

LEGISLATIVE COUNCIL

Thursday, 19 June 1997

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

The President offered the Prayers.

RURAL LANDS PROTECTION AMENDMENT BILL

GAS INDUSTRY RESTRUCTURING AMENDMENT (CUSTOMER CONTRACTS) BILL

Bills received and, by leave, read a first time.

Suspension of standing orders agreed to.

BUSINESS OF THE HOUSE

Precedence of Business

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

That Government business take precedence of general business after 2.30 p.m. this day.

CRIMES AMENDMENT (CHILD PUNISHMENT) BILL

Bill introduced and read a first time.

Second Reading

The Hon. A. G. CORBETT [11.06 a.m.]: I move:

That this bill be now read a second time.

The Crimes Amendment (Child Punishment) Bill has four functions: it clarifies the law, it protects parents, it defines boundaries and it protects children. In 1994-95, according to the Australian Institute of Health and Welfare, 9,000 children in Australia had cases of physical abuse against them confirmed. In reality, the figure may well have been higher. Dr John Yu, Chief Executive of the New Children's Hospital and the 1996 Australian of the Year, said earlier this week that Australians have no reason to be satisfied or complacent about the way we treat our children. Our record on child abuse is no better than any other developed country. Professor Kim Oates, Professor of Paediatrics and Child Health at the University of Sydney and the convenor of the child death review team, said this week that child abuse was far more common "than most of the serious diseases". Too often child abuse is the consequence and result of inappropriate or unlawful physical punishment. For too long, children and their parents have been left exposed to uncertain and unclear common law rules regarding physical punishment and, on occasions, have been arbitrary in their reasoning and application.

The bill is necessary to ensure that the confusion and uncertainty about the responsibilities of parents are

minimised, if not eliminated, and that the limits and boundaries which apply to the physical punishment of their children are clarified. Currently, the common law, in determining whether the use of physical force on a child constitutes an assault, permits such an application of force provided that it is done to punish or correct the child and is performed in a manner that is reasonable considering all the circumstances. The reasonableness of the punishment depends on all the circumstances, but has been generally determined by reference to the nature of the alleged misbehaviour; whether a proper or reasonable instrument was used; the age, maturity and other physical characteristics of the child; the location of the blows; the extent of the harm or injury; and culture.

Despite, or perhaps because of, these criteria there is a lack of certainty and clarity about the legal limits and boundaries that apply to the physical punishment of children. That lack of clarity has been examined and discussed both here and abroad for at least 10 years. It has been recognised that that is due to the fact that the elements of the defence are considered and applied on a case-by-case basis. Furthermore, even when clear pronouncements are made by the courts, these decisions are not generally made known to parents and may not even be applied in similar circumstances. In 1992 the Scottish Law Commission said:

Any examination of the relevant cases will show that standards and values vary so wildly that no rule of thumb definition could be extracted . . . the parenting public could not be expected to be finely tuned to the detail of judicial decision on such matters.

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The response of the Scottish Law Commission to that sort of uncertainty and ambiguity was to recommend that not only should the law "set a standard of reasonableness" but that it should state that correction was lawful only if it was not inflicted with an implement, or in such a way as to risk or cause injury or lasting pain and discomfort. The reference for that quote is page 113 of the discussion paper of the Model Criminal Code Officers committee. The Australian Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General has been examining the general issue of non-fatal offences against the person, and issued a discussion paper in August last year. The discussion paper, at page 112, conceded that the "current common law . . . has been criticised as being uncertain and providing a lack of clear guidance as to the legal limits of lawful correction."

The Model Criminal Code Officers Committee considered the response of the Scottish Law Commission to these criticisms, and it was of the opinion that if law reform did not go so far "as to criminalise a corrective smacking by a parent or guardian", the suggestion that the statutes should set a test of reasonableness and should limit the use of implements had "merit". The reference for that is page 113 of the MCCOC discussion paper. The bill meets those three criteria. It establishes for the first time a statutory test of "reasonable correction"; it prohibits the use of implements, with the exception of the open hand; and it certainly does not "criminalise a corrective smacking by a parent or guardian".

Late last year the review of the Children (Care and Protection) Act 1987 released its discussion paper No. 1 entitled "Law and Policy in Child Protection (1996)". The discussion paper acknowledged that the definition of assault as one of the criteria in determining child abuse is "too vague". It raised a number of questions as to what may or may not constitute an assault on a child, and at pages 22 to 23 it suggested that "the Act needs at least to define certain kinds of corporal punishment which are unacceptable to the community". The Minister for Community Services, responding to media reports about the discussion paper, said in a media release on 10 December 1996:

A debate about what constitutes 'reasonable chastisement' as defined by the legislation is an important community talking point. Unfortunately there are parents who physically abuse their children. This is a serious issue and it must be addressed.

This legislation addresses the need for clarification of the law. Having addressed the need for the bill, I now turn to its substance. The objects of this bill are to codify the current common law defence of reasonable chastisement, to bring a greater degree of certainty to the judicial interpretation of what is meant by lawful

correction, to provide clear guidance to parents and guardians by clearly defining what is not reasonable lawful correction and, most importantly, to minimise the risk of physical harm or injury to children when they are being physically corrected. Schedule 1[1] to the bill inserts proposed section 61AA into the Crimes Act. Proposed section 61AA(1) codifies the current common law defence of lawful correction in the following way:

... it is a defence that the force was applied for the purpose of the discipline, management or control of the child, but only if:

- (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
- (b) the application of that physical force was reasonable in the circumstances.

The bill defines "parent" to include a guardian or other person who has lawful custody of the child. For the purposes of this defence, the bill defines "person acting for the parent of the child" as:

... a person over the age of 18 years:

- (a) who is a step-parent of the child, a de facto spouse of a parent of the child or a relative by (blood or marriage) of a parent of the child, and
- (b) who is authorised by a parent of the child to use physical force to discipline, manage or control the child, or who reasonably believes that he or she has that authority.

Proposed section 61AA(2) makes it clear to parents, courts, police, child protection workers, health professionals and others involved in the care and protection of children that where a charge of assaulting a child is being judicially considered, the defence of lawful correction is not available when the child being disciplined, managed or controlled was subjected to: force applied to any part of the body above the shoulders; force applied by any means other than an open hand; force that inflicts actual bodily harm; or any other punishment or correction which was not reasonable in the circumstances. A considerable body of medical evidence indicates that great risks are involved in hitting children in the manner or to the extent prohibited by this subsection.

Striking with an open hand on the head or across the face can result in bruises on the face and injuries to the mouth or gums, including the loss of teeth, or can risk perforating the eardrum. Severely shaking a child's head or beating a child across the

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head can result in haemorrhages, spinal and internal injuries, brain damage, delays in motor development, and possibly death. The use of a strap, cane, electrical cord or other implement can result in multiple linear bruises, welts, abrasions, and marks on the skin clearly identifying the implement. Physical punishment that results in actual bodily harm - that is, hurt or injury which is more than merely transient or trifling - should be by itself an indication that the punishment is unreasonable. There is no excuse or reason for placing a child's health, physical safety and emotional wellbeing in such jeopardy. The bill provides all parents with a workable and sensible guide to what is and is not reasonable when it comes to physical punishment. Above all, it provides children with the protection of the law, and thus reduces the likelihood of excessive or unreasonable physical punishment.

The provisions of the bill will not operate in isolation. They will be a small but integral part of an interlocking system of checks and protections. The Government's interagency guidelines on child protection intervention set out in great detail the procedure to be followed by police officers, and health, education and child protection professionals. With the protocols and procedures involved in the notification and investigation of child abuse, it is highly unlikely that a matter will simply progress from an assault on a child which constitutes an offence under the Crimes Act, and in relation to which the parent can no longer rely upon the defence of lawful correction as defined in this bill, to the courtroom. Any allegation or suggestion of an assault or abuse of children goes through a thorough process of recognition, notification, assessment and investigation and, if necessary, protective intervention and ongoing care, support and review.

The Police Service, the Department of School Education, the Department of Health and the Department of Community Services have all prepared procedures for recognising and notifying child abuse and neglect. Those procedures, and the provision of training by relevant bodies such as the Child Protection Council, will provide relevant officers with the skills to recognise and deal appropriately with all forms of child abuse. I am confident that this bill will provide those professionals with greater certainty and clarity in their important work. It is a fact that the vast majority of parents do not want to injure or abuse their children. There is a risk, however, that under especially stressful conditions, a parent might lose control when physically punishing a child. The bill is unlikely to alter the present situation of most notifications of supposed child abuse being made to the Department of the Community Services, which then involves the Police Service if there is any indication of criminality.

In that situation, the checks involved in the investigation of such incidents by the department and the Police Service ensure that instances of alleged abuse will result in criminal prosecution only if it is an appropriate response following the notification and investigation. In discussions on this bill my colleague the Hon. J. S. Tingle raised a concern about the impact of this bill on parents who may breach its provisions on a single or rare occasion. I assure the honourable member that the interagency guidelines on child protection intervention are a means of accurately assessing the situation, and providing an appropriate response to the circumstances. Should an instance of inappropriate treatment or punishment of the child be notified to the department, for the sake of the child it cannot be assumed that it is a one-off incident, although every effort should be made to establish whether in fact it is.

I am aware that the case coordination policy framework established by the Department of Community Services in July 1996 is aimed at examining the total environment of the child and placing more emphasis on assessment at the first point of contact. It recognises that only a small minority of parents want to hurt their children. A one-off case of the type suggested by the Hon. J. S. Tingle may well be the result of stress, financial pressures or similar strains, which can be addressed by way of family support services or funds available to the Department of Community Services such as the Family Initiative Fund or targeted child-care subsidies. Last year Parliament passed the Children (Care and Protection) Amendment (Disclosure of Information) Act, which enables the Department of Community Services to liaise with other government departments with a view to establishing relevant information pertinent to the assessment process, and hence the best possible case management plan for the child involved.

That is another check which ensures that the most appropriate response to all forms of abuse and neglect is identified by those government departments with the primary responsibility for the welfare and protection of children. It is envisaged that if an offence has been committed, and it is eventually considered and proven before a court, the magistrate will have recourse, in appropriate circumstances, to section 556A of the Crimes Act under which the offence is proven but no conviction is recorded. Where the interests of the child are an issue the court may well make it a condition of the recognisance that certain undertakings be given and

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observed. Those conditions could take the form of participation in parent education, drug and alcohol counselling or, in the case of older children, a combination of education and family mediation.

The emphasis of the bill is on protecting children and providing parents with the guidance they need and deserve. It is another element in the changes and adjustments made to the system of child protection in the light of the attention and scrutiny given to it in recent times. It will assist both children and parents. It will also assist all of those with the professional responsibility of ensuring that children are protected. In respect of child protection, where a system of mandatory notification exists, as it does under the Children (Care and Protection) Act, there is an overwhelming obligation to ensure that those who are involved in the care and protection of children have a clear and certain understanding of the law, particularly in this instance as it relates to lawful chastisement.

The measures contained in the bill have been subject to widespread consultation and discussion with a number of parents, child protection specialists, paediatricians, children's advocates, and legal academics.

Among the individuals and organisations that have seen a draft of the bill, and have given it their support, are: Dr John Yu, Chief Executive of the New Children's Hospital; Professor Kim Oates, Professor of Paediatrics and Child Health, University of Sydney; the child death review team; the Community Services Commission; the Federation of Parents and Citizens Associations; the Human Rights and Equal Opportunity Commission; the National Children's and Youth Law Centre; and the Youth Action and Policy Association (New South Wales). They all recognise the need for and value of the legislation to protect children and give clear guidance to parents by defining and clarifying the legal boundaries of physical punishment.

In addition to the groups already consulted, I will initiate meetings and discussions with a range of individuals and groups during the winter recess, including those who might be critical of the objects and provisions of the bill. It is important that a constructive discussion about the bill take place over the recess to permit an informed debate when Parliament resumes in the spring. The provisions of the bill go some of the way to meeting the need for child protection and guidance to parents, but the bill alone is not enough. It is important that education and information about the reduction in the risk of injury to children represented by the provisions of this bill accompany any reform of the law, as both are essential if our children are to be afforded every possible protection, every safeguard, against physical abuse.

For that reason, in addition to any time taken to debate the bill both in the Parliament and in the community, the bill provides that the proposed Act will commence two months after the date of assent. I ask the Government and non-government organisations to assist in the process of education. In conclusion, Dr John Yu has called for bipartisan support for the bill, saying that it "will make a difference to children but will not in any way interfere with families and the way families care for and nurture their children". Naturally, I call for the support of all my colleagues for a measure which will undeniably protect both children and parents. I commend the bill.

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

CRIMINAL APPEAL AMENDMENT (REVIEW OF CRIMINAL CASES) BILL

Bill introduced and read a first time.

Second Reading

The Hon. J. P. HANNAFORD (Leader of the Opposition) [11.24 a.m.]: I move:

That this bill be now read a second time.

I suspect that at different times all members of this House have received representations that a conviction was so unsustainable as to warrant an inquiry or that compensation was payable for time spent in gaol, a conviction having been quashed on appeal. The procedure laid down for dealing with such matters is reasonably clear. However, the procedure needs substantial improvement. The purpose of the bill is to provide a mechanism for the handling of such claims outside the political arena. Honourable members would be familiar with the quashing of the convictions of Douglas Rendell and Ziggy Pohl and the difficulties they sustained in obtaining compensation. I acknowledge that both of those cases occurred during my administration. However, following the appointment of former Chief Justice Sir Laurence Street a process was put in place for compensation to be paid to them.

Unfortunately, there are still problems. Recently these problems were highlighted when the royal commission, through the use of its powers, was able to identify a substantial number of miscarriages of justice. It would not be unfair to say that but for the investigative processes of the royal commission not one of those miscarriages of justice

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would ever be corrected. The current process involved in seeking to quash a conviction is less than satisfactory. Under the present system the onus is on the applicant to present evidence to legal officers who advise the

Attorney General to justify the quashing of a conviction. If the applicant does not have the necessary financial resources to engage legal assistance, the application will not get off the ground. Even if an applicant receives assistance from people who are generous with their time - Yvonne Swift, for example, has represented a number of people who have sought to have their convictions quashed - but does not have the necessary financial resources, the application will still not get off the ground.

The English experience is manifest. A royal commission into the conviction of the Birmingham Six advocated the establishment of a Criminal Cases Review Commission and a mechanism for assessing compensation. The bill is very much modelled on that proposal, but I have taken the matter one step further. The bill proposes the appointment of a one-person commission. As and when it becomes necessary, the commissioner will be able to appoint deputies to assist in the inquiry. An applicant seeking to have his or her conviction reviewed will be able to ask the commission to undertake a review that is independent of political and government processes. The commission will have the power to appoint investigators to undertake investigations if that becomes necessary. For example, before I made a final assessment of one application that came before me during the time I was Attorney General it became necessary in my view to obtain entomological advice. The attitude of the advisers was that government should not be attempting to obtain that advice. I do not know the result of the matter, although I know the application to have the conviction quashed was unsuccessful.

The commission proposed in the bill must be able to undertake pro-active investigations. The clear evidence from the royal commission into the conviction of the Birmingham Six and from the Royal Commission into the New South Wales Police Service is that police cannot investigate police. I hope that may change with the advent of the Police Integrity Commission. However, the commission to be established by this bill should have the power to obtain additional evidence if that is considered necessary. Having investigated all the information I do not propose to change the law. An application will then be made to the court for the court to determine whether or not a conviction ought to be quashed.

Division 2 of the bill provides for investigations and division 3 provides for the powers of the commission. The next matter the bill addresses is the assessment of compensation. At the moment, assessments of compensation are made by the Attorney General on an ex gratia basis. Those assessments are always bedevilled with difficulties. No-one in the community is satisfied with the current process. One mechanism I adopted when I was Attorney General - I do not know whether it has been maintained by the current Attorney General - was to appoint mediators in respect of claims for compensation. Part 4B of the bill establishes a statutory right for compensation in cases where a conviction is quashed. Any application for compensation will again be referred to the independent commission. The independent commission will assess the compensation by having regard to the criteria set out in proposed section 23Q. That follows the traditional compensation-assessing process.

Proposed section 23R is an extremely important provision in this legislation if we are to restore public confidence in the justice system. At present the Attorney General has an ex gratia authority to direct the payment of compensation where there has been a wrongful conviction or a miscarriage of justice. It is exceptionally difficult to present a case which leads to advice being given by the appropriate authorities that they were wrong and, therefore, that an ex gratia payment should be made. However, I recall that, on occasions, I authorised such a payment. I authorised an ex gratia payment in a case involving the Director of Public Prosecutions. Proposed section 23R now provides that in cases of wrongful conviction, or apparent or possible wrongful conviction, or otherwise concerning a miscarriage of justice, a person seeking compensation in respect of those matters should be able to make an application to the Attorney General. The Attorney General is required to refer all such applications to the commission. The commission will then investigate the allegation and provide advice to the Attorney General on whether or not a payment should be made.

If compensation is to be paid the commission has to provide advice as to the amount. The legislation provides that there should be no payment of ex gratia compensation in these matters other than in accordance with this procedure. It is still open to the Attorney General of the day to decline to make such a payment, but at least the mechanism is in place. Proposed section 23Q provides for a statutory right to compensation where a conviction has been quashed and payment is to be retrospective. Ex gratia compensation payments will also be retrospective. I recognise the potential for a number of claims to be made. That was recognised also in the

United Kingdom. I established, after discussions

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with officials in the United Kingdom, that although many claims were made few were processed. Many people, for their own reasons, seek to establish that they are wrongfully convicted, but those claims are not often sustained.

We must take additional steps to restore the confidence of the public in the administration of justice - the next logical step as a result of the royal commission. Members of Parliament constantly receive complaints about wrongful convictions or miscarriages of justice in the administration of the criminal justice system. A mechanism will now be in place for the sending of claims to an independent authority for investigation. If those claims are sustained the appropriate mechanism is also in place for the assessment of compensation. This legislation requires extensive public consultation and analysis. I understand that Justice Action has in excess of 110 cases ready for referral to such a commission. The Attorney General has in excess of 60 cases on his books and he is trying to work out what to do with them. There is a real need in the community for such a commission, and this bill provides the necessary mechanisms. I welcome any public comments on amendments to this legislation. I have many files from many people who have already raised the need for such legislation. When the Parliament resumes in September I hope all honourable members will support this bill.

Debate adjourned on motion by the Hon. Dorothy Isaksen.

OMBUDSMAN AMENDMENT (COMPENSATION) BILL

Bill introduced and read a first time.

Second Reading

The Hon. J. P. HANNAFORD (Leader of the Opposition) [11.38 a.m.]: I move:

That this bill be now read a second time.

The Ombudsman Amendment (Compensation) Bill, which is fairly simple piece of legislation, provides a mechanism for the assessment of compensation in cases in which the Ombudsman has made a recommendation that there should be such a payment. Latest reports from the Ombudsman indicate that the vast majority of departments make a payment when such a recommendation has been made by the Ombudsman. The one exception appears to be the New South Wales Police Service. When the Ombudsman has made recommendations that compensation be paid, on approximately 50 per cent of occasions it is not paid. Two aspects concerning this legislation are less than satisfactory. First, because there is no mechanism in place to force a department to pay compensation and to assess compensation, in the vast majority of cases departments use their position of leverage to negotiate a less than satisfactory level of compensation. People claiming compensation know that if they do not take what has been offered by a department there is no other way of getting that money. Second, many departments are putting strong pressure on the Ombudsman not to make recommendations for the payment of compensation.

I have referred previously in the House to an Ombudsman's report that a child was kidnapped by the Department of Community Services and it took the parent some 15 months to get the child back. The then Minister, in a strong approach to the Ombudsman, made it clear that on no account would the department make any payment of compensation. Though the draft report of the Ombudsman advocated compensation, the final report did not. When I made inquiries I was told that the Ombudsman did not recommend payment because the department made it clear the person would not receive any money and therefore such a recommendation would not serve any purpose. That matter is now before the courts and the family, which has been emotionally devastated by this incident, is trying to get compensation.

By putting in place a clear mechanism whereby the Ombudsman can order compensation, and there is a mechanism for assessing compensation and ensuring it is recovered, the community will benefit in two ways.

The Ombudsman will gain confidence, first, from knowing that there is purpose in making an order for compensation, and, second, that there is a mechanism to assess the appropriate amount of compensation that should be ordered.

The amendment is simple. It provides that if the Ombudsman finds that the conduct the subject of the investigation is of any one or more of the kinds of conduct referred to in section 26(1), the Ombudsman may order the public authority whose conduct is in question to pay compensation to any person for any loss or damage suffered by the person because of that conduct. Second, it provides that the Ombudsman may appoint an independent mediator or arbitrator to assess compensation. The bill then provides that the amount so determined shall be deemed to be a judgment debt that is recoverable from the agency.

The legislation makes the clear and specific statement that the Police Service is a public
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authority for the purposes of the Act. Honourable members will recall many occasions on which there has been some travesty of behaviour by police officers. In such circumstances the Ombudsman will be able to pursue the inquiry, determine whether wrong conduct has occurred and, if it has, whether compensation should be paid, and put in place a mediation or arbitration procedure by which the compensation can be assessed and recovered. All of this can be done without the need for litigation, and perhaps even without the need to obtain legal assistance, thus saving the complainant considerable expense.

This is a significant reform, but I believe that the Government will receive strong advice from the Cabinet Office and the Treasury not to support it. When members of the Government consider the legislation I urge them to consider the justice of the process, and if they do I am sure they will support this reform. I have introduced the legislation at this time because I believe that there ought to be time for the community to consider its implications. When the House resumes in September I hope it will support it.

The bill will have retrospective effect; it will apply to all matters, as at this date, in respect of which the Ombudsman has ordered compensation and the authorities have chosen to thumb their noses at the order. Those complainants will be able to get their just entitlements. Some cynics might well say it is easy for an Opposition to introduce this bill and the previous bill I introduced. However, this and the earlier bill have the unanimous support of the shadow cabinet and the party room. Therefore, if the Government does not support the bill, it will be among the first pieces of legislation that will be introduced by the coalition Government upon its return on 27 March 1999.

Debate adjourned on motion by the Hon. Dorothy Isaksen.

PARLIAMENTARY ELECTORATES AND ELECTIONS (VOTING AGE) AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

The Hon. R. S. L. JONES [11.46 a.m.]: I move:

That this bill be now read a second time.

The object of the bill is to amend the Parliamentary Electorates and Elections Act 1912 to reduce the minimum voting age from 18 years to 16 years. More specifically, the bill will qualify 16-year-olds to vote in parliamentary elections; disqualify from voting persons who are committed to the control of the Minister administering the Children (Detention Centres) Act 1987 for 12 months or more; provide for the provisional enrolment of persons from 15 years of age; not confer a right or privilege other than entitlement to vote at an election, impose an obligation or liability or qualify a person to hold a position or exercise a power upon persons under 18 years of age; and not qualify or make liable persons under 18 years of age to serve as jurors.

Over the last two years argument on lowering the voting age has attained what could be called debate status within the wider community. It has received widespread coverage in the electronic media, especially on talkback radio, at both national and local levels, and in the press. As far back as August 1994, the difficulty of reaching young people and involving them in the political debate was pointed out to the Council of Australian Governments in a report from the Centenary of Federation Advisory Committee entitled "2001: A Report from Australia". As it now stands, young people often have the least influence on determining what goes on in their lives both up to and beyond the age of 18. Legislation and public policy that pertains to youth - covering juvenile justice, youth unemployment, education and training, youth suicide, homelessness and other rights and responsibilities of Australian youth - has been, and often continues to be, devised without input from young people. As a result, young people are being excluded from our society's most essential services and resources and their position is being increasingly typified by relative poverty, powerlessness and marginalisation.

For example, the media continually and falsely portray our youth as a generation out of control, and with declining regard for the rest of society. When people speak of young people today the words that generally spring to mind are unemployment, homelessness, suicide, depression, juvenile crime, drugs and family breakdown; while words such as opportunity, hope, ambition, energy, enthusiasm, imagination, aspirations, initiative, careers and beginnings seem to have been somewhat forgotten.

It is, however, time that young people were recognised for the commitment that they show towards their communities, for their genuine desire to contribute to developing a better future for Australia and for their willingness to participate when the rest of society provides them with the opportunity to do so. A recent survey of 1,320 young people between the age of 13 and 25,

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conducted by the Australian Youth Policy and Action Coalition, found that 55 per cent were in favour of young people being able to vote in local, State and Federal elections from the age of sixteen. Also, 73.4 per cent thought young people should be taught more about politics, power and access to decision making, and 86 per cent believed that young people should have more of a say about how things affect them within the community.

Lowering the voting age to 16 years in New South Wales will allow them to do just that. Not only will it provide our youth with an opportunity to participate in society, it will also allow them to play an equal role within it and give them greater access to decision making structures. It is nonsense that in this country one cannot vote until one is 18 years of age but at 15 one can leave school, take up full-time work and pay tax. At the age of 16 one can leave home, join the navy and be required to defend this country, sign a legally binding apprenticeship contract, be declared bankrupt for non-payment of debts, get married and have children, join most political parties and learn to drive. At 17 one can enlist in the air force or army.

It is no small wonder that the Youth Affairs Council of South Australia has recommended that State and Federal Governments introduce legislation allowing 16-year-olds and 17-year-olds the option to register to vote in both State and Federal elections and that the National Children's and Youth Law Centre has also expressed its support for such action. Support for lower voting ages is not however merely confined to Australia. The Social Democratic Party in England has committed itself to giving 16-year-olds the vote. Nelson Mandela, President of South Africa, has stated that all South Africans aged 14 and over will be eligible to vote in future elections. International precedent has also been set. Both Brazil and Nicaragua have already lowered their voting ages to 16 and in Scotland people between 16 and 17 are able to vote for community councils.

Article 25 of the International Covenant on Civil and Political Rights also states that every citizen shall have the right and opportunity without unreasonable distinctions to take part in the conduct of public affairs, directly and freely through chosen representatives and to vote and be elected at genuine periodic elections, which shall be by universal and equal suffrage. Of course, some people argue that those under the age of 18 may not have enough knowledge or understanding of the issues or of politics in general, nor the maturity to cast informed votes. However, an interesting study by Furnham and Stacey has revealed that by the age of 15, children "can take into account the long-range effects of political action and use philosophical principles for making political judgments".

The same argument could probably be used against the majority of the electorate. We have to be consistent. Either a citizen's level of knowledge, understanding and maturity is a factor in their right to vote or it is not. After all, we do not automatically become politically aware and mature once we turn 18. John Holt noted, "No amount of ignorance, misinformation or outright delusion will bar an adult from voting . . . why should young people be?" It is also important to note that the arguments currently being used against the youth vote are the same arguments that were used in the past to justify why women and indigenous people should not have the right to vote. Just as these arguments are not about the ability of a particular gender or race of people, they are not particular to 16-year-olds. As I have just illustrated, they are relevant to all people who have the right to participate in the democratic decision-making process.

[Debate interrupted.]

DISTINGUISHED VISITORS

The PRESIDENT: Order! I announce to the House the distinguished presence in my gallery of Mr P. Upendra, a member of the Parliament of India, and his colleagues, who are currently in Australia studying ethics and codes of conduct.

PARLIAMENTARY ELECTORATES AND ELECTIONS (VOTING AGE) AMENDMENT BILL

Second Reading

[Debate resumed.]

The Hon. R. S. L. JONES: Young people are therefore being denied the right to vote on the basis of age. We now have laws against age discrimination and according to those laws there should be no discrimination based on age unless there are compelling reasons for that deferential treatment. Since it has not been proven that 16-year-olds and 17-year-olds lack the ability to make political decisions, they ought not be denied the vote on the basis of age. Imagine if elderly people were denied the right to vote because of their age. In summary, young people are currently caught in a social, economic and political system of structural dependency which does not encourage them to take responsibility for themselves. If we as political

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leaders are serious about addressing youth issues, we must encourage young people to be part of the democratic process, and the only way in which they can genuinely take part is if they are included in their own right through having the opportunity to vote from the age of 16.

Debate adjourned on motion by the Hon. Dorothy Isaksen.

PUBLIC HEALTH (SMOKING IN VEHICLES) AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

The Hon. R. S. L. JONES [11.56 a.m.]: I move:

That this bill be now read a second time.

The object of this bill is to amend the Public Health Act 1991 to make it an offence to smoke in a vehicle in which a person under the age of 18 is present. The proposed maximum penalty for this offence is 10 penalty units. Proposed section 61B provides for three possible defences. First, a person can only be found guilty if the offence takes place in a public street. Second, a person cannot be found guilty of an offence if he or she believed, on reasonable grounds, that no person in the motor vehicle was under the age of 18. Third, a driver of a bus cannot be found guilty of an offence if he or she smokes in a cabin separated from the rest of the

passengers in the bus.

Proposed section 61C clarifies the serving of a penalty notice. Penalty notices can be served in person or by mail. A person accused of an offence must pay a fine or have the matter determined by a court. Once the fine is paid, the person is not liable to any further proceeding for the offence and is not liable for any civil proceeding arising from the offence. For this section, the prescribed penalty is \$100. The direct human and economic effects of smoking are well documented. The Medical Services Bulletin found cigarettes to be responsible for more morbidity and mortality than any other single item. Globally, smoking accounts for three million deaths annually. By 2027 this figure is likely to rise to 10 million deaths.

The related health care costs are \$200 billion per year. In New South Wales alone, smoking-related illness claims 2,400 lives each year, without counting the effects of passive smoking. The indirect effects of smoking are rapidly gaining a notoriety of their own. Already passive smoking is responsible for over 1,600 deaths each year in Australia, mostly from heart disease and lung cancer. Increasingly, governments have legislated to ensure that the indirect effects of smoking are minimised. For example, smoking in many public places is prohibited. The aim of this bill is to further reduce the effects of passive smoking and particularly to protect the most vulnerable and exposed group in our society - our children.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

HOME CARE SERVICE REVIEW

The Hon. PATRICIA FORSYTHE: My question without notice is directed to the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services. In view of the recent review of the Home Care Service, which according to media reports suggested a drift in services from the frail aged to younger people with a disability, what is the Minister doing to ensure that there is equity in the system? Can he provide guarantees to the frail aged that their needs are not taking second place? When will he table the report produced at expense to the taxpayers of New South Wales?

The Hon. R. D. DYER: I authorised and arranged for a review of the Home Care Service of New South Wales to be conducted by Mr Andrew Booth. Earlier this year the results of that review were made available to me. One of the principal issues to emerge from that review was whether the service related to younger people with a disability or to older people. In either case there was a strong tendency for an increase in clients who consume a greater degree of service hours at the expense of clients who consume a lower proportion of service hours. In other words, people requiring personal services such as showering, which is more time-consuming, were consuming a higher proportion of hours, expressed as a percentage of the total, compared with service hours devoted to housekeeping.

One of the reasons I instituted the review was my concern about that apparent trend, which has been occurring for five years both under this Government and the previous Government. It must be borne in mind that the provision of housekeeping services might be keeping older persons out of acute

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care. The important role of the Home Care Service cannot be underestimated. It is a critical service provided to thousands of frail older people and to people with disabilities, and their carers, who need support to be able to live independently in the community. An attempt to play off older people against younger people with disabilities would be counterproductive because, according to the criteria that are laid down, both of those groups can access the Home Care Service.

The Home Care Service is funded via the home and community care program, which is a joint Federal-State program. The Home Care Service of New South Wales is the largest single home and community

care service in Australia. Given the significance of home care, the commitment to establish a review of the Home Care Service by me is regarded by the Government as an important initiative because it is critical to ensure that the services provided by the Home Care Service are efficient, effective and, most important, sensitive to the needs of consumers. I established the review to examine a number of aspects of the Home Care Service operations.

Those matters included the nature of current service delivery by the Home Care Service to older people, people with disabilities and their carers; changes in the customer mix, assessment and targeting; satisfaction of current and former home care clients; appropriate reporting and accountability arrangements; where possible, comparisons of unit costs clarifying the core business of the Home Care Service; options for subsidisation of core services through other income generating activities; innovative strategies developed or available to the Home Care Service to enable it to provide better quality services; and linkages and coordination with other services. A key aspect of the home care review was the significant effort made to obtain the views of the community and particular home care clients about the service. The reviewer, Mr Booth, undertook over 50 visits to a range of community groups, service providers and home care branches, and during this process met with a considerable number of home care customers and staff.

He visited 50 general and a further nine Aboriginal home care branches. Mr Booth also met with representatives of over 200 community groups and organisations, government departments and private agencies through the facilitation of focus groups and other meetings, and received over 20 written submissions. Earlier in my response to this question I said that the independent review of the Home Care Service has been completed. The report acknowledges the valuable work that the Home Care Service and its staff undertake. Although problems were clearly identified, a significant finding was that there is a high level of satisfaction with and respect for the Home Care Service among its clients. However, clearly there are some areas for improvement. I have asked agencies within my administration to work together to find effective solutions to the issues raised.

Many of the issues raised in the review of home care are complex. If there were easy solutions, they would already have been implemented. I assure the House that I am committed to an effective home care service in New South Wales and following appropriate consideration I look forward to outlining the Government's response to the review in the near future. Funding for services such as home care is a critical element in ensuring high-quality service delivery for the home and community care targeted group. Once again this Government has recognised its commitment to older people, people with disabilities and their carers by providing for growth funds in the HACC program in 1997-98.

If the level of contribution provided in the State budget for annual funding of the HACC program is matched by the Federal Government, the clients of the service will be much better off in this approaching financial year than they were last year. In total, an additional \$12.3 million in recurrent funding has been provided in the current State budget. This will enable provision of indexation to services to meet increased costs and will significantly advance the availability of HACC services throughout the State. I understand that the Commonwealth has also committed new funding for the HACC program in 1997-98, although we have not yet received the formal offer that I referred to a moment ago. Any Commonwealth funding for the program will be able to be fully matched by the provision of funds by the State Government.

The Hon. Dr B. P. V. Pezzutti: When are you going to do something?

The Hon. R. D. DYER: As usual, new funds will be distributed in accordance with priorities established through local area HACC planning. These processes are aimed at ensuring increased equity and targeting of the most pressing needs for service enhancement across the State. I say to the boofhead who is interjecting that the previous Government did nothing for this service for three years before the election; he is the last person who should interject.

ACCOMMODATION LEVY

The Hon. FRANCA ARENA: Has the Treasurer sought legal advice in relation to the bed

tax on brothels in the central business district? What was the legal advice? Will the Treasurer take into consideration the suggestion of the Hon. Dorothy Isaksen that the bed tax on brothels would be more appropriately called a turnover tax?

The Hon. M. R. EGAN: I am aware of the difficulties that may confront officers of the Office of State Revenue when they determine the accommodation component of the service provided by brothels in relation to bed tax. I have noted the suggestion of the Hon. Dorothy Isaksen that, for administrative purposes, it might be easier to impose a turnover tax on brothels.

The Hon. R. T. M Bull: A services tax?

The Hon. M. R. EGAN: No, a turnover tax. Honourable members who are my age or older will remember that in 1969 the then Premier of New South Wales, Robert Askin, toyed with the possibility of introducing a turnover tax. I assure the Hon. Franca Arena that we will give some consideration to the proposition of the Hon. Dorothy Isaksen. I refer to the *Australian Concise Oxford Dictionary*, in which the word "turnover" is defined as "turning over". More aptly, the definition also includes:

... semicircular or triangular pie or tart made by turning half of pastry over filling, amount of money turned over in business, numbers of persons etc, entering and leaving ...

The Government will consider the proposal put forward by the Hon. Dorothy Isaksen.

COUNCILLOR PETER WOODS PUBLIC OFFICES

The Hon. J. H. JOBLING: My question without notice is directed to the Attorney General, representing the Minister for Local Government. Is Labor mate Peter Woods currently being considered for any more State Government appointments? Will the Carr Government place an immediate veto on Peter Woods with respect to further publicly funded appointments? Will the Attorney General confirm whether any conflict of interest problems arise because Peter Woods is concurrently holding three essentially full-time public service and civic positions, as well as positions on nine boards, some of which are in London? He is a member of the Geographical Names Board of New South Wales, the New South Wales Reconciliation Advisory Council, the New South Wales Local Government Liaison Committee, the ministerial task force on local government reform in New South Wales, the board of the Environment Protection Authority of New South Wales, the Roads and Traffic Authority, the Inner West Waste Board and the Commonwealth local government forum, and he is the chairman of the University of Canberra's local government advisory committee. Is this the same Peter Woods who is a member of the board of Greater Southern Electricity? Have any enterprises in which Peter Woods is a significant shareholder received contracts or substantial benefits from Greater Southern Electricity?

The Hon. J. W. SHAW: I understand that Peter Woods is not a member of Greater Southern Electricity. I would have thought that the old aphorism "If you want something done ask a busy person" would be appropriate. The fact that an individual in public life might have multiple roles should not be the subject of criticism or be a problem in itself. The Opposition seems to have developed an obsession with Mr Woods - it might even amount to a vendetta against him - which is puzzling. Mr Woods is the democratically elected leader of the Local Government Association of New South Wales, and he has been for many years. When I was the shadow minister for local government I had my differences with Mr Woods, but we retained a civil relationship.

The fact that the LGA has elected him its public spokesperson year after year is evidence that he is regarded as an articulate and courageous advocate of the interests of local government. As I said in response to similar questions yesterday, nothing suggests that something is untoward in this regard. My information is that he is not a member of the board of Greater Southern Electricity, and my colleague the Minister for Energy will correct me if I am wrong. I do not know whether Mr Woods is under consideration for any Government position. Any person is entitled to apply for appointment or employment under the Public Sector Management Act.

I cannot survey all the applicants at any one point in time. I have no knowledge of an application for an appointment from Mr Woods. The Hon. J. H. Jobling used the term "Labor mate". I do not know whether he intended it as a pejorative term, as a compliment or as a neutral description. Mr Woods was a member of the Australian Labor Party many years ago, but I understand that he was expelled from the party. I understand also that he is currently a passionate independent. He is part of the group of elected officers that regards itself as independent. I do not know whether he is a member of any political party at the moment - that is for him to clarify.

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BROKEN HILL COMMUNITY SERVICES CENTRE

The Hon. Dr MEREDITH BURGMANN: My question without notice is directed to the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services. Is the Minister aware that the Broken Hill Community Services Centre has been nominated for an excellence in service award by the local chamber of commerce?

The Hon. R. D. DYER: I am aware that the Broken Hill Community Services Centre has been nominated for this annual award. This is the first time that the Department of Community Services has been honoured with a nomination. Nominations are made to the chamber of commerce by local residents, and the nomination of the Department of Community Services is a strong endorsement of its innovative and excellent work in the local community. Led by the manager, Mr Glen Spears, the office has developed some inclusive and interesting projects, focusing on the needs of Aboriginal communities and adolescents, in particular.

The Hon. D. F. Moppett: I spoke about it last night. I said that it provides a great service.

The Hon. R. D. DYER: I am glad to hear that the Hon. D. F. Moppett recognises the initiatives being taken by the centre. In response to dealing with child protection issues in Aboriginal communities, the Broken Hill office has developed the concept of family meetings. It has conducted more than 600 meetings with extended Aboriginal families, with the result that not one Aboriginal child has been taken into care. The staff have organised Aboriginal cultural camps and courses to build the self-esteem of the children. These locally based initiatives are in response to local issues and they have been developed in cooperation with the community. The essence of this office's success is that it has opened itself up to the community. Staff have made the premises available for use by other agencies and groups.

A good example of the value of the premises is the setting up of a remedial education program which is run free of charge so that young people can get the extra help they need in mathematics or reading. In many ways this office is stepping out of the traditional community services role and is reaching out into the community, devising local responses to solve local problems and is receiving greater community understanding and recognition for the very difficult and demanding role that it plays. We are constantly reminded in this House and in the media of the negative aspects of the department's work. The fact is that there are many thousands of departmental staff throughout the State who work extremely hard to help families and communities in a whole range of ways.

The experience at Broken Hill is by no means isolated, and it is being repeated throughout the State. I am pleased to highlight the achievements of Mr Glen Spears and the staff of the Broken Hill Community Services Centre in achieving a nomination for service excellence, and I wish them every success for the awards night on 3 July. Mr Spears this week told a member of my staff that the office was thrilled to be nominated and recognised in this way. Mr Spears says it does not matter whether they win or not. Perhaps more indicative of their determination to succeed was his statement that "Next year we'll win it for sure . . . we'll just work a lot harder."

TOTALIZATOR AGENCY BOARD SCOPING STUDIES

The Hon. R. T. M. BULL: I address a question without notice to the Treasurer. Will the Treasurer table the four scoping studies which the Hong Kong and Shanghai Banking Corporation undertook for the New South Wales Government into the possible corporatisation and privatisation of the New South Wales Totalizator Agency Board?

The Hon. M. R. EGAN: I am not aware of any scoping study by the Hong Kong and Shanghai bank. That is not to say that there is not one. But, if there is, I would not anticipate that it would be released publicly.

TOTALIZATOR AGENCY BOARD SCOPING STUDIES

The Hon. R. T. M. BULL: I ask a supplementary question. Given the commercial sensitivities, would the Treasurer allow the Opposition to inspect those documents under the supervision of his departmental officers?

The Hon. M. R. EGAN: I would certainly be willing to allow the Deputy Leader of the Opposition, the Hon. Richard Bull, to have access to the documents because I know that he would treat them with the appropriate confidentiality. But, as I say, I do not know whether such a document exists. In the nature of these things, there are always all sorts of expert advices that are sought and put together for the benefit of decision makers.

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CHARGING OF SENIOR CONSTABLE ANTHONY GARMENT

Reverend the Hon. F. J. NILE: I ask the Attorney General a question without notice. Is it a fact that 18-year-old Rebecca Bernauer was brutally strangled on 7 June 1997? Is it a fact that Rebecca was the main witness in two serious charges of supplying heroin laid against Senior Constable Tony Garment? Is it a fact that the Director of Public Prosecutions will now drop these serious charges of supplying heroin that have been laid against Constable Garment because of the murder of Rebecca? Will the Government delay the dropping of these charges of supplying heroin against Constable Garment until the murder investigations are completed, as it may be shown that Rebecca was murdered by the drug bosses to stop her giving evidence in this serious case of police corruption so as to protect Constable Garment?

The Hon. J. W. SHAW: I am sure that this tragic case has touched all honourable members of this House. This has been a particularly sad murder case, as described in the press. Reverend the Hon. F. J. Nile is correct: I understand that the Director of Public Prosecutions, as a result of that sad death, has dropped certain charges against a suspended police officer, although I understand he is pursuing lesser charges against that person. Obviously, it is within the prerogative of the Director of Public Prosecutions to determine whether, having regard to the course of events, he has sufficient evidence to sustain a particular charge. Obviously, I would not want in any way to influence or interfere with that decision, which is essentially a technical decision as to whether evidence is available to sustain the criminal prosecution.

The course of the murder investigation is clearly in the hands of the police. I would need to leave it to the expertise of the police officers engaged in that investigation to follow that through with all due dispatch. But certainly, in light of the honourable member's question, I would be happy to at least raise the matter with Mr Cowdery to ascertain the position generally. I have confidence in his capacity to take into account all relevant considerations.

CHARGING OF SENIOR CONSTABLE ANTHONY GARMENT

Reverend the Hon. F. J. NILE: I ask a supplementary question. Could the Attorney General explain whether it is possible to retain the serious heroin charges, even if they are not proceeded with?

The Hon. J. W. SHAW: Charges are either proceeded with or not proceeded with. There is no

intermediate position. If the charge can be sustained by available evidence, it will be pursued in the court. If it cannot be sustained by available evidence, then it would need to be abandoned. I do not think there is any grey area there.

LAW REFORM COMMISSION REPORTS

The Hon. PATRICIA STAUNTON: I direct a question without notice to the Attorney General. Can the Attorney report to the House what the Law Reform Commission of New South Wales has produced over the past 12 months.

The Hon. J. W. SHAW: I have always regarded the Law Reform Commission of New South Wales and the Australian Law Reform Commission as very important bodies. Indeed, from time to time I have had the aspiration to contribute to the deliberations of law reform commissions, although so far that opportunity has not come my way, except in my current job - but that has been in a somewhat different capacity. The Law Reform Commission of New South Wales, over many years and under different administrations, has had a very high reputation both for the sense of the recommendations that it has made to the Government and to The Legislature and also for the technical competence of the way in which those recommendations are formulated and advanced by the Law Reform Commission.

When this Government came to office the head of the Law Reform Commission was the very eminent Mr Gordon Samuels, who is now Governor. I was privileged to work with Mr Samuels in his capacity as head of the Law Reform Commission. We appointed Mr Michael Adams, QC, as a part-time chair of the Law Reform Commission. Honourable members may know that whether the chair of the Law Reform Commission is part-time or full-time has fluctuated over the years; there have been some full-time incumbents and some part-time incumbents. I have been glad to appoint Professor Jack Goldring of Wollongong university as a full-time member of the commission. He is doing a fine job.

As the Leader of the Opposition knows, the full-time commissioner of the Law Reform Commission is a critical appointment because that person has to do the detailed writing. He uses the expertise of part-time members, but he essentially has to pull most of the material together. In short, I am extremely happy with the progress of the Law Reform Commission and with the efficiency and rapidity with which it is performing its work. Physically, the Law Reform Commission has moved back into the Goodsell Building, where I understand it was located years ago. The commission formerly had premises at The Rocks.

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The Hon. Dr B. P. V. Pezzutti: Who cares! Get on with the answer.

The Hon. J. W. SHAW: Perhaps the Hon. Dr B. P. V. Pezzutti does not care. I think he will find that the Leader of the Opposition is interested in this matter because the physical proximity of the Law Reform Commission premises and staff to the Attorney General's office and policy office of the Attorney General's office is quite important as well as interesting. It may well be that the Hon. Dr B. P. V. Pezzutti has no interest in this matter, but that cannot be the litmus test of what we say in this House. We cannot fail to report a subject matter to the House simply because the Hon. Dr B. P. V. Pezzutti has no interest in it. If that test were applied, we would be saying hardly anything; we would be struck mute. I hope that the more serious-minded members of the House would be interested in the progress of the Law Reform Commission.

The 1996-97 financial year has been very productive for the Law Reform Commission. It has written seven reports, and they will give honourable members the scope of the matters with which the commission is dealing. The reports are: Report No. 76, Torrens Title: Compensation for Loss; Report No. 77, Directed Verdicts of Acquittal; Report No. 78, Provisional Damages; Report No. 79, Sentencing; Report No. 80, People with an Intellectual Disability and the Criminal Justice System; Report No. 81, Review of the Adoption of Children Act 1965; and Report No. 82, Partial Defences to Murder: Diminished Responsibility. Many of those matters were referred to the Law Reform Commission by former governments, by my predecessors as Attorneys General - Mr

Dowd, as he then was, Mr Collins, and the Leader of the Opposition in this House. All credit to them! The fact that the Hon. Dr B. P. V. Pezzutti has no interest in the topic is beside the point and, I am pleased to say, does not reflect the general view of the Opposition, which, I would think, is supportive of the activities of the Law Reform Commission.

ETHNIC AFFAIRS COMMISSION GRANTS

The Hon. J. M. SAMIOS: Is the Treasurer, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs, aware that a grant from the Ethnic Affairs Commission was made to the Transport Workers Union? Is he able to say what the amount of the grant was and for what purpose it was made? What are the guidelines for the giving of grants to trade unions from the limited funds available to ethnic communities? Does the Minister not agree that the grant is a break from the normal allocation of grants for ethnic community needs?

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

BUREAU OF CRIME STATISTICS AND RESEARCH

The Hon P. T. PRIMROSE: Will the Attorney General tell the House what the Bureau of Crime Statistics and Research has achieved during the year?

The Hon. J. W. SHAW: Another agency within the Attorney General's portfolio that does a great job, and has done for many years, is the Bureau of Crime Statistics and Research, which is headed by Dr Don Weatherburn. For many years governments of all colours have received objective and technically competent advice from Dr Weatherburn. He is not a lawyer, and he is none the worse for that. He is a social scientist and has expertise in statistics.

The Hon. D. J. Gay: He went to school with me.

The Hon. J. W. SHAW: He is none the worse for that. The Bureau of Crime Statistics and Research has made many positive and interesting findings over the past year or so, and I am sure honourable members will be interested to hear about them. A survey of sexual assault victims who took their cases to court revealed that respondents were generally satisfied with the service provided by police and sexual assault centres. A national survey of people's perceptions of their risk of being victims of crime, which was commissioned by the Australian Bureau of Statistics and conducted in 1995-96, revealed that Australians exaggerate their risk of becoming victims of break and enter offences, motor vehicle thefts, assaults and robberies, which makes rational political debate about law and order policy more difficult.

A literature review commissioned by the Director of the National Drug and Alcohol Research Centre presented evidence which showed that the methadone maintenance treatment prescribed for heroin users to help them reduce their dependence on heroin reduced both injecting heroin use and criminal offending by dependent heroin users. To assist court administrators, the Bureau of Crime Statistics and Research published a bulletin dealing with performance measures for the processing of criminal trials. A study was conducted of the relationship between alcohol sales and crime rates across New South Wales postcodes.

The study estimated that if each of the 50 postcodes with the highest sales of alcohol each reduced their sales to the statewide mean, offensive behaviour would be reduced by 22 per cent, malicious damage to property by 9 per cent and assault by 6 per cent. I found all of those research results interesting and influential in developing policy. Dr Weatherburn has been a source of expert

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advice to the Premier's Council on Crime Prevention. All informed members of this House would be well advised to read those reports with care and to take them into account in public debate on those issues.

ACCOMMODATION LEVY

The Hon. Dr B. P. V. PEZZUTTI: I ask the Treasurer whether it is true that St Vincent's Hospital offers accommodation for relatives of the seriously ill? If so, will such accommodation be subject to a bed tax? Are there likely to be any exemptions under those circumstances? Will any members of the military who stay in the officers' mess, sergeants' mess or other ranks' mess in Victoria Barracks - and I include also the navy messes at Woolloomooloo - be liable to pay bed tax while staying on Commonwealth property?

The Hon. M. R. EGAN: In relation to the first part of the honourable member's question, are they charged for the rooms?

The Hon. Dr B. P. V. Pezzutti: They are charged for the rooms, absolutely.

The Hon. M. R. EGAN: I will check on that. My colleague the Attorney, who is learned in the law, as one would expect, is giving me some legal advice. He does not think it would be applicable.

The Hon. J. W. Shaw: I do not have a final view.

The Hon. M. R. EGAN: He does not have a final view on it. From my knowledge of the High Court's decision in the Allders case, which the Attorney has probably not caught up with, my guess is that it would not be payable. The Attorney and I will have that legal argument and I will advise the House accordingly. In relation to the first part of the question, as I indicated by way of interjection during the speech of the Hon. Elaine Nile during the debate on the appropriation bills, in circumstances in which hospitals or others associated with hospitals provide subsidised accommodation for people attending patients in hospitals, I would certainly be more than happy to consider providing an exemption.

The Hon. Patricia Forsythe: How are you going to do that? By legislation?

The Hon. M. R. EGAN: Yes. The honourable member should read the legislation. Obviously if a mum comes from the country to stay with her child in hospital I will not hit her with a bed tax.

JUVENILE JUSTICE VISITING LEGAL SERVICE

The Hon. B. H. VAUGHAN: Will the Minister for Community Services advise the House of recent initiatives funded by the Department of Juvenile Justice to assist young offenders with legal representation?

The Hon. R. D. DYER: I am pleased to advise the House that I have approved the expenditure of \$100,000 from juvenile justice white paper funding for the continuation of the juvenile justice visiting legal service run by the Legal Aid Commission. In light of the recent cuts to legal aid funding by the Commonwealth, it was with great concern that the Department of Juvenile Justice learned that the program to which I have referred was under threat. The extra funding to be provided by the Department of Juvenile Justice will enable the juvenile justice visiting legal service to continue in its present form for a further 12 months. The juvenile justice visiting legal service pilot began in January last year.

Funds were allocated by the New South Wales Government to establish a service comprising one solicitor and to finance the purchase of a car. An evaluation of the project showed that young people who are able to access the juvenile justice visiting legal service are highly satisfied with the service, as are their caseworkers. I am advised that anecdotal evidence suggests that the service has been effective in obtaining bail for a number of young people. In addition, the Ombudsman's report on juvenile justice found that demand for the visiting solicitor service is growing and that access to legal advice is not uniformly available to all detainees because of the high work demands placed on the solitary solicitor.

It is therefore important that the department provide what funding it can to enable the continuation of the visiting legal service. I am also pleased to advise the House that the Department of Juvenile Justice has provided funding of \$12,254 to the Legal Aid Commission for the reprinting and distribution of 10,000 copies of the

booklet entitled "The Legal Survival Kit for Young People", a copy of which I have in the House. I am very pleased with the publication; it is a credit to the Legal Aid Commission. It comprises loose sheets within a cover or folder explaining in plain English to young people aspects of the legal system that would otherwise be foreign and unfamiliar to them.

The pamphlets address the following issues: what is bail? How does the children's legal service
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of the Legal Aid Commission work? What does one do when one gets into trouble with the police? Who is who in the Children's Court? What will happen in court? What penalties can be imposed by the court? What happens if a young person is sent to a juvenile justice centre? I regard this publication as an important resource for young people involved in the juvenile justice system. The Department of Juvenile Justice has also asked the Legal Aid Commission to provide 1,500 copies of this booklet for distribution in juvenile justice centres, community-based services operated by the department and its transport services.

CENTRAL COAST DISABILITY COMMITTEE FUNDING

The Hon. ELISABETH KIRKBY: Is the Minister for Community Services, Minister for Aged Services, and Minister for Disability Services aware that the Central Coast Disability Committee will require funding of at least \$161,000 per year now that the seeding grant for the community access program granted by the Motor Accident Authority in 1995 has been exhausted? Why has the Ageing and Disability Department notified the council that, from 1 July, this community access program will receive only \$136,000? How does the Minister believe that this much overstretched and needed service can be maintained after this savage cut?

The Hon. R. D. DYER: The Hon. Elisabeth Kirkby will realise that the disability system in this State is very large. The question that she has asked involves a matter of detail - why a grant may be somewhat less in future than it might have been in the past.

[Interruption]

The Hon. Patricia Forsythe should realise that, as a result of the activities of her Federal colleagues - from John Howard down, and the Hon. Judi Moylan in particular - this State, along with all other States that have non-Labor governments, has refused to sign a new agreement with the Federal Government beyond one year.

The Hon. Patricia Forsythe: You were offered five years. You took one.

The Hon. R. D. DYER: The Federal Government did offer five years. Not one Minister, whether from Victoria, Western Australia, Queensland, Tasmania, or New South Wales, was prepared to sign for more than one year. That was because of the miserly attitude of the Federal Government. Even the Hon. Patricia Forsythe would know that I am the only Labor Minister in this portfolio in the country. The other Ministers were all from parties comprising the soul mates of the Hon. Patricia Forsythe. Not one Minister was prepared to sign the agreement because the Federal Government, while purporting to grant more funds by way of growth in the Federal budget, maintained the so-called efficiency dividend cuts that were announced in last year's Federal budget. When one sets off the so-called efficiency dividend against the growth funds one realises that the States are actually marginally worse off. That is why funds are lower and that is why the States are constrained. That is why all Ministers throughout the country, including me, would not sign a five-year agreement. Is the Hon. Patricia Forsythe saying that she would have signed a five-year agreement?

The Hon. Patricia Forsythe: I did not say anything.

The Hon. R. D. DYER: If that is what she is saying, she is incompetent. The Hon. Elisabeth Kirkby referred in her question to disability funding. Disability funding partly comes via the Commonwealth-State disability agreement. The Hon. Patricia Forsythe does not realise that the Federal Government is throttling down on disability funding, as it is in other areas, such as education, health and legal aid. My colleague the Attorney General had to fight for funding for the Legal Aid Commission. The Federal Government is giving New South

Wales such a lousy deal that the Legal Aid Commission has had to go its own way in the legal aid area. The Hon. Patricia Forsythe does not realise that; she does not realise much at all.

Disability funding, which is tightly stretched, will be distributed on a needs basis. Funds are distributed according to their availability. Local area disability plans are prepared by the Ageing and Disability Department. That is the basis upon which decisions are made. Priorities are established following consultation with disability groups and consumers in a local area. There are 70 such plans across the State. The Hon. Elisabeth Kirkby would appreciate that these are matters of detail. Priorities are established according to need. The Hon. Virginia Chadwick would not bother to utilise area disability plans.

The Hon. Virginia Chadwick: I am just sitting here minding my own business.

The Hon. R. D. DYER: For once! The Hon. Virginia Chadwick was the original whiteboard user. She used to distribute funds irrespective of what planning might have occurred.

The Hon. Virginia Chadwick: On a point of order. I have never owned a whiteboard in my life. I would not know how to use one. I resent the implication and ask for a withdrawal.

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The PRESIDENT: Order! I hardly regard the ownership of a whiteboard as being unparliamentary language.

The Hon. Virginia Chadwick: I take offence at the implication. Despite the fact that I am blonde I am no Ros Kelly.

MAIN STREET AND SMALL TOWNS ANNUAL CONFERENCE

The Hon. JENNIFER GARDINER: My question without notice is directed to the Treasurer. I refer to last year's Main Street conference, which was held at Port Macquarie, and which I attended. Why did the Treasurer tell Main Street committees in Ulladulla and Merimbula that a decision about the holding of the conference was to be made last month? Why is the Treasurer procrastinating on this issue? Why will the Treasurer not tell us where this year's Main Street annual conference will be held?

The Hon. M. R. EGAN: I thought that the location for this year's Main Street conference had been announced.

The Hon. Dr B. P. V. Pezzutti: But you do not remember what it was.

The Hon. M. R. EGAN: Yes, I do. I approved of the location. I forget when I made that decision, but I assumed that the decision had been announced. The Hon. Jennifer Gardiner will be the first to know that the Main Street conference will be held in Merimbula this year.

IMPORT REPLACEMENT

The Hon. DOROTHY ISAKSEN: Will the Treasurer, Minister for Energy, and Minister for State and Regional Development advise the House what the Government is doing to encourage import replacement in New South Wales, particularly in rural and regional areas?

The Hon. M. R. EGAN: The Government is a strong believer in the capacity of New South Wales industry to supply products as good as or better than the rest of the world. There are plenty of things that we currently import both into Australia and New South Wales that could be supplied by local firms. To encourage import replacement the Government funds the New South Wales Industrial Supplies Office, an organisation established by the Wran Labor Government in the mid-1980s. I must say that this office was also strongly

supported by the successors to the Wran Government - the Unsworth, the Greiner and the Fahey governments. The Carr Government is continuing to support the ISO. I am delighted to report that in May this year the Government approved an increase in funding for the ISO because of its success, a matter which I will deal with later.

The Government has set aside \$3 million over the next three years for the ISO, including an additional \$750,000, to be directly allocated to rural and regional New South Wales. The recent record of the ISO is impressive. Through its offices in Sydney, Newcastle, Wollongong, Orange and Albury the ISO last year helped to generate \$65 million of new orders for New South Wales manufacturers, creating approximately 1,900 new jobs. In the Hunter region the Industrial Supplies Office has a consultant working full time with the Australian Defence Industries Pty Ltd minehunter construction at Carrington. That has helped to give Australian and Hunter-based firms a bigger share of the project.

Small and medium-sized firms in the Hunter have snapped up more than \$40 million worth of contracts. The ISO is also actively involved in ensuring that local manufacturers are given every opportunity to win key Olympic supply projects. The Government has funded an ISO consultant to work with the Olympic Business Information Service, giving interested suppliers throughout New South Wales easy access to information on tenders and other Olympic opportunities, and the results are already evident. Through the work of the ISO a Young-based firm, National Engineering Pty Ltd - honourable members might recall that I referred to the firm yesterday but I was unable to recall its name - was able to secure the Olympic stadium structural steel contract.

National Engineering is now issuing second-tier contracts to local companies in and around the Young region. Aside from Olympic opportunities, the ISO is also making an impact in regional New South Wales. A supplier from Scone, Commercial Minerals Pty Ltd, will now supply the Sydney airport CityRail link tunnel project with around \$8 million worth of bentonite, which would otherwise have been imported from Egypt. I am not aware what bentonite is; I have tried to find out. It is in neither the *Concise Macquarie Dictionary*, nor the *Australian Concise Oxford Dictionary*. If any member of the House knows what bentonite is, I would be fascinated to know.

The Hon. J. H. Jobling: It is a clay.

The Hon. M. R. EGAN: Bentonite is a clay. As I have already pointed out, Commercial Minerals Pty Ltd will be supplying \$8 million of bentonite. It would otherwise have been imported from Egypt, and we have it at Scone.

The Hon. Dr B. P. V. Pezzutti: It is not for stabilising the clay, is it?

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The Hon. M. R. EGAN: I do not know. I have been told it is a clay. It is obviously an important clay, and we have it at Scone. I am advised that maintenance costs at the Cerebos Foods plant in Parkes have also been reduced by using Australian firms to repair specialist stainless steel pumps rather than replacing the worn parts with imported parts. A hat manufacturer by the name of Coraki Cutana has recently won orders over Chinese importers of school children's hats after using the services of the ISO to identify New South Wales manufacturers capable of manufacturing and supplying hat material.

I am not sure what that hat material is, but instead of obtaining it from China we now get it from New South Wales. Coraki Cutana is now also exporting to the United States. The ISO is obviously a great New South Wales success story. By matching the needs of purchasers who would otherwise be importing to the industrial capacity of Australian manufacturers, the ISO not only replaces imports but also helps to develop New South Wales industry in the creation of local jobs. I am pleased to confirm the Government's increased support for the ISO over the next three years.

BELMONT SANDS-JEWELLS WETLAND

The Hon. I. COHEN: I ask the Attorney General, representing the Minister for the Environment, a question without notice. Will the Minister act to protect the Belmont Sands-Jewells wetland area of the Lake Macquarie coast? As that area represents a significant large area of undeveloped coastal land in the lower Hunter, will the Minister act to stop the Lake Macquarie City Council from rezoning for a 2,500 lot residential building development?

The Hon. J. W. SHAW: I happened to be in that region on Sunday and observed some of the physical features that the honourable member referred to in his question. For a more technically focused answer I will refer the question to the Minister for the Environment and obtain a response.

KEITH LOGAN CENTRE SUPPORTED ACCOMMODATION

The Hon. D. F. MOPPETT: My question without notice is addressed to the Minister for Community Services. During the Minister's recent and welcome visit to Dubbo did he have the opportunity to visit the Keith Logan Centre? Is the Minister able to report on any progress in the provision of permanent supported accommodation to some of the residents of the Keith Logan Centre so his capacity to provide respite care for the whole of that north-western area can be restored?

The Hon. R. D. DYER: My recent visit to Dubbo was focused on juvenile justice. I went there to -

The Hon. Virginia Chadwick: Turn the soil.

The Hon. R. D. DYER: No, to launch the plans for and to announce the commencement of the new juvenile justice centre at Dubbo, which will contain 30 beds. That announcement was particularly warmly welcomed by the Mayor of Dubbo, Councillor Anthony McGrane, and by the local media. However, a member of my personal staff visited the Keith Logan Centre during the course of my visit, as I was committed to juvenile justice activities and I was not able to do everything I might have wished to have done during my short visit. I will give further consideration to the matters referred to in the question. I certainly understand that respite care right across the State, and particularly in regional and rural areas of the State, is an important issue. I commend the honourable member for his continued interest in the welfare of the people of the western division of the State.

BOMADERRY ETHANOL EXTRACTION PLANT

The Hon. JAN BURNSWOODS: Will the Treasurer outline what measures are being taken in New South Wales to investigate the viability of a new process to produce ethanol?

The Hon. M. R. EGAN: The Government has supported the establishment of a pilot plant for Bomaderry, which is just north of Nowra on the south coast, to attempt to develop a new technology to extract ethanol from wood waste. The proponents of ethanol claim that when it is used as a fuel blend it lowers the emission of carbon dioxide, nitrogen oxide and other particulates which cause haze and smog, and are generally believed to damage the atmosphere and air quality. Traditionally, ethanol has been extracted from wheat starch. A couple of years ago a researcher, Dr Russell Reeves from Apace Research, backed in various ways by the University of New South Wales and the University of Technology, Sydney, proposed new technology to extract ethanol from wood waste.

The Hon. J. H. Jobling: Lignocellulose.

The Hon. M. R. EGAN: I am indebted to the Hon. J. H. Jobling. That proposal appealed to State Forests, which has a surplus of wood waste, and the Department of Energy and the Department of State and Regional Development both believed the proposal was worth further investigation. As a result, the Government announced that it would put \$2 million towards a total of \$5 million to establish this pilot plant to develop the technology. The rest of the

money was to come in the form of a \$1 million in-kind assistance from a private producer of ethanol, Dick Honan, who runs the Manildra group of companies from Bomaderry, and \$2 million pledged by the Federal Government. Mr Honan already produces ethanol from the traditional wheat starch extraction process and, I am told, sells it in a fuel blend through the Bogas chain of service stations.

The pilot plant, which will essentially be a large laboratory set up in a building the size of a small house, was to have been established at Mr Honan's existing ethanol manufacturing facility at Bomaderry. I regret to have to inform the House, however, that this promising project has been stalled since last year because the Howard Government, which has pledged \$2 million, loaned the allocated money to an outfit attached to the Department of Primary Industry and Energy, namely, the Energy Research and Development Corporation. I am able to report, however, that the problem may now be cleared up. I understand that in its budget this year the Federal Government simply abolished the Energy Research and Development Corporation.

Canberra is certainly not big on visionary and environmental problems these days. Nevertheless, the New South Wales Government is led to believe that this may open the way for the promised funding for the development of this potentially innovative process to flow through, as it was always meant to. This process could provide the basis for a new renewable and sustainable energy source. If that were the case, its mass production would necessitate a manufacturing industry and generate many hundreds of jobs, mainly in the bush - in regional New South Wales. As a government we continue to support this research and hope that the Federal Government will now do the same. I shall keep the Hon. Jan Burnswoods and the House informed of the developments.

If honourable members have further questions, I suggest they place them on notice.

COUNCILLOR PETER WOODS PUBLIC OFFICES

The Hon. J. W. SHAW: Earlier in question time the Hon. J. H. Jobling asked me about various positions and roles occupied by Mr Peter Woods. It is my melancholy duty to inform the honourable member that the Mr Peter Woods on the board of Greater Southern Electricity is the mayor of Leeton and not the Peter Woods to whom the honourable member referred. If he wants to have a vendetta, he should get the facts right.

DISTANCE EDUCATION FUNDING

The Hon. J. W. SHAW: On 15 May the Hon. A. G. Corbett asked me a question about the distance education grant. I provide the following answer:

- (1) Advice has been forwarded by Mr Arthur Townsend, Director of Distance and Rural Education indicating that he is unaware of any instances where the parents of primary aged distance education students have been forced to board their children away from home due to their inability to provide supervision for their distance education lessons.

When instances of personal hardship are drawn to the attention of distance education centre managers, extra provision is made to assist parents and supervisors with the education of their children. This provision includes extra home visits by distance education teachers and negotiated variations to lesson delivery to reduce their workload as supervisors.

In addition, the Directorate of Distance and Rural Education, in conjunction with James Sturt University Wagga Wagga, provides a training and development course to supervisors to improve their skills and has instituted a supervisors network to provide extra support to distance education supervisors and parents.

If the member is aware of particular instances, of which the Department of School Education may be unaware, I would be pleased to pass on such details to the Director of Distance and Rural Education so that he can examine what further assistance may be provided.

- (2) The State Living Away From Home Allowance (LAFHA) is paid to those families who are geographically isolated with a taxable income of \$34,842 or less and who are required to board their children away from home in order to receive a secondary education.

There are no plans to extend this allowance to primary aged children whose educational needs can be met by enrolling in rural primary schools or distance education centres.

SPECIAL SCHOOL STAFFING

The Hon. J. W. SHAW: On 15 May the Hon. J. F. Ryan asked me a question about special schools funding. The Minister for Education and Training has provided the following answer:

There has been no decrease at all in hours for school counsellors and district guidance officers at Campbell House and Glenfield Park special schools. Ajuga school has had a reorganisation of district guidance officer time across districts to assist with assessment and placement procedures. These procedures were previously undertaken by specialist councillors with a regional responsibility.

Regular reviews are held by the student services team to assess need and re-allocate resources as necessary.

AUTHORITY OF POLICE OFFICERS

The Hon. J. W. SHAW: On 15 May the Hon. R. S. L. Jones asked me a question about police powers. The Minister for Police has provided the following answer:

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I am advised by the Deputy Commissioner, Field Operations that a minute on this subject was issued to Patrol Commanders in the Northern Rivers District on 5 November 1996.

Questions without notice concluded.

FAIR TRADING LEGISLATION AMENDMENT BILL

CORRECTIONAL CENTRES AMENDMENT (ALTERNATE CHAIRPERSON) BILL

REGISTERED CLUBS AND LIQUOR LEGISLATION AMENDMENT BILL

TRAFFIC AMENDMENT (STREET AND ILLEGAL DRAG RACING) BILL

TRAFFIC AND CRIMES AMENDMENT (MENACING AND PREDATORY DRIVING) BILL

AUSTRALIAN MUTUAL PROVIDENT SOCIETY (DEMUTUALISATION AND RECONSTRUCTION) BILL

DISTRICT COURT AMENDMENT BILL

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

RURAL FIRES BILL

INVESTIGATIVE BODIES LEGISLATION AMENDMENT BILL

DRUG TRAFFICKING (CIVIL PROCEEDINGS) AMENDMENT BILL

CROWN LANDS AND IRRIGATION LEGISLATION AMENDMENT (TRANSFER RESTRICTIONS) BILL

SUPERANNUATION LEGISLATION AMENDMENT BILL

MARINE PARKS BILL

ADMINISTRATIVE DECISIONS TRIBUNAL BILL

ADMINISTRATIVE DECISIONS LEGISLATION AMENDMENT BILL

Bills received and, by leave, read a first time.

Suspension of standing orders agreed to.

JOINT SELECT COMMITTEE UPON THE THREATENED SPECIES CONSERVATION ACT 1995

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

Mr PRESIDENT

The Legislative Assembly desires to acquaint the Legislative Council that on this day it has agreed to the following resolution -

That, notwithstanding anything contained in the Standing Orders of either House -

- (1) In accordance with section 157 of the Threatened Species Conservation Act 1995 (the Act) a Joint Select Committee be established to determine:
 - (a) whether the policy objectives of the Act remain valid; and
 - (b) whether the terms of the Act remain appropriate for securing those objectives.
- (2) The Committee consist of 9 Members of both Houses, 6 being Members of the Legislative Assembly (4 Government Members, one Opposition Member, one Independent Member and in the event that an Independent Member is unavailable to serve on the Committee a Member of the Opposition be nominated instead) and 3 being Members of the Legislative Council (one Government Member, one Opposition Member and one cross-bench Member) with Members nominated in writing to the respective Clerks of the House.
- (3) The quorum of the Committee is 4 Members, provided that the Committee meet as a joint committee at all times.
- (4) The Chairman shall be a Government Member of the Legislative Assembly.
- (5) The Chairman, or any Acting Chairman, have a deliberative vote and, in the event of an equality of votes, a casting vote.
- (6) The Committee have leave to sit during the sittings or any adjournment of either or both Houses, to adjourn from place to place; and to make visits of inspection within Australia and overseas.
- (7) In accordance with section 157 of the Act the Committee shall report by 22 December 1997.
- (8) Should either or both Houses stand adjourned and the Committee agree to any report before the Houses resume sitting:
 - (a) the Committee have leave to send any report, minutes and evidence taken before it to the Clerks of the respective Houses;
 - (b) the documents may be printed and published and the Clerks forthwith take such action as is necessary to give effect to the order of the Houses; and
 - (c) the documents be laid on the Table of the Houses at their next sittings,

and requests that the Legislative Council appoint three of its members to serve with the members of the Legislative Assembly upon such Joint Select Committee.

Legislative Assembly
19 June 1997

John Murray
Speaker

[*The President left the chair at 1.04 p.m. The House resumed at 2.30 p.m.*]

Pursuant to resolution business interrupted.

YOUNG OFFENDERS BILL

In Committee

Consideration resumed from 18 June.

Part 3

The Hon. I. COHEN [2.31 p.m.]: I move Greens amendment 6:

No. 6 Page 9, clause 17, line 3. Insert "or any information that might identify the child other than information relating to age, gender or racial background" after "concerned".

The Greens support the recording of information which will not identify the child but will permit accurate monitoring and later evaluation of the operation of this part of the legislation. The amendment allows only for statistically relevant information to be recorded when a warning is given. At present no information is available about the number of warnings given by police to children. The available evidence on cautioning suggests that Aboriginal children are rarely given the benefit of a caution. In that regard - see Garth Luke and Chris Cunneen, *Aboriginal Over-Representation in the New South Wales Juvenile Justice System*, JJAC, 1995. Self-report studies suggest that girls are cautioned more often than boys - see Emma Ogilvie, "Masculine Obsessions: An Examination of Criminology, Criminality and Gender" (1996) 29(3) *Australian and New Zealand Journal of Criminology*, pages 205 to 224. Accurate recording of the racial identity, age and gender of a child who has been issued with a warning will provide more reliable information about these claims. I commend the amendment to the Committee.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.32 p.m.]: It was not envisaged that information recorded in relation to children who receive warnings would extend beyond the matters included in the amendment. However, the Government does not see any difficulty with the amendment and does not oppose it.

Amendment agreed to.

Part as amended agreed to.

Part 4

The Hon. A. G. CORBETT [2.33 p.m.], by leave: I move amendments 5, 6, 7, 10 and 11 circulated in my name, in globo:

No. 5 Page 11, clause 20(3)(d), line 1. Omit "any previous". Insert instead "the number and nature of any".

No. 6 Page 12, clause 23(2)(d), line 27. Omit "any previous". Insert instead "the number and nature of any".

No. 7 Page 19, clause 37(3)(d), line 25. Omit "any previous". Insert instead "the number and nature of any".

No. 10 Page 21, clause 40(5)(d), line 28. Omit "any previous". Insert instead "the number and nature of any".

No. 11 Page 22, clause 41(1)(d), line 11. Omit "any previous". Insert instead "the number and nature of any".

Clauses 20, 23, 37, 40 and 41 of the bill require persons exercising various functions to take into account any previous offences committed by the child. It is desirable, and appears to be the intention, that the number and nature of offences be taken into account, not just the fact that the child has been in trouble with the law in the past. Accordingly, I propose that reference in the bill to "any previous offences" be replaced by reference to "the number and nature of any offences", which will ensure the facilitation of a stricter interpretation of this provision.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.35 p.m.]: The amendments relate to the list of factors to be considered in determining whether a caution is appropriate in a particular case. The change in wording is minor but stresses the need to consider the actual nature and number of previous offences involved. Though that is implicit in the current drafting, the Government has no objection to these amendments.

Amendments agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [2.35 p.m.], by leave: I move Opposition amendments 4 and 5 in globo:

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No. 4 Page 11, clause 20. Insert after line 12:

(5) An investigating official who decides to deal with a matter by a caution must inform any victim and must, if requested to do so by a victim, instead refer the matter to a specialist youth officer to determine whether the matter should be dealt with under this Part or Part 5.

No. 5 Page 11, clause 20(5), line 14. Insert "or (5)" after "(4)".

The purpose of amendments 4 and 5 is to impose an obligation upon an investigating official who decides to proceed by way of caution to inform the victim of the manner in which the matter will be proceeded with. If requested to do so by the victim, the investigating official must refer the matter to a specialist youth officer who will determine whether the matter should be dealt with by way of a caution or a conference. The aim is to give a victim the opportunity to express the view that a caution is inappropriate for the nature of the offence and that, at the very least, a conference should be convened. As it is recognised that the process could be subject to abuse, the specialist youth officer will determine whether the matter is appropriately dealt with by a caution or a conference. The amendments will ensure that that check and balance is appropriately in place. I commend the amendments to the House.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.37 p.m.]: The Government does not support these amendments. The bill as drafted makes it clear that the harm suffered by victims is one of the factors to be taken into account in determining whether a conference should be arranged rather than issuing a caution. In particular, provision has been included in the bill to allow the police to refer a matter to a conference having regard to the harm suffered by a victim and the particular circumstances of the victim. Notwithstanding the seriousness of the offence, objectively assessed it might normally be suggested that a caution is sufficient. This matter is dealt with in clause 20 of the bill. In this way the Government has sought to deal with the legitimate expectations of victims whilst ensuring the integrity and accountability of the conferencing process.

Focusing particularly on Opposition amendment 4, discussion will take place with the victim as part of the normal investigation process. The Government will introduce a specific principle requiring the views of victims to be considered. The existing provisions of clause 20, specifically subclauses (4) and (5), ensure that the position of the victims is given prominence. The Opposition amendment will remove the responsibility, involvement and discretion of investigating police officers, which is not desirable. In addition, many cases will clearly not be serious enough in nature and in their effect on the victim to justify the consideration of a conference. Referral of these matters would improperly raise victim expectations and lead to unnecessary delays in decisions being made. This is not in the best interests of the victim or the child. Accordingly, the Government does not support these amendments.

The Hon. ELISABETH KIRKBY [2.40 p.m.]: As a member of the Standing Committee on Social Issues, on whose report the legislation is based, and as an Australian Democrat, I oppose the amendments moved by the Leader of the Opposition. It was made clear during the second reading debate that the victim will take part in the conference. However, it was never intended that the victim be involved in a matter dealt with by way of a caution, and in that respect the amendments defeat the purpose of the legislation as it is currently drafted. The amendments would make the process unwieldy. They would waste the time of the investigating official, the specialist youth officer, the perpetrator and the victim. I cannot support the amendments.

Amendments negatived.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [2.42 p.m.], by leave: I move Opposition amendments 6 and 10 in globo:

No. 6 Page 12, clause 22(1)(b), line 1. Insert "and where that advice may be obtained" after "advice".

No. 10 Page 20, clause 39(1)(b), line 25. Insert "and where that advice may be obtained" after "advice".

The amendments make it obligatory for an investigating officer to inform a young offender of his or her entitlement to access to legal advice and where the advice may be obtained. This important service ought to be provided. I commend the amendments to the Committee.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.43 p.m.]: The Government has some reservations about the amendments. However, it understands that there is support for the amendments and it understands the rationale behind them, and will not oppose them.

The Hon. I. COHEN [2.43 p.m.]: Opposition amendments 6 and 10 are the same as Greens amendments 7 and 14. I therefore support the Opposition's amendments. The Standing Committee on Social Issues report "Inquiry into Children's Advocacy" of September 1996 argued strongly and

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unanimously that there was a need for improved advocacy for children in all areas of law and justice in New South Wales. The committee considered that advocacy is especially needed for society's most vulnerable, powerless and marginalised children. It argued that advocacy is particularly required for children who are abused, neglected, poor, uneducated, sick or disabled; that it is needed for children who do not have a recognised place or role in society.

The committee also considered that all children are entitled to be heard. The recent joint inquiry undertaken by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission found that children who had been apprehended and processed through the criminal justice system were among the most vulnerable, dispossessed and inarticulate of all the children they took evidence from during the course of their inquiry. The amendments place an onus on an investigating official to inform a child where legal advice can be obtained.

The legal rights recognised by the legislation should be realistic, meaningful and enforceable. The Greens

consider that simply informing children that they are entitled to obtain legal advice is not sufficient to ensure that they will obtain the advice or that the advice they obtain will be provided by a competent legal professional who is experienced and skilled in communicating with children. The amendments help to achieve this aim. Young people should have access to competent legal advice before, during and after any intervention beyond a warning. The charter of principles set out in the white paper state:

... all young people accused of committing an offence should be represented by competent professionals who offer understandable legal advice and who ensure that the young person's legal rights are protected at every stage of the legal process.

As has been mentioned, when the Government came to office in 1995 it adopted the white paper as a statement of its juvenile justice policy. Therefore, the Government should adhere to the principles contained in the white paper. I support the Opposition's amendments.

The Hon. ELISABETH KIRKBY [2.46 p.m.]: For the reasons outlined by the Hon. I. Cohen, I support amendments 6 and 10. It is necessary for young people to have legal advice, but it is ridiculous to enshrine that in legislation if young people do not know where to obtain it. It would not be too costly for the Government to implement such a measure. It could establish a 1800 telephone line or supply how-to-obtain-legal-advice cards. Such cards could be prepared and handed out with the various literature that is distributed by community centres, local government and so forth. The amendments are important and I am happy to support them.

The Hon. J. F. RYAN [2.47 p.m.]: The amendments proposed by my colleague the Leader of the Opposition go some way towards implementing some of the measures contained in the New Zealand Children, Young Persons and their Families Act. Section 218 of the Act states:

The explanations are to be given in a manner and language appropriate to the age and level of understanding of the child or young person.

Children are entitled to legal advice, but they are not told how to go about obtaining it - what telephone numbers to call, for example. It could hardly be said that the bill is written in a manner that a child could understand or act on. The Opposition should be commended for moving the amendments because they will make the Act work better.

Amendments agreed to.

The Hon. I. COHEN [2.49 p.m.], by leave: I move Greens amendments 8 and 19 in globo:

No. 8 Page 13, clause 24(2)(g), line 13. Insert "and where that advice may be obtained" after "advice".

No. 19 Page 24, clause 45(3)(g), line 32. Insert "and where that advice may be obtained" after "advice".

The points I made when speaking to Opposition amendment 6 stand. My amendments simply seek to ensure that the child not only should be entitled to obtain legal advice but should be told where that advice may be obtained. I commend the amendments on the same argument that I advanced previously.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.51 p.m.]: The Government has difficulty with these amendments. The bill currently provides for children at various stages of the cautioning and conferences procedures to be advised of their right to obtain legal advice. The proposed amendments to various clauses of the bill also will seek to place on police an obligation to explain to children where that advice can be obtained. I am sympathetic with the need to provide children with information about how to access legal advice but consider that there may be dangers in the proposed amendments as drafted. For example, they might suggest a police officer could

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limit the young person's options for obtaining advice. In addition, a police officer may not necessarily have the knowledge and experience to provide accurate advice. To ensure the accuracy and completeness of information

provided, it may be preferable to develop, for distribution to young people, some sort of standard information sheet setting out options for legal advice, including, for example, legal aid advice services. This could be done administratively and need not be included in the legislation.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [2.53 p.m.]: The Opposition supports the amendments for the reasons outlined earlier. I commend to the Government the suggestion made by the Attorney that a standard form of brochure or information sheet be prepared to give information on access to legal advice, in conjunction with legal aid services or any of the community legal centres. That may necessitate the provision of a 1800 number. I believe the approach is sound because sometimes young people and their advisers lack knowledge of assistance that is available. This is a step in the right direction.

Amendments agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [2.53 p.m.]: I move Opposition amendment 7:

No. 7 Page 13, clause 24. Insert after line 19:

- (4) Before a caution is given to a child, the person arranging for the caution to be given must notify any victim that the victim may provide a statement to be given to the child to be cautioned.

I note the comments made earlier about involving victims in the caution process. However, as I said in my contribution to the second reading of the bill, there is a need to put in place procedures that will sustain community confidence in the system. Victims should feel that steps are being taken to encourage a young person to acknowledge and accept responsibility for the offence. Therefore, it is important to have a system that informs a victim that an offender is to be cautioned and enables a victim's statement to be given to the young offender to let the young person know the impact that the crime has had upon the victim. Circulated Opposition amendment 9 is contingent upon the passage of amendment 7. If the Committee does not accept this amendment, I will not proceed with amendment 9.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [2.55 p.m.]: As the Leader of the Opposition acknowledged in his speech in support of this amending legislation, this amendment raises the question of the extent to which the victim ought to be involved in the cautioning process. The Government opposes the amendment. It is envisaged that in appropriate cases part of the cautioning process might include a statement by the police officer regarding the effect of the crime in question on the victim. The police officer might discuss this issue with the victim prior to the caution. This can be done as a matter of administration and might be more effective than a written statement handed to the child. On balance, the Government is of the view that a formal legislative provision in relation to victim statements is unnecessary and, accordingly, the Government does not support this amendment.

The Hon. I. COHEN [2.56 p.m.]: The Greens do not support the amendment. It would strengthen the victim's rights but slow up the process if the victim were to participate in the cautioning process.

The Hon. ELISABETH KIRKBY [2.56 p.m.]: The Australian Democrats do not support the amendment. It was made clear in the second reading speech that the involvement of the victim was to be at the conference stage, not at the cautioning stage. It would not advance the conference proposal or indeed the whole thrust of the bill if the victim were to become involved every time a caution is given to a child. As I said earlier, that would make the whole procedure top-heavy and would detract from the excellent model which is encompassed in this amending legislation.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [2.57 p.m.]: It is disappointing that the Government and crossbench members take the view that at the cautioning stage victims ought not to be informed about, and be able to respond to, information that young offenders have been identified and have acknowledged responsibility for an offence. Victims should be able to express some views about the impact of the crime on them and have those views conveyed to young offenders. The more senior members of our

community are more concerned about any offence that is committed. They suffer more from domestic crime than any other group in our community. They feel not only that their space has been invaded but that their lives have been severely affected. Senior members of our community want to express their feelings about offences. The amendment would not allow them to be present at the cautioning process but at least it would enable a letter from them to be given to the young offender.

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Victims should be able to get these matters out of their systems, and in some instances that can be assisted by the victims simply knowing that the young offender will be told how their lives have been affected by the offender's actions. That is an extremely important process. In my view it could address what I regard as significant, but in some ways unjustified, angst in the community about the high incidence of youth crime, that young people do not care about the senior citizens of our community, that police are not doing anything about these crimes, and a feeling that "nobody cares about us". I had hoped honourable members would accept this amendment as an indication that the community cares about elderly people. I regret that the Committee does not support it. This is one of the few remaining amendments on which I will call for a division. Knowledge of and participation in the process by the victim is important.

The Hon. ELISABETH KIRKBY [3.00 p.m.]: I do not wish to drag out these proceedings unnecessarily - we have a mass of legislation yet to deal with - but the record should reflect that we are dealing with young offenders who will be cautioned. The bill stipulates that young offenders will not be cautioned for serious offences; they will be cautioned for minor offences only. Although I fully appreciate what the Leader of the Opposition said about the impact on the victim, it cannot possibly be as serious as he has tried to suggest. If a young person breaks into an elderly person's house and steals a television set or video recorder, that young person would not be cautioned; he or she would be charged with an offence.

The young offender might receive prediversion, but I cannot believe that such an offence - one that deprives an elderly person of a television and video recorder that might not be insured, and one that causes feelings of resentment and distress because an elderly person's house has been invaded or broken into by an unauthorised person - would be dealt with purely by way of caution. If such an offence led to a conference for a first offender, the victim would have every right to be present. The concerns of the Leader of the Opposition are covered in the legislation as it stands without further amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 17

Mr Bull	Dr Pezzutti
Mrs Chadwick	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mrs Sham-Ho
Dr Goldsmith	Mr Rowland Smith
Mr Hannaford	Mr Tingle
Mr Lynn	<i>Tellers,</i>
Mrs Nile	Mr Jobling
Rev. Nile	Mr Moppett

Noes, 19

Mrs Arena	Mr Macdonald
Dr Burgmann	Mr Obeid
Ms Burnswoods	Ms Saffin
Mr Cohen	Mr Shaw

Mr Corbett	Ms Staunton
Mr Dyer	Mrs Symonds
Mr Egan	Mr Vaughan
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Mrs Isaksen
Ms Kirkby	Mr Primrose

Pairs

Ms Gardiner	Mr Johnson
Mr Kersten	Mr Manson

Question so resolved in the negative.

Amendment negatived.

The Hon. I. COHEN [3.09 p.m.], by leave: I move Greens amendments 9, 16 and 20 in globo:

No. 9 Page 13, clause 25(1), line 23. Insert ", but only after receiving legal advice" after "court".

No. 16 Page 23, clause 44(1), line 21. Insert ", but only after receiving legal advice" after "court".

No. 20 Page 25, clause 45(3)(h), line 1. Insert ", after obtaining legal advice," after "child".

Amendment 9 will ensure that a child is given legal advice before electing to have a matter dealt with by a court. The amendment will also ensure that a child knows what will happen if he or she decides to proceed to a court hearing; for instance, he or she might receive a possible criminal conviction if found guilty. Amendment 16 will similarly ensure that a child receives legal advice before a matter is dealt with by way of a court hearing. Amendment 20 will ensure that a child has obtained legal advice before he or she elects to have the matter dealt with by a

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court rather than a youth justice conference. This amendment will also ensure that a child has a full knowledge of the implications of electing to go to court. For instance, a child may have a conviction recorded against him or her if found guilty of an offence. I commend these amendments.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.11 p.m.]: The Government does not accept these amendments. They seem to us to limit the rights of the child in one important sense. Clause 25 of the bill provides:

(1) A child may, at any time before a caution is given to the child, decide not to proceed with the caution and elect that the matter be dealt with by a court.

If these amendments are agreed to, that choice could occur only after obtaining legal advice. I appreciate that the motivation is, no doubt, to protect the rights of the child. I am sure that that election is one which is given or made advisedly. But what if a child does not want to seek legal advice? I readily accept that it is generally desirable that a child obtain legal advice, but he or she cannot be forced to do so. The right of a child to go to a court procedure should not be limited merely because he or she has not chosen to seek legal advice.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.12 p.m.]: The Opposition does not support these amendments. The Committee has agreed to amendments that place a requirement on the police to inform young offenders about the opportunities available to them of legal advice and where they should go to get that legal advice. If a young person does not seek to take advantage of that opportunity the Parliament cannot rectify that situation. We have done as much as we can to provide access to legal advice.

Amendments negatived.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.13 p.m.]: I move Opposition amendment 8:

No. 8 Page 15, clause 28. Insert after line 8:

- (2) If the investigating official is not a police officer, a police officer (other than the person giving the caution) may be present when the caution is given.

There might be circumstances when an investigating official is not a police officer. There are no requirements that an investigating official be present at a caution. The Opposition believes that there is some benefit in having a police officer present to represent the interests of the community and the victim. If a caution is being given by some other person the State and the victim should be represented.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.14 p.m.]: The Government does not support the amendment. Initially, the bill would apply only to offences where the investigating official was a police officer. This reflects the practical requirements of the legislation, including the requirement that formal cautions should normally be given by a police officer or specialist youth officer within the Police Service and that is the role of specialist youth officers in relation to the scheme. However, the bill will enable, through regulation, an extension of the scheme to other classes of investigating officials. There is no current plan to make such a regulation. Should the bill be extended in the future to other investigating officials, in the normal situation a police officer or specialist youth officer would still be present administering the caution.

However, there is provision for the police to arrange for a respected member of the community to administer a caution. In this case there might be no active police involvement if the investigating official is outside the Police Service. Use of this provision would still, nevertheless, be at the discretion of the police. If a police officer thought it important to attend, he or she could still determine whether or not to administer the caution. It is not clear why police should always be in attendance at cautions which involve another investigative agency. As the bill is currently drafted police will still have an overview of the administration of cautions in any event. Accordingly, the Government does not consider this amendment to be necessary and does not support it.

Amendment negatived.

The Hon. I. COHEN [3.15 p.m.]: I move Greens amendment 10:

No. 10 Page 15, clause 29(4), line 22. Omit "an". Insert instead "a written".

This amendment will enable a young person to give a victim a written apology. The proposed amendment will provide a safeguard against a complaint by the victim if no action has been taken against the child and it protects the child from unnecessary contact with the victim. I commend the amendment.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.16 p.m.]: Clause 29 enables a child to make either an oral or a written apology. However,
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this amendment will enable a child to make only a written apology. In the past I have advocated a greater involvement of the victim in the cautioning process. In view of the position taken by the Committee I am prepared to support this amendment which provides for the giving of a written apology. In that way a child will not have to directly confront the victim. If a victim has not been involved in the process, confrontation, by way of an oral apology, could be less than edifying. In my view there are some benefits in receiving a written apology. Young people will benefit from sitting down and writing out a formal apology. In the long term it will be beneficial for victims to receive a written apology from a young offender. It might be argued that some people might not be able to write in a language that is understood by others. That is a possibility. However, there

are many ways in which to overcome that administrative matter. The Opposition supports the amendment.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.18 p.m.]: The Government has some difficulty with this amendment. However, I appreciate the arguments put forward by the Hon. I. Cohen and the Leader of the Opposition. The point made by the Leader of the Opposition concerning a person who might not be able to write was cogent. Clause 29(4) does not restrict an apology to a written apology, although in practice the apology might often take that form. The clause, as drafted, would also allow for an apology to be made orally to a police officer and conveyed to a victim, or for the police officer to request a child to make a direct oral apology.

There might be situations where a request to make an oral apology might be appropriate, for example, where there is an ongoing relationship between or contact with the victim and the young person or the young person's family. Accordingly, we would prefer the bill in its original form. We did not want to totally rule out the possibility of a face-to-face apology. As I explained earlier, the Government has difficulty with this amendment. I apprehend that the amendment has the support of the majority of honourable members, so I will not divide the Committee.

Amendment agreed to.

Part as amended agreed to.

Part 5

The Hon. I. COHEN [3.20 p.m.]: I move Greens amendment No. 11:

No. 11 Page 18, clause 34(1)(c). Insert after line 9:

, and

(iv) the gender, race and sexuality of any such children.

The amendment simply broadens the matters to be taken into account when deciding whether measures or sanctions should be imposed on children who are alleged to have committed offences. It is designed to ensure that where the child is a girl, homosexual or non Anglo-saxon, the conference convener takes those factors into account in making decisions concerning the people to be present at the conference. I commend the amendment to the House.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.21 p.m.]: I support the amendment. I do so not only for the reasons outlined by the Hon. I. Cohen but for another reason. While dealing with conferences and the attention that should be paid to gender, race and sexuality I want to emphasise the reason for my attention to race. When I had responsibility for juvenile justice I was extremely concerned about the large number of juveniles from Asian backgrounds who were coming under notice, particularly for serious offences. Having met with them in a number of detention centres I was surprised by the arrogant attitude they displayed to our justice system. For those people, a period spent in detention was of no consequence; it was no deterrent.

After speaking to a large number of people in the Asian community, I was encouraged to visit Hong Kong and to inspect some of the refugee detention camps where a large number of those people had spent time before coming to Australia. I was appalled by what I saw. Some of our prisons are holiday camps compared with those refugee camps. I visited one centre about the size of Long Bay gaol. The gaol is capable of housing about 3,000 prisoners, and the refugee camp housed about 45,000 refugees at one time. Having experienced that, one develops a different attitude towards justice systems. I mention that only to emphasise that conferencing outcomes must be racially, ethnically and culturally relevant. The amendment advocated by the Hon. I. Cohen is appropriate, but I emphasise the point that if conferencing outcomes are to divert young people from a life of crime, they must reflect the needs of the victim as well as the attitudes of the offender.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.24 p.m.]: I must say candidly that the Government's starting
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point in relation to the amendment was to indicate that these matters were satisfactorily addressed elsewhere in the bill, particularly by clause 34(1)(c), which provides that when dealing with measures or sanctions one should take into account age and level of development, the needs of any children who are disadvantaged or who are disconnected from their families, and the needs of any children with disabilities, especially those with communication and cognitive difficulties. That was the Government's prima facie position, but arguments have been advanced and there is clearly support in the House for greater specification in relation to the matters referred to in the amendment. In the circumstances the Government does not oppose it.

Amendment agreed to.

The Hon. I. COHEN [3.25 p.m.]: I move Greens amendment 12:

No. 12 Page 18, clause 34(3), lines 16-25. Omit all words on those lines. Insert instead:

- (a) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development,
- (b) the need to hold children accountable for offending behaviour,
- (c) the need to encourage children to accept responsibility for offending behaviour,
- (d) the need to empower families and victims in making decisions about a child's offending behaviour,
- (e) the need to make reparation to any victim.

The amendment renumbers the provisions of clause 34(3). The Greens consider that those provisions should be renumbered to reflect adherence within the bill to the principles contained in the United Nations Convention on the Rights of the Child. I commend the amendment to the Committee.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.26 p.m.]: The Government does not oppose the amendment.

Amendment agreed to.

The Hon. A. G. CORBETT [3.26 p.m.], by leave: I move A Better Future for our Children amendments 8 and 9 in globo:

No. 8 Page 20, clause 38(3), lines 16-18. Omit "an investigating official or other appropriate authority for the commencement of proceedings", insert instead "the Director of Public Prosecutions for consideration of whether to commence proceedings, together with written reasons why the specialist youth officer is of the opinion that proceedings should be commenced".

No. 9 Page 20, clause 38(4). Insert after line 18:

- (4) The Director of Public Prosecutions may refer a matter referred by a specialist youth officer under subsection (3) for a conference under section 40 if of the opinion that it is not in the interests of justice to commence proceedings.

As I stated in my contribution to the second reading debate, I propose that when a specialist youth officer fails to make use of the option of a caution or a conference the Director of Public Prosecutions should conduct an independent assessment of each case for the commencement of proceedings. The DPP may refer the matter directly to a conference if it is in the interests of justice to do so. In drafting the amendment I relied on advice

offered by the Law Society. I understand that the Government considers the amendment to be based on a misunderstanding of the current role of the DPP. If that is the case, I accept the advice of the Government, but it does not diminish my belief for the need of a detached assessment of a referral of a child's case for commencement of proceedings.

In the event that it is not possible to provide an independent assessment of a case prior to commencement of proceedings, it is important that in appropriate instances the courts exercise their discretion under clause 40 to refer cases for conferences. I seek an assurance from the Attorney General that judicial education regarding the provisions of the bill will give attention to the discretion available to the courts to refer an appropriate matter to a conference. It is also important that in relation to referrals by courts the Director of Public Prosecutions and conference conveners be subject to monitoring and evaluation and that results of that evaluation be considered by the proposed Youth Justice Advisory Committee. I seek the Attorney General's assurance that that will be the case.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.28 p.m.]: The Opposition does not support the amendments, which will effectively come into operation when the Government transfers responsibility for the Local Court prosecution processes to the DPP. At that time the police will get advice from the DPP as to whether a prosecution should proceed or the matter should be dealt with by way of caution or conference. At a time when the legal advice to the police prosecuting branch is coming through the Police Service the Hon. A. G. Corbett is suggesting that there be a further round of legal advice coming from the DPP. At this time that

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is an additional bureaucratic layer that would not advantage the system. However, the objectives, which are laudable, will be attained when the services of the police prosecuting branch are under the control of the DPP.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.29 p.m.]: For the reasons expressed by the Leader of the Opposition the Government cannot support the amendments. Although the Government understands that the amendments are well-intentioned the legislation must be passed in the context of the existing system under which it is the role of the police to institute charges and it is the role of the Director of Public Prosecutions to make decisions in relation to the conduct of prosecutions once proceedings have been commenced. The amendments cut across those principles. I give the Hon. A. G. Corbett an undertaking that I will raise with the Judicial Commission the general question of judicial education in relation to the legislation. Undoubtedly everyone concerned with the legislation will need to undergo an educative process, be they police, juvenile justice officers or judicial officers. I will urge that all aspects of the legislation be the subject of some such education program.

Amendments negatived.

The Hon. A. G. CORBETT [3.30 p.m.]: I move amendment 12 circulated in my name:

No. 12 Page 22, clause 41. Insert after line 21:

- (4) The Director of Public Prosecutions must, not later than 14 days after receiving a referral under this section, determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.

The bill provides that following a decision to refer a child to a conference, the conference must be held within 21 days of the conference administrator receiving the reference. It is possible during this time for the administrator to refer the matter to the Director of Public Prosecutions but there is no time limit for the DPP to make a decision when a matter is referred for consideration. The amendment provides that the DPP should make a decision in 14 days to enable the overall time frame to be met.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.31 p.m.]: The Government does not oppose the amendment.

Amendment agreed to.

The Hon. I. COHEN [3.31 p.m.]: I move Greens amendment 15:

No. 15 Page 23, clause 41(7), lines 4 and 5. Omit "back to the specialist youth officer or other appropriate authority". Insert instead "to the Director of Public Prosecutions".

The arguments are the same as those advanced in relation to amendment 8 of the Hon. A. G. Corbett.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.32 p.m.]: The arguments against the amendment are the same as those advanced in relation to the earlier amendment as well. The Government opposes the amendment.

Amendment negated.

The Hon. I. COHEN [3.33 p.m.]: I move Greens amendment 17:

No. 17 Page 23, clause 44(2)(a), lines 26 and 27. Omit all words on those lines. Insert instead "Director of Public Prosecutions, together with written reasons for the opinion, to determine whether proceedings should be commenced or the matter should be referred for a conference under section 40".

The argument is the same as that advanced in support of Greens amendment 13 and I presume the result will be the same.

Amendment negated.

The Hon. I. COHEN [3.33 p.m.]: I move Greens amendment 18:

No. 18 Page 24, clause 45(2)(c), line 20. Insert "of the child and" after "needs".

The Greens consider that the needs of the child as well as those of the victim must be taken into consideration. I commend the amendment to the Committee.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.34 p.m.]: It was always intended that the needs of the child should be considered in arranging conference venues and times. Obviously as a practical matter the convener should do his or her best to accommodate the interests of all participants. The Government has no objection to the amendment.

Amendment agreed to.

The Hon. A. G. CORBETT [3.35 p.m.]: I move amendment 13 circulated in my name:

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No. 13 Page 26, clause 47. Insert after line 14:

(3) The conference convener may permit a person to attend a conference for the purposes of carrying out research or evaluation that has been specifically approved by the Minister, but only with the consent of the child the subject of the conference and any victim. Any such person may not participate in the conference except with the consent of all participants in the conference.

This amendment will permit people to attend a conference at the invitation of a conference convener and with the approval of the child and any victim present for the purpose of conducting research or evaluations approved by the Minister. I canvassed the reasons for the amendment more fully in my contribution to the second reading debate.

The Hon. ELISABETH KIRKBY [3.36 p.m.]: I am concerned about this amendment and honourable members should give it careful consideration. The Hon. A. G. Corbett suggests that a conference convener may permit a person to attend a conference for the purpose of carrying out research or evaluation that has been specifically approved by the Minister, but only with the consent of the child the subject of the conference or any victim. Any such person may not participate except with the consent of all participants. However, the conference is designed to be a conference between the victim and the child, with the child's parents or guardian present and with the child being able to have some legal guidance.

The conference convener will act as an overall coordinator and mediator. That is the whole purpose of the conference. There is no place in such a system for someone from totally outside the system who may or may not be carrying out research which has been notified or approved by the Minister. Anyone undertaking research should obtain research material from sources other than the conference. I believe that what is proposed in the amendment would not be proper. It may well be that the Leader of the Opposition and the Attorney General have an opposing view but I place on the record my concern about the amendment, which I could not possibly support.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.38 p.m.]: The legislation should contain a mechanism that allows someone doing research with the approval of the Minister to be present at conferences. The Attorney General has the power to allow researchers to interview jurors for the purposes of reform. A similar approach is desirable in this area. What the Hon. Elisabeth Kirkby said about the last part of the amendment is correct. That part of the amendment would allow a researcher to participate in the conference process. That should not be allowed; it is inconsistent with the direction of the conferences. Therefore, I move the following amendment:

That the amendment be amended by deleting the words "except with the consent of all participants in the conference".

The effect of the amendment is to provide that a person undertaking research may be present but cannot participate in the conference. That captures the intent of the original amendment and addresses the concerns of the Hon. Elisabeth Kirkby.

The Hon. ELISABETH KIRKBY [3.39 p.m.]: I agree with what the Leader of the Opposition has said. The deletion of those words certainly improves the original amendment but it does not address the problem. The analogy given by the Leader of the Opposition about interviewing jurors is not a true comparison. Adults are called for jury duty as a matter of civic responsibility; certain classes of people are exempt from jury duty. A person suffering from a disability or an illness may apply to be exempt from jury duty. Jurors are adults fulfilling a civic duty; they are not participating in a conference where their culpability or behaviour are being questioned in any way. A child being brought to a conference or a bitterly distressed victim is in a totally different situation. I cannot believe that it would not be possible for the Minister to obtain whatever type of research evaluation he might need without the attendance of a researcher at the conference. As I said earlier, the amendment of the Leader of the Opposition is an improvement but it does not address my problem.

The Hon. A. G. CORBETT [3.40 p.m.]: I accept the amendment of the Leader of the Opposition.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.40 p.m.]: I am content to not oppose the amendment as amended. There is a significant difference between attendance and participation. One can understand an observer on a bona fide research task attending such a conference with the safeguards that are contained in the amendment, that is, with the approval of the Minister and the consent of the child and the victim. They are fairly significant safeguards, and I can live comfortably with that. But the concept of a researcher, no matter how well-intentioned, participating in a conference strikes a discordant note. The amendment creates a reasonable balance between the competing arguments.

Amendment of amendment agreed to.

Amendment as amended agreed to.

The Hon. A. G. CORBETT [3.42 p.m.]: I move amendment 14 as circulated in my name:

No. 14 Page 27, clause 48(6)(a), line 2. Before "participants", insert "majority of the".

To adjourn a conference the convener requires the consent of all participants. It seems unfair that a single person can continue a conference if the majority of participants consider that the conference would be better served by adjourning for a period of time. The amendment provides that a conference may be adjourned with the consent of the majority of the participants.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.43 p.m.]: The Government opposes the amendment. It is unnecessary and might suggest the need for undue formality in dealing with adjournments. The bill as a whole is based upon a consensus and commonsense approach to decision making at conferences. While there is provision for the veto of conference outcomes by the child concerned or a victim attending the conference, there are no specific provisions dealing with formalities for the reaching of decisions at conferences. As a practical matter it is not considered that the current drafting of the clause will present difficulties in relation to the adjournment of conferences.

Amendment negatived.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.44 p.m.]: I move Opposition amendment 11:

No. 11 Page 27, clause 50, lines 17-23. Omit all words on those lines. Insert instead:

(1) Legal practitioners may participate in a conference and may provide advice to a child.

I extensively outlined my arguments for the amendment in the second reading debate. A legal practitioner should not be present at a conference in an adversarial role, and that could potentially occur when a legal practitioner is representing a young offender. Clauses 50(1) and 50(2) use the word "represented". It is my view that the drafting of the clauses, notwithstanding their intention, encourages an adversarial role. The amendment I have moved will achieve the same outcome but reduces the chance of a conference becoming an adversarial contest.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.45 p.m.]: Although the Government accepts that it is undesirable that these conferences become adversarial in character, it does not support the amendment. Clause 50(1) provides that a child is entitled to be advised but not represented by a lawyer at a conference. However, as the Leader of the Opposition said, clause 50(2) allows discretion for a conference convener to allow legal representation, either generally or subject to conditions or limitations. The amendment would remove any discretion for a lawyer to take a representative role. The Government considers that an absolute prohibition on legal representation in the sense of the lawyer performing any advocacy role on behalf of the child is too inflexible and may disadvantage particularly vulnerable children, such as those with profound communication or cognitive difficulties.

From time to time legal issues will inevitably arise within the conferencing framework, for example, whether a proposed outcome plan conforms with the requirements of the Act. In such circumstances, as well as advising the child, it might be appropriate to allow a lawyer to address the conference on behalf of the child in relation to such matters. The bill as drafted makes it clear that the general principle, the prima facie position, is that the role of the legal practitioner at a conference will be to advise the young person about his or her rights but not to subsume the young person's proper role in the process. The appropriate use of the discretion to allow legal representation can be addressed in the training of conveners and the issue could, if necessary, be the

subject of guidelines issued by the Director-General of the Department of Juvenile Justice.

The bill also provides powers to the conference convener to expel participants from a conference if their conduct is frustrating the process. That power could be used in appropriate cases where lawyers are acting inconsistently with the purpose of the conference, which one hopes will be a rare phenomenon. I believe that there is not a vast philosophical gulf between the Opposition and the Government on this issue. On the face of it, these conferences should not involve legal representation but may involve legal advice. The difference is that the Government considers that some leeway, some residual discretion, ought to be left, no doubt in unusual cases, to allow the advocate to represent the child, whereas the amendment would close the door on that altogether. The difference is not vast but the Government prefers the bill as drafted.

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Amendment negatived.

The Hon. A. G. CORBETT [3.48 p.m.]: I move amendment 15 as circulated in my name:

No. 15 Page 29, clause 55. Insert after line 24:

(3) A conference convener must not reconvene a conference unless the conference convener is satisfied that:

- (a) it is in the interests of justice to do so, or
- (b) the outcome plan or any recommendation of an outcome plan has become unsuitable or unworkable.

The bill permits the conference convener to reconvene a conference without specifying any grounds on which the decision is to be made. It is proposed that two criteria for the reconvening of a conference be established: either that it is in the interests of justice to do so, for example when new evidence comes to light, or that the conference plan agreed to at the initial conference is not working or is not suitable.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.49 p.m.]: The Government does not oppose the amendment. It is of the view that as a matter of good administration, conferences would not be reconvened without good reason; and that that is implicit in the current drafting of the bill.

Amendment agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.50 p.m.]: I move Opposition amendment 12:

No. 12 Page 31, clause 60. Insert after line 20:

(4) Without limiting subsection (1), a police officer may be appointed as a conference convener under this section in the police officer's private capacity.

The purpose of the amendment is to make it clear that police officers can be trained as a conference convener. Having had the requisite training and having been appointed by the director-general as a conference convener, a police officer, in the appropriate circumstances, could be a convener. However, I make it clear that a police officer would be a convener in his private capacity, not as a police officer. I do not believe that any benefit is served by precluding police officers from being conference conveners. It could be argued that in the absence of this clause police officers could get training and be a convener. However, I can foresee a situation where representatives will advocate that a police officer has a conflict of interest if, at a time when he is not on duty as a police officer, he undertakes conferences to facilitate outcomes. We should not allow that sort of advocacy to occur. It ought to be clear that police officers, if appropriately trained, can undertake the role.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.51 p.m.]: I find myself in a dilemma that is not uncommon in Committee. The Government believes that the amendment is unnecessary, but it does not have a fundamental difficulty with it. The Government believes that the amendment is unnecessary because there is nothing in the bill that prevents a police officer from seeking an appointment in his or her private capacity, provided that he or she has the ability to perform the role. As the amendment does no harm and may put the matter beyond dispute, the Government does not oppose it.

The Hon. ELISABETH KIRKBY [3.52 p.m.]: I oppose the amendment. There are places in metropolitan Sydney where such a situation would work. However, I do not believe it would work in some country towns where a young offender may have been in the sights of the local police for some time. In their dealing with a young offender, some police officers in some country towns - much as the Government would wish it to be otherwise - would find it difficult, if not impossible, to separate their view as a police officer from their view as a private citizen. In the towns in the far west of New South Wales, young Aboriginal people are victimised by the police, and the effect of the amendment would be to destroy the conference.

The young person would not feel comfortable and would not accept the conference situation easily because he or she would automatically assume - rightly or wrongly - that the police officer was there to get them. There is a lot of resentment about the way in which young people in country towns are being treated, and this amendment would damage the conferencing procedure. I realise that New Zealand has special youth police. I hope that in New South Wales we will also eventually have a whole section of police officers who have specialist knowledge of how to deal with young people, and understand why some of them commit acts of minor delinquency. We have not reached that situation yet. I cannot accept the amendment.

Amendment agreed to.

Part as amended agreed to.

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Part 6

The Hon. A. G. CORBETT [3.55 p.m.]: I move my amendment 16 circulated in my name:

No. 16 Page 32, clause 64(1)(c) and (d), lines 18-20. Omit all words on those lines, insert instead:

(c) a conference fails to reach an agreement as to an outcome plan, or

(d) a child fails to satisfactorily complete an outcome plan.

This is a minor amendment that reverses two of the paragraphs in the clause to better reflect the chronological order in which events are likely to occur.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.55 p.m.]: The Government supports the amendment.

Amendment agreed to.

The Hon. A. G. CORBETT [3.56 p.m.]: I move amendment 17 circulated in my name:

No. 17 Page 32, clause 64. Insert after line 24:

(3) Proceedings may not be commenced against a child who fails to satisfactorily complete an outcome plan unless:

- (a) the child has been given a notice of the failure under section 56, and
- (b) the failure was within the child's control.

Proceedings may be commenced against a child if he or she fails to satisfactorily complete an outcome plan. In New Zealand some children have failed to complete their plan but it was not their fault. In such circumstances, they should not be subject to further proceedings. Judge Mick Brown, who was responsible for administering the New Zealand legislation, has indicated that children should not be subjected to further criminal proceedings if they fail to complete an outcome plan through circumstances beyond their control. It is appropriate, therefore, that where the failure to complete a plan is outside the control of the child, proceedings should not be recommenced.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.57 p.m.]: The Opposition does not support the amendment. The amendments that the Committee just agreed to provide a mechanism whereby, if for some reason a plan is not satisfactorily completed, the conference can be reconvened and the matters can be readdressed. That is appropriate. A prohibition should not be placed on proceedings. If proceedings are commenced, a court could direct that a conference be reconvened. Mechanisms are in place to protect the child in this instance.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.58 p.m.]: The Government does not accept that the amendment is appropriate. The bill already provides for a child to be given notice of the satisfactory or unsatisfactory completion of an outcome plan. There is already flexibility in relation to decisions that flow from a failure to fully complete a plan. The bill does not require exact compliance with outcome plans. The concept of satisfactory completion ensures room for some discretion where there has been substantial compliance. Clause 55 allows conferences to be reconvened and outcome plans to be further considered, if necessary. This would provide a solution if a proposed outcome plan, for some reason, becomes no longer relevant or is not able to be completed.

It is certainly not intended that proceedings should be commenced against a child where completion of the outcome plan becomes impossible due to causes beyond the child's control. We believe that this is reflected in the current drafting of the bill. The Government is concerned that the prosecuting authority should not have the burden of proving a child's failure to satisfactorily complete the plan. Rather, the child should have to explain and justify the reasons for that failure. The amendment may lead to legal argument and uncertainty about what matters can be said to be within the child's control. On balance, we do not favour the amendment.

Amendment negated.

The Hon. I. COHEN [3.59 p.m.]: I move Greens amendment 21:

No. 21 Page 34, clause 67(1), lines 5 and 6. Omit "against that child or any other child the subject of the caution or conference for any offence".

This amendment is designed to ensure that admissions made by a child during a caution or a conference are not admissible as evidence in any subsequent criminal proceedings. I commend the amendment.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [3.59 p.m.]: The Government does not oppose the amendment.

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Amendment agreed to.

The Hon. A. G. CORBETT [4.00 p.m.]: I move amendment 19 circulated in my name:

70 Youth Justice Advisory Committee

- (1) There is to be a Youth Justice Advisory Committee consisting of the following members:
 - (a) a person appointed by the Minister to be the chairperson of the Committee, being a person who, in the opinion of the Minister, possesses qualifications and experience that are relevant to the Committee's functions and who is not a public servant,
 - (b) a representative nominated by the Juvenile Justice Advisory Council,
 - (c) a representative nominated by the Juvenile Crime Prevention Advisory Committee,
 - (d) the Director-General of the Attorney General's Department or a nominee of the Director-General,
 - (e) the Director-General of Juvenile Justice or a nominee of the Director-General,
 - (f) the Commissioner of Police or a nominee of the Commissioner of Police,
 - (g) the Director of the Office of Children and Young Persons in the Cabinet Office or a nominee of the Director,
 - (h) a person representing the interests of victims, appointed by the Minister,
 - (i) a person representing the interests of children and young people, appointed by the Minister,
 - (j) such other persons as are determined in accordance with the regulations.
- (2) The Youth Justice Advisory Committee has the function of advising the Minister and the Director-General on the following:
 - (a) the making of regulations,
 - (b) the preparation of guidelines for conferences,
 - (c) the selection criteria for, appointment of and training of conference conveners,
 - (d) the conduct of the review under section 76,
 - (e) the performance of monitoring and evaluation of the Act, whether or not required by the Act,
 - (f) any other matter relevant to the administration of Part 5 or any other provisions of the Act.
- (3) The regulations may make provision for or with respect to the procedure, nomination of members, terms of members and remuneration of members of the Youth Justice Advisory Committee.

In the second reading debate I dealt with the need for, and value of, a statutory-based advisory committee and its proposed structure. I believe that such a committee reflects a range of interests and views that will ensure the ongoing success of the conferencing scheme. I look forward to the advisory committee taking an active and constructive role in advising on the monitoring and evaluation of the scheme. I commend the amendment.

The Hon. ELISABETH KIRKBY [4.01 p.m.]: I am happy to support the amendment to establish an advisory committee. I know that it is the view of the Law Society of New South Wales that an advisory committee should be established. In a letter to me the Law Society stated that the legislation envisages the

preparation of written guidelines for the conduct of conferences, and regulations with respect to various matters, including the keeping of records, referrals for conferences and outcome plans. The Law Society also said that a substantial number of agencies had been involved in the various procedures, and recommended that there be legislative provision for the creation of an advisory committee made up of representatives of those agencies to assist the director-general. The Law Society suggested that clause 72 should provide also for the appointment of an advisory committee made up of key stakeholders to assist the director-general, to make regulations and to oversee the operation of the Act, including provision for monitoring and evaluation of all actions under the Act. I am happy that this suggestion is reflected in the Hon. A. G. Corbett's amendment, and I support it.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [4.02 p.m.]: The Government will accept the amendment. It was always the intention that there be consultation on the implementation of this legislation. The Government has no objection to the inclusion in the bill of a provision for the establishment of an advisory committee as envisaged by the amendment.

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However, we would see the role of that committee as consultative and advisory, rather than making determinations.

Amendment agreed to.

The Hon. I. COHEN [4.03 p.m.]: I move Greens amendment 22:

No. 22 Page 36, clause 72(2)(c), line 6. Insert "or parents" after "children".

Parents held in custody should be allowed to attend youth justice conferences, and this amendment will ensure that they can. I shall be interested to hear what the Opposition has to say about such a provision.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [4.03 p.m.]: The Government does not oppose the amendment.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [4.03 p.m.]: The Opposition does not oppose the amendment.

Amendment agreed to.

The Hon. I. COHEN [4.04 p.m.]: I move Greens amendment 23:

No. 23 Page 36, clause 72(2)(c), line 7. Insert "and ensuring the dignity and full participation in conferences of persons brought from custody to conferences".

This amendment reflects article 40(1) of the United Nations Convention on the Rights of the Child, which states:

State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth . . .

I commend the amendment.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [4.04 p.m.]: We do not oppose the amendment.

Amendment agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [4.05 p.m.]: In view of the decision just taken by the Committee, I will not move Opposition amendment 13. I move Opposition amendment 14:

No. 14 Page 36, clause 75, lines 28 and 31. Omit "3 years" wherever occurring. Insert instead "one year".

I will not repeat the detailed explanation of this amendment that I gave during the second reading debate. I reiterate that three years is too long to wait for a review to be commenced, and that one year is more than adequate. By the time appropriate legislation comes before the Parliament, I would expect that at least another year will have passed, and by that time the Parliament will be fairly well informed on how the legislation is operating and will be able to reassess the need to change it.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [4.06 p.m.]: The Government does not support the amendment. There appears to be a genuine difference about how long it takes to assess the operation of a model of this kind. The Government considers 12 months is not long enough to allow for the collection of empirical data upon which a meaningful review could be based. Three years is more realistic and would provide a better basis on which to ensure a more vigorous and useful review. Of course, the period for statutory review and reporting in no way precludes earlier and ongoing review. Indeed, the Committee has just agreed to the establishment of a formal advisory committee to monitor the operation of the legislation in practice. That committee will ensure that that occurs well within a three-year period - indeed, on an ongoing basis. Accordingly, the amendment is not supported.

The Hon. ELISABETH KIRKBY [4.07 p.m.]: As a member of the Social Issues Committee I too cannot support the amendment. I do not see how after only one year it could be possible to evaluate a new scheme like this, to which I am quite certain there will be some resistance. It will need more time so that victims, the people dealing with juvenile offenders, and others will be able to get used to it. If a serious anomaly is discovered in the legislation, it would be possible to address it by way of amendment, without the need for a full-scale review of the entire system. I really think that this system will need more time to operate and more time for people to become accustomed to it before it is reviewed.

Amendment negatived.

Part as amended agreed to.

Schedule 1

The Hon. A. G. CORBETT [4.08 p.m.], by leave: I move amendments 20 and 21 circulated in my name in globo:

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No. 20 Page 37, Schedule 1, clause 3(1). Insert after line 29:

, or

(g) becomes a judge or magistrate, a police officer or a permanent employee of the Department of Juvenile Justice.

No. 21 Page 38, Schedule 1. Insert after line 15:

(4) Despite subclauses (2) and (3), the following persons may not hold office as a conference convener:

(a) a judge or magistrate,

(b) a police officer,

(c) a permanent employee of the Department of Juvenile Justice.

As I said during the second reading debate, if the provisions of the bill are intended as an alternative to the criminal justice system for children, it is inappropriate that those responsible for administering the criminal justice system be allowed to convene conferences. Amendments 20 and 21 would not permit judges, magistrates, police officers and Department of Juvenile Justice employees to convene conferences. I know that the Government, in all likelihood, will object to these amendments on the ground that in some areas it may not be possible to find anyone else sufficiently experienced and suitable to convene conferences. If that is the case, I urge the Government to use persons from the groups I have just mentioned as a last resort. I would prefer that other community leaders are trained to convene conferences, rather than take the easy option of appointing a magistrate or police officer.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [4.09 p.m.]: In part these amendments could be said to be in conflict with an earlier amendment passed by the Committee to enable police officers in their non-official capacity to be conference conveners, but the Committee may want to deal with it on a non-technical basis. The Government opposes the amendments. Although the Government does not believe that, in their official capacity, police officers and judicial officers should be responsible for the conduct of conferences, the Government would not consider it appropriate to rule out the prospect of police officers, judicial officers or magistrates seeking an appointment as conference conveners in their private capacity, provided they have the necessary ability. The Government would not see any inherent jurisdictional problem or inconsistency in judges or acting judges, magistrates or acting magistrates, or Department of Juvenile Justice employees seeking accreditation in their private capacities as conference conveners.

Amendments negatived.

Schedule agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [4.11 p.m.]: Mr Chairman, I take this opportunity to observe that this is the sixth report of the social issues committee that has effectively been embraced in legislation. Committee reports on adoption, youth and drugs, medically acquired AIDS, juvenile justice, and births, deaths, and marriages have resulted in legislation, which indicates the benefit to the Parliament of policy committees, such as the social issues committee, making reports that are significant triggers in obtaining bipartisan support for significant legislation and significant reform. All members of the committee are to be commended, but particularly the Hon. Dr Marlene Goldsmith, who chaired the committee that gave rise to this report and, therefore, this bill.

Bill reported from Committee with amendments and report adopted.

Pursuant to sessional orders business interrupted. The House continued to sit.

SNOWY HYDRO CORPORATISATION BILL

Bill received and read a first time.

Suspension of standing orders agreed to.

TOTALIZATOR AGENCY BOARD PRIVATISATION BILL

LIQUOR AND REGISTERED CLUBS LEGISLATION AMENDMENT (MONITORING AND LINKS) BILL

TOTALIZATOR BILL

Second Reading

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development,

Minister Assisting the Premier, and Vice-President of the Executive Council), on behalf of the Hon. R. D. Dyer [4.17 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

These are historic bills.

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They lay a foundation for the resurgence of racing in this State and give security to the 50,000 people employed by this industry.

The Bills also allow the creation of a strong New South Wales based wagering and gaming business, capable of dealing with the rigours of national and international competition.

They also demonstrate this Government's commitment to introduce reforms which satisfy both the financial interests of the State and the aspirations of affected stakeholders.

The Bills deliver on the commitment made prior to the last election by the Premier to reform the taxation of wagering.

The TAB, under the onerous taxation regime which this Government inherited, could not keep pace with the legitimate funding requirements of the racing industry.

While the NSW TAB saw its reserves continuing to be depleted the Victorian industry had its support come close to being doubled following privatisation of its TAB.

However, the Government was not prepared to take the easy way out and merely introduce taxation cuts to silence the critics. It faced up to the hard, but honest, task of putting in place a genuinely reformed financial structure for the Racing Industry and the TAB.

A reformed structure which, while guaranteeing the racing industry's future, also places it in a clear commercial context, with responsibility for improving its own performance and determining its own internal funding allocations.

The reforms also clearly define the role of the Government, as the regulator of wagering and not as its operator (with ministerial control of all facets of commercial operations and receiving a massive 52% share of turnover).

The Government will now be able to fairly, and impartially, regulate the conduct of the TAB.

The fundamental ingredients of the reform, for which the Bills provide a framework, can be explained:

The proposed legislation provides a competitive taxation structure. The taxation rate on wagering will be reduced from a level equal to 52% of the TAB's wagering revenue to 28.2%.

This is the same level as in Victoria. In common with Victoria the TAB will, within limits, be able to vary player deductions provided, on average, they are approximately 16% of gross wagering turnover.

The TAB will be transformed from a statutory authority to a public company limited by shares.

It will have a commercial board of directors and operate according to the same disciplines as any other public company.

The TAB will be issued with an exclusive license to conduct off course totalizator wagering for 15 years.

This term is similar to the Victorian TAB and will provide a period of certainty for the racing industry prior to moving to completely commercial arrangements.

The emphasis of license regulation will be to ensure the probity of the TAB and its operations, and the disclosures which it makes to punters.

So as to ensure the protection of the public interest, including the collection of Government revenue, the provisions of the legislation place a heavy emphasis on the probity of the TAB, its management and its staff.

The Bill will also ensure that the Government is able to maintain a vigilant oversight on the operation of the TAB.

It should be emphasized however that the progress of the legislation and the terms of the license will not allow the Government to substitute itself for the TAB in making decisions of a strictly commercial nature.

The arrangements will allow the TAB to take a 75% interest in a joint venture with the racing industry to conduct wagering in NSW.

The industry will be responsible for providing racing product, under a commercial contract, and the TAB for operating the off course betting totalizator network.

The joint venture will also include the industry's on course totalizator operations.

In addition, although existing contractual arrangements between racing clubs and totalizator operator companies will not be affected, the TAB will also be licensed to conduct on course totalizators.

The joint venture will be managed by a committee comprising an equal number of appointed representatives from the racing industry and the TAB. In addition, the TAB Chief Executive will be Chairman.

The racing industry's product contract will be incentive based.

The onus will be on the industry to improve its product, and the effectiveness of its scheme of distributions, if it wants more.

If wagering turnover is at 1995-96 levels the industry will receive at least \$165 million, (in 1995-1996 dollars), \$25 million more than it will receive this year.

As an added bonus, the racing industry will receive 25% of the TAB's profits on two new gaming ventures.

The TAB will, in this regard, be licensed to provide State Wide Linked Jackpots to participating registered clubs.

This is a system which links gaming machines so players can share jackpots. This should be of considerable value to Clubs, particularly smaller community based clubs whose clientele may have been attracted by the jackpots on offer at larger clubs who can already link machines internally.

The legislation will also allow the Government, at a future date, to approve the TAB providing a linked jackpot system for NSW hotels.

The TAB, which already services hotels and clubs with wagering products, and runs a very sophisticated, and reliable, wagering system, is well placed to develop this new product.

This system provides a degree of diversification for the TAB and a greater degree of financial stability into the future.

The TAB will also run, under the control of the Government, a central monitoring system which will eventually report on the operation of all gaming machines in all NSW hotels and clubs.

This arrangement will reduce many administrative costs associated with regulatory compliance for individual clubs and hotels whilst permitting the more efficient payment and collection of gaming revenue.

The commercial confidentiality, and privacy, of all information collected will be strictly protected.

The TAB corporation will be sold by a public float with the arrangements described above in place. Individual shareholding will be limited to 5% of issued shares.

Organizations with significant gaming or wagering interests will be excluded.

This is an important element. The TAB's wagering opportunities will not be able to be hijacked by a future owner and moved off shore or inter State.

The TAB's integrity will be able to be judged by examining the calibre of its directors and managers - not by having to investigate shareholders strewn across the world and hiding behind complex legal artifices.

The float allows the whole community, if they so wish, to invest in the TAB.

The proceeds of the float will be strictly applied to reduce Government debt. This will produce a benefit in perpetuity for the taxpayers of the State irrespective of the future operating fortunes of the TAB.

However, the float will only proceed if the Government is satisfied that a reserve price, which fairly reflects the value of the current taxation stream which is forgone, can be met or exceeded.

The Bills take account of the legitimate interests of TAB employees. In the transfer of the TAB to a corporation, and upon its sale by float, the terms and conditions of employment of all staff members will continue to have effect unless lawfully varied.

The Government will not permit the sale of the TAB to be used as a subterfuge aimed at undermining the conditions of workers.

The Bills, and the arrangements which are anticipated, also consider the interests of other stakeholders, including the tab's existing agents whose contracts will be carried over to the new company.

Registered clubs and hotels were concerned that Central Monitoring would be expensive and that commercial confidentiality would not be enforced.

The Bills provide an absolute guarantee as to the limited use to which the information can be put.

In addition, the monitoring fee will be set at a level which fairly balances the benefits which are derived by registered clubs and hotels against the costs of providing the service, including capital costs.

Similarly, the linked jackpot system will be made available to registered clubs on a negotiated commercial basis which will maximise the benefits to the club industry as well as the revenues to the TAB.

The setting of commission deduction rates and the policy of roundings will no longer be determined by the Government. Within overall parameters, these matters will be dealt with by the TAB which can act in accordance with market demand.

In addition, punters can look forward to an organization committed to increasing product choice.

The Government recently moved to allow the TAB to conduct parimutuel betting on two outcome events and the legislation before the House will open the way for the introduction of increased sports betting, subject to Government approval.

The legislation will remove all remaining restrictions on the maximum number of race days and the days of the week on which race meetings can be conducted.

This follows upon legislation introduced into Parliament in this session to remove restrictions on Sunday racing and night racing and is in line with the Government's deregulation commitments.

I would also stress that the existing legislative scheme which governs totalizator wagering in NSW will not be repealed until the new commercial arrangements have all been agreed with the racing industry as well as agreement reached on a date for the new arrangements to become operational.

In conclusion, the float of the TAB will be anything but a punt. The Bills put the racing industry, and the TAB on the right track.

What has been a very stable business will benefit from the introduction of new products, its liberation from inappropriate regulation and its placement on a commercial footing.

The previous perception of the racing industry of avoiding internal reform and only looking to government for taxation relief has been dispelled.

The industry now has the appropriate incentives, and the funding, to build on its pre-eminence in breeding and training and deliver increasingly attractive racing to the punter.

The 50,000 jobs in this state which depend on racing, and the tens of thousands of other jobs which also depend on its success, will be preserved.

These reforms are sensible, considered and overdue.

I commend the bills to the House.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [4.18 p.m.]: This is landmark legislation for the New South Wales racing industry and the Totalizator Agency Board. I am sure that all those involved in the industry will appreciate the introduction of this legislation as it will provide enormous benefits to the racing industry over time and will enable it to compete with Victoria on a more level footing. The former Government had plans for the corporatisation of the TAB and its eventual privatisation. It is now history that the current Government has proceeded down that path.

I am sure the advice the Government received was that this was the best option for the racing industry in New South Wales - it would achieve the best financial outcomes for the racing industry and

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benefit the taxpayers of New South Wales. The privatisation, per se, of the TAB will deliver to the Government of the day and to the taxpayers of New South Wales a windfall benefit of the order of \$1 billion from the wagering component. The gaming product, which has been added to the privatised TAB, will enhance the sale and deliver approximately \$1.3 billion. Honourable members will be aware of the privatisation of the Victorian TAB. The success of that privatisation hinged upon the gaming product being included to enhance the performance of the TAB.

This legislation mirrors the Victorian legislation. Honourable members will recall that the Victorian TAB was privatised during the first term of the Kennett Government. Privatisation was proceeding quite well until Mr Brumby, the then Leader of the Opposition, decided to make some political capital out of the industry by talking down the sale of the TAB. He was successful. He not only talked it down but assured the people of Victoria that he would unscramble the egg and return the TAB to public ownership if he was elected to government. Fortunately for the people of Victoria, he never got an opportunity to do so, but he was successful in talking down the sale of the TAB by at least \$200 million.

Government members should be reminded of the completely irresponsible actions of their colleague Mr Brumby in Victoria towards the sale of the TAB. Over the last two years I have continually urged and badgered the Government to privatise the TAB to ensure that the best possible outcomes are achieved for the racing industry. I have been critical of the Government because it has taken so long to include the gaming product, and

I am not sure whether the Government has got it right. I should be given some credit for the legislation which is being debated today. It is crucial to the future success of wagering for us to get a better return and performance from the TAB. Wagering, compared to general gambling, has declined in real terms over the last few years.

Gaming has gone through the roof, whereas wagering has had a negative growth pattern. That pattern will continue under current arrangements. The privatisation of the TAB will result in accrued benefits to the racing industry. First, the taxation rate will be reduced to 28.2 per cent, which is commensurate with the Victorian taxation rate. Second, one would expect the TAB to perform much better under private ownership and the entrepreneurial aspects that go with private ownership than it would under government ownership - and that is no reflection on the good public servants in the TAB. They have a lot about which to be proud if we take into account the past performances of a TAB that has been recognised Australiawide and worldwide.

The TAB, with its new commercial arrangements and objectives, will perform a lot better. We can look forward to addressing the decline in wagering which has been occurring. The Government, by adding the gaming product, will increase the TAB's annual income stream which, in turn, will enhance returns to the racing industry. The racing industry will benefit in three areas. First, its 52 per cent taxation rate will be reduced to 28.2 per cent; second, the private commercial objectives driving performance and profit will result in increased profits to the racing industry; and, third, the addition of the gaming product will increase the TAB's financial performance after privatisation.

The Opposition has attempted to persuade the Government to issue the TAB with a gaming licence to enable it to operate stand-alone machines in licensed venues such as clubs and hotels. I have had discussions with the Minister's advisers and I do not know whether this matter could be included in the legislation. The Minister might address that matter when he replies to the debate. A gaming licence would enhance the financial performance of the TAB, add value to the sale of the TAB when the float is concluded, and add value to its profit performance which, in turn, would assist the racing industry even further. The Government should consider this proposal. I would like to have had such a provision included in the legislation. I have been assured that it is still possible to do that.

There has been a lot of negative speculation by the Registered Clubs Association about the cost of monitoring gaming and the burden that would place on clubs. Figures as high as \$50 per machine per month have been mooted. This matter is to be negotiated by the Government, registered clubs and hotels prior to the TAB float. However, registered clubs and hotels have a genuine concern about the cost of this monitoring. The Government has agreed to accept an amendment, which I will move in Committee, to involve the Independent Pricing and Regulatory Tribunal in initial negotiations. The Opposition is not concerned about the ongoing price as that will be regulated by ministerial discretion from time to time. That is not the biggest issue. The biggest issue is the initial price that is struck.

The Government must make sure that it becomes a win-win situation for the Government, the Totalizator Agency Board and the racing industry. It must also ensure that it does not inflict a

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financial penalty on some of the smaller clubs which obviously cannot afford to pay \$50 a month per machine, given that they are making very little out of them anyway. I refer to some of the small bowling and golf clubs whose members, generally speaking, do not play the machines regularly. The Opposition see that as a potential problem. I hope that with the involvement of the Independent Pricing and Regulatory Tribunal most concerns will be resolved and we can provide a satisfactory outcome for all the parties involved.

The clubs have been concerned about the possible effects of an independent operator such as the TAB having access to information which will be provided through the monitoring system back to the Department of Gaming and Racing. Obviously their concern relates to the fact that they regard the TAB as a competitor for the gaming-wagering dollar; they feel that the TAB might receive some commercial advantage from having access to such information. I have been assured by the Government that the board will be subject to the usual confidentiality arrangements to which all collectors of such information are subjected. I remind the Government of the seriousness of this matter in the hope that the concerns raised by the industry do not come to fruition.

By being involved in the central monitoring system the TAB will be involved also in gaming and will have a steady stream of income. However, it is important that we ensure that the small clubs do not bleed to death paying for the privilege of having access to the information. There is a positive aspect to the system, however. Costs will reduce for those clubs and hotels that comply and provide data to the department by completing the necessary forms. I understand that a proposal has been put forward to enable the jackpot link to be extended to hotels. The bill provides for that eventuality. However, at the moment consideration is centred on the clubs, and the Opposition has no problem with that. A number of concerns have been expressed about the proposal, the first being the return to player percentage.

At the moment that percentage is very high in the registered club movement - I understand that it is as high as about 95 per cent in some of the larger clubs, but it is certainly around 90 per cent and more in most registered clubs in New South Wales. It is because of this high percentage return that players have continued to play poker machines. I am informed that Tattersalls, which operates the statewide link in Victoria, actually commenced with a return-to-player percentage of 91 per cent. When the percentage was increased to 91.5 per cent, Tattersalls turnover and profit also increased. There is a clear message here: the higher the return to players the higher the turnover and profit to the operator and the Government.

The Government must negotiate successfully with the Registered Clubs Association and the registered club movement to ensure that the player percentage remains adequate and that the cut that is taken by the TAB is not so high that players will cease using the link. That matter should be considered in the final negotiations. The Opposition fully supports the proposal, but we need to be sure that clubs will profit from it and continue to support it. I understand that the figures that have been calculated for the registered clubs jackpot links are based on only 10 per cent club participation. Obviously there will be a much higher participation rate than that, and I am sure that the TAB would expect a higher participation rate. So there is enormous potential if the Registered Clubs Association and the registered club movement can be convinced of the benefits of this proposal.

The Hon. Jan Burnswoods: Why don't you get excited, as you did yesterday?

The Hon. R. T. M. BULL: The Hon. Dr Meredith Burgmann is still plotting away. I understand that the Deputy Premier will soon make an announcement that the left wing will oppose any attempts to privatise the electricity industry unless the matter is deferred until after the annual conference. It is quite obvious that the left wing and others are plotting on the back bench. They are not interested in this issue. They ought to leave the Chamber, quite frankly.

The Hon. E. M. Obeid: Does that include me too?

The Hon. R. T. M. BULL: Yes, the honourable member might as well go too; he is not interested in the legislation either. Honourable members might then be able to have a rational discussion about this legislation and not have to put up with the constant chatter of the left-wing plotters on the back bench. If they want to talk about electricity privatisation, they should go outside the Chamber and let other members talk about TAB privatisation, which is the matter before the House at present. The gaming product has the potential to perform very well, but it also has the potential to be a flop.

The Government has a lot of work to do between now and the float of the TAB to ensure that all negotiations have a satisfactory outcome. There is a real potential not only from the sale of the float

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but also for revenue growth in the future; that will be very important to the future success of the TAB, the taxation strand of the Government and the profit strand of the racing industry. I wish to raise a number of issues relating to the float of the TAB. The Government will be aware of some concerns that the Opposition has about the future of the TAB after the expiration of its 15-year licence. I understand that the Minister will place on the record some information to the effect that the licence will be held in perpetuity.

I presume the gaming product will not be held in perpetuity, only the wagering component. Without the

gaming component the value will not be as high and it will have to be renegotiated after 15 years. The Opposition regards this as a problem. What will happen to the two 15-year licences for the monitoring scheme and statewide links? Why are they not also being granted in perpetuity? The market value of the TAB may fall as a result of the uncertainty of those licences. We are not talking about exclusive licences. I understand that an exclusive licence will be renegotiable after 15 years, but there is no reason that the gaming and wagering licence should not be held in perpetuity.

The Treasurer might give consideration to inserting a measure similar to section 21 of the Victorian Gaming and Betting Act, which provides for compensation to be paid to the former licence holder should the licence not be renewed after the expiration of the exclusive licence period. That provision ensures that TABCORP in Victoria, after the expiration of its 18-year licence, will be compensated if an exclusive licence is not granted in return. Reference has been made to Australian accounting standards that require investors to advertise the value of the licence over the 15-year period and then reflect that value against the market value of the TAB. Perhaps the Government does not understand that. The legislation may have to be revisited.

Without that surety, after 15 years the market value of the TAB will decrease and that will affect the final sale price. Under Corporations Law in New South Wales the Government is required to stipulate in the prospectus that the two licences are to be issued for only 15 years, with no guarantee of renewal or provision for financial compensation should the licences not be reviewed, as per the Victorian model. The Government should give an assurance that it will not sell the New South Wales TAB if the retention value is greater than the expected market value. Though we do not know the retention or market values, the market would suggest that its value is about 8.5 times the annual profit of the organisation - a figure referred to by the Government.

The Hon. M. R. Egan: It is a fabulous investment if the price is only 8.5 times the earnings.

The Hon. R. T. M. BULL: That may be what the market value is. It is expected that the market value for the wagering product at the moment will be \$130 million plus \$40 million for the rounding down of dividends and unclaimed dividends, times 8.5. That calculates out to slightly over \$1 billion. The gaming product has been valued at \$40 million per annum, which adds a further \$300 million to the market value of the TAB. The retention value has been calculated by Treasury but if it is greater than the market value it will create a dilemma for the Government.

The privatisation process can be conducted either by sale, by tender or sale by float. The Government has chosen the option of sale by float, and we do not yet know whether we will be worse off or better off following that float. Prior to the Government announcement, the Opposition's view was that a trade sale would have been a quick and clean option for the Government. That would realise the sort of dollars the Government is talking about. Four or five bodies have intimated privately - and some publicly - that they would be interested in the purchase of the New South Wales TAB. One of those bodies is TABCORP of Victoria. The \$1.3 billion expected return will not be a net price because almost \$200 million in costs will be associated with the sale - much more than a trade sale.

The Hon. R. S. L. Jones: Can the Treasurer confirm that cost?

The Hon. R. T. M. BULL: He might provide me with an answer.

The Hon. R. S. L. Jones: I can tell you the answer. It is about \$25 million.

The Hon. R. T. M. BULL: I will take the Treasurer's advice on that. Whatever the cost is for a float sale, a trade sale would cost considerably less - but certainly more than \$25 million, I would suggest. Time will tell. I accept some of the reasoning behind the Government's decision to opt for the float. The Government could have had problems if one or two individuals had purchased the TAB, as would have been their right had the sale been put out to tender. The Government will have to live with its decision. Everything depends on the

TABCORP in Victoria. That was an utterly disgraceful situation. He had no loyalty to his State or anyone else. The Opposition wants the venture to succeed and is determined to get the best outcome possible for the racing industry. At present the New South Wales racing industry is well behind Victoria in terms of prize money and funding.

Victoria has roughly half the number of race meetings across the three codes - thoroughbred racing, greyhound racing and harness racing - but its racing industry receives \$40 million more than the New South Wales industry receives. New South Wales has approximately 1,100 meetings a year whereas Victoria has only 540, yet our racing industry receives \$40 million less than Victoria's industry does. In this State one is lucky to receive \$800 as first prize money for a harness racing event in the bush. In Victoria one can receive \$3,000. This inequity has had a negative impact on our racing industry. Many owners are not now prepared to race thoroughbreds because of the small return, especially in light of the high risks involved in horseracing. Horses can always find a reason to get beaten, to break down, to get sick or not to run, full stop.

Countless owners in New South Wales have outlaid a fortune trying to find the elusive group one winner, of which there are precious few. Many no longer participate in horse racing. As a result trainers, stable hands, strappers, feed merchants, farriers and bookmakers are affected. This significant domino effect over the past few years has had a negative impact on the racing industry in New South Wales. The Government must convince the market that there will be a future for the TAB after 15 years and that the wagering licence, which may be held in perpetuity by the licensee, will also include gaming product. If not, the Government must ascertain the impact that that will have on the industry.

The float and the prospectus must clearly indicate the requirements of Australian accounting standards and Australian Corporations Law to ensure that the best outcome is achieved. The Government must negotiate with registered clubs and hotels for a system that is acceptable to all and to achieve a satisfactory price outcome. The Government must also ensure that, whatever calculations and offsets are made to the cost of running the statewide link and the agreed profit for the TAB, the club and hotel industries will use the link. If the registered club movement adopts a negative approach to the link, the whole proposal will fall flat and the potential revenue streams available to the TAB and the racing industry will not be achieved. That will be a matter of regret, particularly for the racing industry, which is relying heavily on the future success of the float.

I place on record my thanks to the Minister for Gaming and Racing and the Treasurer for their assistance during the privatisation process. I have been kept informed throughout. On behalf of the racing industry I also thank Macquarie Bank. It has done an outstanding job in advising the racing industry and the Government, through the board committee, on the best way to handle the privatisation process. The proposals put forward by the bank have generally been accepted by the Government. I urge the Government to consider a third option for gaming products, that is, licences to operate stand-alone machines.

I have not heard of any opposition to that proposal, which will assist the small hotels and clubs to install machines on their premises, something many of them would not otherwise have the financial capacity to do. It would also create a niche market for the TAB with the potential for growth. Unlike Victoria, the licence would not be exclusive. Members would be aware that in Victoria TABCORP and Tattersalls each have 50 per cent of the poker machine licences. I am certainly not suggesting that arrangement should apply in New South Wales. It would be an optional arrangement for clubs and hotels. It would open up a niche market that would benefit not only the TAB and the racing industry but also the clubs and hotels which have to convert to the new generation machines during the next three years.

I seriously put forward that option to the Government as an alternative. I suggest to the Government that it has a great deal of work to do on this measure. The Opposition certainly welcomes the legislation and looks forward to a successful float and, more importantly, a successful future for the TAB, which will be operating in a new environment. The proposal has exciting prospects. Providing the gaming product can be successfully negotiated and implemented, widespread benefits will accrue to the racing industry. That will regenerate what is in some ways a dying industry in this State.

The Hon. ELISABETH KIRKBY [4.52 p.m.]: I oppose the legislation. I realise my opposition is probably futile because the legislation will be supported by the Opposition. To me, the legislation is offensive. I believe that the Totalizator Agency Board should not have been privatised. If the Government wants to go down that route, the

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board should have first been corporatised. I certainly do not agree with the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill and the Totalizator Bill. As was pointed out at some length by the Deputy Leader of the Opposition, Victoria has already made many changes to its racing industry which have resulted in competition with New South Wales. It is suggested that many involved in the racing industry - trainers, horse breeders, punters and, indeed the horses themselves - have moved to Victoria because the returns are greater.

Although I do not oppose a bloodstock industry, I do not believe what has happened in country Victoria can be compared with what the Government hopes may happen in rural New South Wales if the TAB is privatised. If the Government believes that more money will then be spent on country racing, in the long run it will be disappointed. No organisation, certainly not a government, should sell off an asset, a revenue stream or a money-making opportunity unless the return to the people from the sale is greater than the value of the retention of the asset. At the moment there is no guarantee of that. I ask the Treasurer why the Government has included in the sale the monitoring component of the linked poker machines, a significant revenue driver for the sale, and the revenue from the linked poker machines. Is there any guarantee that whatever revenue is raised will go to the racing industry and will not be used for other purposes?

In another place the Opposition raised a significant issue. It asked whether the community realised that by floating the TAB, restricting the shareholding to a maximum of 5 per cent and excluding various people from participating in the industry, such as those with links to other gambling activities in New South Wales, the Government has given away a substantial value which will have an impact on the budget. It has to be pointed out yet again that the Government is the custodian of community-owned assets. The TAB is one such asset. The figures involved should be explained to the people of New South Wales, and that should have been done before the legislation went ahead.

It is clear from reading the bills and the speeches in the second reading debate in another place that the Minister will be responsible for all probity checks and the administration of the licence. I find that rather strange because it is in contrast with casino probity checks, which are carried out by an independent authority. Why in this instance will the Minister - in other words, the department - rather than an independent body, be responsible for the administration of the licence? Why will the Minister and his department, rather than an independent authority, be responsible for all probity checks on investors? As I pointed out earlier, the concept of corporatisation has been bypassed. Other Government enterprises and authorities that have been privatised by this Government were first corporatised. Perhaps in his reply the Treasurer will explain why the TAB was not first corporatised.

The honourable member for Manly in another place made some pertinent comments in his contribution to the second reading debate. He asked why the TAB is not being offered to open tender. The honourable member shares my concern about the inclusion of statewide links and opposes the bills. It is for that very reason that I oppose the bills in this House. I agree with the honourable member for Manly that the handing over to the new TAB operator of a licence to exclusively operate statewide linked jackpots is unethical. I will not go as far as the honourable member for Manly, who said that the Independent Commission Against Corruption should probably look into the matter. However, I find the provision to be strange indeed.

The bill gives the TAB an exclusive 15-year licence to operate an interhotel links gaming system. The open tender system has been totally ignored. As all members know, gambling provides a revenue resource, so why is the TAB not being offered to open tender? It can scarcely be said that the TAB should not be privatised in the long run because it is hardly a core activity of government. I hope it can be adequately regulated. A few weeks ago I placed a number of questions on notice to the Minister for Gaming and Racing. I should like to repeat them now. The first question was:

Will the Government be selling the TAB for significantly less than its true value because it has failed to make reasonable efforts to increase its turnover by properly enquiring into the viability of fixed odds betting, also referred to as set price betting?

If that correlation has been done, why are the results of the investigation not available? Why is the public not being told the true value of the TAB so that those in the community who have no objection to the TAB being privatised can be assured that it is not being sold for less than its true value? I also asked the Minister for Gaming and Racing:

Is the Government aware that one of the main objectives in devising the SPT was to provide versions specifically aimed not only at avoiding the detrimental effect on variable price punters but actually providing them with better prices?

Those who follow gambling in detail - and Reverend the Hon. F. J. Nile has a much greater knowledge of
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this subject than I - will be aware that from time to time people win the lottery or receive a substantial payout from gaming machines. However, in the long run the majority of people who back horses lose, although they may have a one-off win. If their winnings and losses over an extended period of time are compared, they do not come out on top. Betting on thoroughbreds is a seductive form of gambling. Betting at the races is more seductive than using a gaming machine in a club, hotel or casino or playing blackjack or roulette in a casino. The atmosphere at a racecourse is seductive: the horses are beautiful, people are elegantly dressed and there is a party atmosphere. People are tempted to put money on a horse - money that they can ill afford to gamble, money that they lose. I also asked the Minister for Gaming and Racing the following questions:

Has the Government had any research done to ascertain how much higher the price for the sale of the TAB might be if SPB is introduced?

Is it correct that from a technical point of view, SPB could have been in operation for about 2½ years now thus providing significant extra revenue for the racing industry and the Government and better variable prices for average TAB punters as well as set prices?

With partners who had the appropriate rights and expertise, would development of this system and its implementation worldwide provide an opportunity for growth for the TAB?

That would have been an advantage and would have been a reason to keep the TAB in government ownership. As I said earlier I oppose the legislation primarily because of the Australian Democrats policy on privatisation and competition. I shall conclude by putting our policy on the public record. It states:

The Australian Democrats will oppose privatisation unless it is shown in a public inquiry there is a clear public benefit.

There has been no public inquiry into the privatisation of the TAB. Our policy continues:

We will oppose privatisation of Telstra, Federal airports and the Australian National Line unless a public inquiry proves there is a public benefit. To date no party has clearly proven its case to the public on the merits of these sales.

We will closely monitor the implementation of Competition Policy to ensure that the interests of Australians in regional areas, low income families, small business and the interests of the environment are properly addressed.

We will oppose "contracting out" of essential government services where this will lead to less accountability, higher costs to the public or a lowering of standards and access.

We will oppose waste at any level of the bureaucracy, and support stronger powers and better resources for the Auditor-General to identify and address waste and inefficiency.

If the Treasurer was not willing to hold a public inquiry, why did he not think it proper to ask the Auditor-General to audit the TAB before the legislation was introduced? An audit would have allayed the

concerns of many in the community about this government instrumentality being privatised with such speed. My main objection is to the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill, which links gaming machines and provides further outlets for gaming machines. Compared with other States New South Wales has a great many gaming machines. In the lengthy debate on Tuesday about the poker machine tax it was revealed that New South Wales has three times the number of gaming machines as Victoria. In Queensland and South Australia the number of gaming machines is limited but in New South Wales the number is being deliberately increased. The number was increased by previous legislation that allowed gaming machines into hotels as well as clubs, where they have been for many years. The number is now to be increased even further.

Reverend the Hon. F. J. Nile: They plan to put 38,000 in the hotels.

The Hon. ELISABETH KIRKBY: That is just unbelievable, particularly in hotels, because even a moderate intake of alcohol can release people's inhibitions and cause them to put more money into poker machines than they normally would. Gambling is as addictive as alcohol or cigarettes. When I was at the Matthew Talbot Hostel about 10 days ago the supervisor on duty pointed out to me that the hostel now has many more derelict men seeking its help and using its facilities to deal with addiction not to alcohol or other substances but to gambling. When the proposal to establish a casino in Sydney was put forward honourable members were told that a special community fund would be set up to assist the people and the families of people who became addicted to gambling.

I do not know what became of that proposal. I do not know how many anti-gambling groups have been set up to equate the work of Alcoholics Anonymous, but it seems to me that not enough money is being spent to assist those who have become addicted to gambling. That is a tragedy. We read in the press of more and more cases of people - sometimes young and well-educated women - who have taken money from their employers. Some who have been in responsible positions have falsified the books of companies, milked their employers of large sums of money which they used to feed their gambling habits. Some

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have committed very serious criminal offences. I oppose the legislation. I realise that it will pass, whatever my personal views are, but I hope that in two or three years time New South Wales will not have even greater problems caused by gambling addiction than it has now.

Reverend the Hon. F. J. NILE [5.12 p.m.]: Call to Australia, consistent with its stand on gambling, opposes the Totalizator Agency Board Privatisation Bill, the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill and the Totalizator Bill. Although it may be said that these bills will simply bring about a reorganisation of totalisator betting arrangements in this State through this privatisation proposal, Call to Australia believes this measure will lead to an increase in gambling. Governments work very hard to raise revenue, and from time to time increase taxes to finance their budgets, but they still pay some regard to the overall impact of their legislation on the social and economic fabric of our community. In my view governments do not have nearly as much regard to that as they should, but at least they realise their responsibilities as elected governments.

However, for private companies and those involved in private enterprises, and in particular those that will eventually control totalisator operations in this State, casinos and other gambling outlets, the bottom line is to make a dollar - not just a dollar, but millions or billions of dollars. There will be no restraints on private organisations that are involved in the gambling industry. They will use every method, device, advertising approach, gimmick or incentive to encourage people to take up the form of gambling over which they have control to increase the profits of the company or organisation. If the manager or whoever is administering that gambling enterprise does not show ruthlessness in pursuit of that gambling market, another person will take his place who will pursue the marketing of the gambling product in a ruthless way.

The House is discussing the privatisation of the Totalizator Agency Board. I am amazed that the TAB is listed by Australian business magazines as being in the top 40 of the leading 1,000 companies ranked by sales. I would rather have those top 40 positions filled by what I regard as productive companies. In saying that I

acknowledge that the TAB employs 50,000 people, but I regard it as an organisation that does not contribute to our society. It is a sad and tragic indictment of our society that the New South Wales TAB should be in the top 40 businesses in our nation, or that the TAB in this State is the fifth largest wagering organisation in the world, based on turnover, behind the Japan Racing Association, Japan Provincial Racing, the Hong Kong Jockey Club, and a French organisation called Pari Mutuel Urbain France. The New South Wales TAB is rated the second-largest wagering organisation in the world, based on the amount spent per capita, behind the Hong Kong Jockey Club.

The wagering sales of the New South Wales TAB in 1995-96 were \$3.59 billion. That, of course, is only part of the massive turnover in gambling generally within Australia, which last year was \$70 billion. Half of that \$70 billion was generated in New South Wales. In other words, New South Wales is responsible for half the gambling turnover in Australia, while all the other States and Territories generate the other half. For anyone who does not realise that New South Wales is going headlong down the pathway of gambling and the promotion of gambling, those figures speak for themselves.

The Government received gambling revenue in 1995-96 of \$305.8 million. The TAB operates 1,474 cash sale outlets, and employs 50,000 people in various activities that depend upon the gambling and racing industry in this State. Those 50,000 people are not employed solely in the TAB but in the racing industry of this State, with the TAB directly employing 6,000 people comprising 1,500 permanent and casual staff and 4,500 agents and their staff. I know that TAB agencies have protested about the privatisation of the TAB, being concerned that this legislation will lead to sackings and closure of some of those agencies. But those figures show how big the gambling industry in this State has become.

There is an irony in this measure. Honourable members would recall the controversy generated some years ago regarding the activities of starting-price bookmakers, when SP betting operators were conducting large underground operations in Sydney and other parts of Australia. There were links between those operators and organised crime. People like the late George Freeman were considered to be the Mr Bigs in the SP betting industry. The Government was unable to tax the profits of SP betting and decided to legalise it and run it. It is history that the Government took over SP betting and that those operations are now conducted by the TAB.

The Government proposes to go full circle with these bills and hand back that industry to private individuals. George Freeman, if he were still living, could have become chairman of the new privatised TAB.

Those who were previously

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regarded as criminals must think it ironic that these betting operations were taken away from them years ago and are now to be made available to them, their friends or relatives. Perhaps the family or friends of George Freeman could invest in the industry in which he was formerly involved.

I have no doubt that privatisation of the gambling industry will result in more gambling machines and more incentive and more advertising aimed at increasing turnover, and therefore profits. Recently I spoke about this with Mr Carr, who has made public statements about his concern at the level of gambling in this State. He wishes something could be done about it - but he is the Premier, after all. I gave him my gambling anti-greed prohibition advertising bill, and he was very interested in it. I hope that eventually the bill will receive government support. I would be happy for it to become the Carr anti-greed anti-gambling bill; I would be happy for anyone to take it, provided it becomes law. Once the TAB is privatised, concern about the social impact, the family impact and the economic impact of gambling will be lost.

The TAB has already expanded its products: phoneTAB, the introduction of the 2KY radio punters club, and Bet Link, which links computers in hotels and clubs to the TAB central computer. That system has been tested in the north coast and Illawarra regions and is due to be further developed this year. Other developments include Internet betting by computers. Apparently it will be possible to gamble through TAB outlets all over the world while sitting in a lounge room with a computer. There is no age limit on using a computer, so every member of our society - men, women and children - could become a computer gambling addict. Billions of dollars will be involved.

No-one has assessed whether this is a healthy development. The location of TABs and their operations have been subject to a number of controls, but if gambling is accessible via the Internet, it will be available in every home in Australia that has a computer linked to the Internet. Recently 37 new pubTAB outlets opened. In 1996 25 new clubTAB outlets were opened. One of the biggest TAB outlets is the Sydney Harbour Casino. Honourable members may not be aware that the casino is running a competition for a new name. Melbourne has the Crown Casino and the Sydney casino owners believe that Sydney Harbour Casino is not a sufficiently dramatic name. I suggested that the new one billion dollar casino should be appropriately called the Temple of Mammon. According to the encyclopaedia, Mammon is the spirit or god of greed.

The Lord Jesus said, "No man can serve two masters. He must choose between almighty God or Mammon", the spirit of greed. Gambling is based on greed and exploits the weakness of many people. It pushes a button in all of us that makes us believe we can obtain a huge amount of money by investing a small amount of money in a TAB ticket, et cetera. We are all vulnerable. Advertising on television, radio and by other means will promote the privatisation of the TAB. Call to Australia is aware that people are employed in the gambling industry; we wish they could be employed elsewhere, but the reality is they are not. The Government has argued that if it does not take strong action at this stage, Victoria will roll over New South Wales. The lower tax rate introduced by the Kennett Government is already attracting many bettors.

In the past few years the TAB has paid a distribution to the New South Wales industry that exceeded its profits. This situation cannot be sustained, given the drain on the TAB's reserves. I have background material that indicates that the privatisation of the Victorian TAB in 1994 accelerated competition for the New South Wales TAB. As a statutory authority the New South Wales TAB has less flexibility to respond to its competitors by offering different products, services or pay-out rates to punters. Privatisation of the TAB will make gambling more seductive and our society more vulnerable. The tax rate on wagering in New South Wales was increased in 1990 to nearly double the rate in Victoria, and that has caused a steady decline in the New South Wales industry, and more and more trainers and horses are lured south by bigger prize money.

The rationale is that through the legislation the Government will reform wagering in New South Wales by reducing the tax rate on wagering, selling the TAB and setting up a new structure for wagering in New South Wales in partnership with the New South Wales racing industry. New South Wales is obviously in a life-and-death struggle with Victoria, or Mr Kennett. The Treasurer in this State is trying to outdo Mr Kennett. My concern is that I do not think he can. Mr Kennett has virtually a one-man dictatorship in Victoria. New South Wales maintains a degree of democracy, and there are different points of view within the Labor Party on these issues, but Mr Kennett seems to be able to impose his will with a snap of his fingers. Whatever the Treasurer comes up with today, Mr Kennett can outdo him on tomorrow. Mr Kennett could cut it to the bone, even though it may result in a loss of money to Victoria, simply to destroy New South Wales. It is a very dangerous situation.

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The Hon. R. T. M. Bull: That is not a good analogy.

Reverend the Hon. F. J. NILE: I believe it is. I am not attacking Mr Kennett as an individual, but I have watched his methods and I believe they are very dangerous to New South Wales. It seems as though we are now entering into a bartering process.

The Hon. R. T. M. Bull: Nothing happens here very quickly.

Reverend the Hon. F. J. NILE: That is the point I am making. In Victoria, Jeff Kennett acts with the snap of his fingers. New South Wales will be out-manoeuvred within minutes by the Kennett Government and those around him who are very closely involved with gambling and the Melbourne casino. On one occasion I asked the Treasurer whether the Victorian Government was not a subsidiary of the Crown Casino. I believe there is some truth to that. New South Wales does not want to be in that situation. Like the Hon. Elisabeth

Kirkby, Call to Australia will vote against the bills in principle.

The Hon. Dr MEREDITH BURGMANN [5.30 p.m.]: I want to be very brief and put on record my concerns about the bills, particularly the Totalizator Agency Board Privatisation Bill. Surprisingly enough, I agree with a lot of what Reverend the Hon. F. J. Nile said. I am enormously concerned about gambling, a very delicate activity, being in the hands of private enterprise. I have seen what has happened with casinos in other States. I have seen the disgusting behaviour of the Victorian Government concerning the Crown Casino. I am not opposed to gambling, but I believe it can cause enormous social concerns. Once it is in the hands of private enterprise, it can get out of control. The whole *raison d'être* for private enterprise is to make a buck and to encourage people to gamble. By privatising the TAB the profits will no longer go back into the community; they will go to the shareholders. I am opposed to privatisation of government assets anyway, but to have such a delicate area as gambling going to the private sector is really a matter of great concern.

The Hon. D. F. MOPPETT [5.32 p.m.]: It is with regret that the Hon. R. B. Rowland Smith will not be able to contribute in debate on this matter as he is afflicted with a cold. The Hon. R. B. Rowland Smith is one of those country people for whom a race meeting is a sporting occasion and a social event without peer. Years ago such an event commanded the attendance of people in country districts like no other event. In my younger days when I was involved in public affairs and local government I was always amazed when I was informed that the Australian Jockey Club completed its racing calendar for the year at least six months ahead to enable arrangements to be made for court hearings. That was done to ensure that no court hearing clashed with a race meeting. It is amazing that as little as 20 or 30 years ago court hearings were arranged after the racing calendar. Race meetings were an important social event in country areas.

Earlier my colleague the Deputy Leader of the Opposition referred succinctly to the fact that this legislation was driven partly by philosophical views about the privatisation of non-core government businesses. More than anything this legislation has been driven by the deterioration of the racing industry, particularly in country areas. The racing industry is no longer able to attract through its gambling processes the sort of money needed for reinvestment. It is desperately competing with Victorian alternatives and investment in industry in that State. Although I am not a keen racing person I support the bill as I believe we must take some action before the racing industry collapses altogether.

In the Coonamble, Walgett and Warren districts ownership of horses and the participation of industry and the community have dropped over the last 10 or 15 years. One of the largest industries in the sporting sense is in jeopardy. I share with Reverend the Hon. F. J. Nile some sense of irony that we have come full circle. I recall the extension of totalisator betting to the off-course scene in the early 1960s. At the time it was an attempt to rein in an amount of off-course betting. The SP bookie seemed to be the darling of the real devotee of racing. One could go into any barber shop or hotel in a country area and be told where to lay a bet with an SP bookmaker. The advent of TAB outlets in virtually all country towns almost put an end to that. Government-sponsored and government-regulated gambling will now be managed by private enterprise. Though the Government is still involved in lotteries, by and large access to gambling is in private hands.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! I remind honourable members that it is unparliamentary to read newspapers in the House.

The Hon. D. F. MOPPETT: Any honourable member studying a newspaper in this Chamber would not be looking at the racing form. Perhaps that is a sign of the difficulties being faced by the industry. There can no longer be any doubt about

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the future of the TAB in New South Wales. The operations of the TAB and the racing industry have reached crisis proportions. Even though some honourable members might have reservations about gambling, they can set those reservations aside and support the passage of the legislation through the Parliament this session.

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

PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL

Second Reading

Debate resumed from 18 June.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.39 p.m.]: The Opposition supports the measures contained in the Prevention of Cruelty to Animals Amendment Bill. However, I have some concerns in relation to the bill, and at the Committee stage I will move some amendments to it. Prevention of cruelty to animals has always been an emotive subject. Over time a battleline has been drawn, principally and regrettably, between primary producers and, on the extreme side of the equation, the supporters of animal liberation movements and other associated organisations. Over the years we have heard ongoing debate about this matter. I guess every Minister in every government has attempted to review the legislation and make acceptable changes. Of course, there has always been the problem that some proposals have been unacceptable.

The consultation process leading up to this legislation has been exhaustive. Some time ago a green paper was produced and an inordinate amount of discussion and consultation took place between all interested parties in an effort to amend the legislation. A number of issues concerning the bill were raised during the consultation process, in which the Opposition took part. The Opposition has endeavoured to be totally rational in the debate - I do not think anyone would say otherwise. A number of organisations have expressed views about the legislation. The Government provided advice about these amendments, and animal welfare organisations gave advice about associated issues. Obviously, the Opposition has listened to the RSPCA about a number of issues and we accept the general thrust of the legislation, but, as I said earlier, we have some concerns about it.

The Opposition has three concerns, and it has not been successful in convincing the Government to address them. The first concern is about section 8 of the Act, which prescribes the offence of failing to provide sufficient water, food and shelter. The bill fails to address the concerns that farmers have about that section. Farmers are liable for prosecution if they do not provide assistance for stock, even in exceptional circumstances. I would be the first to point out that no member of the Opposition supports cruelty to animals, and no member of the Opposition supports animals being denied sufficient clean water and appropriate fodder - under normal circumstances. However, the Opposition is concerned that the legislation will allow for a successful prosecution even if the offence occurred in exceptional and extreme circumstances.

Anyone who has been involved in a bushfire knows that it is not easy to feed stock in that circumstance; that it may take up to half a day, or 24 hours in some circumstances, before stock can be given fodder. In a variety of exceptional circumstances there could be a problem with water supply. The Opposition believes that exceptional circumstances should be taken into account before a primary producer is prosecuted. The second concern of the Opposition relates to increased penalties. The Opposition does not quibble with large corporations being penalised up to \$50,000. However, members would be aware that many small farm operations are incorporated, and therefore under the bill would attract that higher penalty.

Clearly the intention of the legislation is that the higher penalty should apply only to the large corporations. The Opposition asked the Government to define "corporations" in such a way that incorporated family farms would be exempt, and it will move amendments to that effect. The Opposition is concerned also about section 16 of the Act, which prohibits the use of electrical devices other than those prescribed in the regulations. The Opposition has requested the Government to amend that section to ban the electrical devices specifically prescribed in the regulation. The logic behind that move is that the Government is hindering the development of new technology that may have animal welfare benefits. The Opposition will move appropriate amendments to deal with that.

The Opposition has some concerns about the guidelines relating to the welfare of farm or companion animals. The guidelines are intended to ensure that appropriate methods of handling and looking after stock are employed. However, the inclusion of the guidelines in the legislation gives them much more credibility under the law. The Opposition is concerned that the guidelines could be regarded as an offence, when quite clearly

they are intended to assist people who have livestock in their

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possession. In relation to guidelines being admissible in evidence, many guidelines could be treated as codes of practice. For example, the model code of practice for domestic poultry recommends that during an inspection of poultry a light intensity of at least 10 lux is required. That recommendation is absolutely irrelevant to whether an offence has taken place; yet it may be admissible as evidence in a prosecution.

For that reason the Opposition has a problem with codes of practice being written into the legislation. Item [32] will amend section 23 to provide for the possession of steel-jawed traps. The Opposition agrees that the use of steel-jawed traps should be an offence, but it does not necessarily believe that the possession of traps should be an offence. Honourable members would be aware that steel-jawed traps are somewhat of a collectors item. They are in just about everyone's back shed; they are in museums. They are not a particularly dangerous item. I understand that a Minister has one hanging on his wall. Under the Act the Minister would be guilty of having a steel-jawed rabbit trap in his possession.

While the Opposition supports the Government's move to ban the use of the traps, it believes that possession is irrelevant, and will move an amendment that possession not constitute an offence. As I said, steel-jawed traps are now a collectors item, and most of them are useless and half rusted out. The Opposition has a concern about farmers being prosecuted and not having the option to consult a third party, as provided by section 8 of the Act. By way of amendment, we will propose an option to allow consultation with the Department of Agriculture and the Rural Lands Protection Board prior to prosecution. This issue is relevant. There may be reasons for stock emaciation, such as ovine Johne's disease, which is a wasting disease in sheep.

An unsuspecting inspector might launch a prosecution believing that the condition of stock was the result of poor quality food and water. Before commencing proceedings an officer should obtain independent advice about the state of stock under investigation and what care it should receive from rural lands protection boards and the Department of Agriculture. This would not present any logistical problems; officers are available to provide such advice. Honourable members should support this measure. I shall advise honourable members of an unfortunate case involving an overzealous prosecution. I received the following letter, dated 16 May 1997, from a man who lives in western New South Wales:

Briefly, in May 1993 the RSPCA seized 9 mares and foals (6-8 months) on 8 days notice, shipped them to Hawkesbury (past Orange Agricultural College) and charged my wife and myself with 74 charges of failing to provide proper & sufficient feed, veterinary treatment and one of aggravated cruelty on an old mare who had an arthritic/bent knee for 8 years.

In the Local Court my wife & I were acquitted of 55 charges (including the aggravated cruelty) which took 3 separate weeks in Court. We appealed the remaining 19 charges and these were heard in the District Court . . . December 1996 in Dubbo and from 5th May 1997 till Judgement on Monday last 12th May in Sydney . . . Our Appeals were upheld in every case.

The important facts to come out of this trial were noted by [the judge] who addressed the RSPCA Barrister and suggested that he should get the RSPCA to approach the Government with suggestions to improve the Act. [The judge] read these recommendations into his summary of evidence and judgement which took about 4 hours . . .

There are a number of matters arising out of this case that should be addressed before finalising the revision to the Act and as [the judge] said on Friday 9th May he couldn't understand why the Society doesn't do something about getting the Act revamped with a need for sub-sections where necessary and in particular under "Vet treatment". His view was that the RSPCA should look at using mediation with a panel of independent experts BEFORE seizing animals and using Court facilities . . . that common sense should prevail . . . that truckloads of hay could have been purchased for what this case has cost and that those who make donations don't expect it to be used up on those in wigs and gowns and Solicitors Offices. Suggestions/comments were also made about Inspectoral behaviour and the RSPCA's habit of multiple summoning . . .

Problems with the current and probably revised Act: -

1. The general perception that fat is good and healthy and thin is bad and unhealthy. This view prevails today despite the fact that all

modern research tends to take the opposite view.

2. Vague technology " . . . proper and sufficient food". Sufficient to do what? What about prevailing conditions?
3. Specific, written instructions should be given by Officers.
4. The RSPCA receives a moiety from fines and this could be an incentive to maximise the number of charges. Scrap the moiety - pay an annual grant.
5. There should be mandatory requirements that in the event of seizure ALL tests (blood samples, faecal samples etc.) be done BEFORE animals moved with 2 samples of each to enable the defendant the appropriate opportunity to defend themselves.

The RSPCA took this man to court and the charges were dismissed after an enormous amount of time and money were wasted. The stock involved were transported at great expense to Hawkesbury Agricultural College for testing. They could have been tested at the Orange Agricultural College. The 55 charges were dismissed at first instance and a further 19 charges were dismissed on appeal. The

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land-holder spent \$115,000 defending the charges. The exercise was a very expensive one for the RSPCA. The case highlights the fact that a second opinion must be obtained in such matters before proceeding to litigation - which is what our amendments require. I am not opposed to the RSPCA; it is a fine organisation and does an excellent job. It ensures that people who have the control of animals do the right thing. On 18 June I was sent the following facsimile message:

I must reiterate my hard earned belief (4 years of a living nightmare and some \$115,000 to prove our innocence) that this review of the Act is an opportunity to GET IT RIGHT so that committed and ACCOUNTABLE Animal Welfare Groups will have the power to deal with cruel people without destroying the lives of innocent people by either misuse or abuse of power combined with an ill defined act.

The judge who heard the matter found:

There is no suggestion in this case that there was overstocking of the stud.

Whatever be the result of these prosecutions, in my view what occurred then and until now can properly be described as a sorry saga.

In the course of addresses I have already referred to some recommendations which I feel the RSPCA should make to Parliament. The Act ought to be considered overall, principally to avoid what are invariably long and very costly hearings in the courts. Naturally, where actual cruelty is involved, either as a result of leaving animals without food and/or water and/or by ill-treatment, those who allegedly are guilty thereof should certainly be prosecuted. Here, it seems obvious on any view of the evidence that the lives of the animals have not been threatened but it was felt that they were in need of better care and attention.

Surely this could be decided by a panel of veterinary surgeons which may include people with very good practical experience in the relevant field, and any person responsible, according to such a panel, could be the subject of civil action to recover costs and expenses which may properly be incurred by the RSPCA. As I also said, I consider there should be a separate offence of failing to provide necessary treatment, which could be defined as the first part of "veterinary treatment" is now defined. This would cover all forms of treatment including drenching which are carried out on a property by the owner or manager thereof and not require the intervention of a veterinary officer.

This unfortunate situation could have been avoided had the amendments that we now propose been in place. As members of Parliament we should ensure that the legislation is right so that those who ill-treat livestock are successfully prosecuted. It is undesirable that enormous amounts of money are expended by the RSPCA and others on matters that should not have been commenced. The bill provides an opportunity for the RSPCA, the Government, rural lands protection boards and the Department of Agriculture to reduce the number of offences of aggravated cruelty to animals as a result of insufficient fodder and water.

The Opposition supports the provisions relating to the tethering of sows, the tail docking of dogs and the

securing of dogs in the back of vehicles. Unfortunately, in such circumstances every now and then an overexcited dog travelling on the back of a vehicle jumps from the vehicle. If the animal is not killed, often its injuries - caused by hitting the bitumen at speeds up to 100 kilometres an hour or being hit by a passing or following vehicle - are such that it has to be destroyed. The Opposition supports the provisions relating to the grinding, trimming or clipping of one of the teeth of sheep, animal baiting and fighting, and animal trapping. We are in for a interesting Committee stage; I am sure the Hon. R. S. L. Jones has many technical issues to raise.

The Opposition supports the general thrust of the legislation. I urge honourable members to seriously consider our proposed amendments. The Opposition will not support the amendments proposed to be moved to clause 34B by the Hon. R. S. L. Jones; it does not consider it is in anyone's interests to have a third party running around willy-nilly seeking to lay charges against intensive industries throughout the State.

The Hon. R. S. L. Jones: The provision has been there for years.

The Hon. R. T. M. BULL: I know it has been there for years. These provisions have been arrived at after long negotiation, many working papers and consultation ad nauseam. I believe the Government has it right with regard to approved charitable organisations. If organisations can prove to the Minister that they can carry out a responsible inspectorial role, that is acceptable. However, the Opposition cannot support a proposal by the Hon. R. S. L. Jones at five minutes to midnight, as it were, that will take us back to where we started. That would be regressive step and the Opposition will not support it. Acceptance of it would see all-night raiders dropping in on unsuspecting farmers - big and small, intensive industries or a farm with few cattle in the back paddock - causing mayhem. I know the agenda of the Hon. R. S. L. Jones and the Opposition does not support it. No doubt we will have a most interesting and extensive discussion on these issues in Committee. The Opposition supports the general thrust of the bill.

The Hon. R. S. L. JONES [6.03 p.m.]: Mahatma Gandhi said:

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

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He also said:

I want to realise brotherhood or identity not merely with the beings called human, but I want to realise identity with all life, even with such things as crawl upon the earth.

At another time he said:

To my mind the life of a lamb is no less precious than that of a human being. I should be unwilling to take the life of a lamb for the sake of the human body.

Last week I talked to Mrs Manika Gandhi in India. She had intended to be here today to listen to debate on this bill. She is a former Minister for the Environment in the Government of India. She is also Sanjay Gandhi's widow. She could not be here today; today is the anniversary of her husband's death. I will be meeting with her again soon. What Mahatma Gandhi said those many years ago was very appropriate. If Australia's greatness and moral progress were to be judged, it would be found wanting because Australia is probably the most cruel nation on earth when it comes to the treatment of animals, especially with regard to the live transport of sheep and the size of pens in which some animals are caged. I am afraid to say that we have not progressed very far. It is appropriate to quote some other well known philosophers over the ages. I read from Ecclesiastes 3:19:

Even one thing befallerth them: as the one dieth, so dieth the other; yea, they have all one breath, so that a man hath no preeminence above a beast: for all is Vanity.

That is an appropriate comment. The Koran states:

There is not an animal on the earth, nor a flying creature on two wings, but they are people like unto you.

So it has been acknowledged for centuries, in fact thousands of years, that animals are similar to us in many ways. The material I am quoting was compiled from the Internet a few days ago by Donald Graff. Christiaan Barnard made an interesting observation when he discovered the intelligence and sensitivity of chimps. He said:

I had bought two male chimps from a primate colony in Holland. They lived next to each other in separate cages for several months before I used one as a [heart] donor. When we put him to sleep in his cage in preparation for the operation, he chattered and cried incessantly. We attached no significance to this, but it must have made a great impression on his companion, for when we removed the body to the operating room, the other chimp wept bitterly and was inconsolable for days. The incident made a deep impression on me. I vowed never again to experiment with such sensitive creatures.

Another philosopher, Jacques Cousteau, the famous oceanographer, said:

Perhaps the time has come to formulate a moral code which would govern our relations with the great creatures of the sea as well as those on dry land. That this will come to pass is [my] dear wish.

Today I will be moving an amendment to have crustacea included in the provisions of the bill. Charles Darwin said:

There is no fundamental difference between man and the higher animals in their mental faculties . . . The lower animals, like man, manifestly feel pleasure and pain, happiness, and misery.

Leonardo Da Vinci, a famous artist and scientist - he was also a vegetarian - said:

I have from an early age abjured the use of meat, and the time will come when men such as I will look upon the murder of animals as they now look upon the murder of men.

Unfortunately, we have not progressed very far in the past 500 years. Many years ago Thomas Edison said:

Non-violence leads to the highest ethics, which is the goal of all evolution. Until we stop harming all other living beings, we are still savages.

Albert Einstein, a physicist and Nobel prize winner in 1921, said:

Nothing will benefit human health and increase chances for survival on earth as much as the evolution to a vegetarian diet.

Pythagoras, the well-known philosopher, mathematician and vegetarian, stated:

For as long as men massacre animals, they will kill each other. Indeed, he who sows the seed of murder and pain cannot reap joy and love.

Plutarch said 2,000 years ago:

Can you really ask what reason Pythagoras had for abstaining from flesh? For my part I rather wonder both by what accident and in what state of soul or mind the first man did so, touched his mouth to gore and brought his lips to the flesh of a dead creature, he who set forth tables of dead, stale bodies and ventured to call food and nourishment the parts that had a little before bellowed and cried, moved and lived. How could his eyes endure the slaughter when throats were slit and hides flayed and limbs torn from limb? How could his nose endure the stench? How was it that pollution did not turn away his taste, which made contact with the sores of others and sucked juices and serums from mortal wounds?

Albert Schweitzer, who won the Nobel Prize in 1952, stated:

Until he extends the circle of his compassion to all living things, man will not himself find peace.

No-one from the National Party will ever be the recipient of the Nobel Prize, that is for certain.

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George Bernard Shaw, the playwright who won the Nobel Prize in 1925, stated:

While we ourselves are the living graves of murdered beasts, how can we expect any ideal conditions on this earth?

For thousands of years, people have been aware that our attitude towards animals is savage. After several thousand years, we have not learnt how to treat animals as sentient beings with which we share the earth, but just as meat on the hoof. The 1992 ministerial review of the prevention of cruelty to animals was largely ignored by the Government. The Department of Agriculture has its nasty little fingerprints all over it. The review was conducted over three years by a team of more than 20 people, many of whom volunteered a considerable amount of time and effort. The review considered hundreds of public submissions from individuals and organisations concerned with animal welfare. It made 217 recommendations, the majority of which were ignored by the Department of Agriculture and the Government.

The welfare of animals should not be the responsibility of the Department of Agriculture. It was the responsibility of the Department of Local Government and Co-operatives in the period of office of the previous Government, but it was moved to the Department of Agriculture so that the National Party could ensure that there were no improvements to the welfare of animals. The Premier's efforts have not made much progress in the improvement of the conditions of animals - and he is a patron of the RSPCA! It is about time he moved animal welfare from the Department of Agriculture back to where it belongs: the Department of Local Government and Co-operatives. We will then get some fair-minded and objective views on how animals should be treated and not be influenced by those who torture animals.

The Government's green paper on the Prevention of Cruelty to Animals Act was only 40 pages long and made only 37 recommendations - far fewer than the 217 recommendations of the ministerial review. The chairperson of that 1992 review team said that the green paper and the proposed amendments to the bill were a trivial response to the ministerial review. He said further that the green paper was a "disappointing result from a wide ranging public consultation process, and an opportunity to put in place an Act which deals comprehensively with the management of animal welfare in New South Wales has been lost".

Unfortunately, it has been lost once more to the Department of Agriculture. The Government has vetoed almost every single improvement to the welfare of animals. In 1987 the European Parliament considered a report on animal welfare that contained recommendations putting an end to keeping veal calves in crates and depriving them of iron roughage; phasing out battery cages for hens within 10 years; discontinuing keeping sows in individual stalls or on tethers; and stopping routine mutilations such as tail docking and the castration of male pigs. It passed the proposals by a vote of 150 to zero, with only two abstentions. I could not imagine that happening in the New South Wales Parliament. Australia is a long way behind Europe and America. In terms of the way we treat our animals, Australia is a hick country.

I will move a number of amendments in Committee. I shall detail my proposals now, rather than spend a long time doing so in Committee. The Act makes no provision for public education and socially pro-active activities intended to prevent cruelty and modify human behaviour. The emphasis of the Act is to respond to and judge existing human behaviour. There should be a positive duty of care on all animal owners to care properly for animals in their charge. This will assist the court to determine a person's responsibility for an animal when there is a sufficient nexus between them. The term "abandon" must be defined to enable the court to determine who is responsible for an animal or when an offence takes place. "Abandon" should be defined as "discard, set loose, no longer take charge of, for the purpose of relinquishing ownership, control, supervision or custody".

The Deputy Leader of the Opposition has praised the proposed removal of third party access provisions, which have been in this legislation since 1979 and are also incorporated in the Environmental Planning and Assessment Act and the Environmental Offences and Penalties Act. I had to fight former Premier Nick Greiner

tooth and nail to have the provision included in the Environmental Offences and Penalties Act. He eventually agreed to the inclusion of a modified version. He said that Tim Moore, the Minister for the Environment at that time, had gone too far.

In 18 years there have been only two or three actions commenced under that Act. There was a private prosecution against a farmer in Albury in November 1994 and January 1995. That was the case of *Mark v Svarc*. In that case the magistrate accepted the complaint as prima facie evidence, which means he believed the prosecution was substantial and worthy. However, the matter was settled out of court because it was said the evidence was not obtained legally. On the only occasion when

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someone other than the RSPCA or the police has tried to prosecute, the case has not been successful. There has been one other private prosecution commenced under the Prevention of Cruelty to Animals Act, and that was the case of *Clark v Golden Eggs* in Tasmania. The defendant was found guilty on several counts of cruelty and he did not appeal the decision. Hysteria has been whipped up and people have said that animal liberationists will go into places and attempt to prosecute -

The Hon. R. T. M. Bull: There are many such cases.

The Hon. R. S. L. JONES: No, not by third parties other than the RSPCA and the police. There was recently a raid on the farm of Russell Turner, the National Party member for Orange in another place. The raid was attended by Anthony Hoy. Those who were invited by Russell Turner to go on to his property found the most horrifying conditions.

The Hon. D. J. Gay: On a point of order. The Hon. R. S. L. Jones is implying improper practices by a member of the other place. The honourable member is reading from the original press release of the gang that illegally moved onto the property of the honourable member for Orange. The Hon. R. S. L. Jones should have the decency to read a subsequent report, which completely exonerates the honourable member for Orange from these outrageous charges. Mr President, I ask that you direct the honourable member not to attempt to demean a member of the other place by reading such an outrageously incorrect press release.

The Hon. R. S. L. JONES: On the point of order. I am not referring to a press release but to an article that appeared in the *Sydney Morning Herald* a few days ago entitled "'Wasting' disease confirmed on MP's egg farm". I do not intend to go any further than read what is in the article. There are facts in the article that are on the public record for everyone to see. I am not defaming Mr Turner. I am referring to what appeared in the *Sydney Morning Herald* on more than one occasion. I am not reading from a press release or from a document that has not been released. I am reading from an article reported in the *Sydney Morning Herald*. Surely that is acceptable.

The Hon. Jan Burnswoods: On the point of order. On this question of fact, when I was in Orange last week I saw appalling photos -

The PRESIDENT: Order! The Hon. Jan Burnswoods will confine her remarks to the point of order.

The Hon. Jan Burnswoods: They were photos of Mr Turner's chooks.

The PRESIDENT: Order! The honourable member must speak to the point of order.

The Hon. Jan Burnswoods: I thought the point of order related to the veracity of the claims of the Hon. R. S. L. Jones.

The PRESIDENT: Order! No, that is not the point of order.

The Hon. Patricia Forsythe: It is an attack on a member not by way of substantive motion.

The PRESIDENT: Order! I do not need the advice of the Hon. Patricia Forsythe. If the Hon. R. S. L. Jones is quoting from an article which is part of the print media, he is entitled to do so provided he does not thereby associate himself with that accusation if it is disparaging of or reflecting on a member of the other House, in which case the honourable member is restricted to doing so by way of substantive motion.

The Hon. R. S. L. JONES: That is exactly as I would have expected you to rule, Mr President. That is why I did not go beyond what has already been published.

The PRESIDENT: Order! I have given a ruling.

The Hon. R. S. L. JONES: That is right, and I accept and agree with the ruling.

The Hon. D. J. Gay: You have no choice but to accept it.

The Hon. R. S. L. JONES: I did not intend to challenge Mr President's ruling. Among other things the article stated:

A histopathology report by the Government Veterinary Laboratory at Orange confirmed that two birds referred by a Bathurst veterinarian, Ms Alison Holloway, had [Marek's] disease. Ms Holloway had reluctantly examined about 12 of Mr Turner's sick and dead birds delivered to her surgery after a raid on May 16 by Animal Liberation members, after conferring first with the Australian Veterinary Association.

Ms Holloway had immediately euthanased a number of the birds rather than prolong their suffering through treatment. A number were in poor condition, obviously very weak, and exhibited signs of cannibalism . . .

There is no point in going right through the article, because I am sure that all members have read it. That is why they are concerned about ensuring that

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people do not get in to see these places, so that they cannot take evidence to prosecute people who are treating animals cruelly. No doubt there were many other cases of cruelty. In fact, at the Bunge pig farm I saw the most incredible cruelty taking place, but I will come to that later when I come to deal with pigs.

The Hon. R. T. M. Bull: Let's have a raid on your place in the middle of the night! Let's see what you are doing at your place at four o'clock in the morning.

The Hon. R. S. L. JONES: If I tortured animals like Mr Russell Turner has I would expect to be raided.

The Hon. D. J. Gay: On a point of order. I ask the honourable member to withdraw the statement that Russell Turner tortures animals.

The Hon. R. S. L. JONES: It is a matter of fact.

The Hon. D. J. Gay: It is a reflection on a member in the other place, and I ask that the honourable member be directed to withdraw that statement and apologise.

The PRESIDENT: Order! The Hon. R. S. L. Jones is running perilously close to breaching the conventions of the Parliament. An allegation of the torture of animals is a very serious allegation to make against a fellow member of Parliament. I would have thought the honourable member had taken the hint from my previous ruling. He is perfectly at liberty in the course of debate to make reference to what was published in a newspaper. To draw from that an allegation against a member of the Parliament, which is clearly an allegation of criminality, is going a bit too far. If the honourable member cannot walk the fine line that I thought I had defined, he should pull back.

The Hon. R. S. L. JONES: I think I will leave this matter, because it has obviously become far too

heated, and get on to the next point.

The Hon. D. J. Gay: You cannot leave it. I have asked for a withdrawal.

The PRESIDENT: Order! It is improper, in my opinion, for a member to allege directly, as the honourable member has, that a member of this House or the other House is guilty of the torture of animals, and I think it appropriate that the member should withdraw that allegation. That statement is quite different from bringing to the attention of the House that which may have been written in a newspaper.

The Hon. R. S. L. JONES: I withdraw the remark. We will wait and see what happens further down the track.

The Hon. D. J. Gay: Without qualification, Mr President.

The PRESIDENT: Order! The honourable member has withdrawn the remark. That is all I require. He did not qualify it.

The Hon. R. S. L. JONES: There has not been a single successful prosecution using the third-party provisions in the existing Act, provisions which the Department of Agriculture is attempting to remove from the Act after 18 years of operation. I hope that attempt will be unsuccessful. The New South Wales Farmers Association has alleged that I have no confidence in the RSPCA. That is not true. In fact, Charles Wright from the RSPCA is in the gallery tonight. I have known Mr Wright for some 17 years. We founded the Fund for Animals together in 1980. I know that Mr Wright is serious, as are other RSPCA people I have known for many years, about prosecuting where possible. The RSPCA is not able to be everywhere all the time, and there may be occasions - which there apparently have not been in 18 years - on which another person needs to launch a prosecution. It may be that the people next door, who have been observing animals being treated very badly, having the evidence themselves want to launch their own case. That has not happened yet.

The Hon. D. J. Gay: Why not ring up the RSPCA? That is the proper thing to do.

The Hon. R. S. L. JONES: The RSPCA does not have sufficient resources to prosecute everybody. Sometimes it needs assistance from others. If these rights are abolished, the RSPCA and the Animal Welfare League will be the only organisations - other than police, of course - able to instigate a prosecution under the Act. Sometimes they have had difficulties, because they are under-resourced, in being able to launch the number of prosecutions they would like to launch. So they need assistance. It may be that the RSPCA will get that assistance in the future. Who knows? But it is absolutely ludicrous to say that there will be raids by animal liberationists to get evidence to prosecute, because such evidence would probably be ruled to be inadmissible in court because it had been illegally obtained.

The Government's rationale in banning third-party prosecution rights is that that will limit trivial or vexatious prosecutions. But there have not been any! Trivial or vexatious prosecutions would cost those launching them a great deal of money. I do not expect anyone would launch a trivial or

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vexatious prosecution because it would be ineffective as well as costing time and money. I respect greatly a number of animal organisations apart from the Animal Welfare League and the RSPCA and those who support them. There are some very dedicated people in organisations that deal with animal issues. For example, the International Fund for Animal Welfare has attracted a membership of nearly 50,000 in the past four years, and about half of them live in this State. Under the Act any one of those 25,000 members can take action. The Department of Agriculture and its mates want to avoid that possibility because they are afraid of prosecutions taking place - even though there have been no such prosecutions!

Animal Liberation, of course, is a growing organisation, and lately its membership has been growing in leaps and bounds. The Humane Society established a branch here recently, and it has several thousand members as well. Michael Kennedy, an old friend of mine, runs that organisation; we worked together years ago in the

Fund for Animals. Those organisations have links throughout the community. The International Fund for Animal Welfare, which I have worked with closely, has supported organisations throughout the State financially. It has income of some \$50 million a year, and has written to some two million people as part of a major worldwide campaign on kangaroos.

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

YOUTH AND COMMUNITY SERVICES AMENDMENT BILL

NEW SOUTH WALES CANCER COUNCIL AMENDMENT BILL

WATER AND ENVIRONMENTAL PLANNING LEGISLATION AMENDMENT BILL

PARLIAMENTARY PRECINCTS BILL

Bills received and, by leave, read a first time.

Suspension of standing orders agreed to.

[The President left the chair at 6.30 p.m. The House resumed at 8.00 p.m.]

POLICE SERVICE AMENDMENT BILL

Second Reading

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [8.00 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

On May 15th the Premier tabled the three volumes of the Final Report of the Royal Commission into the NSW Police Service.

Three years ago, Justice Wood was given the task of uncovering the extent and causes of corruption in the New South Wales Police Service.

It is a matter of public record, and shame, that the Royal Commission was able to reveal in such graphic detail the level and extent of corruption within the Police Service.

However, with the problem now recognised and acknowledged, the time has come to move into the recovery and rebuilding stage.

The legislation before the House arises from the Royal Commission's final report.

It deals with a single issue, and that is the industrial rights flowing from the termination of employment of police officers under the provision commonly referred to as "Commissioner's confidence".

If a single issue had to be isolated as crucial to reform of the Police Service, it would have to be the ability of the Commissioner to divest the service of those who fail to meet its standards.

Without the means to quickly and efficiently terminate the employment of individuals who cannot or will not comply with minimum standards of integrity, conduct and competence, it is doubtful that we will ever reap the full benefits of the reform process.

The old system clearly did not work.

It was cumbersome, protracted and legalistic.

It effectively meant the corrupt and the hopeless could seek sanctuary and remain within the service.

The system required the proving of departmental charges before the Police Tribunal.

After the tribunal had made a recommendation, action may be taken on the basis of its finding.

That action was then subject to appeal to the Government and Related Employees Appeal Tribunal, (GREAT) which routinely put dismissed officers back into the Service.

The system could be manipulated and beaten.

Corrupt officers knew that, and took comfort from it.

Basically, the system sheltered those who least deserved it, and failed the people of New South Wales who looked to the Police Service to be a model of honesty, integrity, and community service.

In November 1996 this Parliament threw out the old system.

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Responding to the Immediate Measures Interim Report of the Royal Commission, section 181D was introduced into the Police Service Act.

For the first time the Commissioner of Police was given a fast and effective way to rid the service of those who had forfeited the right to be police officers in this State.

Of course, section 181B had previously allowed the removal of officers suspected of criminal or corrupt behaviour but only in the limited circumstances of information arising from the Royal Commission.

Section 181D extended Commissioner Ryan's power to ensure he is not only the most powerful Police Commissioner in the history of this State but also in Australia.

The Carr Government is determined to ensure that Commissioner Ryan's Police Service only contains officers in whom he has confidence.

That is why the current bill only affects the processes after the police officer has been removed from the Service.

Commissioner Ryan's power to remove corrupt and inept officers remains unaffected.

After the introduction of section 181D, the Premier and I, after consultation with the Caucus agreed the post-dismissal process - the appeal rights, if you like - should be revisited after the Final Report of the Royal Commission was delivered.

The provisions which came into effect on 16 December 1996 were, as I said at the time, exceptional, designed to deal with an exceptional situation.

The appeal rights were, to put it simply, that the exercise of the Commissioner's power to dismiss was subject to administrative review by the Supreme Court on administrative law or judicial review principles.

In its final report, the Royal Commission explored in some depth various proposals in relation to the appeal processes arising after an exercise of the Commissioner's Confidence powers.

The options examined had many points of similarity, the key issues on which they varied were the nature of the review provisions and the restrictions on how the parties could run their cases.

Honourable members may recall that, earlier this year the Royal Commission convened a round table conference to consider the question of police appeals and disciplinary processes.

The successful outcome of the conference prompted my establishment of a working party to consider the finer detail of the matters discussed at that Conference.

The working party comprised representatives of the Police Service, the Ministry for Police, the Ombudsman's Office, and the police associations.

The report prepared for me by the working party was one of the options considered by the Royal Commission in the final report.

In considering three options, the Royal Commission outlined a range of matters which it considered were appropriate for the new system.

Some of those matters were common to different options, whilst others were not.

Since the final reports were delivered, I have examined the various options in great detail.

The bill currently before the House does not conform exactly with any of the three options the Royal Commission considered.

Rather it takes the best aspects of options two and three to strike a balance between the spirit of the Royal Commission recommendations and existing industrial law and practice in New South Wales.

The result is a process that retains the Commissioner's power to ensure that the service is able to quickly free itself of those who fail to live up to professional standards of integrity, competence and behaviour, but also protects against injustice

It is that simple - the bill is anti-corruption but also anti-injustice.

The bill:

- * accommodates the unique nature of policing;
- * overcomes the problems of past appeal processes; and
- * puts the police officer on a similar footing to other employees under the Industrial Relations Act.

It is the first step in the long-term overhaul of the police disciplinary system - the other matters such as the abolition of the Police Tribunal and the removal of GREAT from the remaining disciplinary processes will be addressed during the next stage of reform.

The bill provides police officers with the right to go to the Industrial Relations Commission to seek review of a dismissal decision.

Again, whilst similar to the protection provided to other workers under the unfair dismissal provisions of the Industrial Relations Act, it is not identical as there are some important differences which I will discuss shortly.

The key aspect review to be conducted by the IRC will be a review of the merits of the decision of the Commissioner.

It will allow both the fairness of the process by which the decision was arrived at, the facts on which the decision was based, and whether dismissal was too harsh, unjust or unreasonable.

However, it will be for the applicant to establish that a decision was "harsh, unjust or unreasonable".

These words will be familiar to those with knowledge of our industrial relations law as they are the same grounds on which an employee may seek redress under the unfair dismissal provisions of part 6 of chapter 2 of the Industrial Relations Act 1996.

In making its decisions, the IRC will be required to balance the interests of the applicant against the wider public interest including the interest of protecting the integrity of the Police Service.

This will also include the fact that the applicant was dismissed under section 181D(1) - that is, for want of Commissioner's confidence.

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These are significant tests.

For the sake of clarity I should stress that the lodging of an application for review will not stay the Commissioner's decision.

What that means in practice is that the applicant becomes a former police officer from the time the Commissioner signs the order to dismiss him or her.

This is an enormous change from the past where officers not only abused the system to get back into the Service but also made it virtually impossible to get them out in the first place.

It is in the interests of the applicant, the community and the Police Service that any reviews arising out of dismissals be finalised quickly.

That is why the bill provides that an application for review must be lodged within 14 days, and requires that the hearing be commenced within four weeks.

Hearings under division 1C of the Police Service Act will be conducted by the IRC in a similar way to hearings under part 6 of Chapter 2 of the Industrial Relations Act.

The bill also requires that if either party wishes to introduce new evidence to support their case, notice must be given.

What this means is that not only must notice of intention be given, but also notice of the substance of the evidence that is sought to be adduced.

This will ensure that the issues are clearly defined and allow both parties to better prepare their case.

If notice is not given, leave of the IRC can be sought.

This provision of the bill is not intended in any way to reduce the discretion of the IRC to grant leave upon any basis it considers appropriate.

In the interests of fairness and justice, however, the IRC will be required to grant leave if satisfied that:

- * where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information;
- * where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously;
- * where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

Other issues addressed by the bill include the admissibility of transcripts of evidence arising out of the Royal Commission or the Police Integrity Commission, to which the Commissioner may have had regard in coming to a decision.

The bill clearly states that, subject to section 163(1) of the Industrial Relations Act, nothing in the bill is intended to override the existing

law in this area.

If a transcript from any proceedings has been considered by the Commissioner in reaching a decision to terminate then it is likely to be relevant.

In the normal course of events under section 181D, even before making a determination the Commissioner is required to advise an officer of the grounds considered to warrant loss of confidence.

If an order is subsequently made it must also detail the reasons that have caused the Commissioner to lose confidence in the officer and issue the removal notice.

Under the review process, the Commissioner will also be required to provide the applicant with a copy of the documents and other material taken into account in determining that a termination order should be issued.

The reasons put forward by the Commission as supporting the termination decision will also be the first thing considered by the IRC in hearing the review application.

Some concern had been expressed that as the decision maker, the Commissioner of Police would be routinely required to attend the IRC to give evidence in every review hearing.

Whilst this is not currently the experience in matters before the Industrial Relations Commission, it was considered an issue of sufficient weight to warrant legislative guidance.

The bill therefore makes it clear that the leave of the IRC is required before the Commissioner or a member of any advisory committee can be called as a witness before the IRC.

Before giving such leave the IRC must be satisfied that extraordinary grounds exist that warrant evidence being personally given.

I have now explained in some detail the provisions of this bill, and it will be obvious to all that the legislative framework will clarify the position in respect of challenging a decision to terminate employment under section 181D.

Access to a right of review on the merits is important.

However, it is equally important that the process followed in reaching a determination under section 181D is sound and not itself giving rise to appeals.

Section 181D contains certain key requirements such as advising an officer of the case against them and providing an opportunity to respond.

Commissioner Ryan has supplemented this with an administrative protocol which describes the procedures that will be followed in reaching a determination under section 181D.

This protocol was developed in consultation with the police unions and endeavours to ensure the process is fair, open and accountable.

Of note is the fact that under the protocol an officer has the opportunity to make a submission to a panel which includes a member of the community to provide advice to the Commissioner.

I wish to advise the House that I intend to take the matter one step further and make a regulation which sets out in detail the steps to be followed in the exercise of the Commissioner's confidence power.

This will ensure that the process is both open and known.

This in turn will contribute to fair exercise of the power and further reduce potential for appeals.

Of course, my intention is to again bring together the relevant parties in formulating this regulation, to ensure that the resulting process is the best and fairest possible.

In the course of drafting this bill I have consulted with the Royal Commission, the Commissioner of Police, the Police Integrity Commission Commissioner and the Police Association.

There is one matter - requested by the Police Association - which the Government is simply unable to accommodate.

The association requested that the appeal rights under the bill be made retrospective.

The Government is unable to accede to this request, for the simple reason that, as I said in November, the previous appeal was designed to institute an interim process which would always be superseded after the final report was delivered.

There is no going back and the Government will not be persuaded otherwise.

Finally, in the next session of Parliament I look forward to bringing forward a new Police Service Act which will both lay the legislative framework for implementation of many of the changes recommended by the Royal Commission and symbolise the emergence of the new Police Service.

That legislation will be historic and no doubt eagerly awaited by all in this Chamber.

It will be wide ranging, touching on all facets of the police service from recruitment and terms of employment, to methods of promotion and the management of misconduct.

The Hon. M. J. GALLACHER [8.02 p.m.]: It is with pleasure that I speak on behalf of the Opposition to the Police Service Amendment Bill, which has been presented to this Chamber with a degree of urgency following its introduction in the other place last night. This legislation is well and truly overdue. The bill addresses the fundamental right of each police officer that decisions regarding his or her continued employment in the Police Service should be subject to an independent review. I am pleased to advise that the Opposition supports the bill.

The object of the bill is to amend that part of the Police Service Act that deals with the commissioner's confidence discharge provisions to ensure a right of appeal to the Industrial Relations Commission. Honourable members would still be mindful of the philosophical debate that took place between Government members earlier in the life of this Parliament when the Government instituted legislation which denied police the right of appeal. I am sure that most members on the Government side of the House who have been outspoken on this issue are relieved that this bill has been introduced, and none more so than the Attorney General. Those sensible-thinking members of the Government who are truly committed to protecting workers, almost as much as the Opposition is, played a significant role in changing the views of both the Premier and the Minister for Police, who showed their true colours on workers' rights. Those Government members who forced this change are to be congratulated. In essence, the bill does not denigrate the role and responsibility of the Commissioner of Police to remove corrupt or unethical police from the service. It merely provides a safety net to ensure that all police are protected from the system being itself corrupted.

The bill correlates with both the recommendations of the Royal Commission into the New South Wales Police Service and workers' rights as set out in this State's industrial legislation, and indeed international law. The bill is barely 24 hours old and the Opposition commends its progress through both Houses in this session. It is hoped that the bill will return to the other place either tonight or next Thursday to ensure it is in place well before this House adjourns next week. In reply in the other place last evening, the Minister for Police stated that the bill was not only designed to prevent corruption; its basic tenet was to prevent injustice. This comment is intriguing, given that the Government has made no provision for the bill to operate retrospectively.

If no appeal right is made available to those who were dismissed as a result of lack of commissioner's confidence prior to the passage of this bill, what avenues are available to ensure that they have not been the subject of injustice? The Government knows, as does the Opposition, that no avenue is available to those former police - and the Government cannot take much solace from presenting the bill tonight, many months after the matter was first debated in Parliament. Honourable members will remember that this appeal right was promised by the Government when Parliament resumed some months ago. That issue aside, the Opposition is pleased that the Government has finally settled the issue - I hope before we adjourn - as we do not resume until September.

I congratulate the Police Association, which is represented in the public gallery this evening, on the mature manner in which it has pursued the matter since those heated days last year when we witnessed behaviour that I am sure all honourable members of Parliament, and indeed all Police Service members, wish had not occurred. The Opposition recognises the significance and emotional character of this issue. The association is commended for acting properly in discussing the matter with the Government, Opposition and crossbench members in this Chamber and for focusing on mediating a better

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deal for its members whilst avoiding confrontation. The Opposition is pleased to support the bill.

The Hon. FRANCA ARENA [8.07 p.m.]: I thank the Government Whip for giving me the opportunity to express my strong support for the bill. I congratulate the Hon. M. J. Gallacher on his speech and his efforts in encouraging the Government to introduce this bill. He is a former policeman, and obviously the bill is of interest to him. I also congratulate the Minister for Police in the other place on presenting the bill to Parliament in this session. My fear was that the bill would be delayed until the next session. I am pleased that my fears have been put to rest. As a Labor woman I strongly believe in the right of every worker to a right of appeal. Therefore, this bill is important. I also congratulate the Police Association. As the Hon. M. J. Gallacher said, a representative of the association is in the gallery tonight. To its credit, the association has made submissions to the Government and has done excellent work for its members.

In the past couple of years the royal commission has focused on the Police Service. Corrupt police have been exposed, but there are still more. It has been a sad process for the many thousands of decent police officers. A fine example to us all are those officers of the Police Service whom I have witnessed on ABC news reports combing 10 square kilometres of land, at times in terrible weather, trying to find the kidnapped Kerry Whelan. Too often we forget the hard and valuable work that police do. I congratulate them and the Minister. I am very happy to give my full support for the bill.

The Hon. ELISABETH KIRKBY [8.08 p.m.]: On behalf of the Australian Democrats I support the bill. As was pointed out very sensibly and properly by the Hon. M. J. Gallacher, the purpose of the bill is to give police officers removed from the Police Service for lack of commissioner's confidence the right to have that decision reviewed by the Industrial Relations Commission on grounds comparable to those of other workers. The bill is the result of detailed consultation with the Commissioner of Police, the Minister for Police and the Police Association of New South Wales. Discussion has also taken place with the Police Integrity Commission commissioner. Much discussion has taken place since it was suggested that the Commissioner of Police should have the right to dismiss officers in whom he has no confidence.

When that announcement was made it was suggested that such action would be against the International Labour Organisation convention. However, the ILO convention does not cover members of the armed forces or the police force. The ILO convention applies only to what one could describe as ordinary workers - people who do not work under strict disciplinary conditions, such as members of the armed forces or the police force. In November 1996 the Government gave the Commissioner of Police the power to dismiss officers in whom he had lost confidence. The subsequent concern resulted in active consultation. The final report of the Royal Commission into the New South Wales Police Service examined three possible options for appeal rights for officers dismissed for lack of confidence.

The bill gives the Commissioner of Police the power to summarily dismiss officers. It is a hybrid of options two and three in Commissioner Woods' final report. It adopts as many of the royal commission's

recommendations as possible. As far as possible, it gives police officers rights similar to those of other workers. The bill achieves a delicate balance between anti-corruption and anti-justice. The bill provides police officers with industrial rights that accommodate the unique nature of policing, that overcome the problems of the past appeal processes and that puts police officers on a similar footing to other employees under the Industrial Relations Act.

The bill ensures that the officer is removed from the Police Service at the time the Commissioner of Police makes the dismissal order. It removes the potential for delay by requiring that applications for review be lodged with the Industrial Relations Commission within 14 days of dismissal and that the hearing be commenced within four weeks. It provides that the Commissioner of Police be called to give evidence before the IRC if there are extraordinary grounds for doing so. It requires the IRC, when making its decisions, to take into account the public interest, which includes maintaining the integrity of the Police Service and the fact that the officer was dismissed for lack of commissioner's confidence.

The review is to be conducted on the usual IRC grounds - that is, whether the order was harsh, unjust or unreasonable. This is a good example of how a reasonable outcome can be reached if there is sufficient consultation, if time is taken for all interested parties to get around the table and talk the matter out, and if it is not debated on partisan lines in the media or in the confines of the Parliament. Earlier this evening I received a fax from the Police Association requesting that I not do anything to delay the passage of the bill. I replied to the association by fax that I support the legislation and

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that I will not attempt to delay its passage. I am happy to support the bill.

The Hon. A. G. CORBETT [8.15 p.m.]: I am pleased to support the Police Service Amendment Bill because it will restore the appeal rights of police officers dismissed under the lack of commissioner's confidence provision seven months after the Government rejected out of hand the legitimate concerns of the Opposition and the crossbench about the unfairness of the provisions. My concern about the legislation last year was that it did not permit an officer to argue the merits and the process of his termination of employment before an impartial adjudicator or arbitrator. In my speech to the Police Legislation Further Amendment Bill last November I made it clear that I believe that natural justice for any employee facing termination of employment requires that his dismissal be fair and just and, in the event of dismissal, that he be entitled to appeal on the grounds of both the merits of the termination and the fairness of the procedure.

The bill will amend the Police Service Act to ensure that an officer is entitled to have a termination of employment order made by the Commissioner of Police reviewed by the Industrial Relations Commission both as to the validity and the merits of the order. Today I received a letter from the secretary of the industrial division of the Police Association of New South Wales advising that the bill is not to be applied retrospectively. It is unfortunate and regrettable that the appeal provisions are not to be made available to officers who were dismissed in the period between the commencement of the Police Legislation Further Amendment Act and the commencement of this bill. Nevertheless, I am pleased that the bill will finally restore the balance between the need for the commissioner to have decisive powers of termination and the right of a dismissed officer to test that termination before an impartial adjudicator. Having argued for this very balance last year, it is gratifying - regardless of the delay - to have my concerns, and the concerns of other crossbench members, addressed. I support the bill.

The Hon. I. COHEN [8.17 p.m.]: The Greens support the Police Service Amendment Bill, which I am pleased has come to fruition. I agree with the proposals contained in the bill. While the police culture needs to be transformed, we should be mindful of the basic rights and civil liberties of members of the Police Service. I support the position taken by the Police Association. In November 1996 I contributed to debate on the Police Legislation Further Amendment Bill. At that time, I referred to a letter to the Premier from the President of the Australian Council of Trade Unions, Jennie George, in which she drew his attention to International Labour Organisation Convention 158, which relates to the termination of employment, and to which Australia is a signatory. Article 7 of the convention states:

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Article 8 states:

A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

I support the bill, which is tailored to the Police Service and takes into account its recent history and problems. The police have a special position in our community. However, the rights of police should be similar to those of other workers. The bill takes into account industrial rights appropriate to police. It will ensure that a removed officer will suffer no further discrimination. I am keen to ensure that this bill passes without delay. I was interested to receive last year from Phil Tunchon, President of the Police Association of New South Wales, a letter in which he said:

I write to thank you personally for your attention to the "Police Service Amendment Bill of 1996" and in particular your contribution in attempting to ensure that Police Officers have a legitimate entitlement to appeal rights which test the merits and facts of a dismissal decision.

I certainly appreciate that positive communication from the Police Association. Though we are witnessing a rapid change in police culture in this State, it is important that unfettered powers are not again given to the commissioner to dismiss officers. Such powers could lead to corruption on the part of a future commissioner if officers do not have such a basic right as an appeal avenue to contest dismissal. I support the legislation.

The Hon. PATRICIA STAUNTON [8.20 p.m.]: I will speak only briefly to express my support for this amending legislation and my great satisfaction that this bill is now before this Chamber. I, as a backbench member of this Government, took no joy from participating last year in a decision to take from the police officers of this State their rights of appeal regarding unfair dismissal. I say that because it has long been my fundamental belief - and, given my background, that could hardly be surprising - that workers, in whatever industry

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employed, should have the right to appeal against a breach of the most significant aspect of their employment, that is, their contract of employment.

Having not been happy with the decision taken by the executive arm of Government on that occasion, I welcome this amending legislation as a sign of good faith on the part of the executive arm of Government in honouring an undertaking given to caucus that it would move to fill that void in the rights of New South Wales police officers. In welcoming this legislation one has to thank the Minister for Police for ensuring that the undertaking given in November 1996 would be kept, for that undertaking is well kept by the sweeping provisions contained in the bill.

Credit must also be paid to the Police Association, which has worked long and hard on behalf of its members to ensure that the measures ultimately embodied in this legislative package represent a fair and reasonable outcome for the association and for its members. It has to be said that, although the commissioner will retain his power under section 181D of the Police Service Act to remove a police officer in whom he has lost confidence - a power not lightly given, not to be abused, and used only in appropriate circumstances - the fetter on that power is the right of appeal, which is the thrust of this amending legislation.

I am pleased to acknowledge that as part of the streamlining of the appeal process due acknowledgment and agreement have been given by the Police Association to removal of the clumsy mechanisms that existed regarding their rights of access to what was the Police Tribunal and then to the Government and Related Employees Appeals Tribunal. It is certainly pleasing to me that under the framework of this legislation dismissed officers will have the right to appeal directly to the Industrial Relations Commission. The precise

details of the legislative package encompassed within this amending bill are outlined in the Minister's second reading speech, and it is not my intention to repeat them. I have great pleasure in welcoming this bill. At least it will restore to police officers of this State an entitlement that they should always have had.

Reverend the Hon. F. J. NILE [8.25 p.m.]: It gives me great pleasure on behalf of Call to Australia to support the Police Service Amendment Bill. This bill is overdue, so I am glad that it is now before the House. Call to Australia will do all it can to ensure its passage tonight and its becoming law. The object of the bill is to amend the Police Service Act 1990 to provide that an order made by the Commissioner of Police under section 181D of that Act - that is, an order by which the commissioner removes a police officer from the Police Service - is to be reviewable by the Industrial Relations Commission, both as to its validity and as to its merits. The bill also makes a consequential amendment to the Police Integrity Commission Act 1996.

This bill reminds me, and no doubt other honourable members, of dramatic scenes that occurred in November last year when the Government, in pursuance of its interpretation of the recommendations of the police royal commission, removed the rights of police officers to appeal to the Industrial Relations Commission. As honourable members know, at that time a motion was passed by caucus seeking restoration of that right of appeal. It seems from television articles tonight that the Labor caucus is developing a mind of its own on some issues. Last year it exercised its mind on this police appeals issue. However, as we know, 24 hours later that caucus resolution was rescinded.

As honourable members of this House would know, during debate on the legislation that removed those appeal rights I moved an amendment to restore the right of dismissed police officers to appeal to the Industrial Relations Commission. Even though I was aware that in principle all crossbench members supported my amendment, it was disappointing that Government members, National Party members and Liberal members voted together to reject my amendment. In the rushed discussions that night somehow the coalition appeared to be in the balance, with no-one being sure how the scales would tilt. It is now history that the scales tilted towards a vote that defeated my amendment.

As a result of those events, we witnessed the first public protest by police outside Parliament House, indicating how strongly police felt about this particular issue. More than 2,000 police met in the gardens of the Domain behind Parliament House, then, dressed in civilian clothes, marched to the front of Parliament House, where they demonstrated their concerns. I was present and observed a great portion of that protest. In fact I was asked to speak to the police officers who had assembled outside Parliament House. I did so, and told them about the amendment that I was to move. When I finished my address, the President of the Police Association asked the police assembled to give three rousing cheers in appreciation of my stand in support of their position.

It was interesting how the electronic media that night manipulated the reporting of that peaceful
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protest. As far as I am aware, all television stations edited the portion of the meeting in which I spoke and the three cheers and did not report my presence at the meeting. Even though, in the main, the protest was peaceful, the television coverage focused on some rowdy officers who were upset at the way in which they had been treated. The media cleverly, but misleadingly, used that protest meeting to turn public opinion against the police. I have learned over the years how television can manipulate events to create a particular impression in the public mind.

Some of the police were angry. They told me they felt they were an important part of society, yet the Government showed them no respect. No Government member or Minister would speak to them or indicate sympathy for their concerns, which caused a minority of officers to become increasingly angry. In debating amendments to the Police Legislation Further Amendment Bill attempts were made to cloud the issue to give the impression that if one supported the right of appeal in some way that was protecting corrupt police. That was never the intention of any of my amendments, and I made that very clear, nor was it ever the intention of the Police Association.

I was concerned, as was the Police Association, about the possibility of an honest officer dismissed by a

senior police officer for reasons that had no real basis receiving unjust treatment. An honest police officer could be set up by a corrupt senior officer who wanted to get rid of a thorn in his side, an officer whom he did not trust, or an officer who might reveal corrupt activities. Some right of appeal had to be available to enable an honest police officer to receive justice and have his case judged on its merits. I am very pleased the bill was brought into the House tonight. Last night, together with other members, I was invited to meet about 80 of the recently appointed senior regional police commanders.

I was very impressed by the quality and calibre of the officers. I had the opportunity to speak with Police Commissioner Peter Ryan. I am sure that all members of this House wish the new Commissioner of Police, the officers who make up the New South Wales Police Service and the newly appointed commanders all the best as they take up their responsibilities. The bill will restore the industrial rights of police officers, which accommodate the unique nature of policing, overcome the problems of the past appeal process and are comparable with those enjoyed by other employees under the Industrial Relations Act.

The bill will replace the former discredited appeal process and ensure that an officer is removed from the Police Service at the time the Commissioner of Police makes a dismissal order. The legislation removes the potential for delay by requiring that applications for review are to be lodged with the Industrial Relations Commission within 14 days of dismissal. The bill provides that the hearing is to be commenced within four weeks and that the Commissioner of Police may be called to give evidence before the Industrial Relations Commission only if there are extraordinary grounds.

The legislation requires the commissioner to make his decision to take into account the public interest, which includes maintaining the integrity of the Police Service and the fact that the officer was dismissed for lack of commissioner's confidence. The review is to be conducted on the usual Industrial Relations Commission grounds, that is whether the order was harsh, unjust or unreasonable. The Commissioner of Police, the royal commissioner, the Commissioner of the Police Integrity Commission and the Police Association were consulted during the drafting of the bill. I received a letter from Mr Peter Remfrey, Secretary of the Industrial Division of the Police Association of New South Wales, dated 19 June, which states:

Dear Fred

I write regarding the above Bill which was passed by the Legislative Assembly last night.

The Association supports the Bill which will provide police officers in the State with the same rights to appeal against unfair dismissals as any other workers. It has been the subject of a significant amount of negotiation.

We seek your assistance to have the Bill passed expeditiously through the Upper House. The Government would not agree to make the Bill retrospective and as a result there is a compelling argument to give this Bill priority. Police are currently in an untenable situation whereby they have no redress to an independent tribunal yet there is legislation before the parliament restoring this right. Any delays therefore have the potential to cause a grave injustice to those caught in this interim period.

For those reasons and in view of the strong request from the Police Association of New South Wales, Call to Australia is pleased to support the bill.

The Hon. Dr MEREDITH BURGMANN [8.34 p.m.]: I support the bill. I am pleased that the right of appeal has been restored to police, who are, after all, workers. As honourable members know, the right of workers to argue against unfair dismissal is under attack by the Federal Government. All workers have the basic right to test before a tribunal whether they have been properly dismissed. Lack of commissioner's confidence is a problem for people in an employee relationship. This commissioner is doing an excellent job and he should be supported,

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but it would have been problematic if past commissioners had power to dismiss a police officer without proper right of appeal. As honourable members know, the history of police in this State is poor; there has been a lot of corruption. Police commissioners have been corrupt. The enormous right inherent in the commissioner's lack of

confidence provision was such that I am very pleased that a right of appeal has been re-established.

The Hon. J. W. SHAW (Attorney General, and Minister for Industrial Relations) [8.35 p.m.], in reply: I thank all honourable members who spoke in support of the bill. It is pleasing to see the widespread and deeply felt support for the package - support from the Opposition, support from the crossbenchers and support from members on the Government benches. This package is the result of considerable thought, detailed negotiation and close attention. It is a tribute to the Minister for Police, my colleague the Hon. Paul Whelan, to his staff and to the professionalism and competence of the Police Association of New South Wales. It has been a good, combined effort, though at times people no doubt thought the negotiation process was hard going. The culmination of the consultation process was well described by the Hon. Elisabeth Kirkby as the sort of process that can lead to a broadly acceptable result. I am very pleased to commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

RURAL LANDS PROTECTION AMENDMENT BILL

Second Reading

The Hon. R. D. DYER (Minister for Community Services, Minister for Aged Services, and Minister for Disability Services) [8.38 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

Mr President

There are at present 57 rural lands protection boards in New South Wales which together provide vital services to the people of this State in a range of areas. Such functions include animal health services regarding domestic farm animals which also involves exotic and endemic disease surveillance. Boards also manage the many thousands of kilometres of travelling stock routes which are vital sources of stock feed, especially in drought periods. Board staff regulate the suppression of noxious and pest animals and noxious insects which cause incalculable damage to crops and the environment. Each board provides a district registrar to maintain stock identification systems which are vital in the trace back of disease and therefore a vital tool in the maintenance of Australia's valuable overseas markets for beef, lamb, pigs and poultry. Boards also provide administration of drought relief schemes and participate in emergency procedures under the State disaster plan.

All these services are provided on a self-funding basis. Each board collects rates from the occupiers of rural lands within their local district. The boards consist of eight directors and each board employs staff generally including a district veterinarian, a ranger, a noxious animal inspector, an administrative officer and other support staff.

The *Rural Lands Protection Act 1989* has been under review since 1994, and many recommendations have been made for the further improvement of the board system. The Minister for Agriculture intends to introduce a new bill into Parliament in the spring session which will encapsulate those recommendations.

As part of the review process, the firm Coopers & Lybrand was asked to look at certain areas, including the area of efficiency gains. The bill which I now bring forward will play an important part in effecting those efficiency gains.

On 30 May, the Minister for Agriculture announced a series of board district boundary changes and board amalgamations which will take effect in conjunction with the general election of directors to each rural lands protection board due in October this year.

The main principles governing the changes are that each board district should be situated completely within one of four climatic zones in New South Wales, for efficiency of board functions. Climate largely dictates the nature of agricultural pursuits within an area and it will assist board administration if there is commonality of purpose amongst its ratepayers. It is also vital that a board be of a size that permits it to financially support the employment of a full time district veterinarian. This principle applies to boards situated in the eastern and central division of New South Wales. In effecting the board district changes, close attention has been paid to the long term viability of boards and their service delivery constraints.

The overall number of boards will be reduced from 57 to 48. The majority of the changes will be made by amalgamating two or three adjacent board districts. In a few cases, board boundaries will be varied, or an existing board district will be divided between two other board districts.

The reduction of nine boards will result in considerable saving in overhead administrative expenses. It is the Minister for Agriculture's intention that the inevitable staff reductions will be kept to a minimum and every effort be made to alleviate personal distress from these changes and also to ensure minimum disturbance in services to ratepayers and the public.

To this end, the bill before you provides that:

- Current boards will continue to exist in a "caretaker mode" until new elected directors take up office on 1 November 1997 in the new boards.

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- New boards may be proclaimed to come into existence on 1 November 1997 and an amalgamation facilitator will be appointed to each board. This person will be responsible for arranging an election in respect of the new directors.

- The Minister for Agriculture is to publish a notice fixing a date for the election on or after 10 October 1997.

- The Minister for Agriculture has complete discretion to determine how many divisions each board district may be divided into and how many directors are to be elected to each division. This will enable better representation of the dissolved or altered board districts on the newly constituted boards. The current situation is that boards, except for those in the western division, must be divided into 4 divisions and all boards must consist of 8 directors.

- The Governor may declare which property rights and obligations of affected boards will be transferred to new boards.

These amendments will promote continuity by allowing present board directors of affected boards to continue in office until the new boards and their newly elected directors have assumed control. Further, the flexibility in the creation of divisions and the number of directors to be elected per division, will allow the vital decisions such as where the central office of the board will be located, to be made by the new boards with the interests of all constituent parts of the district taken into account.

I commend the bill to the house.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.38 p.m.]: The Opposition supports the legislation, which is basically enabling legislation to allow a smooth transition between some of the old rural lands protection boards that chose to amalgamate and new rural lands protection boards that were amalgamated to form a new entity. In other words, the legislation provides for the election of directors under new boundaries, and the number of directors to be established in this legislation prior to the completion of some of the amalgamations, which will come into force on 1 August. Much concern and debate have been generated by the amalgamations. While the bill does not confer amalgamations upon the boards, honourable members would be aware that the Minister has the power and ability to amalgamate boards or change the boundaries of boards without referring the matter to Parliament. A few areas of the State still have many concerns about what they perceive to be forced amalgamations.

Honourable members might be aware of a number of inquiries that have been conducted over the years, including one conducted many years ago by my father. Those inquiries recommended a smaller number of

larger, more efficient boards in New South Wales. The most recent report, the Coopers and Lybrand report, recommended that certain boards be amalgamated and that New South Wales be divided into climatic zones. The report also recommended that all rural lands protection boards employ their own district veterinarian. It recommended a number of other proposals which are not particularly relevant to this piece of legislation.

The Deniliquin and Moulamein rural lands protection boards have amalgamated and that has been a very successful marriage. The Corowa, Urana and Jerilderie rural lands protection boards have amalgamated and that, too, has been a successful marriage. The boards at Holbrook, the area from which I come, and Albury have also amalgamated, but that is not such a happy union. Those boards have gone through a facilitation process, through the auspices of the State Council of Rural Lands Protection Boards Association of New South Wales, to facilitate proper and objective discussions between them, to consider all the pros and cons and to determine what benefits might be available in the future. I mentioned the amalgamation of those boards because quite reasonable outcomes have been achieved.

There have been some sticking points. The Braidwood, Cooma and Bombala rural lands protection boards, which have gone through the facilitation process, have not concluded negotiations. The eastern end of the Braidwood board area, which encompasses coastal areas, will be carved off and included in the area covered by the Bega board, a matter about which the Braidwood board is not all that happy. However, it is generally perceived that, with the new climatic zonings, that section should not properly remain in the control of the Braidwood board. The Braidwood board, probably quite rightly, has argued that it will be less economic because of the loss of income from ratepayers. That problem might be overcome in the future when we are determining the fate of the Braidwood and Bombala boards.

The Merriwa, Denman-Singleton, Scone and Mudgee rural lands protection boards have decided that they do not want any form of amalgamation. Denman-Singleton and Scone rural lands protection boards have reluctantly said that they will amalgamate. The Merriwa Rural Lands Protection Board, which has been through the facilitation process, and which has been designated for amalgamation with Mudgee Rural Lands Protection Board, is not too happy about that proposal. Honourable members might have received correspondence from the Merriwa board which, incidentally, is one of the smallest boards in New South Wales. Merriwa board is presently sharing a veterinarian with Scone. Those rural lands protection

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boards that will not be amalgamated with other boards will each have to employ a district veterinary officer.

Problems are being confronted also by rural lands protection boards in the northern part of New South Wales. Wialda and Inverell rural lands protection boards have been amalgamated. Part of the western end of Tenterfield has been included in that amalgamation. Tenterfield and Glen Innes rural lands protection boards are designated for amalgamation in the future, which has caused a lot of concern in the area. Tenterfield board simply does not want to be amalgamated. Tenterfield board, which will have to employ its own district veterinarian in the future, believes that it meets the criteria set out by the Minister, which include: providing its own district veterinarian, coming within one climatic zone and proving that it can remain viable in the future.

The Opposition is concerned about the proposed amalgamation of the Tenterfield and Merriwa rural lands protection boards. There is much opposition to the amalgamation proposals and it is feared that the Minister will proceed with the amalgamation despite that objection. A forced marriage or a shotgun marriage would be doomed to failure. Any party to such an amalgamation would not attempt to make it successful if it did not believe in the proposal. Unfortunately for the boards concerned, the Minister is taking advice from the State Council of Rural Lands Protection Boards Association of New South Wales. The advice that he has received is that this amalgamation should be proceeded with. If those boards have a problem with either the Government or the Opposition over this matter they should turn to their colleagues in the State council as it has been making these recommendations to the Minister.

The Opposition supports the amalgamation proposal and the facilitation process. They represent specific gains for ratepayers, economic advantages and, in many instances, better services for ratepayers. At the end of the facilitation process and when all negotiations have been completed no-one should decree that rural lands

protection boards that want to remain as a single entity should be amalgamated. This legislation will facilitate the amalgamation of the boards to which I have referred. It will enable directors to be elected under the new boundaries. This legislation must pass through the Parliament now because those elections are due to be held before November. If this matter is not dealt with until the spring session of Parliament those elections will not be able to be conducted.

The Minister should talk to people in Merriwa and Tenterfield. I believe that people from Merriwa, who have been trying to arrange a meeting with the Minister, are somewhat aggrieved about these amalgamations. As I said earlier, they believe that they meet the criteria set out by the Minister and that they should remain a single entity. We would see a better result all round if people were satisfied about these amalgamations. Quite clearly, amalgamation will be difficult without that sort of support. The Opposition supports this legislation.

The Hon. ELISABETH KIRKBY [8.49 p.m.]: I support the Rural Lands Protection Amendment Bill, which will amend the Rural Lands Protection Act 1989 to facilitate the amalgamation of a number of rural lands protection districts in conjunction with the scheduled general election of directors of all boards, which is due to take place on or after 10 October 1997. This objective is to be effected by empowering the Minister to determine the number of divisions into which a board district may be divided and also the number of directors to be elected to each division. The object of the bill is also to make a transitional provision to enable directors to be elected for the boards of districts that it is proposed to amalgamate by 1 November 1997 at the elections to be held for directors of existing rural lands protection boards.

As the Deputy Leader of the Opposition pointed out at some length, 57 rural lands protection districts are constituted under the Lands Protection Act 1989. Those boards have the following functions: to provide animal health services, including exotic and endemic disease surveillance; to manage the multitude of travelling stock reserves throughout New South Wales; to regulate the suppression of noxious and pest animals and noxious insects; to provide stock identification systems to enable the traceback to owners of straying, infected or chemically contaminated animals; to administer drought relief schemes; and to provide emergency services under the State Disaster Plan.

The Act has been under review since 1994. Two years later the Minister announced certain board boundary changes which would necessitate board amalgamations. The details of the amalgamations were provided by ministerial announcement on 30 May. There will now be a reduction in the number of boards from 57 to 48. As the Deputy Leader of the Opposition pointed out, it is necessary that this legislation be passed in this House tonight to ensure that elections can take place, with proper provision for preparation, before 10 October 1997. I have not been lobbied by the

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people of the Tenterfield area, but of course I have been lobbied by the Merriwa Rural Lands Protection Board. I have a certain amount of sympathy for them.

I have not seen the map that shows why Merriwa should be included in the area covered by Mudgee. Honourable members who are familiar with that part of New South Wales, as I am, will be aware that the link between the coastal road and Mudgee is via a narrow, rough, gravel road. I would have thought it would be far better if Merriwa were amalgamated with Quirindi. I do not know whether Quirindi is included in the Singleton-Scone area, which the Deputy Leader of the Opposition mentioned. It may well be that Quirindi, Scone and Denman are now covered by the same board. The Deputy Leader of the Opposition has just drawn for me a diagram, which shows that Scone, Denman and Singleton form part of the upper Hunter and that Mudgee is part of the tablelands. He has drawn a distinct line between the two areas.

I do not know why Merriwa has not been included in the upper Hunter area and why the Minister has decided it is part of Mudgee. Frankly, I cannot see any commonality of interest. Areas are drought-declared by local rural lands protection board, and that can cause many anomalies for landholders with properties on the boundary of or contiguous to a rural lands protection board area. One rural lands protection board declares an area drought-affected and the adjoining one does not. Yet, the landholders on the boundary may be in as severe a drought as the landholders in another protection board area. I believe it is now possible for drought

declarations to be made on the basis of divisions, and not simply on the basis of an entire area that is covered by a rural lands protection board.

The Hon. D. F. Moppett: It is vital to the big boards.

The Hon. ELISABETH KIRKBY: The bigger the board the more essential it will be that drought declarations are made on the basis of divisions, and not on the entire geographical area. Today I received a fax from Mr Kevin O'Malley, the Administrative Officer of the Merriwa Rural Lands Protection Board, in which he expressed his concern. Mr O'Malley stated in his letter that he wants the Government to consider utilising the voluntary amalgamation process by the year 2001. He said that this process has been granted to many other rural lands protection boards, but he did not provide the relevant details chapter and verse. Mr O'Malley also stated that he believed the present situation defeats this purpose and dismisses the needs and concerns of the rural population by ignoring the natural consultation process essential to instigate appropriate change in a modern democracy. He said that the process that the Government is following dismisses the needs of the rural population and flies in the face of natural justice. He stated in his letter:

It will fail to ensure ownership of the change process and the identification of the best needs and outcomes to ensure the most appropriate boundaries.

Mr O'Malley requested further consultation and laid down the principles for areas of discussion and consideration to ensure the best for the communities represented by all rural lands protection boards. Of course, he is really lobbying on behalf of Merriwa. He stated that he believes it is necessary that there be consultation and ownership of the change process; that the social and economic impacts and the benefits now and for the future are taken into consideration; and that there is a need for government policy direction for the structure of agriculture over the next 20 years. He wants the Government to consider the effect on rural infrastructure, towns and populace, and he believes that there should be appropriate representation of all stakeholders.

It is obvious that the Government has made up its mind on Merriwa and Mudgee even though the amalgamations are totally against the wishes of both boards and of the ratepayers, who at recent meetings indicated that they do not wish to have this forced amalgamation imposed upon them. All I can do is raise these matters in this debate tonight. I am not in a position to change the views of the Government, but I do not think it is too late. Perhaps the Minister might inform the House in his reply whether he would consider consulting further with his Cabinet colleagues' advisers.

In view of the strong and determined concern about the forced amalgamation of Merriwa and Mudgee, is it not possible for the Minister not to enforce the amalgamation on the Merriwa and Mudgee boards by the passing of the bill? It appears to me that the majority of other boards that will be affected have accepted the Minister's proposed amalgamations. But if certain boards are to be allowed to continue under the present conditions until the year 2001, it would not be difficult for the Government to include the Merriwa Rural Lands Protection Board. I urge the Government to take those concerns into account. Perhaps even at this late stage it is possible to make an exception in the case of the Merriwa Rural Lands Protection Board. With those remarks I am happy to support the bill because I realise that it is necessary to pass the legislation before the House rises for the winter recess.

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The Hon. R. S. L. JONES [9.00 p.m.]: This bill is not the result of a major overhaul of the rural lands protection boards; that will be done later this year or early next year. I speak in this debate to flag serious problems that exist along the coastline for property owners with land that is zoned rural-residential - multiple occupancies in some cases and forested blocks in others. Cattle and sheep are obviously not run on properties on the coastal fringe of the State, yet the owners of these properties are being harassed for funds by rural lands protection boards. The boards are of no benefit to those land-holders, who do not have foxes, pigs, dogs or weeds on their land. They only have forests, yet they still have to pay. There appears to be a war going on -

The Hon. D. F. Moppett: They get a concession though?

The Hon. R. S. L. JONES: No, they do not actually. One land-holder is now having his possessions removed by the Tweed-Lismore Rural Lands Protection Board. He refuses to pay because he receives no benefit from the board, and recently the sheriff marked all his possessions for removal. Others have waged war on their boards because they are of no use to them. If the boards provide some benefit to land-holders, payment should be made on a user-pays basis or derived from general funds. People who derive no benefit should not be charged. I have the profit and loss statement for the year ended December 1995 of the Tweed-Lismore Rural Lands Protection Board. Of the \$314,000, most is spent on salaries and wages. There is provision for annual leave, long service leave, printing and stationery, motor vehicle expenses and so on. The problem is that there are 357 rural lands protection board directors but only 280 staff. There are more directors than staff, so something is clearly out of order. It is synonymous with having more admirals than ships in the navy.

The Hon. D. F. Moppett: But they work virtually in an honorary capacity. That is hardly a valid argument.

The Hon. R. S. L. JONES: But they spend a fair bit of money. For example, the Tweed-Lismore board constructed a costly new building at 79 Conway Street, Lismore. I do not believe that the boards provide sufficient benefit to land-holders to warrant their operating costs, and consideration should be given to that. The boards should undergo a shake-up. The numbers are to be reduced to 48 because some are not viable. I hope the remaining boards will be viable and, to a certain extent, self-funding. Those who receive a community benefit should pay for that benefit. The owners of properties that are essentially zoned rural-residential and do not have problems with noxious animals should not come within the jurisdiction of the boards; they should be granted exemptions. Those land-holders are responsible people who look after their properties. I hope the Minister, when reviewing the Act later this year, will consider increasing the defined size of the properties of those who are categorised as genuine producers or providing exemptions to those who can demonstrate that no benefit will be derived from contributing to the boards.

The Hon. D. F. Moppett: There is a very low concession rate for those people.

The Hon. R. S. L. JONES: But that small sum is an irritant, and in the long run it probably costs more to collect the money than the amount that is received. That issue deserves consideration because constant battles are occurring up and down the coastline. I am sure the Minister would acknowledge that, particularly in relation to large residential properties. Boards in western New South Wales presumably serve a useful function for land-holders. If they do not they would not exist. However, the activities of rural lands protection boards on the coastline require some revision. With those few words I do not oppose the legislation.

The Hon. D. F. MOPPETT [9.05 p.m.]: I also support the bill. I am of the view that rural lands protection boards still perform a useful function throughout New South Wales. The work of the directors is sometimes undervalued and in some cases their efforts are misunderstood. The original pastures protection boards that were set up more than 100 years ago had the same boundaries as police districts. In the interests of primary producers, the boards were agents for policing certain laws. It was considered appropriate for boards to be administrative agents for the State Government.

Years ago the boards played a major role in maintaining vital stock routes, and that is often still the case. I reside in the Coonamble Rural Lands Protection Board district, which, together with Moree to the north, actively manages stock routes and has a vegetation program in place. Stock routes are used to move stock, and reserves are used for agistment in times of drought. In many cases they contain remnants of the vegetation that originally covered the entire area, and they are carefully managed. Amalgamation is needed. It is similar to the need for amalgamation of the left-wing and the right-wing of the Labor Party. If that took place, there might be some order in this place.

I am sure that the Hon. I. M. Macdonald has a deep interest in the future of rural lands protection boards. He is a primary producer who owns livestock. He would have been disappointed with the remarks of the Hon. R. S. L. Jones, who chose to highlight the difficulties experienced by one or two rural lands protection boards which those boards themselves acknowledge. Many changes have taken place since the boards were originally constituted and since the original specification of their functions and duties. The Deputy Leader of the Opposition said that the boards must work out their own destiny because of the need to identify climatic zones and to acknowledge that rural lands protection boards on the coastal plains function differently from those on the tablelands. They in turn experience problems different from those on the western plains and in pastoral areas.

I have said that I believe amalgamation will take place. It is a paradox that the boards that should, on a cost-benefit analysis, be amalgamated - for example, Milparinka and Wanaaring - probably will not be amalgamated. The Milparinka Rural Lands Protection Board district, which is in the far north-western corner of the State, is probably the most remote in New South Wales. Tibooburra is its administrative centre but the board is named Milparinka after a large goldmining centre. Milparinka now has only about 40 ratepayers. They are acutely conscious that at the present time the wool industry does not warrant the maintenance of an office with only one administrative officer.

The State council of the rural lands protection boards is calling for change, but perhaps a special case needs to be made for the western division rural lands protection boards such as at Wilcannia, Wanaaring and, to a degree, Bourke. There is a limit to the number of boards that can be amalgamated if services are to be maintained. A veterinary officer or stock inspector has to be able to go out into the field to inspect stock suffering from lice infestation or anthrax and provide a prompt diagnosis. These are vital issues to rural people. Earlier the Hon. R. S. L. Jones criticised the Tweed Rural Lands Protection Board. He said that property holders believed they were being dealt with inequitably because they did not derive any benefit from the board.

It is simply a matter of public relations. Those people do not realise the extent to which owners of extensive rural holdings, even though they may not be livestock producers, benefit from the control of various noxious insects and diseases. The incidence of anthrax on a neighbouring property that runs livestock is a matter of significance and its eradication involves a financial interest, albeit a small one. In those circumstances, those property owners have a responsibility to contribute towards the maintenance, integrity and security of rural lands in the surrounding district. As I said earlier, honourable members should be conscious of the job that is done by the directors of the rural lands protection boards. People do not aspire to those positions for financial reward. I do not think there is a more dedicated or self-effacing group of people in public life. They are parsimonious about the expenditure that is committed to their care; they are extremely frugal and economical.

At their recent conference, which was held at Manly, I had an opportunity to extend an invitation to their spouses. I do not use the word "wives", because many of the directors are women. The initiative of the Minister for Women to encourage more female directors has been taken seriously. A number of female directors and their spouses were reluctant to attend the entertainment arranged for them, which included a luncheon at Parliament House, a tour of Government House, and a trip around Sydney Harbour. While they were in Parliament House, I expressed the appreciation of all members of Parliament and all the people of New South Wales for the work of their spouses now and in the future.

Despite the fact that some boards, such as Tenterfield, are fighting for their independence they are conscious of the need for change. When county councils amalgamated, Tenterfield was one area that held out for its independence. Anyone who has lived at Tenterfield would know why. The granite country gives people a sense of independence. Tenterfield occupies a proud place in the history of Australia. It has produced great statesmen, people with wonderful thoughts about the future of Australia and the confidence to express them. I do not criticise the Tenterfield board for its desire to remain independent. Ultimately its ratepayers will realise the wisdom of amalgamation and the board will agree to amalgamate of its own volition.

This excellent legislation allows for amalgamations such as that to take place. It encourages the directors to examine the services they provide. It is generally agreed that the boards need to be large enough to employ a

full-time veterinary officer rather than use an officer who works in one area for two days and then moves to another area for three days. That was the practice in the past. Our livestock industries are far too valuable to expose them to the risk of haphazard disease control. The boards must be economically viable, strong and confident, they must have the backing of government and Parliament, and they must be

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allowed to get on with the work they perform on our behalf.

Reverend the Hon. F. J. NILE [9.15 p.m.]: In principle Call to Australia supports the Rural Lands Protection Amendment Bill. We had some objections to the bill, but we look to the National Party for leadership on bills that have a direct impact on country communities. Opposition members, particularly National Party members, have indicated that they have no problems with it, although they may move amendments at a later time. The object of the bill is to amend the Rural Lands Protection Act to facilitate the amalgamation of existing rural lands protection districts and to provide greater flexibility in constituting rural lands protection boards for districts by enabling the Minister to determine the number of divisions for each district and the number of directors for each board. The bill also makes transitional provisions to enable directors to be elected for the boards of districts that are proposed to be amalgamated on 1 November 1997 at the elections due to be held for directors of existing rural lands protection boards on or after 10 October 1997 and before that date.

Call to Australia has received a number of submissions on the bill, which provides for a major reorganisation of the rural lands protection boards in this State. From my understanding of the correspondence, it seems that the Government is transferring many of the responsibilities and costs of the Department of Agriculture to rural lands protection boards and their State council. Some of the correspondence gives that as the reason for opposing the legislation. Perhaps it is a clever move by the Government to transfer some of the department's costs. That does not seem to have been put forward as a reason for the legislation, but many farmers who are astute at counting every penny have detected it as one of the underlying reasons for the bill.

Currently there are 57 rural lands protection districts constituted under the Rural Lands Protection Act 1989. The boards administer a number of functions including the provision of animal health services, the management of the multitude of travelling stock reserves, the regulation of the suppression of pest animals and noxious insects, the provision of stock identification systems to enable straying, infected or chemically contaminated animals to be traced back to the owners, the provision of emergency services under the State disaster plan, the administration of drought relief schemes, and the undertaking of such other functions as required by the Minister.

The boards seem to have onerous responsibilities. I understand from reading some of the letters of objection that some of the directors undertake those responsibilities in an unpaid voluntary capacity. Everyone seems to believe that the directors will be paid at some time in the future. Who will pay them? Where will it come from? The Government will allocate \$250,000 a year for the next five years to provide the State council with the expert staff needed to achieve improvements in board performance. Many farmers and rural lands protection boards have written to me and asked what will happen after the five years. Will local farmers have to contribute some form of a levy or rate payment?

Some of the farmers who have written to me are cynical about whether the State council enthusiastically supports the reorganisation. Only those who have a greater knowledge of the matter than I have would know the truth about that. The council will receive the funding and, obviously, become a more powerful organisation. Is the council representing the concerns of the farmers of New South Wales? One would assume that it is, but a number of farmers who have written to me do not appear to have a great deal of confidence in the State council. The Act has been under review since 1994. As part of the review, Coopers and Lybrand was asked to examine certain matters, including opportunities for efficiency gains. As a result, certain recommendations were made for the amalgamation of some board districts.

Obviously, the amalgamation of boards stirs up strong feelings because people feel loyal to their boards and they feel threatened. The amalgamations must be necessary and should not be merely bureaucratic action. The amalgamation of boards upsets local people who volunteer their time and may then lose interest. There are

currently 57 boards; after the amalgamations there will be 48. The boards have general elections every four years, and the next elections are due on or after 10 October. That is one of the reasons the Government is anxious to have the bill passed as quickly as possible: the procedures for the elections must be put in place.

The main principle governing the amalgamations is that each board district, for the efficiency of board functions, must be situated in one of four climatic zones in New South Wales. Climate largely dictates the nature of agricultural pursuits in any area, and a commonality of purpose among ratepayers will assist the administration of the board administration. It is also vital that the

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board be of a size that permits it to financially support the employment of a full-time district veterinarian. That matter is causing concern. Many of the farmers who have written to us have said that they do not understand why a full-time district veterinarian is needed. They believe that it is still possible to share a veterinarian. They want the boards to decide whether a full-time veterinarian should be appointed or whether a veterinarian should be shared.

The reduction in the number of boards will result in savings in overhead administrative expenses. However, whether those expenses will be transferred to the State council is another matter. The current boards will continue to exist in caretaker mode until the new elected directors take office in the new boards on 1 November. In its correspondence to us, which was headed "Statement on Rural Lands Protection Act Changes", the State council stated:

The State Council believes that the changes announced by the Minister are supported by the majority of people and organisations affected by the Rural Lands Protection Board system. State Council believes that the benefits of the Minister's changes are: simplification of a very complex piece of legislation; improvement in the management, performance and accountability of Boards; and improvement in the levels and quality of services provided to ratepayers.

The RLPB system has existed for over 100 years in NSW. It is a unique institution and changes have never been made without powerful argument in favour. Such is the case in this instance.

In its letter the State council made a detailed submission in support of the bill. However, it raised a matter of concern under the heading "Public Finance & Audit Act". The letter stated:

The Minister has directed that Rural Lands Protection Boards come under the Public Finance and Audit Act.

State Council believes that this could involve considerable additional costs to Boards and discussions are underway to minimise any additional costs.

In other words, the State council has used its own auditors in local areas and it believes that costs will be imposed on it if, under the new system, it falls within the provisions of the Public Finance and Audit Act. A letter dated 18 April from the NSW Farmers Association, representing the Mudgee district council, raised the same concern about the Public Finance and Audit Act. The association does not understand why one full-time veterinary officer is needed in each ward. A letter dated 4 May from M. R. and M. D. O'Brien, from Kingsland, Glen Innes, questions whether the State council should be regarded as representing all the members of the rural lands protection boards. The letter asked us to vote against the bill. It stated:

The Directors of the Boards, each give considerable time, free of payment, to ensure their Rural Lands district is run efficiently and at a reasonable cost to the landowners.

To put in Chief Executive Officers, their staff, buildings and equipment, will only become another expensive Government body. The costs to the Landowners would become outrageous.

The letter also stated:

The number of Executive Officers would increase and the costs to the landowners would be enormous. The State Council Chairman Mr

Peter Merton does not speak for the landowners.

The letter concluded:

Please give all landowners a vote on this issue. We need your help.

Yours faithfully,

Maxwell O'Brien

It is obviously difficult to give all landowners a vote, even though that would be the democratic thing to do. A letter from the Broken Hill Rural Lands Protection Board asked us to take up its concerns. Attached to the letter is a copy of the board's letter to Mr Amery, the Minister for Agriculture, which stated:

The Board of Directors wish to express their serious concern to the current proposal of being forced to change from their present system of auditing to being audited under the Public Auditing and Finance Act.

The letter also stated:

By enforcing Boards to come under the Public Auditing and Finance Act, signifies to the Board that you feel that local auditors are incapable of carrying out their duties that they have been appointed to undertake and possibly places discredit on the capabilities of Directors to make decisions on the Board's finances.

The letter continued:

Considering Local Government is not subject to the Audit and Finance Act and have more responsibilities and receive public finances, it is unjust to subject the landholder of the State to this added cost of Government . . .

Perhaps the Minister can explain why the boards will be under strict control and local councils will not. Another farmer, Gordon Galagher from Muswellbrook, has written to me about this issue. He believes that directors will be paid in the future. His letter stated:

The Directors of the R.L.P. BOARD are to receive payment for their jobs as directors in the Draft Outline, and I oppose
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this move. The quality of directors will not improve with payment - it may actually do the opposite.

The Government might indicate whether in the future directors will be paid some sort of fee. In another interesting letter Miss R. Walter of Jerrys Plains made this comment on a matter to which I referred earlier:

One of the major issues is the philosophy of transferring ministerial responsibilities from the Department of Agriculture to the State Council of the Rural Lands Protection Boards Association of NSW, and the expectation that rural ratepayers will fund the requirements of State Council to assume these responsibilities.

Those seem to be the major changes that will be made by this legislation. Mrs P. J. Porter of Inverell argues the issue of having one veterinary officer per board. Many other matters are raised in the letters that I received. It is interesting that most of the letters are from women in these country areas, which points out that the directors of these boards are not all men. Most letters received by Call to Australia came from women members of those boards. Another, from Sarah Thompson, expresses concern about the impact of this legislation. Another comes from Evan Lackey of Inverell, who wrote about similar concerns.

I make special reference to a four-page, handwritten letter that I received and to a long, neatly-written letter addressed to the Hon. Elaine Nile listing the concerns of Christine Searle of "River View", Sandy Hollow. I congratulate Christine Searle on her zeal in putting together such a well-written letter, setting out her arguments and points, particularly on the transfer of ministerial responsibilities to the State council and

questioning whether that is a way by which the Department of Agriculture will avoid its responsibilities and expenses. A letter from Lane Pastoral Company of Inverell expressed a number of concerns. Another letter came from Catherine Wagstaffe of Sandy Hollow indicating similar concerns. I place these on record because these people have taken the time to write or type excellent letters presenting their concerns and arguments. I will be interested to hear how the experts from the National Party respond to some of the concerns being raised by farmers of this State, and whether they can deal with those concerns by proposing amendments to the bill, or whether the Government will be forthcoming with assurances that some of the concerns I have raised already are under consideration, or that there are simple explanations that may allay some of those concerns.

The Hon. R. D. DYER (Minister for Community Services, Minister for Aged Services, and Minister for Disability Services) [9.33 p.m.], in reply: I thank all honourable members who spoke in the debate, and I will respond to some points that were made. In response to remarks made by the Hon. Elisabeth Kirkby, could I indicate that it is the Government's view that the Merriwa Rural Lands Protection Board district is not viable as it stands in that the board cannot afford to employ a district veterinarian in its own right. The Government takes the view, and so does the Minister, that this reflects on the State's overall disease surveillance program. One would presume that our trading partners are concerned that there should be such disease surveillance. That is an important reason that the Government wishes a district veterinarian to be available in each district.

I also make the point, in regard to the rationale for combining the Merriwa board with the Mudgee board, that Mudgee is on the central tablelands of the State, as is much of the Merriwa district. The Merriwa board's first option would have been to remain as it is but, as I have just indicated, it is the view of the Department of Agriculture and the Government that that is not a tenable or viable option. The second option was that if the boards had to amalgamate, the Merriwa board preferred to amalgamate with a board to the west, with Mudgee. It was on that basis that the State council made its recommendation. I make this response to the Hon. R. S. L. Jones. The Minister for Agriculture has stated previously that he has asked the State council to conduct a review of the rating system by March 1998. It is hoped that the concerns expressed by the honourable member will be addressed during the review to which I have just referred.

I might respond briefly to the questions raised by Reverend the Hon. F. J. Nile. The proposed Rural Lands Protection Bill to be introduced, the Government hopes, in the spring session of Parliament this year is not intended to transfer any functions from New South Wales Agriculture to rural lands protection boards. It is intended that the proposed bill will only transfer powers of the Minister back to the State council and to the boards themselves. That is aimed at creating a more flexible and efficient administration in the rural lands protection boards system. I might indicate that the legislation to which I have referred will not be amending legislation but, rather, new legislation to entirely replace the existing Act. I commend the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. R. S. L. JONES [9.38 p.m.]: I have at the table some 4,000 letters addressed to the Minister for Agriculture, Mr Richard Amery, and I seek leave to table them.

Leave granted.

I will read one of the letters so that honourable members will know the substance of them. They seem to

be from Sydney people mainly. I read the letter from Victoria King of Peakhurst:

Dear Minister,

THE CRUEL CONFINEMENT OF PIGS

I am upset to know that 95% of Australia's pigs (sows) are kept **locked in sheds in tiny stalls for the whole of their lives**. These animals cannot move out of their stalls or even turn round and their only escape is death when their breeding life is finished. It is dreadful to know we condemn these intelligent animals to such a miserable barren existence.

As Minister you have already taken a lead in banning the cruel tethering of pigs in metal collars. I appeal to you now to complete what you have begun and initiate the phase-out of factory farming altogether. **I know that in UK such a phase-out is already well advanced**. Please make sure Australia is not left behind in the humane treatment of animals.

Previously I spoke about third party access to the legislation which has been in force for at least 17 years. There seems to be some hysteria amongst members of the Opposition and farmers who believe that if this remains in the Act there will be a sudden flood of activity. Of course, it will not happen. Firstly, it is very expensive, and, secondly, people would need a good reason. Certainly they will not launch vexatious prosecutions because they could not afford to. People who are involved in animal welfare are not wealthy. Some major organisations raise vast amounts of money but make sure they spend it well.

I went with some people to the Bunge piggery after a worker advised us of the appalling way the animals there were treated. We were not arrested; we talked to the management and to the local police sergeant, who was very amiable and understanding. He was shocked to see the conditions in which those pigs were kept. We had a meeting with the RSPCA; the whole thing was done perfectly properly. We did not damage anything; we may have trespassed, but we were not charged with trespass. The pigs were unable to turn around; they had four or five centimetres of space at either end of their bodies. The buildings were not heated and it was extremely cold. The pigs were confined one to a stall and could barely lie down. They had to manoeuvre in a strange way to sit down. They were forced to lie in their faeces and pushed the faeces through the slats. It would have been extremely uncomfortable.

Honourable members may have seen a television program about an overseas experiment in which the intelligence of pigs and dogs was tested. The animals had to move a symbol around a screen to get food. It turned out that the pigs were far more intelligent than the dogs. But we knew that anyway; they are quite intelligent creatures. The Pacific Islanders used to call humans the long pig, because we taste very similar to pigs. Pigs are not so different from humans; they are our cousins. We eat our cousins; it is a bit like cannibalism.

The Hon. D. J. Gay: The French use pigs to find truffles.

The Hon. R. S. L. JONES: Yes, pigs have a good sense of smell. The Hon. D. J. Gay made an interesting comment. Pigs have a well developed sense of smell but in the piggery we visited the smell was ghastly. The pigs would not have enjoyed it. The International Fund for Animal Welfare and the RSPCA receive vast numbers of complaints, mainly relating to Chinese restaurants where crustaceans are eaten alive at the table. They crawl around and try to escape but are held by chopsticks and eaten. It is really the most ghastly practice.

Earlier this evening Charles Wright was in the gallery. He wants to take action against that practice. Most of these complaints are about restaurants. A number of people are absolutely appalled by this practice. I have spoken previously about buying live lobsters from restaurants and releasing them into the sea. That is an expensive way of not eating. The Minister has agreed to include in the legislation the Victorian definition of crustacean, limited only to the restaurant trade. It will appear anomalous because the Act will refer to fish, birds and other animals generally, but only to crustaceans in restaurants; people might wonder why it will be an offence to be cruel to crustaceans inside a restaurant, but not outside. However, it will be an advance.

The RSPCA, the International Fund for Animal Welfare, the Animal Welfare League and other animal

organisations will be happy that finally some action can be taken against those who produce live lobsters for eating. It is pretty disgusting. Crustaceans have a complex central nervous system

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and their behaviour shows that they feel pain. Doctor John Baxter, a zoologist at Oxford University, has said that their sensory organs are highly developed, their nervous systems are complex, their nerve cells are similar to ours, and their responses to certain stimuli are immediate and vigorous. Dr Baxter therefore believes that lobsters can feel pain. In restaurants crustaceans are routinely subjected to a range of cruel practices, such as being dissected, eaten or boiled alive. The *Daily Telegraph* has described a meal called drunken prawns or screaming prawns as follows:

... live green prawns are dunked in a bowl of clear liqueur for about 20 minutes until they are infused with alcohol and leaping madly about -

that description reminds me of a debate in this House the other night when the Hon. A. G. Corbett was speaking -

Then, still alive they are set in fire. Those who have observed the ritual say the prawns scream with pain and try to jump out of the bowls, legs and feelers aflame.

That really disgusts some diners. The 1992 ministerial review recommended that crustaceans be included in the definition of "animal" in the Act. In Victoria and New Zealand that has been the definition for some time, albeit a limited definition. We take steps towards humane practices little by little. I have tried to strengthen the legislation concerning the pinioning of birds. That involves cutting specific ligaments or tendons so that the bird cannot extend its wings for flight. It is cruel and unnecessary and is akin to damaging an animal's legs so that it cannot walk.

Pinioning is specifically prescribed in the Act as being an act of cruelty. Proposed section 4(2A) will permit pinioning if it is carried out in the manner prescribed by the regulations. I wanted to move an amendment to limit that section to zoological parks, but the Department of Agriculture refused to accept it. Native birds should not be kept in a cage in which they cannot exercise, stretch their wings or fly. After a recent television program dealing with the International Fund for Animal Welfare's rehabilitation aviary in western Sydney, the station was inundated with calls from people wishing to rehabilitate their cockatoos and galahs.

That aviary rehabilitates dozens of birds at a time. The birds are kept together, but the wild birds go to the back of the cage and try to escape. They are eventually released in flocks in appropriate parts of western New South Wales, where they are reasonably safe. People are beginning to realise that it is cruel to keep any bird in an area where it cannot stretch its wings or perform its natural functions. Birds are highly social. I bought some wild birds from a market and released them at Terry Hills. As I released them, a flock of birds flew by, called to them, and my birds joined the flock. That was my wife's birthday present.

Native birds should not be kept in a cage by themselves. It should be an offence to keep a native bird, or a non-native bird from the parrot species, which are very intelligent, as we all know, in a space which does not allow it to exercise, stretch its wings or fly. If it is a flock bird it should be kept in captivity with its own species. Some birds are permanently confined by means of a ring around their leg, with a chain attached to the ring. The average weight of the chain is 75 grams. For an average-weight sulphur crested cockatoo that is 10 per cent of its body weight. The average length of the chain is 116 centimetres. One result of leg chaining is bone erosion, in which the bone of the foot is completely eaten away. Leg chains prevent the bird performing a range of natural acts. The Minister has agreed to address that after this legislation passes through this House. That is a small step towards more humane treatment of intelligent birds and animals.

Negotiations with the Minister to move an amendment not to allow the transportation of animals when they are clearly too sick or too injured to be transported, unless they are being taken to a veterinarian, were unsuccessful. Shipping fever is a reaction to transportation. It is a form of pneumonia associated with a virus that healthy cattle have no difficulty resisting. Serious stress weakens the resistance of animals. Animals also

face temperature extremes: they freeze to death in winter and they die of heat exhaustion in summer. They are often injured falling off slippery loading ramps and they can suffocate when animals pile on top of them in overcrowded, badly loaded trucks. I have seen that occur in unloading docks.

The transportation of animals should be re-examined, if not this time then some time in the future, so that animals that are clearly injured or unfit for transport cannot be carried unless it is to a veterinarian. A problem also arises when transporters use vehicles that are unfit for animal transportation. Legislation should ensure that any vehicle used to carry or convey an animal has sufficient space to ensure the animal can stand in a natural position while being transported. An animal should be able to extend its head fully without contacting the roof of the vehicle. This is clearly another humane change that must take place at some point, although the Department of Agriculture would

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not allow that amendment to be moved at this time, bearing in mind the Department of Agriculture runs the Minister on this issue.

Stock animals should be recognised as animals that are as sentient as any other, just as capable of feeling pain as a koala, a cat or any other animal. Stock animals are barely recognised by some people as animals. Words are used to conceal the origin of the food we eat: beef instead of cow, bull or steer; pork not pig; meat not flesh. The Prevention of Cruelty to Animals Act exempts the need to exercise a confined animal if it is a stock animal or if it is an animal usually kept in captivity in a cage. The need to exercise should be a basic requirement of all animals, whether stock or whether kept in a cage. Earlier I referred to the pigs we saw down south. They could hardly move at all. We attempted to have an amendment passed that would allow pigs that are confined to tiny spaces to at least have bedding.

A study in applied animal ethology shows that providing stimulus, such as straw bedding, can decrease the incidence of tail biting and cannibalism. Another problem for pigs is that the floors of the units in which they are held are designed for ease of maintenance, not animal comfort. Studies have shown a very high level of foot damage amongst pigs. An innovative proposal, tested in Sweden, involves housing pigs on deep straw beds. The composting action of the straw kills pathogens, enriches the soil, keeps the pigs warm in winter, produces little or no offensive odours and eliminates the need for expensive chemical feed additives to reduce disease and stimulate growth.

Some farmers say that straw bedding is too expensive and will cause disease, when in fact research has shown that exactly the opposite is true. It would actually save farmers money and cause less disease, but some people cannot be told. Some honourable members would be aware of the appalling conditions in which battery hens are kept. Those conditions are being phased out in countries more enlightened than Australia. There is no reason why they should not be phased out in New South Wales. I am quite sure the Minister would do that if he had a magic wand, but in the meantime hundreds of millions of chickens will live their lives in agony.

The Hon. R. T. M. Bull: Russell Turner already sells a lot of barn eggs.

The Hon. R. S. L. JONES: He should go completely over to barn egg production.

The Hon. R. T. M. Bull: He would be quite happy to do it.

The Hon. R. S. L. JONES: When will he do it?

The Hon. R. T. M. Bull: When the marketplace is prepared to pay a little extra he will do it.

The Hon. R. S. L. JONES: Apart from the obvious cruelty inflicted upon hens who cannot behave naturally, such as spreading their wings, it has been shown that humane alternatives to battery cages, which are economically viable, are available. It is commonplace to lose 10 per cent to 15 per cent of birds a year. An article in the *Farmer Express* refers to evidence of cannibalism, and states:

Feather-pecking and cannibalism easily become serious vices among birds kept under intensive conditions. They mean lower productivity and lost profits. Birds become bored and peck at some outstanding part of another bird's plumage. While idleness and boredom are a predisposing cause of the vices, cramped, stuffy and overhead housing are contributory causes.

Another way birds die is called piling. Intensively farmed birds become jittery and nervous. Strong light, loud noise or other intrusions lead to panic and the birds flee to a corner of the shed where they pile on each other and suffocate each other. Of course, that occurs in larger establishments. Another mystery cause of death is acute death syndrome - ADS - which kills approximately 2 per cent of intensively farmed birds. It was described in *Poultry Science* in 1987 thus:

Chickens exhibited a sudden attack prior to death characterised by a loss of balance, violent flapping, and strong muscular contractions. Birds were observed to fall forwards or backwards during the initial loss of balance and could turn over on their back or the sternum during the course of violent flapping.

A University of Melbourne study found that 70 per cent of farmers reported sore eyes, 30 per cent regular coughing and 15 per cent asthma and chronic bronchitis because of the lack of ventilation in their chicken farms. The study concluded that chicken farmers should spend as little time as possible in their sheds and they should use a respirator when they go into them. One can only imagine what effect those conditions have on chickens, which will be in sheds for most of their lives. This week Eric Schutte from the Poultry Farm Neighbours Support Group told me of an incident at Pheasant's Nest near Picton.

Lea Boyd lives 50 metres away from a four-shed poultry farm. She has five young children, all of whom suffer from respiratory problems, and the two youngest suffer from asthma. Moreover they suffer from noise pollution from pick-ups, which can

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continue until 3 a.m. In 1981 Switzerland began a 10-year phase-out of battery cages. Swedish law passed in 1988 requires the abolition of cages for hens. In 1987 the European Parliament recommended that battery cages be phased out in the European community within 10 years. What is happening in Australia? Nothing!

The Hon. R. T. M. Bull: It will change eventually.

The Hon. R. S. L. JONES: It will eventually, yes. But when? We also tried to move an amendment in relation to veal preparation to ensure that animals were fed properly. Currently some veal is prepared by being intentionally fed a diet that results in nutritional deprivation and a whiter meat. The technique was discovered in Holland in the 1950s. The trick is to keep the calves in highly unnatural conditions where they are confined and fed a totally liquid diet based on non-fat milk powder with vitamins, mineral and growth-promoting drugs added. A University of Bristol researcher said:

Because veal calves grow so fast and produce so much heat, they tend to shed their coats at about 10 weeks of age. During this time they have a great urge to groom themselves. They are particularly prone to infestation with external parasites, especially in mild, humid conditions. Veal calves in crates cannot reach much of their body. We conclude that denying the veal calf the opportunity to groom itself thoroughly is an unacceptable insult to welfare.

Because roughage is forbidden the calf may resort to vain attempts to chew the sides of its stalls. Digestive disorders, including stomach ulcers and chronic diarrhoea, are common in veal calves. It should be an offence for a person to intentionally feed an animal a ration designed to cause or likely to cause disease or deformity by deficiency or excess of essential nutrients, nutritional imbalance or inclusion of chemical agents. It should be an offence for a person to intentionally feed an animal a ration known to be contaminated or unfit for consumption.

The Hon. R. T. M. Bull: I have never heard of that veal production. Does it happen in Australia?

The Hon. R. S. L. JONES: Yes, I am afraid it does.

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

CRIMES AMENDMENT (ASSAULT OF POLICE OFFICERS) BILL

Bill received and read a first time.

Suspension of standing orders agreed to.

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

Coal Acquisition Amendment Bill.

JOINT SELECT COMMITTEE UPON INJECTING ROOMS

The DEPUTY-PRESIDENT (The Hon. Ann Symonds): I report the receipt of the following message from the Legislative Assembly:

Mr PRESIDENT

The Legislative Assembly desires to acquaint the Legislative Council that on this day it has agreed to the following resolution -

(1) That in the light of the Royal Commission into the New South Wales Police Service recommendation concerning safe and sanitary injecting rooms a Joint Select Committee be appointed to:

- (a) advise the Parliament of the costs and benefits to the public of the establishment or trial of safe, sanitary injecting rooms under the licence or supervision of the Department of Health and of amendment of the Drug Misuse and Trafficking Act 1985 accordingly; and
- (b) make a recommendation to the Parliament as to whether or not such establishment or trial should proceed.

(2) That the Legislative Assembly Members comprise:

- (a) 3 Government Members nominated in writing to the Clerk of the House by the Leader of the House;
- (b) 2 Opposition Members nominated in writing to the Clerk of the House by the Leader of the Opposition; and
- (c) 1 Independent Member nominated in writing to the Clerk of the House by the Independent Members.

(3) That notwithstanding anything to the contrary in the Standing Orders of either House:

- (a) the Committee is to elect as Chairman a Government Member;
- (b) the Chairman of the Committee have a deliberative vote and, in the event of an equality of votes, a casting vote;
- (c) at any meeting of the Committee 4 members constitute a quorum, provided that the Committee meet as a Joint Committee at all times; and
- (d) dissenting reports shall be permitted to be tabled.

(4) That the Committee have leave to sit during any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State

time.

(5) That the Committee report by 30 November 1997.

(6) That should either or both Houses stand adjourned and the Committee agree to any report before the Houses resume sitting:

- (a) the Committee have leave to send any such report, minutes and evidence taken before it to the Clerks of the respective Houses;
- (b) the documents be printed and published and the Clerks forthwith take such action as is necessary to give effect to the order of the House; and
- (c) the documents be laid on the Table of the Houses at their next sittings.

(7) The Legislative Assembly requests the Legislative Council to appoint 4 of its Members (being 2 Government and 2 Non-Government) to serve on the Committee and to nominate the time and place for the first meeting of the Committee.

Legislative Assembly
19 June 1997

John Murray
Speaker

INVESTIGATION OF FORMER MEMBER OF PARLIAMENT Mr PHILLIP SMILES

The DEPUTY-PRESIDENT (The Hon. Ann Symonds): I report the receipt of the following message from the Legislative Assembly:

Mr PRESIDENT

The Legislative Assembly desires to acquaint the Legislative Council that it has this day agreed to the following resolution -

That this House refers to the Committee on the Independent Commission Against Corruption the following matters in connection with the Second Report of the Independent Commission Against Corruption of its investigation into circumstances surrounding the payment of a parliamentary pension to Mr P M Smiles (April 1996) ("the Second Report"), for inquiry and report:

- (i) the options set out in the Second Report for amendment of section 13A(e) of the Constitution Act 1901 which provides for vacation of a Member's seat where he or she is attainted of treason or convicted of felony or any infamous crime;
- (ii) whether the grounds for vacation of a Member's seat set out in s.13A(b) ("allegiance to a foreign prince") and s.13A(d) ("public defaulter") should be reviewed in light of contemporary standards and circumstances and if so, the options which are available for their amendment;
- (iii) whether s.13A(c) ("becomes a bankrupt") gives rise to similar problems to those identified by the ICAC in relation to s.13A(e) because of the existence of appeal rights or the possibility of a bankruptcy being annulled; and
- (iv) the ICAC's recommendation in the Second Report that section 70 of the Parliamentary Electorates and Elections Act 1912 be amended to ensure that in all cases the reason for a vacancy in a seat in the Parliament be determined and stated by the relevant House or its principal officer.

And the Legislative Assembly, in accordance with section 64(1)(e), requests that the Legislative Council pass a similar resolution.

Legislative Assembly
19 June 1997

John Murray
Speaker

TOTALIZATOR AGENCY BOARD PRIVATISATION BILL

LIQUOR AND REGISTERED CLUBS LEGISLATION AMENDMENT (MONITORING AND

LINKS) BILL

TOTALIZATOR BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. R. S. L. JONES [10.05 p.m.]: There was some discussion earlier in the debate as to whether there should have been a trade sale of the Totalizator Agency Board or a float. There is no doubt that a trade sale would yield up to 50 per cent more in proceeds than a float, but there would be a problem with public perception as to who actually bought the TAB. There could be heated debate in the *Daily Telegraph* or the *Sydney Morning Herald*, for example, depending on who was successful. The same question arises in respect of the potential privatisation of Pacific Power, which has become controversial. It is the same story. A trade sale of Pacific Power would yield approximately 50 per cent more than a float. I noticed recently that shares in the Colonial State Bank, which were floated at \$2.60, are now worth \$3.50.

The State Bank was floated. We sold the State Bank for a song. Colonial Mutual Life floated the State Bank recently and the shares, which started at \$2.60, are now worth \$3.50. The Minister has said that the TAB float would proceed only if the Government is satisfied that a reserve price that fairly reflects the value of the current taxation stream that will be foregone can be met or exceeded. The figure that is being bandied around is \$1.2 billion but my information from Treasury sources is that the real figure should be \$1.4 billion. The Treasurer should think very carefully about letting it float for less than \$1.425 billion, the \$25 million being the float costs. This legislation does

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not necessarily mean that the Totalizator Agency Board will automatically be privatised. The first step will be corporatisation but it may not be privatised because it may not reach the reserve that we absolutely need to ensure that we do not actually lose money.

The Government could lose money on the privatisation of the TAB as it did in respect of the State Bank, and that is of concern. There is no point in selling an entity and being worse off. The only reason for selling an entity is if New South Wales is going to be better off. It is interesting to speculate on the rationale for the legislation. After all, in the case of a sale at the reserve price we are only swapping an up-front lump sum for an equivalent income stream during the next 15 years. We would pay off \$1 billion of State debt or \$1.4 billion of State debt, thereby saving up to \$140 million in interest payments, but we would forego \$100 million in taxes from the TAB. Only a premium price will justify the sale of the TAB.

There is a curious ambivalence in the Government's handling of the issue of debt versus revenue. In the current legislation the Government is anxious to convert a stream of future revenue to a capital sum with which to repay State debt. Contrast this with the case of coal acquisition, which was debated in this House no more than a month ago. In that case the Government was increasing debt to pay coal rights and justifying it on the basis of a future stream of revenue to be received, which would be income tax free in its hands, compared with private coal right owners who have to pay income tax on the royalties they receive. In the case of the TAB, the State's stream of tax-free revenue is being sold to private shareholders who will pay income tax on it, which will result presumably in a lower value than it would be to us. That is the ambivalence.

The justification for a sale would be provided if we could secure a premium over the reserve price. There are factors which would contribute to a premium price. For example, there could be an association with the VicTAB performance which has more than doubled in price since it was floated at \$2.70. For VicTAB the profit driver has been poker machines. It received one of only two poker machine licences that were issued. The current overheated share market with the All Ordinaries index at an historic high would also tend to keep the price high. Recently the extraordinary situation in Hong Kong resulted in the Hang Seng index going through the roof. It is continuing to rise mainly because of money coming in from mainland China - a haven. We do not yet know whether it will be another South Sea Bubble or whether it will remain like that.

Floats with a gambling element, for which the Chinese are famous, have been sought after because people believe that it is an easy money game. Internet gambling is being developed by the TAB and State tax competition is proposed to be eliminated by the introduction of uniform legislation in all States. A committee is currently working on that proposal. That will provide what is called blue sky. Further, blue sky will be created by issuing 15-year licences to the TAB to operate a statewide linked jackpot poker machine scheme for hotels and clubs. This will enable smaller clubs to participate in larger pools and provide higher jackpot prizes. The TAB will receive a fee for this service. More blue sky is created by providing a central monitoring service which will connect all poker machines in clubs and hotels to a central computer to facilitate the collection of poker machine taxes. The TAB will also receive a fee for this.

Another factor justifying the sale of the TAB is that it is currently run much along public service lines. It is suggested that privatisation would galvanise it to enhance performance, thus increasing revenue to the benefit of private shareholders and the State through increased taxes. Lately the TAB has not experienced much growth. Sales since 1990 on an inflation-adjusted basis have been flat, so this might be the appropriate time to pass the business to private investors who may develop action plans to increase business. I will now refer to some of the figures relating to the TAB. The Government currently receives \$318 million per annum from racing through its 52 per cent tax on wagering. The tax on wagering is proposed to be reduced to 28 per cent. That is the current rate in Victoria. This reduction is driven by the need for the racing industry to compete with Victoria.

The reduced tax rate will lead to a reduced revenue from wagering of \$190 million per annum. If that \$190 is subtracted from the annual revenue of \$318 million we are left with a revenue of \$128 million per annum. Treasury's average borrowing rate is 10 per cent per annum. The TAB, in addition to its current wagering activities, will be given an exclusive licence to operate a statewide linked jackpot system. This system will enable clubs to offer multimillion dollar prizes on their poker machines. Those who participate will pay a moderate fee to the TAB. The TAB will also connect all gaming machines in pubs and clubs to a central monitoring system. That will enable all machines to be monitored automatically and will lead to a significant reduction in form filling and administration costs to the pubs and clubs and, at the same time, provide a more efficient collection of gaming taxes. As to the fees for this service, the Government is considering cost recovery which represents no profit for the TAB.

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The TAB would have to at least break even to justify its sale. That break-even point is calculated as the present value of the stream of revenue foregone by reducing the tax rate from 52 per cent to 28 per cent, that is, \$128 million per annum. To arrive at a present value this stream needs to be discounted. The appropriate discount rate is 10 per cent as this is the average rate being paid on the debt it is proposed to retire from the proceeds of the sale. So \$128 million multiplied by 7.606 represents \$973 million, or \$1 billion, when 7.606 is the factor in the equation that gives the present value of a dollar received annually for 15 years, assuming a discount rate of 10 per cent. This calculation does not take into account any profit to be received by the TAB for its SWL and CMS functions. That might be quite modest as the pubs and clubs are putting pressure on the Government to maintain these functions at minimal levels.

With competition for the gambling dollar now coming additionally from casinos and the longer standing pokies, racing is not perceived as a growth industry, certainly not under government control as at present. So passing it to a private enterprise for a 15-year period could see some growth strategies brought to bear which would increase the Government's take through its 28 per cent tax. Clause 11 of the bill defines the exclusive licence period as 15 years. I asked the Treasurer whether we would receive another \$1 billion in 15 years time in current dollar terms. However, there will be no exclusive licence in 15 years time so the amount would be less than \$1 billion.

I do not know whether the Treasurer has made those calculations. Nevertheless, we can have another bite at the cherry in 15 years time, which will be well received by another generation of taxpayers and recipients. One might call that intergenerational equity. I urge the Minister to ensure that he does not undersell the TAB as

we have this revenue stream coming in. If we undersell the TAB now we could be underselling the people of New South Wales. I thank Barry Davies, my financial adviser, who worked with me and has been having consultations with Treasury officials. He has been through the figures for me. I support the legislation but I ask the Treasurer to be prudent when it comes to the actual sale price.

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [10.16 p.m.], in reply: I thank all honourable members for their contribution to the debate on this legislation. I thank in particular the Deputy Leader of the Opposition and the Hon. R. S. L. Jones for their support for the legislation. This legislation will become a milestone in the administration of racing and the conduct of on-course and off-course totalisator betting in this State. The Government will reform wagering in New South Wales by reducing the tax rate on wagering, selling its ownership of the Totalisator Agency Board and setting up a new structure, in partnership with the New South Wales racing industry, for wagering in New South Wales.

These reforms will put industry on a long-term sustainable basis with a higher level of annual income and protect 50,000 jobs. The value of the TAB to be sold includes its exclusive 15-year licence to conduct off-course wagering in New South Wales as well as two other exclusive licences it will hold to provide the statewide linked jackpot system and the central monitoring system for gaming machines. Let me put beyond any doubt what those licences mean for the value of the TAB. Some Opposition members in the other place have suggested that the Government is jeopardising the potential value which can be realised from the sale of the TAB. That is not the case at all. The TAB's wagering licence will be granted in perpetuity. I emphasise that the licence will be granted in perpetuity with an exclusive period of 15 years. That is reflected in this legislation and will be stated quite clearly in the off-course wagering licence issued to the TAB.

Once sold, the new TAB will operate like any other public company listed on the Australian Stock Exchange. The TAB will only be sold if the price is greater than its reserve price and the Government will use the proceeds to retire debt. A limit of 5 per cent will be placed on the maximum number of shares that each person or institution can buy. The limit will apply not just at the time of the public float, but over time. The 5 per cent ceiling which is reflected in this legislation will be incorporated into the new TAB's articles of association. By setting a limit of 5 per cent more people will have an opportunity to buy shares in the new TAB and a wide ownership base means that the wealth created by the TAB can be shared across the community, not just by a few individuals.

With regard to its licence to conduct a statewide linked jackpot system, the TAB will be responsible for operating the links system, paying the links prizes and complying with the requirements of the links licence. Although the TAB will be able to purchase machines and provide them to clubs under appropriate commercial arrangements, it will not be an operator of gaming machines in the same way as the term is used in some other jurisdictions.

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Clubs will retain ultimate control over their gaming machine future and will be able to choose to negotiate with the TAB for the most commercially suitable links arrangement.

Matters subject to negotiation will include arrangements for the maintenance of links machines and the links-wide area communications network, the specific placement of machines in clubs and the revenue sharing arrangement which may be applied for machines. A number of matters need to be dealt with prior to the sale of the TAB. It will be several months before the Government and the TAB are ready for the sale to proceed. That could mean a sale will take place in late 1997 or early 1998, but that will depend upon satisfactory resolution of all the matters I have referred to. I hope Opposition members will join with the Government - as has the Deputy Leader of the Opposition - and the racing industry to take such action as is necessary to ensure a highly successful sale of the TAB for the benefit of the racing industry and New South Wales taxpayers.

The Hon. R. S. L. Jones: And invest, ourselves.

The Hon. M. R. EGAN: I will take some advice on that. The sale of the TAB will see the end of an era. It

has been one of the State's most successful commercial enterprises, and I thank the many people who have served on the board since 1964 as well as the staff and agents of the TAB who have contributed to its success. Unlike the Kennett Government, the New South Wales Government has not resorted to the use of highly paid consultants to develop this program of reforms. Apart from acquiring some financial and legal advice of a specialist nature, it utilised the skills and resources available within the New South Wales public sector. This approach has ensured that these important initiatives have been brought to fruition. I am proud to have been associated with this legislation and I take the opportunity to thank the members of the TAB steering committee, and in particular Mr Paul Broad, Lynne Chester, George Maltabarow from the Department of Treasury, and many others who have worked very hard for months on this legislation. I commend the bills to the House.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIRMAN: The Committee will now deal with amendments to the Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill.

Schedule 1

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [10.26 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

- No. 1 Page 9, Schedule 1[9], proposed section 200G, line 32. After "Treasurer", insert ", and in consultation with the Independent Pricing and Regulatory Tribunal pursuant to such arrangements as may be entered into under section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*".
- No. 2 Page 32, Schedule 3[10], proposed section 87HB, line 15. After "Treasurer", insert ", and in consultation with the Independent Pricing and Regulatory Tribunal pursuant to such arrangements as may be entered into under section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*".

The amendments will facilitate negotiations principally between the Government and the registered club movement regarding the setting of fees for the central monitoring system by including the Independent Pricing and Regulatory Tribunal in the negotiations in the first instance. That approach seems to have fairly widespread support, and will ultimately assist all parties to reach a satisfactory outcome.

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [10.31 p.m.]: The Government supports the amendments moved by the Deputy Leader of the Opposition.

Amendments agreed to.

Schedule as amended agreed to.

Schedule 4

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [10.32 p.m.]: I move Government amendment No. 1:

- No. 1 Page 35, Schedule 4[3], line 2. Omit "(a)". Insert instead "(e)".

That is a formal amendment to correct an incorrect cross-reference.

Amendment agreed to.

Schedule as amended agreed to.

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The CHAIRMAN: The Committee will now deal with the Totalizator Bill.

Part 3

Amendments, by leave, by the Hon. M. R. Egan agreed to:

- No. 1 Page 32, clause 47(1), line 32. Omit "\$1,000,000". Insert instead "\$100,000 in the case of a racing club or \$1,000,000 in any other case".
- No. 2 Page 45, clause 67. Insert after line 30:
- (5) The regulations can exempt specified contracts or other arrangements or specified classes of contracts or other arrangements from the operation of this section. The effect of such an exemption is that a contract or other arrangement to which the exemption applies cannot be the subject of a direction under this section.
- No. 3 Page 48, clause 70(5), line 3. Insert a closing bracket after "28.2%".
- No. 4 Page 77, Schedule 2, clause 5, line 16. Insert "arrangement or" before "agreement".
- No. 5 Page 77, Schedule 2, clause 5, line 21. Omit "agreement, to be an arrangement". Insert instead "arrangement or agreement, to be an arrangement or agreement".
- No. 6 Page 77, Schedule 2, clause 5. Insert after line 22:
- (2) Despite the repeal of section 12 of the *Totalizator (Off-course Betting) Act*, an arrangement or agreement in force under that section immediately before its repeal remains subject to the provisions of subsections (6)-(8) of that section and TAB remains subject to those provisions in respect of the arrangement or agreement.
- No. 7 Page 78, Schedule 2, clause 11, line 19. Omit "**and Racing Assistance Fund**".
- No. 8 Page 81, Schedule 2, clause 13, line 4. Insert "and the betting tax is not paid by the due date," after "tax)".
- No. 9 Page 81, Schedule 2. Insert after line 14:

14 Power of racing bodies to enter into and perform commercial arrangements

Each of the AJC Principal Club, Harness Racing New South Wales and the Greyhound Racing Authority (NSW) have, by virtue of this Act, such additional powers, authorities, duties and functions as may be necessary or convenient for enabling those bodies to enter into and perform their obligations under commercial arrangements for facilitating the conduct of totalizator betting and other betting activities authorised by this Act.

Part as amended agreed to.

Totalizator Agency Board Privatisation Bill reported from Committee without amendment, Liquor and Registered Clubs Legislation Amendment (Monitoring and Links) Bill and Totalizator Bill reported from Committee with amendments, and report adopted.

Third Reading

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [10.40 p.m.]: I move:

That these bills be now read a third time.

The House divided.

Ayes, 29

Mrs Arena	Mr Macdonald
Mr Bull	Mr Moppett
Dr Burgmann	Mr Obeid
Ms Burnswoods	Dr Pezzutti
Mr Egan	Mr Primrose
Mrs Forsythe	Mr Ryan
Mr Gallacher	Ms Saffin
Miss Gardiner	Mr Samios
Mr Gay	Mrs Sham-Ho
Dr Goldsmith	Ms Staunton
Mr Hannaford	Mr Tingle
Mr Jones	Mr Vaughan
Mr Kaldis	<i>Tellers,</i>
Mr Kersten	Mrs Isaksen
Mr Lynn	Mr Jobling

Noes, 5

Ms Kirkby	<i>Tellers,</i>
Mrs Nile	Mr Cohen
Revd Nile	Mr Corbett

Question so resolved in the affirmative.

Motion agreed to.

Bills read a third time.

PORT KEMBLA DEVELOPMENT (SPECIAL PROVISIONS) BILL

Second Reading

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [10.47 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

On 19th February, 1996, the Minister for Urban Affairs and Planning issued a development consent for the upgrading and expansion of the existing copper smelter and refinery at Port Kembla.

That consent was modified on 19 November 1996. This Bill aims to remove any doubt about the validity of that consent. Sadly, the Southern Copper consent was challenged in the Land and Environment Court on Christmas Eve 1996 and the project has already suffered from five months of uncertainty and inability to commence construction.

The Minister is not prepared to allow this uncertainty to continue and therefore the Port Kembla Development (Special Provisions) Bill aims to ensure that there is no further delay to the construction of this important economic development initiative for the Illawarra.

Mr. President, in simple terms, this Bill is about certainty and jobs. The Illawarra needs the Port Kembla Copper Smelter. Indeed, both NSW and Australia needs the Port Kembla Copper Smelter and we, as a Parliament, have an obligation to ensure that this project proceeds.

As most members know, the Minister's consent is currently the subject of a challenge in the Land and Environment Court. The appeal is not about the merit of the proposal, but a technical issue about whether enough people were notified of the development application.

This appeal is occurring despite the fact that the application has been through an exhaustive public participation process since 1994, including a Commission of Inquiry which recommended an approval.

There has been any amount of media coverage at a local, regional, State and national level. The Minister's view is that anybody who ever wanted to have a say about the proposal has had more than ample opportunity since the application was first lodged under the former Minister for Planning, the Hon. Robert Webster, in 1994.

I have to advise the Parliament that the proponent has advised the Government that as a result of the tactics of the appellant in the court case the whole development is at risk of being indefinitely deferred and even lost to New South Wales.

I am advised that the two Japanese investor companies, Nissho Iwai and Furukawa - both major publicly listed Japanese corporations - are particularly concerned that after having acted in good faith, and after having obtained a valid development consent, they are now faced with further uncertainty when they seek to invest hundreds of millions of dollars into our national economy.

The Port Kembla Development (Special Provisions) Bill 1997 provides a unique opportunity for this House to vote for jobs, to vote for economic growth and to show the people of the Illawarra that we can establish an internationally competitive industry with the highest environmental standards.

Mr. President, as I indicated, this Bill will remove any doubt about the validity of a development consent which the Minister granted on 19th February 1996 for the upgrading and expansion of an existing copper smelter and refinery at Port Kembla.

That consent was issued after rigorous environmental assessment, including a Commission of Inquiry, and is subject to stringent environmental controls. The consent was further modified in November 1996 to make the environmental conditions even stronger.

But by validating this Bill the Parliament is giving the green light to jobs. We will provide a pay cheque for more than 270 families with a flow-on effect which would affect more than 400 families and would bring new hope to the region's unemployed.

Mr. President, the Port Kembla copper smelter represents a massive injection of \$230 million in construction and capital upgrades alone. Of that, more than \$170 million will be spent on environmental improvements to comply with the conditions of my consent.

In addition, at full capacity, the total economic output of the plant will be about \$350 million a year. Exports will be in excess of \$200 million per annum. The Port Kembla Copper Smelter is the only copper refinery in NSW and before it was placed in maintenance mode, the refinery's output represented 12 per cent of Australia's copper smelting production.

This means that, unless the Port Kembla plant goes ahead, NSW mines will have to send their copper either interstate or overseas for processing.

In other words, if we do not get this upgrade up and running we will be sending jobs and investment either interstate or overseas.

Given the history of this matter - the exhaustive environmental assessment, the public consultation and participation, the approvals validly given - the Government finds such a prospect totally unacceptable.

Mr. President, this is the most pressing argument in favour of this legislation. In terms of jobs, the copper smelter will directly employ 270 people when fully operational. During the construction phase of three years, approximately 360 jobs will be created, with flow-on benefits to the wider Illawarra economy.

It must be placed on record that the copper smelter and refinery operation has been in existence in Port Kembla since 1908. The mothballing of the plant in 1995 had an immediate impact on the local community with the immediate loss of 400 direct jobs and related income to the area.

Mr. President, Parliament now has the chance to put those jobs back and in addition to the economic and employment benefits the upgrade will deliver a major improvement to the environment.

The conditions under which the upgrade will proceed will be among the toughest ever placed on a development of this nature. These conditions are the result of extensive public and community consultation, including a Commission of Inquiry which recommended that the upgrade proceed.

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Let me give a few examples of the environmental benefits of the proposed upgrade. The total annual tonnage of stack and fugitive emissions of sulphur dioxide, lead and particulates will be significantly reduced.

For example, the total sulphur dioxide emissions from the site will be reduced by almost 90 per cent. The number of exceedances of sulphur dioxide goal would be significantly reduced.

For example, at the Port Kembla fire station the number of exceedances would be reduced from over 4,000 to ultimately 36. The lead-in-the-air goal recommended by the Parliamentary Select Committee would be achieved.

Mr. President, through the 62 conditions attached to the consent there are any number of powerful environmental controls.

For example, waste water discharged from the site would meet the clean water regulation standard for heavy metal contaminants and therefore contribute to improvements in the marine habitat conditions of the outer harbour of Port Kembla; underground water quality monitoring will be commenced based on a program approved by the Environment Protection Authority; and a comprehensive program to monitor compliance with conditions will be enforced and subject to public review.

The Port Kembla Public Pollution Committee will be involved in the review.

The proposed upgrade and the conditions of consent will result in a significant reduction in the impact of the smelter on the environment and on human health. The conditions of consent mirror the EPA's draft pollution control conditions. This will ensure and give greater certainty that the predicted beneficial environmental outcomes will be achieved.

It is worth putting on record the extensive assessment process undertaken over the last few years that resulted in the Minister's decision to approve the upgrade.

Mr. President, on 12 September 1994 Southern Copper Limited lodged with the then Minister for Planning, the Hon. Robert Webster, a development application for the expansion and upgrade of the smelter at Port Kembla. The application was accompanied by an environmental impact statement.

Both the development application and the environmental impact statement were exhibited in accordance with the statutory requirements of the Environmental Planning and Assessment Act.

The Minister directed that a Commission of Inquiry be held into the environmental aspects of the proposed development. After an exhaustive assessment process, the Commissioners recommended that he grant consent subject to conditions. He accordingly approved the smelter in February last year subject to conditions consistent with the Commissioners' recommendations.

On a further application the Minister modified the development consent on 19 November, 1996. The effect of this modification was to improve even further the environmental performance of the smelter consistent with the requirements of the EPA.

Mr. President, as I said earlier, despite this exhaustive environmental process, the whole project is now under threat as a result of a legal challenge - a challenge based on procedural technicality rather than the merit of the proposal or my approval.

In fact, I have been advised that since the original challenge was made attempts have been continually made to expand the scope of the court proceedings, even to the extent of seeking to join the two Japanese investor companies in the proceedings.

I can assure the House that that action alone has caused shock waves of concern about the investment certainty and the capacity to do business in this State, and that, of course, is a matter of real concern for any responsible Government.

Sadly, even if the Government wins the court case - and I remain confident that we will - the Land and Environment Court decision will most likely be appealed resulting in further protracted litigation, and will almost certainly result in the loss of this project to our State and nation.

We are not prepared to lose 270 direct jobs with a potential for a flow-on effect of 200 jobs on a legal technicality.

We are not prepared to lose \$270 million of capital investment.

We are not prepared to lose a \$350 million annual increase in the State's economic output including \$200 million worth of exports.

And we are not prepared to maintain the uncertainty that a technical legal battle has established around this project.

I urge all members to support this legislation and I commend the Bill to the House.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [10.47 p.m.]: The Opposition supports the Port Kembla Development (Special Provisions) Bill. It is an exceptional circumstance in which the Parliament is required to address its mind to a particular development proposal and to determine at a parliamentary level that it should express its support for a development and validate a development consent. But this is the second time in 12 months that the Parliament has had to do that. Last year the Parliament dealt with the validation of the Bengalla mine and at the same time as the Parliament engaged in that procedure that application was before the courts. The circumstances that prevailed in relation to the Bengalla mine are in evidence on this occasion. The overview of the bill states:

The object of this Bill is to validate a development consent granted by the Minister for Urban Affairs and Planning in February 1996 for the upgrading and the expansion of a copper smelter and refinery at Port Kembla, together with a modification of that development consent made in November 1996, to the extent of any invalidity.

On 12 September 1994, Southern Copper Limited lodged with the Minister for Urban Affairs and Planning a development application for the upgrading and expansion of an existing copper smelter and refinery at Port Kembla, which was accompanied by an environmental impact statement.

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After receipt of the commission of inquiry report, the Minister granted a development consent on 19 February 1996 and, on further application, the Minister modified that consent on 19 November 1996. That development consent and modification then became the subject of proceedings before the Land and Environment Court. Whilst that challenge was made in accordance with the rules, it has become clear that the challenge to the application is based upon technical breaches of the law. The Opposition takes the definitive view that the

commission of inquiry considered all the merits of the application and determined that the application ought to proceed. The commission of inquiry provided all interested parties with the opportunity to express their concerns to an independent entity and to have those views independently assessed.

The integrity of members of commissions of inquiry has never been questioned, and in this case the commission of inquiry approved the application on certain conditions. Some in the community will disagree with the outcome of the process. I have been involved in environmental matters for all my professional career and from experience I know that there are always winners and losers; the umpire makes the decision. In this development application the umpire decided that the application should go ahead. Sometimes the law allows applications to proceed based on technicalities that may restrict the development. That is the nature of the law and lawyers are entitled to advise their clients to act accordingly and the clients, in turn, are entitled to act upon that advice.

It is clear that in the economic interests of New South Wales and the Illawarra, the Port Kembla development proposal for this smelter and refinery should proceed. The Government made the decision to introduce the legislation to ensure that the development - irrespective of whether it failed before the courts - proceeds and is not defeated on some legal technicality. As a lawyer, I could be expected to say that the legal framework should be allowed to proceed, but I do not do that. This case was heard by an independent tribunal and a decision was made on the merits of the case that the development should proceed. The Government then made a value judgment that, in the economic interests of the State, the Parliament's intervention was justified.

The local community is concerned about whether environmental matters will be addressed and the environment protected. The legislation gives the Minister discretions in the exercise of environmental management. Those discretions are available in a wider framework than normal enabling legislation. Where a discretion is available to deal with environmental emissions that might have an effect upon the community, such a discretion should be exercised for the benefit of the total community, not a particular business enterprise. As legislators we have an obligation to act in the interests of the broader community. To the extent that the legislation allows discretions to be exercised to vary emission controls, those emission controls should only ever be used for the protection of the residents. The Opposition would act vehemently if the discretions were exercised other than for the benefit of the total community, and I have no doubt that the Government would do the same.

I am sure the Minister in his reply will express sentiments similar to mine. As legislators we must, and will, ensure that the development proceeds without interruption through some technicality in the law. If problems arise at a late stage that impact on the community, the Parliament will act in the community's interests because, as legislators, we are elected by the community to protect it. I met with a Japanese delegation of the industry organisation to ascertain the attitude of the coalition towards the development. I indicated to that group, as I have indicated to the House, that commissions of inquiry make independent assessments on the evidence available and, as legislators, we will act upon that advice. However, I informed the group that if conditions change, the Parliament will act in the interests of the community.

I am led to believe that the technology that will be used in the smelter is available in other parts of the world but is not in New South Wales at present. Actually, the technology to be used will be a refinement of that used in other countries, so it may be that New South Wales will be a world leader with this technology. International agencies will read this debate in *Hansard*, so I put clearly on the record that the Opposition supports developments of this nature and the role of the Environment Protection Authority as a monitoring agency that will act to protect the health of the community. I know from discussions I have had with the agencies that they have also embraced that principle. They, as international investors who want to develop a resource in this country and be part of the investment business environment here, do not want anyone to think that they would act otherwise.

There is a need to revisit the legislation that has led to this bill. If there are to be commissions of inquiry, they should deal with every aspect of a development. There should be no secondary litigation arising out of the commissions of inquiry. Legal issues should be dealt with before the inquiry.

Appeals should go to the Court of Appeal, not intermediate courts. The Government is reviewing all of the legislation in this area, and it is time for the Government to examine the need for greater efficiency in dealing with commissions of inquiry and their oversight. If the Government wants to pursue a reform direction that achieves greater efficiency, the Opposition will support improvement in that efficiency.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT LEGISLATION AMENDMENT BILL

Second Reading

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [11.03 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The focus of the Bill, as introduced into the Legislative Assembly, is development consents granted by the Minister for Urban Affairs and Planning.

Generally, these consents are for major development projects of significance for the State economy. These developments often generate significant employment opportunities.

More than ever, it is critical that NSW maintains its competitive position by providing a reasonable level of certainty in relation to the validity of these consents.

Mr. President, the purpose of the bill is to clearly identify the key provisions of the Act which are mandatory. Failure to strictly comply with these provisions can render the consent invalid.

The requirements relate to the processing of development applications for designated development, which require the preparation of an environmental impact statement, and advertised development.

They ensure that a development application for either designated development or advertised development, and any accompanying documents including, where relevant, an environmental impact statement are exhibited for the minimum period specified in the Environmental Planning and Assessment Regulation 1994.

This ensures a high level of public awareness of this type of development and encourages the public to be part of the process.

Indeed, the amendments while supporting the already high level of public participation embodied in the EP&A Act, go further by enhancing the power and the options available to the Land and Environment Court when considering technical challenges to consents issued by the Minister for Urban Affairs and Planning.

By technical challenges, I mean challenges to the validity of such a development consent brought on the basis of failure to comply with the requirements of the EP&A Act and the general law.

Mr. President, the effect of this amendment will not be that the other provisions of the Act applying to the processing of a development application, to be determined by the Minister, do not require compliance. They do.

However, the failure to strictly comply with these provisions will not automatically invalidate the consent. The standard of compliance is different. They require substantial compliance. What constitutes substantial compliance will depend on the particular provisions and facts

of the case.

The Bill also seeks to expand the powers of the Land and Environment Court when it is determining a challenge to the validity of a development consent granted by the Minister.

Where the Court concludes that the requirements for the making of a valid consent by the Minister have not been met, then rather than declaring or otherwise determining that the consent is invalid, the Court will have the ability to make an order requiring the defect to be remedied. This extends to failure to comply with the mandatory requirements under the Bill.

The Minister must then revisit his decision to grant consent.

Mr. President, these amendments are considered necessary to introduce broader powers into the legislation applying to the planning system to ensure a greater level of certainty by providing the Land and Environment Court with the greater capacity to remedy technical breaches of the Act which could potentially invalidate development consents granted by the Minister.

This, in turn, will encourage increased opportunities for economic and employment growth whilst ensuring that there is an appropriate level of environmental impact assessment for each development.

Mr. President, at present there are approximately \$1.7 billion worth of major developments of significance to the State under consideration which will ultimately require my consent.

Those projects range from major mining ventures through to value adding agricultural projects and includes substantial opportunities for economic development in rural and regional New South Wales.

They have the potential to generate nearly 2,000 direct jobs and many hundreds of millions of dollars in production output and exports for the State and our Nation.

The Government's intent in progressing this Bill is to make it clear to those who seek to provide jobs and economic growth in this State that we are keen to assist; that we would ensure proper and rigorous environmental assessment; that once a decision is made, the Government will not sit idly by and see jobs and the State's economy threatened by challenges which do not go to the merits of a development approved by the Minister.

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Mr. President, while challenges to the validity of a consent granted by the Minister will still be possible, it will now be equally possible for the Land and Environment Court, should it so choose, to require the rectification of the technical breach without sending all parties back to square one by, as is presently the case, invalidating the whole approval.

Because, Mr. President, this is the fundamental point.

It is not necessarily the challenge to the validity of the consent, it is often the delay and frustration that is caused as a result of such action, that puts these major projects at risk.

Mr. President, as the Australian economy internationalises and our industries seek to be globally competitive, it is incumbent on all Governments and regulators to ensure world class assessment processes.

Mr. President, the passage of this Bill moves us one step closer to that objective.

It will ensure New South Wales maintains its position in leading the National economy and underpin, by providing greater certainty to those who would invest, our twin objectives of high quality environmental management and maximising job opportunity for the people of the State.

Mr. President, I note that after the Bill was introduced into the Legislative Assembly, the Opposition with the support of the Government moved a number of amendments to the Bill which would extend its operation to all development consents, whether or not granted by the

Minister.

The amendments also sought to clarify the legal implications for the validity of a development consent of failure to comply with the requirements of the EP&A Act, whether or not these requirements were mandatory.

Whilst the Government supports the objective of ensuring greater certainty concerning the validity of development consents whether or not granted by the Minister, after further consideration, the current wording of the Opposition's amendments may not achieve this objective.

Accordingly, Mr. President, I propose to move amendments to delete the amendments moved by the Opposition and supported by the Government in the other House.

I commend the bill to the House.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [11.04 p.m.]: The Opposition supports the bill, which will put in place a regime under which the Land and Environment Court will be able to examine and review technical deficiencies if a challenge to development applications comes before the court. The court will be able to make a direction for compliance with the intention of the legislation and will be able to assess whether an approval should be granted after the compliance is achieved. Both the Government and the Opposition have embraced this principle. During debate in the lower House the Opposition moved a number of amendments, the effect of which was twofold.

If the court reviewing a development application formed the view that a departure from technical compliance with the legislation was so minor that there was no need to go back to comply with the law, because the spirit of the legislation had effectively been observed, the court would have the discretion either to waive compliance or to require an authority to go back and act in accordance with the law. In the legislation the Government took the approach that if a breach was made, an authority would have to go back and comply with the law. All honourable members would recognise that there are certain breaches that are so minor they should be waived. The Opposition believes that the court should be given the total discretion, and moved an amendment to give the court that discretion.

The Opposition took the view that if it was good enough for the Minister, who was the consent authority, then it should be good enough for any other agency, and the court should be given the discretion to deal with the application and the alleged breach. Everyone who has been involved in environmental planning and assessment knows that technical breaches do occur from time to time. They occur not deliberately nor maliciously but by pure chance or oversight. All of the merits of the oversight ought to be reviewed and the court ought to be able to determine the best approach in the interests of justice. The Opposition's amendments give the court, as the independent arbitrator, the opportunity to assess these matters - it is taken out of the hands of politicians and administrators.

The bill expresses that view, and it is for that reason that the Opposition supports the bill. The court, as the independent arbitrator, can make a decision as to the way in which all environmental issues and disputes arising out of such issues can be dealt with. The Opposition advocates the passage of the bill in its present form. The Opposition is, however, concerned about proposed section 104C(5). I would like the Government to say why that provision has been included in the bill. If the court is involved in a determination as to whether an application ought to be approved and regrants an approval, so far as the Opposition is concerned a regrant of an approval should be treated as an approval given under the Act and should apply with all the provisions of the Act.

Proposed new section 104C(5) provides that section 92 and such other provisions of the Act as may be prescribed by the regulations extend to development consents regranted under the provision subject to such modifications of any parts of the law as may be prescribed. Opposition members ask why that provision has been included in the bill. If the court has granted an approval then it should comply with the Act as it is known to comply; there should

be no subsequent modification of the legislation to deal with an application that has been dealt with by the court. If the court deals with an application, it deals with everything having regard to the law.

After the approval has been granted there can be no justification for changing the law by way of regulation. So the Opposition will move an amendment in Committee to restate the Government's intention. If that was not its intention, the Government had better explain why. We will move that when a regrant approval is given, the regrant will operate according to this Act as it was at the time the approval was granted. Apart from that amendment, we support the bill. I understand that the Government proposes that some aspects of the bill should be substantially amended. If that is so, it is regrettable, but that is a matter for the Government. We will see what happens in Committee.

Debate adjourned on motion by the Hon. Patricia Forsythe.

ADJOURNMENT

The Hon. M. R. EGAN (Treasurer, Minister for Energy, Minister for State and Regional Development, Minister Assisting the Premier, and Vice-President of the Executive Council) [11.12 p.m.]: I move:

That this House do now adjourn.

NARDY HOUSE, QUAAMA

The Hon. ELISABETH KIRKBY [11.12 p.m.]: A group of concerned parents in the Bega district is raising money to establish a residential home to enable severely disabled children to live as independently as possible in home-like surroundings. They wish to establish a place where the children can spend their childhood and then remain there when they become adults. They have obtained 5½ acres of land and are now raising the money to build the house, to be known as Nardy House, at Quaama. Although it is isolated, it is only 22 kilometres from Bega District Hospital. The Nardy House Committee has attempted to negotiate with the southern highlands region of the Department of Community Services - DOCS - about its project, but with most unsatisfactory results.

Able Solutions, consultants used by Bega DOCS, carried out a brief survey. Indeed, the statistics which were presented to the department were collected in one day. The survey requested only the age of the child and the level of disability. If the DOCS office in Bega completed the Able Solutions work sheets, why were these children omitted? They were DOCS clients and DOCS were well aware of their level of disability. The committee has accessed the work sheets prepared by Able Solutions and the covering letter that the consultants sent to the DOCS agencies. They are totally dissatisfied with the way their application has been handled. They have asked me to ask the Minister the following questions.

Can the Minister explain why the Nardy House Committee was informed by DOCS officers that their clients were omitted from the original plan because they had not applied for accommodation? The Able Solutions survey asked a question about accommodation. Area management and the local DOCS were aware of the stated needs of the parents regarding a permanently staffed house for children with severe disabilities. Can the Minister explain why in answer to a question in Parliament he said that the three children with a physical disability were not included in the original plan at Bega? The Minister said, "These children were not included because they had not accessed nor applied for services."

The children have physical, sensory and intellectual disabilities. They access DOCS services weekly through the Department of School Education system and have done so for the past nine years. All these children are serviced by a case manager. Currently, the only respite available to these children is at Bradley House in Goulburn. In the past, respite residents have only been able to access a bed when permanent residents have gone on holiday. Essentially, they are accessing someone else's bed and they want the Minister to define respite. Why are home duties, ironing and personal care, showering and bathing, classified as respite when listed as a service

type provided by the Home Care Service? Does the Minister really believe that this is the meaning of respite care?

I request that the Minister conduct a full investigation into the treatment of the Nardy House Committee by DOCS in Bega. These parents are raising their own money to establish a permanently staffed house for children with severe disabilities. They are attempting to fulfil a need that the Government cannot meet at the moment. They are being treated very shabbily. I go so far as to say that they have been lied to by the staff of DOCS in Bega. The Minister should look into this matter because these parents are only trying to achieve exactly what the Hon. J. Kaldis has achieved in Sydney - a facility to care for some severely disabled young adults who happen to be autistic.

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The Government of the day applauded the Hon. J. Kaldis when he did that, and it assisted him. In fact, that facility is known as Kaldis House, and the Minister opened it. Why cannot the same treatment be given to the Nardy House Committee in Bega?

LEGAL FEES

The Hon. Dr B. P. V. PEZZUTTI [11.17 p.m.]: I draw the attention of honourable members to a notice issued by the President of the Law Society, Mr Patrick Fair, which states:

When Mike Carlton commented on radio last week that "Lawyer bashing is fun" he was expressing a popular view. He might have added "and completely harmless, most of the time". After all just about every section of the community gets a serve from the media from time to time. This, however, does not excuse the comments of the Legal Services Commissioner made at the launch of his annual report on 1 April nor many of the comments he made subsequently on radio and to the press.

The comment of the Legal Services Commissioner that initially caused the Law Society to react was reported in the lead story in the Herald the following day entitled "Damning Verdict on Lawyers". In that story the Commissioner was reported as saying "charges are soaring despite deregulation of legal fees in 1994 which was intended to help people find cheaper prices." and later in the article "the State Government's decision in 1994 to abolish the published scale fees for legal work may have disadvantaged consumers rather than helped them to shop around for cheaper fees." He linked these assertions with his personal concern: "I think charges are becoming so high that the common person cannot afford it".

There are a few things wrong with these comments. The Commissioner has no direct evidence of the direction the price of Legal Fees is taking in New South Wales. The abolition of scale fees obviously has helped consumers to "shop around for cheaper fees" but the Commissioner has no evidence at all of the overall level of legal fees or what the ordinary person can or cannot afford.

The comments fail to take into account the favourable effect of the introduction of speculative fees arrangements on access to justice. The comments also run counter to available data which indicates the price of conveyancing services (representing approximately one third of the profession's business) have fallen. Profiles of the incomes of lawyers suggests strong competitive pressure on costs and declining incomes. In addition a study conducted by the Justice Research Centre has found that the demographic make up of court users reflects the community at large: suggesting that people in need of the courts do in fact have access.

So what were these comments really all about? They were not constructive. They were not based on information in the report. They were merely baseless opinions: lawyer bashing and gratuitous. Our principal external regulator thinks he has an open licence to make generally pejorative comments about the profession as a whole because of inevitable instances of bad practice.

When the Commissioner was challenged to justify his comments it took a few days for his position to change. Initially he denied the comments. He is quoted in the Financial Review as saying "I never said legal fees were so high that ordinary people can no longer afford a lawyer. I made no such claim in my annual report or in the press". The Financial Review journalist was amazed at the direct contradiction of the reports from the previous day's Herald so he checked with the Herald journalist who said "I have a tape". However, the following day the Commissioner changed his position and the Herald reported "Watchdog Digs In" saying "Mr Steve Mark is holding to his claim that NSW Lawyer's fees are rising beyond the reach of the public despite strong protests from the Law Society . . . " His justification? "What we know is what the public is telling us through the complaints system and they are saying they can't afford what they perceive to be rising costs".

The Commissioner's position became clear. The Commission has not measured the number of complainants who hold the view reported about "rising prices" or the effect of deregulation. He is reporting his perception from the perceptions of complainants. This is a weak basis indeed for what the Herald described as his "Damning Verdict on Lawyers".

After all, the job of the Legal Services Commissioner is to receive complaints. The fact that complaints are received is not, of itself, indicative of any overall trend, particularly when the overall number of complaints referred to the Law Society declined by 15.5 per cent during the period. Consider, also that, in the previous year, less than 10 per cent of the profession had complaints made (right or wrong) against them. The number is probably similar for the period covered by the Commissioner's report.

The role of the Legal Services Commissioner as co-regulator of the profession is an important one. The Law Society supports the role of the office and cooperates with it in the handling of complaints and in many other ways. Along with the powers of his office Mr Mark has a responsibility to be fair to the profession and to inform the public accurately regarding the profession and its affairs.

I seek leave to incorporate the remainder of the article in *Hansard*.

The PRESIDENT: How much of the article does the honourable member wish to incorporate?

The Hon. Dr B. P. V. PEZZUTTI: It is half a column.

The PRESIDENT: Is the document publicly available?

The Hon. Dr B. P. V. PEZZUTTI: Yes, it is.

The PRESIDENT: It is not appropriate for honourable members to incorporate documents in *Hansard* if they are publicly available.

The Hon. Dr B. P. V. PEZZUTTI: The article continues:

The most important allegation made by the Commissioner in his report that "many" lawyers fail to disclose their fees as required by law. I suspect this comment is literally true in the sense that the number of lawyers who fail to disclose fees -

[*Time expired.*]

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CUDMIRRAH NATIONAL PARK EXTENSION

The Hon. I. COHEN [11.22 p.m.]: The Cudmirrah National Park is just south of Sussex Inlet, on the south coast of New South Wales. It was gazetted in November 1994, adding 2,365 hectares to the national estate. The Cudmirrah National Park spans the small catchments of Swan Lake and Terrara Creek. It has, apart from small areas which were logged, retained its original floristic composition and structure. There are 12 threatened or endangered fauna species and at least four rare and endangered flora species within the current park boundaries. The existing park boundaries are not the original park boundaries. Cudmirrah National Park's boundaries were originally different, and there are several reasons why Cudmirrah's borders should be reconsidered. Currently Cudmirrah National Park is geographically isolated from nearby national parks, such as Jervis Bay, Morton and Conjola.

The ecological and biological values that the national parks are committed to conserving are greatly enhanced by increasing the interconnectedness between national parks. Cudmirrah National Park's role in providing a comprehensive, representative and adequate conservation of the south coast's unique biodiversity could be greatly enhanced by increasing the current park area to the original proposed boundary. All indicative maps leading up to the gazettal of Cudmirrah National Park consistently included this area - extending the park boundaries west to the Princes Highway and south to Bendalong Road. These maps formed the basis for

discussion about the proposed park boundaries for 10 years.

Incidentally, despite requests for freedom of information material, the Bendalong and Districts Environmental Association has not been able to discern why the then Minister, the Hon. George Souris, altered the boundaries of Cudmirrah National Park prior to gazettal. Over the intervening years some logging has been carried out in adjacent areas. This has heightened community concerns about the eventual use of the area. Threats to the area included in the Cudmirrah National Park include development as a major landfill site for the Shoalhaven and, more recently, an area for a sewage treatment plant for Manyana. The community expressed its dismay about these proposals and logging of compartments that had not been assessed as part of the interim assessment process.

The community has persistently argued that important information about this region was not considered by the Resource and Conservation Assessment Council. RACAC subsequently included nearly all of Conjola State Forest and additional areas west of the Princes Highway as meriting interim deferral status based on the interim assessment process data and reports from the Bendalong and Districts Environmental Association. This is an indication of how strongly the local community feels about the area and its inclusion in the National Park, and an indication of how RACAC responded to such strong community spirit. The extensions to Cudmirrah National Park have wide support in the local community. Supporters of the proposal include the Bendalong and Districts Environmental Association, the Jerrinja Land Council, the Shoalhaven City Council and New South Wales National Parks and Wild Life Service and State Forests.

The extended Cudmirrah National Park would play an enhanced role in the future conservation of south coast forest communities. The proposed landfill site is now subject to the State's regional waste strategy considerations, and looks like it will be accommodated in an area that would not impact on the potential national park. This sensitive coastal area represents a unique opportunity to conserve an area that is renowned for its rare flora and fauna, its mosaic of ecological communities and sites of Aboriginal heritage significance.

It is becoming increasingly rare to be able to conserve such coastal areas, and no chances should be dismissed lightly. Once the area has been logged, once the communities are destroyed, there are no second chances. We simply cannot, with our advanced state of knowledge - both technological and ecological - replace this area. There are no more options available; the point of no return is reached as soon as that community suffers logging, however sustainable that logging operation may be designed to be. However, we have the option to add to our system of reserves, enhance the protection of regional biodiversity, and reap the benefits of this far sightedness for generations to come.

I support the Bendalong and District Environmental Association in its endeavour to extend the boundaries of Cudmirrah National Park. I applaud Shoalhaven City Council, the National Parks and Wildlife Service and State Forests in their open support of the extension. I also appreciate the Jerrinja Land Council's contribution, which would remove this land from its ownership under any future native title claim. Many traditional activities that would have been carried out on this land, over many centuries, would no longer be allowable in an extended Cudmirrah National Park. I am convinced that this level of cooperation, at a community level, is a force to be listened to, and I look forward to the

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Minister for the Environment's early reply to my questions about the likely extension of Cudmirrah National Park.

BEHAVIOUR OF MEMBERS

The Hon. JAN BURNSWOODS [11.27 p.m.]: Over the last couple of weeks there has been considerable community debate about the standards of parliamentary behaviour. I should like to say a little about the standards of parliamentary behaviour. The following series of dates are those on which the honourable member for Ermington was removed from the Legislative Assembly Chamber since the 1995 election: May 1995, twice in October 1995, Nov 1995, twice in May 1996, September 1996, October 1996, twice in May 1997, in June 1997 and an additional date in November 1996. As the Labor Party's Legislative Council duty member for

Ermington I am concerned about the level of representation this very important electorate is receiving.

The member has been removed from the Chamber on 11 occasions. On one occasion he was removed for two days and just this week he was removed for four days. My concern is that the member is deliberately not representing the electorate and deliberately letting it down. As the duty MLC for Ermington and as a local resident I am aware of this concern from talking to people in the area. The constituency has a right to expect that a member will be available, take a serious approach to issues, attend community events, show a level of commitment, perhaps, like most members of Parliament, live in the electorate, and demonstrate a serious approach to parliamentary duties. It has become clear that the member concerned is deficient in most of those respects.

The Hon. J. M. Samios: On a point of order. It surprises me to hear this tack taken by the Hon. Jan Burnswoods. This is not the purpose of an adjournment speech. If there is to be an attack on a member for some failure in his duties, a substantive motion is the correct procedure. The remarks of the Hon. Jan Burnswoods are an incorrect approach and not within the conventions of the upper House.

The Hon. M. R. Egan: On the point of order. It is clear that the remarks of the Hon. Jan Burnswoods are not a personal attack on the member. Rather they are an attack on the quality of the member's political representation, which is one of the functions performed in this House, that is, discussing matters of public importance.

The PRESIDENT: Order! So far the honourable member has not transgressed, but she is getting close to it. I behove her to be careful.

The Hon. JAN BURNSWOODS: I am expressing my concern and that of the local constituents. The dates I have recited were taken from the parliamentary record. Yesterday there was more cause for concern when the *Daily Telegraph* published a photograph of the particular member wearing a funny hat in a demonstration with a caption relating to being an alleged hotel worker. I am concerned at this quality of parliamentary representation. As the duty MLC for the Ermington electorate I consider the matter serious. This is a man who, when he was a Minister, was notorious mostly for a massive budget blow-out, most of which went on hospitality and cab charges for himself and his staff.

We have a right to expect proper behaviour, serious representation and a responsible approach to duties by a member of Parliament. My contacts with the people of West Ryde, Ermington, Eastwood and elsewhere, and my careful reading of local newspapers, make me confident in saying that that proper representation is not being given us by the member for Ermington, Michael Photios.

POWER INSTITUTE OF FINE ARTS

The Hon. J. M. SAMIOS [11.32 p.m.]: I draw to the attention of the House the continued progress of the Power Institute of Fine Arts. The Power institute is one of our great flagships in the arts. The reality is that the institute aims to become the leading centre for research, education and publication in the visual arts and culture in Australia, and to become outstanding in world terms. Those words are to be found in the director's report contained in the institute's annual report for 1996. Those are the words of Professor Terry Smith, who is the head of the Power Institute of Fine Arts. Further, the institute states:

Our mission is to develop the latest ideas and theories concerning visual art and culture - past, present and future - and to communicate them, both nationally and internationally.

An important part of the institute is the Department of Fine Arts, which was founded in 1967. According to the 1996 annual report, in that year it had 342 first-year students enrolled; 369 option enrolments for second- and third-year students in semester one, and 360 for semester two; and 29 honours students in their fourth year - a total of 611 undergraduate student enrolments. The Power institute was founded by that great Australian Dr John Joseph Wardell Power, who as founding benefactor said in his will that he wished to "bring the latest ideas

and theories . . . concerning contemporary art to the people of Australia". Incidentally, Dr Power was the grandson, I think on his mother's side, of the famous architect Wardell, who designed St Mary's Cathedral.

As I have stated, the institute is headed by that distinguished Australian Professor Terry Smith, who for 1996 reported a broad contribution to research by a number of important catalysts in fine arts, including Professor Virginia Spate, former head of the Power institute. Professor Terry Smith himself had contributed a number of works in research for 1996, including, as editor, *Ideas of the University*, for the Research Institute for the Humanities and Social Sciences and Power Publications; a work entitled "Modes of Production: The Spectre and *The Stonebreakers*" that appeared in *Critical Terms for Art History*; as well as, of course, "Kandinsky and the Russian Avant-Garde" in *Art and Australia*. Professor Virginia Spate also continued to contribute, with "Where the Sun Never Set. Tom Roberts and the British Empire". The Department of Fine Arts has played a pivotal role in producing a number of important curators both for this State and for Australia. [*Time expired.*]

OLD SYDNEY TOWN

The Hon. M. J. GALLACHER [11.37 p.m.]: I take this opportunity to bring to the attention of all members concerns that have been raised with me by a number of central coast residents about the deterioration of an important part of our heritage, a true asset for the State - if not the entire nation - and one of New South Wales most significant regional tourist attractions: Old Sydney Town at Somersby. My comments are not designed to denigrate this asset, which belongs to each and every one of us. I wish only to bring to the attention of the House how conditions have been allowed to run down. Unless the Government intervenes quickly, it will be only a matter of time before the doors of this tourist destination are forced to close.

Some months ago I attended Old Sydney Town for the first time as a paying tourist. I had been there previously in an official capacity when performing duty as a local detective investigating crimes that occurred from time to time in the park. Others with me reported that they had not been to the park for in excess of 10 years and that very little had changed. Some might argue that the fact that little has changed in the park during that time is an indication of its success, because the theme of the park was to maintain its original character. But when I remembered that this park is designed to attract both domestic and international tourists, I was disappointed. I was disappointed not by the hard work of people working in Old Sydney Town as actors or by those conducting their small businesses, but rather by the general condition of the park.

From the moment I arrived I found that the tourist attraction looked very much in need of rejuvenation, not modernisation, to protect the unique qualities of the park. The animal park within its confines is designed to give children an opportunity to view and experience native animals first hand. I saw animals living in very poor accommodation and conditions not in line with those stipulated in government legislation. I found the overall general condition of the park somewhat poor, if not dangerous. Pedestrian access to the animal park from the main village is merely a dirt road that is constantly used by bullock-drawn carriages carrying tourists who elect to take the ride instead of walking. The sails of the windmill, underneath which tourists often gather, are rotting.

I have since conducted some investigations into the park and found that it belongs to the people of New South Wales; it is merely operated by a private consortium. I have also learned of the many promises made by previous governments about Old Sydney Town and the way in which such promises have fallen away. Old Sydney Town is located on an extensive parcel of land owned by the State Government. The attraction itself is also owned by the State Government, but it is leased to an overseas-based entertainment company. In 1985 the then Minister for Sport and Recreation and Minister for Tourism, Mike Cleary, was alarmed by the deterioration of the park and in an endeavour to save this most valuable resource for future generations, and particularly for the 1988 bicentennial celebrations, he called for tenders to lease the theme park.

Later the Minister announced that the successful lessee, Far East Hotels and Entertainment Pty Ltd, had guaranteed \$15 million and, according to some reports, up to \$20 million to revamp the theme park. The Minister also approved up to \$5 million of State money to further assist the development. If the money was ever

provided from either party, where did it go? Among the promises made by the Minister as a result of the lease agreement was a promise that the historic church would be fully completed. That promise was made in 1985. A few months ago when I was at Old Sydney Town the church did not have a roof or windows, and it was totally incapable of providing a dry, shaded area for tourists to watch the show that takes place in the church.

Similarly, other aspects of the park, such as the well-known vessels *Perseverance* and the *Contest*, are totally closed off to tourists because they are not safe. I have seen photographs in which *Perseverance* had two beautifully maintained fully rigged masts. All that is left is one decayed mast

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sticking up in the middle of a rotting hull. The *Contest* has sunk. About a year ago an 18-month-old baby fell through the hull of *Perseverance* into the lake, but was fortunately saved by an off-duty police officer. I reiterate that my reason for raising the matter is in no way meant to denigrate the theme park or its personnel.

I have made it my business to speak with a number of staff from Old Sydney Town, and I am told that they are all concerned about its future. But they are also concerned about the possible ramifications for their continued employment if they speak out. The Federal member for Robertson, Mr

Jim Lloyd, supports what I have said. He has spoken out in defence of Old Sydney Town in the past, and he is also known to the staff. Like the staff, we are truly interested not only in the tourist potential of the park, but also in its heritage value to the people of New South Wales. During the 1980s the community pressured the Wran Government and it is our intention to pressure this Government during the 1990s to save Old Sydney Town for the people of New South Wales.

Motion agreed to.

House adjourned at 11.42 p.m.
