LEGISLATIVE COUNCIL

Wednesday 4 July 2001

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The President (The Hon. Dr Meredith Burgmann) took the chair at 10.00 a.m.

The President offered the Prayers.

PETITIONS

Wildlife as Pets

Petition praying that the House rejects any proposal to legalise the keeping of native wildlife as pets, received from the **Hon. Richard Jones**.

Council Pounds Animal Protection

Petition praying that the House introduce legislation to ensure that high standards of care are provided for all animals held in council pounds, received from the **Hon. Richard Jones**.

Medically Supervised Heroin Injecting Rooms

Petition opposing the establishment of medically supervised heroin injecting rooms, and praying that the House pass legislation to establish rapid detoxification naltrexone drug rehabilitation centres, received from **Reverend the Hon. Fred Nile**.

AGRICULTURAL AND VETERINARY CHEMICALS (NEW SOUTH WALES) AMENDMENT BILL

CO-OPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) BILL

Second Reading

Debate resumed from 26 June.

The Hon. IAN COHEN [10.05 a.m.]: The Greens support the bills. The Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill is a technical bill that addresses a constitutional issue raised by a recent decision of the High Court. In a briefing note circulated by the Government the following statement was made:

> Agricultural and veterinary chemicals make a vital contribution to achieving an internationally competitive and sustainable agricultural market in Australia. The gross value of farm production in Australia during 1999-2000 was over $30 billion. During the same period, agricultural and veterinary chemicals sales exceeded $2 billion. The use of chemical inputs into this market has enabled the reliable supply of quality food and fibre products which, in turn, contribute to the health and well being of the entire community.

Although I support the bill, I should give the counter argument to that type of comment. The clear suggestion in the briefing note is that the use of agricultural chemicals is contributing to the health of the community. I strongly disagree with that statement because there have been significant problems with

agricultural chemicals, and we have a duty to examine the way these chemicals are misused. Chemicals are part of the reality of modern day farming, food production and fibre production. However, my experience as a member of the Standing Committee on State Development examining sustainable agriculture has been that people working in the industry and residing nearby suffer considerable problems. The misuse of chemicals must be critically examined because it can have a deleterious effect on the community and the environment. An article in the *New Internationalist* of May 2001 entitled "Pick your poison—the price we pay for using pesticides" states:

> Today there is widespread concern about such health problems, but when synthetic pesticides first came into widespread commercial use some 50 years ago they were hailed with euphoria. Dr Paul Muller, the Swiss inventor of the organochlorine insecticide DDT, won the Nobel Prize.
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> It was not until the Second World War that a revolution occurred in bug-killing. DDT was the first synthetic insecticide to be widely used. Five years later, insects started to develop resistance and organophosphates, a new generation of insecticides, came into being based on nerve gases. The first generation of organophosphate poisons was tested on prisoners in the Nazi concentration camp at Auschwitz.
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> These chemicals were different than those that had gone before in two significant ways: first, that they were entirely synthetic, that is, developed in a laboratory. And second, they had the ability to attack the nervous system, killing and disabling with deadly accuracy.
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> What worked against people could also kill bugs. And so a mighty industry took to the air, spraying chemicals and killing pests.
>
> Today, the World Health Organization estimates that at least three million people a year are poisoned by pesticides and that 200,000 people die …
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> But the real problem goes far wider than this. Pesticides are not just responsible for accidental poisonings. They have become a part of us and our environment in a way that could never have been imagined half a century ago.
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> Around 100,000 pesticides are now in regular commercial use worldwide with more than 2.5 million tons applied to fields each year. So widespread are these poisons in our environment that every person on earth has absorbed at least 250 synthetic chemicals into their body. And women all over the world now produce breastmilk containing traces of the insecticide DDT (though breastmilk remains the safest option for babies).
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> Pesticides waft into the air, sink into the soil and leach into rivers and streams. They also travel long distances: the polar bears, seals, birds and the Inuit people who live in the Arctic have some of the highest recorded levels of chemical contamination in the world, even though they are thousands of kilometres away from where the chemicals are used …
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> So what has been the argument for the continuing use of pesticides? Mainly that they increase crop yields. But at what price? Unfortunately, over time some pests gradually become resistant to certain pesticides which means that companies have to come up with stronger and more deadly chemicals to try to kill them. It's an escalating cycle of poison.
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> The corporations defend their position by saying that only by using pesticides can we feed a hungry world. (The same arguments are used for genetically modified crops—but then many of these are produced by the same companies that make the pesticides) …
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> But this equation ignores three crucial factors. First, world hunger is not caused by food shortages. There is more than enough food for everyone. The world today produces more food

per person than ever before. People are hungry because they are too poor to buy the food available, not because there is not enough. We don't need more food, we just need a fairer way of distributing it.

The Hon. Duncan Gay: Point of order: The Hon. Ian Cohen has strayed well beyond the leave of the bills, which complement Federal legislation. While I understand that the honourable member has very strong views about these issues, he is simply indulging himself and unnecessarily taking up the time of the House.

The Hon. IAN COHEN: To the point of order: I do not believe I am taking up the time of the House unnecessarily. I am referring to a specific briefing note on the bills that the Government gave to crossbenchers, and I am commenting about chemical sales in the community. I think the Deputy Leader of the Opposition reacted when he heard something that he found hard to deal with.

The PRESIDENT: Order! Even in second reading debates, members' speeches must be relevant to the topic. I believe that the Hon. Ian Cohen is not straying too far from the legislation under debate.

The Hon. IAN COHEN: I thank you for that judgment, Madam President, which proves that this House is relevant. The article continues:

> Second, 80 per cent of pesticides are used in the rich world. And many of these are used not to grow food for humans but to produce animal feed for livestock. Third, most pesticides in the Third World are used on export crops—most of which are eaten by people in the West.
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> Agribusiness is a mindset, a way of thinking which dominates our current model of industrial agriculture and is inextricably linked to increased use of agro-chemicals. It is an approach to food production which sees the soil only as a source of profit and the earth as a resource to plunder. It dismisses pesticide poisonings as accidents and refuses to acknowledge the links between health and the environment and the increased use of pesticides. It sees agriculture only as business and farmers as business people rather than guardians of the land.
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> The corporations which profit from the pesticide industry have a vested interest in keeping it alive—or in replacing it with one in which genetically modified crops reign supreme. That's because pesticides make money: in 1998 the business was worth $31 billion. And much of it resides in the hands of a few companies: 10 agrochemical corporations control 73 per cent of the world market in pesticides; the top 20 control 93 per cent.

In Wollongong last weekend, two meetings examined the devastating disease known as multiple chemical sensitivity [MCS], which, unfortunately, is becoming increasingly common. The Australian Chemical Trauma Alliance heard some important presentations from eminent experts. Unfortunately, these experts predicted a likely epidemic of MCS unless there is a massive reduction in pesticides and other chemicals used in all aspects of our society. This is particularly necessary for pesticide use in agriculture.

The Australian Greens also held a meeting in Adelaide on the weekend to develop a policy on MCS. The cause of MCS is long-term exposure to chemicals. It is suggested that many diverse health problems in society, such as behavioural difficulties in children, asthma and even high suicide rates in rural areas, are linked to increased chemical use and MCS. In the worst cases, MCS is a totally debilitating disease. Sufferers who come into contact with a tiny amount of the chemicals used every day in homes and workplaces can become extremely ill. The Greens support clean, green agriculture that does not depend on chemicals and provides people with a healthy and environmentally sustainable food supply. I thank the House for allowing me to put those comments on the record.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.14 a.m.]: The Australian Democrats support

the Agriculture and Veterinary Chemicals (New South Wales) Amendment Bill and the Co-operative Schemes (Administrative Action) Bill. We believe that these bills address the legal problems highlighted in *The Queen v Hughes*. The object of the proposed Act is to formalise the exercise of powers and functions conferred by State laws on Commonwealth authorities and officers. The intention is to fix a constitutional anomaly that has lain beneath the surface of administration law since Federation. It will make changes to the national registration scheme conferring certain powers on Commonwealth agencies, such as the Administrative Appeals Tribunal, the Director of Public Prosecutions and other authorities. The bills will also rectify what Justice Kirby and the Minister for Agriculture have described as "gaps" in the co-operative legislative scheme relating to the conferral of certain functions that State legislation has delegated, over time, to the Commonwealth.

The bills are part of a raft of legislation that Parliament has passed in reaction to issues raised in the High Court's decision in *The Queen v. Hughes*. I could quote Justice Kirby's judgment at some length, but I will spare the House that joy—although I know that the Deputy Leader of the Opposition is enthusiastic to hear those comments. That decision raised important legal issues that require the attention of parliaments throughout the Federation, and no doubt more bills will follow. I have some sympathy with the Greens position on this topic. I also attended the chemical conference on the weekend, at which I also spoke. However, I do not think that matter is relevant to these bills. We certainly need to take a broader approach to agricultural chemicals, but that is beyond the scope of this legislation, which simply legitimises functions.

Reverend the Hon. FRED NILE [10.16 a.m.]: The Christian Democratic Party supports the Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill. This is simply a machinery bill resulting from a decision of the High Court. That decision cast doubt on the ability of the Commonwealth authorities and officers to exercise powers and perform functions under State laws in relation to several intergovernmental legislative schemes. In *The Queen v Hughes* the High Court indicated that when a State gives a Commonwealth authority or officer a power to undertake a function under State law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function and one or more of the legislative heads of power of the Commonwealth Parliament set out in the Commonwealth Constitution. *The Queen v Hughes* also highlighted the need for the Commonwealth Parliament to authorise the conferral of duties, powers or functions by a State on Commonwealth authorities or officers.

This bill refers to the Federal Constitution, which was adopted on 1 January in 1901, and the separation of powers between the Commonwealth and the States. Over time, more and more powers—particularly regarding taxation—have been assumed by the Commonwealth. However, the High Court correctly continues to draw a distinction between Commonwealth and State powers. If the State gives powers to the Commonwealth, they must somehow relate to the Commonwealth Constitution and the authority under which the Commonwealth exercises those State powers. That matter must be kept under constant review to protect the sovereignty of State governments and parliaments, particularly the New South Wales Parliament.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.19 a.m.], in reply: I thank honourable members for their contributions to the debate, and I commend the bills to the House.

Motion agreed to.

Bills read a second time and passed through remaining stages.

WESTERN SYDNEY REGIONAL PARK (REVOCATION FOR WESTERN SYDNEY ORBITAL) BILL

Second Reading

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [10.21 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to revoke the reservation of approximately 18.2 hectares of land within the 580 hectare Western Sydney Regional Park and vests its ownership in the minister for urban affairs and planning. This land is required for the Western Sydney Orbital project.

The Western Sydney Orbital is a vital project for the economic development of Western Sydney. It will cost about $1.25 billion and provide $2.0 billion in benefits to road users. It will reduce traffic on existing routes enhancing amenity for those living along these routes.

The need for the land being required for the Western Sydney Orbital has been known since 1994, well prior to the establishment of the regional park in 1998.

In 1996, the Roads and Traffic Authority ("RTA") reached agreement with the Department of Urban Affairs and Planning for the RTA to acquire land for the project and entered into a contract to purchase part of the relevant land.

In 1997 the relevant land was transferred to the National Parks and Wildlife Service and became part of the park. It was always recognised that when the boundary of the Western Sydney Orbital was finalised, the land would revert to the Department of Urban Affairs and Planning and become available for the project.

Alternative options to using land within the park were examined but were found to have more adverse consequences than the adopted route. The adverse consequences were either financial or involved acquiring numbers of residential properties.

The revocation will not impact on the viability of the park as a regional recreational facility. The environmental assessment of the project discloses no significant impact resulting from the excision of the land from the park. Indeed, the representations made following exhibition of the environmental impact statement did not raise the revocation as an issue.

The RTA will pay the Department of Urban Affairs and Planning $3m compensation for the transfer of relevant land. These funds will be used to meet the statutory obligations of the Sydney region development fund, including the purchase of remaining private lands within special uses and open space corridors.

The Government has decided that any of the revoked land surplus to the project will be returned to the National Parks and Wildlife Service.

I commend the bill to the Legislative Council.

The Hon. CHARLIE LYNN [10.22 a.m.]: The Opposition will not oppose the Western Sydney Regional Park (Revocation for Western Sydney Orbital) Bill. The object of the bill is to revoke the reservation under the National Parks and Wildlife Act 1974 and to excise 18.2 hectares of land within the Western Sydney Regional Park. This land is required to enable the construction of the Western Sydney Orbital road as a toll road. The Western Sydney Orbital is the vital missing link of the national highway. It

will link the Hume Highway and the M5 motorway at Preston in the south to the M2 motorway at west Baulkham Hills in the north. The Western Sydney Orbital will form part of the national highway, linking major employment, industrial and residential areas throughout Sydney.

As a result of the structure for the funding of roads established in the mid-1970s under the Whitlam Government, the Federal Government will bear the responsibility of funding roads of national significance. For this reason the Federal Government will provide funding for the construction of this 39-kilometre orbital road, which is estimated to cost around $1.25 billion. The Western Sydney Orbital certainly has its merits. It will bypass 56 sets of traffic lights and will save motorists and freight vehicles up to an hour on the road. Anyone who has travelled between those two roads would be aware of the frustration involved in having to negotiate up to 56 sets of traffic lights. Obviously this orbital road will enable major traffic that is commuting between the North Coast and the South Coast to bypass congested western Sydney suburbs, which will significantly improve road safety.

In addition, smoother and safer roads will attract business to the west, further strengthening western Sydney as one of the key economic centres of New South Wales. It is fundamental to the regional and economic development of western Sydney. One journalist, Lisa Allen of the *Australian Financial Review*, described the Western Sydney Orbital as the road to riches for Sydney's west. In an article on 5 January 2001 she quoted Katie Lahey, Chief Executive of the New South Wales State Chamber of Commerce as saying:

> The orbital road would deliver significant economic benefits to the business community.

The article also states:

> She estimated that the project would create 24,000 jobs over an eight-year period and boost the regional economy by $3 billion.

The Labor member for Fairfield, Joe Tripodi, who acknowledged the potential benefits for Sydney's west, is quoted as saying:

> Business will be over the moon.

In relation to the proposed toll for the orbital, Joe Tripodi said:

> Those businesses that can save money by using the toll road will opt to do so; those businesses that find it too expensive can continue to use the public roads.

Public roads will be easier to access because there will be less congestion on them. The bulk of the traffic will be utilising the orbital road. The Federal Coalition Government sees western Sydney as a priority, as does the New South Wales Opposition. Whilst the orbital road will benefit western Sydney and other parts of New South Wales in general, we should not underestimate the impact its construction might have on residents, on endangered or vulnerable species of flora and, in particular, on rare snails in the area, because clearing will be unavoidable during construction. We must, therefore, carefully consider the environmental aspects of the proposal.

The Opposition is fully aware of the significance of an environmental impact statement [EIS] and a species impact statement [SIS] in the decision-making process for a project of this magnitude. We believe that these reports must be thoroughly researched to provide us all with the information we need on which to base our decisions. The environmental impact statement has identified six vulnerable or endangered species of flora along the planned 39-kilometre road and 43 sites where listed vegetation would be impacted. I obtained that information from an article in the *Sydney Morning Herald* on 15 January this year entitled "Ring Road to disrupt rare plants and snails".

I understand from both the Minister's office and the office of the shadow Minister for Transport and Roads that representation reports are yet to be finalised. The Opposition is concerned at this revelation. We believe that no legislation should be finalised before we have had a chance to study the report. The shadow Minister in the other place pointed out that the bill pre-empts the environmental impact assessment process, in particular as the representation report that considers submissions made regarding the EIS and the SIS has not yet been finalised. Unfortunately, that seems to be the normal modus operandi of this Government. I recall that it used a similar approach when it opposed the Opposition's Crimes (Sentencing Procedure) Amendment (Life Sentencing Confirmation) Bill. I simply cannot understand why the Government is in such a hurry to push through this legislation before the proper representation report is finalised. The other concern that the Opposition has relates to the ongoing secrecy and arrogance that are becoming the hallmark signature of this Government. I refer to the briefing note of the Minister for Transport, and Minister for Roads in which he said:

> The Western Sydney Orbital concept has evolved over the past 27 years; WSO overview report was prepared in 1995 ... Western Sydney Regional Park was gazetted 15 May 1998—including 18.2 hectares required for WSO ... EIS exhibited from 4 January 2001 to 5 March 2001. Representation report is being finalised.

However, many residents of western Sydney are concerned that the Western Sydney Orbital might cut through their area and therefore ruin their semi-rural lifestyle. Many of them wrote to the Department of Urban Affairs and Planning demanding an answer. An article in the *Daily Telegraph* of 2 February this year states:

> A letter two years ago from the Department of Urban Affairs and Planning to Mr. Schembri's solicitor said the Department could not give "any guarantee that the land will never be required for some public utility"—but the Department had "nothing planned" for the eastern section of the corridor.

Residents in Cecil Hills are disgusted at the Government's non-consultation and its secrecy in relation to matters that will seriously affect their daily lives. Again, according to the *Daily Telegraph* of 15 January 2001, a total of 191 properties will be bought. There is no doubt that the Western Sydney Orbital will bring broad economic benefits to the west. These benefits include better employment opportunities and greater commercial and business activities at lower costs. Despite these benefits we should bear in mind that this should not happen by compromising the interests of residents along the route and at the cost of endangering vegetation, rare plants and animals and, in this case, rare snails. I therefore urge the Government to take sufficient notice of these concerns and to make informed decisions after the representation report is finalised. The Opposition will not oppose this bill.

Reverend the Hon. FRED NILE [10.30 a.m.]: The Christian Democratic Party supports the Western Sydney Regional Park (Revocation for Western Sydney Orbital) Bill. The object of this bill is to revoke the reservation under the National Parks and Wildlife Act 1974 of certain land as part of the Western Sydney Regional Park and to vest that land in the corporation sole known as the Minister administering the Environmental Planning and Assessment Act 1979. The land will obviously be used for the Western Sydney Orbital tollway. Those of us who have lived in Sydney for most of our lives consider that this orbital tollway is long overdue. The Hon. Charlie Lynn has already outlined the many advantages of the orbital, so I will not repeat them. One of the main advantages will be to divert heavy traffic, which is currently required to go through inner-city suburbs, by the use of a ring-road or, as it is described in this bill, an orbital tollway. The tollway will provide a great many advantages for the people of Sydney.

The project will require the revocation of the reservation of approximately 18.2 hectares of land within the 580-hectare Western Sydney Regional Park. The ownership of such land is to be vested in the Minister for Urban Affairs and Planning. That land has been identified for the Western Sydney Orbital since at least 1994, if not before. Even when the land was transferred to the National Parks and Wildlife Service in 1997, it was recognised that when the plans for the Western Sydney Orbital were finalised the

land would revert to the Department for Urban Affairs and Planning to be made available for the project. The revocation of the land will not have any impact on the viability of the park as a regional recreational facility. The Roads and Traffic Authority will pay the Department of Urban Affairs and Planning $3 million compensation for the transfer of the relevant land. Those funds will be used to meet the statutory obligations of the Sydney Region Development Fund, including the purchase of remaining private land within special uses and open space corridors. For those reasons we support the bill and trust that the House will also support it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.32 a.m.]: The Australian Democrats accept the necessity for the creation of the Western Sydney Orbital. However, we believe that the poor management of rail has increased the demand for this road. Carriages that were built to provide a good train service were not purchased. I believe, in fact, they were sold to New Zealand. The new stock being built will be known as the Millennium trains. The original stock was to be called the Olympian. For some time there has been a shortfall in rail carriages. For that reason there have been insufficient trains to run the service from Macarthur up the line through Campbelltown to Parramatta. Had sufficient trains been made available for that route, the people of western Sydney would not have become car dependent.

The road lobby has triumphed. People have been forced to travel on roads that are not designed to take heavy traffic loads. People have become car dependent and they are now screaming for this orbital. If more carriages had been made available, people would not have become accustomed to travelling by train and western Sydney would not have this immense necessity for an orbital road. The road is necessary but the need has been exacerbated by the lack of train transport. That illustrates what happens when a good train service is not provided. People will not consider travelling by trains, they use cars and then demand more roads. With the rising cost of fuel, the problems of air pollution and the falling Australian dollar, it is a short-sighted approach for Australia to become increasingly car dependent. Australians should become less car dependent and should travel by train, if possible. Our cities should be planned on higher density living close to railway stations in order to prepare for the eventuality that fuel will be too expensive to use. We should not assume an endless ability to use cars.

As I have said, the Australian Democrats agree that the orbital road is necessary, but it must be linked to a rail development in western Sydney. I will move an amendment that will set aside an easement within the corridor for the later development of rail. The development of rail in association with roads, in fact located in the centre of roads, is a feature of the new expressways in Western Australia and in Washington DC. I will speak more about that at the Committee stage, but it is important to put it on the record in the second reading debate. Assuming the need for an orbital road in western Sydney, a rail link should be constructed up the orbital route from Glenfield to west of Eastern Creek and up through Rooty Hill.

The rail link should continue into the north-west sector through to Schofields. Because of lack of proper planning up the Windsor Road, people in those areas have become car dependent rather than train dependent, which creates many problems for the environment, for air and for transport. The construction of a rail link up the orbital will overcome those problems. I have spoken to the Minister for Transport, who said that the Government would be pleased to have a rail link if someone were willing to pay for it. As I said, I will move an amendment that will make an easement available for the construction of a rail link.

The real purpose of this bill is to allow land that is part of the Western Sydney Regional Park to be sold for the purpose of constructing the orbital. A problem has arisen which is, in essence, that the road cannot be approved until the park land is sold and the park land cannot be sold until the road is approved. The provisions of this bill will overcome that problem. The Australian Democrats consider that planning problems with roads, or any other construction, should be covered by existing framework. The Government should not introduce a bill that overrides planning instruments. Planning instruments should be universal. The same issue was raised during debate last night on the Sydney Olympic Park Authority Bill, which did not have to comply with the Environmental Planning and Assessment Act 1979. What is the

use of setting up procedures to protect the environment and so on if this House abolishes existing planning instruments in any bill of interest? It is a most unsatisfactory way to proceed when dealing with corporate governance in our State.

I will move an amendment in Committee so that the land cannot be sold until there is approval under the Environmental Planning and Assessment Act 1979 for the construction of the Western Sydney Orbital. The Minister has told me that this cannot happen because planning permission cannot be granted until this bill is passed. Once again, it is the chicken or the egg argument. Nevertheless, I will move my amendment to highlight the problem. The bill does not include its stated purpose. I will move an amendment to insert the purpose of the bill. I understand that the Government will agree to that amendment. For the sake of completeness, the purpose and objects of a bill ought to be stated. Last night, the Sydney Olympic Park Authority Bill was amended to insert the objects of the legislation. The omission of a statement of objectives is a weakness in the bill. We ought to know what we are talking about and why.

I will move an amendment to provide that an easement for rail must be worked out at the time the road is built. If the road is built without that easement, providing a rail service at a later time will become immensely difficult, as the approaches, the stations and so on will have to be squeezed in. The changes necessary to provide a rail service will be immensely expensive and the bottom line will be that the Government will claim it cannot build the railway. When a rail service is suggested in western Sydney one hears the line: "Why put a rail service there, there are no people." If people move there the line used is: "Now the people are there we cannot afford the land and a rail service cannot possibly be built". The rail service never gets built, basically because of a lack of willingness to sell the bonds to build the railway. If there is a easement, and some future government has some courage and vision, or the price of petrol gets to crisis point, a rail service can be built.

If the easement is not provided for, perhaps the problem could be solved by simply making the median strip a little wider and extending the bridges by one section to accommodate any proposed rail system. The surveying of the rail system could then be done when the Western Sydney Orbital is built. If the Commonwealth pays for the Western Sydney Orbital, which is looking increasingly dubious as Badgerys Creek fades into the never-never, at least the survey will be there for future use. If the State Government has to pay for the Western Sydney Orbital, it may want to do so at a later time, but we would like that easement to be provided for. I support the bill within the framework I have described.

Ms LEE RHIANNON [10.41 a.m.]: The Greens are totally opposed to the construction of the Western Sydney Orbital, so we most definitely oppose the bill. The Western Sydney Orbital proposal does nothing for the people of western Sydney. It is a massive con job. It will service only trucking interests and people passing through. It will make the lives of people in western Sydney worse, especially from the added pollution that goes with such projects. We understand that 18.2 hectares of land will be excised from the Western Sydney Regional Park to construct this western Sydney tollway. That is a serious development considering the lack of open space in that area. We understand that the end result will be a 39-kilometre scar across western Sydney at a cost of $1.25 billion. It will encourage private car use. Motorways attract traffic. These special roadways bring more cars onto the road, which means more pollution. We know from the topography of the Sydney basin that pollution lies in that area. The new roadway will mean greater consumption of fossil fuels. It will exacerbate traffic, and global warming will be raised. The proposal is a backward step, both locally and globally.

We are often sold the line that motorways solve traffic problems. They may provide a temporary solution. We may be able to bypass some of those traffic lights that the Hon. Charlie Lynn told us about and get to our destination 20 minutes earlier. That does not last long. I remember all the carry-on about the F3. For a long time it made the journey quicker. Ask the people coming from the Central Coast how often they sit in traffic jams now. The M5, the M4, the M2 and the Eastern Distributor have all been con jobs—as this proposal is—at huge prices. Members on the Coalition side guffaw, but the toll could be $6 or $7. Motorways will make the situation worse. If it is going to cost $6 or $7 to travel on the Western

Sydney Orbital, the majority of people in western Sydney will not be regular users.

One of the big concerns for the Greens is that a large chunk of the Western Sydney Regional Park will be cut out. Western Sydney does it hard when it comes to open space. We have seen the problems involved with the development of the former Australian Defence Industries site and the collusion of the major parties. We believe we still have a chance to have a fantastic regional park in that area. Because of the direction in which the major parties are moving, the people of western Sydney are losing out there, as it seems they will lose out when it comes to the Western Sydney Regional Park.

Western Sydney is also being done over when it comes to public transport, which is heavily skewed to the northern and eastern suburbs of the city. The buses in western Sydney are nearly all private buses. By using that lovely number 131500, which can help get people around the city on public transport, one learns how hard up the people of western Sydney are because they are not able to rely on public transport. The private buses provide an incredibly dismal service. The service is slow and expensive and the buses are often fairly grotty. The way the western Sydney private bus services are managed is one of the great scandals of Sydney. I have spoken about this before, but it is relevant to this debate to put on record the way the Bus and Coach Association mismanages transport systems in the west. The major parties have been too gutless, or they have been too fond of the donations from the Bus and Coach Association, to take on that lobby group. The public transport system in western Sydney should at least provide a decent service, even if it is not state of the art.

The Western Sydney Orbital will do nothing for the people of western Sydney. That message has to go out. It is a massive con job. Periodically the Government likes to portray itself as being concerned about western Sydney, but when one scratches the surface one finds the concern is not real. How many people can afford to pay a toll of $6 or $7 on a regular basis? People may believe the tollway will get them to work more quickly but will they use it when it costs money? Our guess is they will not and the result will be similar to the results of the construction of the Eastern Distributor, another disaster when it comes to motorway planning for the city.

The main benefit most definitely will flow to road freight and trucking companies. More traffic onto the roads will mean more pollution. That is where the bulk of the population live, and because of the topography of the Sydney basin that is where much of that poisonous pollution will hang in the air. Asthma rates are increasing and it is a scandal that this project is being pushed ahead. All the extra trucks and cars will add to the pollution in western Sydney, and the Greens are alarmed about that. We most definitely oppose the bill and continue, both inside and outside Parliament, to campaign against motorways. They are not the way to deliver transport solutions for the people of western Sydney.

The Hon. IAN COHEN [10.49 a.m.]: I feel the need to support my colleague Ms Lee Rhiannon because this the Western Sydney Orbital an important issue for the Greens. We have had a great deal of discussion about it over a period of time. Our opposition to and concerns about the motorway have been consistent because its construction will result in a building frenzy, which is typical of what we have seen with the construction of a number of other urban freeways that are destroying the quality of life for the people of Sydney. It seems that every year since I have been a member of this House the construction of yet another freeway is announced with the crazy promise that it will solve Sydney's traffic problems. The Greens do not believe that. Even though there was massive public opposition to freeway projects and huge environmental destruction as a result, we already have the M2, the M5, the M4, the M5 East and the Eastern Distributor.

We are building a network of freeways, which means that we are not dealing effectively with public transport needs and making this city more liveable. We are following the Los Angeles model of city development. That metropolis is regarded as one of the world's most populated and technologically advanced cities. The development of motorways seduces motorists and trucking industries into greater use of and reliance on fossil fuels to the detriment of our public transport infrastructure. Motorways do not improve traffic flow. They produce more noise, greenhouse gas emissions, accidents, air pollution,

congestion and road rage. It amazes me that the Government can compartmentalise the development of a motorway without considering the resulting health costs.

We have had this debate time and time again. What health costs are generated in the western suburbs of Sydney in treating children suffering from asthma? What health costs are generated as result of the increased number of accidents on motorways, accidents that would not be a factor if transport options such as rail were adopted? The Western Sydney Orbital is different from the motorways I mentioned earlier because it is funded by the Federal Government as part of the national highway system. The Western Sydney Orbital will be a major freight route. In effect it is a $1.25 billion subsidy to the trucking industry on top of the diesel rebate and dual carriageway developments on our major highways. It is a another sop to the trucking industry. The fundamental reason the Greens object to the road is that it will encourage car and truck transport. The Greens believe its direct environmental effect will be disastrous. I quote from an article in the *Sydney Morning Herald* of Monday 15 January:

> Thousands of rare plants, more than 70 hectares of delicate bushland and a rare breed of snail will be threatened by Sydney's log-awaited western orbital road.
>
> The six-volume environmental impact statement into the $1.25 billion project reveals that six "vulnerable" or "endangered" species of flora lie along the 39-kilometre road, which will stretch from Prestons in the south-west to Baulkham Hills in the north-west ...
>
> The road corridor has been aligned, where possible, to avoid impacts on threatened flora and fauna. There are, however, 43 sites where listed vegetation would be impacted.
>
> But the most controversial problem will probably be the impact on a species of rare snail. Very little is known about the biology and life history of the Meridolum corneovirens, or large land snail, which lives in a small area bounded by Cattai to the north, Camden (south), Holsworthy (east) and Mulgoa (west). It burrows into soil and is rarely seen above the surface.
>
> There are seven locations along the orbital route with threatened populations of the snail, which grows 2 centimetres high ...
>
> The affected plants include the Grevillea juniperina (1,759 plants), which is endemic to western Sydney and, according to the EIS, "is critically endangered due to habitat destruction" ...
>
> The road will also affect the endangered Pimela spicata (542 plants). The EIS says: "It is inadequately represented within conservation reserves and is likely to become extinct within 10-20 years if threatening processes and other factors affecting its survival are not addressed."

There can be no more threatening process than a motorway. The article continued:

> The Dwillwynia tenuifolia (342 plants) is listed as vulnerable under the Endangered Species Protection Act and the Threatened Species Conservation Act ...
>
> The Acacia pubescens, or Downy Wattle, (one plant) grows mainly between Campbelltown and Liverpool where, like many other plants, it has become threatened by the spread of agriculture and urban development.
>
> The Pultenaea parviflora (one plant) is endemic to western Sydney, where it grows around Penrith, Windsor and Blacktown.
>
> The EIS also lists three endangered ecological communities, including the Cumberland plain woodland (40 sites and 56 hectares); the shale sandstone transition forest (one site and 1.4 hectares); and the Sydney coastal river-flat forest (19 sites and 16 hectares).

These areas are similar to those surrounding the Australian Defence Industries site, which we have debated previously. These rare, endangered, remnant urban areas of the bush and ecosystem are under immense threat from all sorts of development. But the Western Sydney Orbital proposal is really the icing on the cake. Many members of this House wonder why we should bother about a snail; the answer is that we just do not know. Something like 80 per cent of western medicine comes out of our rainforests, and we are destroying them at a massive rate. We are currently destroying things in New South Wales without knowing their true value. In many instances we are destroying plant and animal species that have not be properly investigated, or even named. The Greens are strongly opposed to the revocation of the Western Sydney Regional Park. I quote briefly from a letter from the Environment Liaison Office that has been circulated by Rachel Walmsly on behalf of Andrew Cox, the Executive Officer of the National Parks Association:

> NSW peak environment groups oppose the Western Sydney Regional Park (Revocation for Western Sydney Orbital) Bill 2001, which proposes to revoke 18.2 hectares of the park.
>
> This Bill is untimely and undermines the integrity of the EIS process. Environment groups would like to see the sanctity of the process restored, whereby revocation can only occur after the approval has been granted by the consent authority (in this case the Minister for Urban Affairs and Planning). Further, any approval by the consent authority must be conditional upon the subsequent approval by Parliament for the revocation of the necessary area. In this situation, there has been no approval yet, and it is unacceptable for the Bill to pre-empt this.
>
> The proposed Bill is particularly disappointing in light of the recent report: *Review of Revocation Procedures*, June 2001, prepared by the National Parks and Wildlife Services for the Minister for the Environment. This report was carried out as a result of environment groups' concerns about the National Parks (Adjustment of Areas) Bill 2001. The report recommends that new procedures should be followed when an area protected under the National Parks and Wildlife Act (NPW Act) is proposed to be removed from that protection.

I have read the debate on the Brunswick River bridge in the north of New South Wales, and the Government is at great pains to indicate that it is giving back great areas of land that it had cut out of local nature reserves to maintain species. The Government is going to a certain amount of trouble in that area, but it seems that in the west of Sydney it is convenient to ignore the rather sensitive issues and bulldoze ahead. The letter continued:

> The report recommendations (No. 14 and 15) require that revocation of part of a Regional Park for a proposed Freeway must be accompanied by suitable compensatory habitat. The developer must make an agreement with the Minister for the Environment on the provision of compensatory habitat "prior to the introduction of legislation". The compensatory habitat must be transferred to the NPWS *before* the legislation is enacted. There is no evidence that negotiations for compensation have been finalised in this case.

I suggest that compensatory areas will not exist. These species will not exist in a lot of other areas. The letter continued:

> The report also recommends (page 14) that proposed revocations should take place *prior* to the carrying out of activities incompatible with the NPW Act (for example, freeway construction). However, as mentioned before, Parliament should not pre-empt the approval for the freeway by the Government, which is still under consideration.
>
> The report recommends (recommendation No. 13) that the relevant regional Advisory Committee and the NSW Advisory Council are consulted about potential revocations and compensation. It is unclear whether this has occurred.

The correct procedure and timing should be:

1. Consider if revocation of NPW Act reserved land is required (in exceptional circumstances only, with Ministerial approval);
2. Consult with the NPWS Regional Advisory Committee and NPWS Advisory Council;
3. Identify and seek agreement between Minister for the Environment and developer on suitable compensatory habitat;
4. Seek Parliamentary consent to revoke the area in question;
5. Transfer to NPWS suitable compensatory habitat; and then
6. Commence legislation revoking area in question.

Step 4 can only occur after the consent authority has granted approval to the development. This consent will be conditional upon Parliamentary approval of the proposed revocations from reservation or dedication under the NPW Act.

The government must follow recently agreed improvements to the revocation procedures for the NPW Act areas.

Environment groups look forward to seeing the correct process restored, and for this process to be followed for all future developments proposed within areas reserved or dedicated under the National Parks and Wildlife Act.

It is quite clear that these proposals are not being adhered to. The environmental impact study [EIS] proposed a number of measures which it is claimed will ameliorate the effects of the road. This is typical of environmental impact studies for major roads which propose measures such as fauna crossings and relocation of plants as solutions to the huge environmental impact of road construction and use. The Greens do not accept that these so-called engineering solutions are real solutions to the problems caused by major roads. The Greens' transport policy places transport in its proper context. It includes policies for travel and demand management and recognises the effect of major trip-generating development. Unless the roads are understood in the broader context, sustainable transport will be nothing more than an empty promise.

We are witnessing attempts to placate the trucking industry. Debates over FreightCorp in New South Wales and the withering on the vine of alternative transport options, particularly for heavy freight, represent lost opportunities for the Government to really establish its often-espoused green bona fides by examining alternative transport options and applying a bit of cleverness rather than just going for this massive roadway option. The present position adopted by the Government is just sad, as far as the Greens are concerned. This is a matter about which the Greens will continue to complain, but the issue is bigger than the debate in this House. Transport policy needs to be examined with an eye to the future, bearing in mind the health of children of western Sydney and future generations. The Greens advocate a sane transport system within the city and linking other States—a system that gets more trucks off the road, results in cleaner air, and does something for the people of western Sydney by taking some pollution out of the western Sydney airshed. The Greens oppose this bill.

The Hon. RICHARD JONES [11.02 a.m.]: I rise briefly to oppose the Western Sydney Regional Park (Revocation for Western Sydney Orbital) Bill. The bill is opposed by a number of environment groups on the grounds that it is untimely and undermines the integrity of the environmental impact study [EIS] process. These groups, others and I would like to see the integrity of the EIS process restored by ensuring that revocations can occur only after approval has been granted by a consent authority. We are particularly disappointed that this bill has been introduced in its current form in the light of the recent report "Review of Revocation Procedures" prepared by the National Parks and Wildlife Service for the Minister for the Environment.

The report recommends that revocations of parkland must be accompanied by suitable compensatory habitat; that agreements must be made with the Minister for the Environment in relation to compensatory habitat prior to the introduction of legislation revoking any parkland; that the compensatory habitat must be transferred to the National Parks and Wildlife Service before revocation legislation is enacted; that proposed revocations should take place prior to the carrying out of any activities that are incompatible with the National Parks and Wildlife Act; and that the relevant regional advisory committee and the New South Wales Advisory Council should be consulted about potential revocations and compensation.

I note that a sum of $3 million in compensation will be paid by the Roads and Traffic Authority [RTA] to the Department of Urban Affairs and Planning [DUAP]. I ask whether that $3 million will be used for acquiring at least as much land as has been excised—that is, 18.2 hectares? What kind of land would that be? Would the land be better habitat land than is the land that is being excised? I imagine that it would be. When will the land be added to the parks system of New South Wales?

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.04 a.m.], in reply: I thank all honourable members for their contribution to this debate. The Hon. Charlie Lynn led for the Opposition and indicated that the Opposition will be supporting this bill. The Government thanks the Opposition for its support. The Western Sydney Orbital is a vital project for the economic development of western Sydney. The Western Sydney Orbital will make travel easier in western Sydney and will attract new activities, services and facilities to the region. It should be remembered that $2 billion in benefits to road users will be forgone if it is not built. The Western Sydney Orbital will reduce traffic on many existing routes, enhancing the amenity for those living along these routes, and amenity of life will be significantly improved.

Despite the contributions made by some honourable members to the debate, it is certainly my understanding that the people of western Sydney actually want the Western Sydney Orbital and one only has to ask them to discover that fact, which has also been referred to by a number of honourable members of this House who live in western Sydney. The National Parks and Wildlife Service knew of the Western Sydney Orbital proposal when it gazetted the park in 1998. The suggestion that large chunks of the park are being taken out is simply not correct. The area is 18.2 hectares out of 580 hectares which, on my calculation, is 3.2 per cent. I do not think that could be regarded as a large chunk.

The revocation will not impact on the viability of the park as a regional recreational facility. There will be no significant environmental impact resulting from the excision of the land from the park. It is likely that some land which is adjacent to the park, acquired by the RTA but surplus to requirements of the Western Sydney Orbital, can become part of the park. The RTA is having discussions with the National Parks and Wildlife Service about landscaping of the Western Sydney Orbital land which is adjacent to the park to ensure integrated treatment. I commend the bill to the House. I urge all honourable members to support the bill.

Question—That the bill be now read a second time—put.

The House divided.

Ayes, 21

Mr Breen	Mr M. I. Jones	Mr Tingle
Dr Chesterfield-Evans	Mr Lynn	Mr Tsang
Mr Colless	Mr Macdonald	Dr Wong
Mr Dyer	Mrs Nile	

Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Ryan	*Tellers,*
Mr Gay	Ms Saffin	Mr Pearce
Mr Harwin	Ms Tebbutt	Mr Primrose

Noes, 3

Mr R. S. L. Jones
Tellers,
Mr Cohen
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clause 1 agreed to.

Clause 2

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.15 a.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 2, clause 2. Insert after line 6:

(2) Despite subsection (1), a provision of this Act does not take effect in relation to any part of the land to which this Act applies until the Minister for Urban Affairs and Planning has granted any relevant approval under Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* for the proposed Western Sydney Orbital tollway in relation to that land.

The essence of this amendment is that the requirements of the Environmental Planning and Assessment Act should be met. The land should not be excised from the park until the Minister for Urban Affairs and Planning has granted relevant approval under division 4, part 5 of that Act in relation to part of the park being used for the tollway. The Australian Democrats believe that if a planning and environmental process is in place, the Government should adhere to it. It is not satisfactory to set up an environmental planning process and then simply pass legislation which cuts through that process.

The Government either has a planning process or it does not. If such a planning process is in place, it should be used in respect of whatever is being built. The planning process should be universal. The Australian Democrats believe this is an important amendment; that excision of the land in the park will not take place until the Minister for Urban Affairs and Planning has granted relevant approval under the existing Environmental Planning and Assessment Act. Those who are concerned about correct procedures will no doubt see this amendment as very sensible and necessary.

The Hon. CHARLIE LYNN [11.17 a.m.]: The Opposition does not believe that this amendment is

necessary as the Department of Urban Affairs and Planning cannot sell the land to the Roads and Traffic Authority until all environmental aspects have been considered, and until they have all been satisfied.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.17 a.m.]: The Government does not support the amendment. The amendment adds unnecessary uncertainty to the approval process. The result of the amendment will be that the Minister for Urban Affairs and Planning could only give conditional approval to the project. The process envisaged in the bill is that the subject land will be transferred to the Department of Urban Affairs and Planning and will only be sold to the Roads and Traffic Authority if and when the environmental impact statement [EIS] has been approved. The Government does not support the amendment to delay commencement of the bill. This procedure in no way pre-empts the EIS process and is similar to the process adopted in relation to the Eastern Distributor.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.18 a.m.]: I move Australian Democrats amendment No. 2:

No. 2 Page 2. Insert before line 7:

3 Purpose of this Act

The purpose of this Act is to revoke the reservation under the *National Parks and Wildlife Act 1974* of certain land as part of the Western Sydney Regional Park, being land that is required for the Western Sydney Orbital tollway.

The amendment is designed to insert a purpose in the Act. The Australian Democrats believe there should be clearly stated in each Act the purposes and objectives of such Act. We believe this amendment will correct that oversight.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.19 a.m.]: The Government does not oppose the amendment but believes the word "tollway" should be deleted from it. It is envisaged that the Western Sydney Orbital will revert to a freeway once the toll concession is removed. The Government would also not want to rule out a future Federal government contributing additional funding to the orbital project. I seek your advice as to whether I need to formally move the removal of the word "tollway" from the Hon. Dr Arthur Chesterfield-Evans' amendment? I understand that the honourable member is happy to accept the removal of the word "tollway".

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! You need to move the amendment.

The Hon. CARMEL TEBBUTT: I move:

That the amendment be amended by deleting the word "tollway".

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.20 a.m.]: I accept the Government's amendment. The Australian Democrats certainly do not mind if the tollway becomes free, and I am sure that the people of western Sydney will also not mind.

The Hon. CHARLIE LYNN [11.20 a.m.]: The Opposition does not oppose the amendment moved by the Hon. Dr Arthur Chesterfield-Evans but supports the amendment moved by the Government to remove the word "tollway".

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.20 a.m.]: Whilst it would be churlish of the Opposition to oppose the amendment moved by the Hon. Dr Arthur Chesterfield-Evans, the amendment is akin to an amendment that was accepted during debate on the workers compensation legislation, relating to the tabling of a document, when in fact the particular document would have appeared in the *Government Gazette*, which is a statutory instrument. The amendment moved by the Hon. Dr Arthur Chesterfield-Evans simply repeats what is contained in the objects of the bill. If moving such an amendment makes the honourable member feel good, he is easily satisfied.

Amendment of amendment agreed to.

Amendment as amended agreed to.

Clause 2 as amended agreed to.

Clause 3 agreed to.

Clause 4

Question—That the clause be agreed to—put.

The Committee divided.

Ayes, 20

Mr Breen	Mr Harwin	Ms Tebbutt
Dr Chesterfield-Evans	Mr Johnson	Mr Tingle
Mr Colless	Mr M. I. Jones	Mr Tsang
Mr Dyer	Mr Lynn	Dr Wong
Mrs Forsythe	Mrs Nile	*Tellers,*
Miss Gardiner	Reverend Nile	Mr Pearce
Mr Gay	Mr Ryan	Mr Primrose

Noes, 3

Ms Rhiannon
Tellers,
Mr Cohen
Mr R. S. L. Jones

Question resolved in the affirmative.

Clause 4 agreed to.

Clause 5

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.30 a.m.]: I move Australian Democrats amendment No. 3:

No. 3 Page 2, clause 5, line 26. Insert "for the purposes of, or in connection with, the Western

Sydney Orbital tollway" after "land".

This small amendment would provide that the land may be sold only in order to build the tollway; it could not be sold for any other purpose. If the Government would like the word "tollway" removed I am happy to move accordingly.

The Hon. Carmel Tebbutt: It would not make any difference.

The Hon. CHARLIE LYNN [11.31 a.m.]: The Opposition thinks that the amendment is superfluous. The only merit seems to be that it would ensure that the land must be used for or in connection with the Western Sydney Orbital. It may be argued that without the specific statement "for the purposes of, or in connection with, the Western Sydney Orbital" it could be used for other purposes. However, this would go against the purposes of the bill that Australian Democrats amendment No. 2 clearly enunciated: it is land required for the Western Sydney Orbital and therefore if the Department of Urban Affairs and Planning [DUAP] or other entitled government agencies tried to dispose of the land other than for the purpose of the Western Sydney Orbital we submit that it would be contrary to the purposes of the bill. Further, because the amendment is so specific it would preclude surplus land not needed for the orbital from being added to the Western Sydney Regional Park or the National Parks and Wildlife Service.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.32 a.m.]: The Government does not support the amendment, which would unnecessarily limit the right of DUAP to deal with the subject land. For example, it is envisaged that any land the subject of the revocation that is not ultimately required for the Western Sydney Orbital will be returned for recreational purposes.

Amendment negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.32 a.m.]: I move Australian Democrats amendment No. 4:

No. 4 Page 2, clause 5. Insert after line 26:

(3) Without limiting subsection (2), it is the duty of the corporation sole to ensure that, if the excised land is used for or in connection with the Western Sydney Orbital tollway, sufficient of the land is subject to an easement for the construction of railway lines, the erection of railway stations or other railway purposes, so as to enable the construction of a dual railway line and at least 2 railway stations.

In the interests of brevity I will not repeat what I said during the second reading debate. Basically, it is necessary to have a decent rail network to take the pressure off roads in western Sydney and allow population densities to increase. This occurs in response to the availability of rail travel because people know that they can get quickly to their destinations by rail. The opportunity should not be lost. If the tollway is to go through industrial areas they will become destinations. There is a well-established precedent in Perth. When an important large road route is constructed a rail corridor runs down the middle, giving economies of scale with surveying and earthworks. It is also done almost universally in Washington DC as a way of keeping the transport corridors together. I understand that the proposed easement is wide enough.

All I am asking is that, at the designing stage, the Western Sydney Orbital include a rail easement in the middle of it, which is the easiest place to put it. If this is not done and the road is built with all the spur roads and noise mitigation earthworks and so on, there will not be space for rail. It will then be claimed that it is not possible to have a rail service and we will condemn western Sydney to car dependency forever. This is an opportunity to have the legislation require this so that it gets done

eventually. The rail system does not have to be built now, but the easement should be left. This is of real importance for transport in western Sydney and I ask for support of the amendment.

The Hon. CHARLIE LYNN [11.34 a.m.]: I find it really interesting that the experts who are speaking on the needs of western Sydney do not live in western Sydney.

The Hon. Dr Arthur Chesterfield-Evans: Oh, give us a break! You cannot live everywhere.

The Hon. CHARLIE LYNN: I am quite serious about this. The Hon. Dr Arthur Chesterfield-Evans made an assumption that we need a link road in western Sydney. It is not necessary to assume it: come out and have a look and ask the people of western Sydney what they want. We desperately need road links in western Sydney. The Greens said that this road link does nothing for the people of western Sydney. The Hon. Peter Primrose and I were just talking about sitting in traffic jams with other people from western Sydney on a daily basis. Ms Lee Rhiannon referred to 39 sets of traffic lights. Queues of vehicles at traffic lights belch pollution into the atmosphere and cause the damage that the Greens want to prevent.

Ms Lee Rhiannon referred to a 39-kilometre scar across western Sydney, but the route is already there. It will not be kept in its natural state. We have a duty of care to the people of western Sydney to ensure that they can move around western Sydney efficiently and economically. Traffic moving between the North Coast and the South Coast should be taken off the residential streets of western Sydney. This will increase the quality of life of the million and a half people who live in western Sydney and, as we said earlier in the debate, it will encourage jobs and business investment in western Sydney.

Whilst I appreciate that they are arguments for the constituencies of the Australian Democrats and the Greens, who perhaps live a little further out than the urban fringes, a million and a half people in western Sydney suffer daily because of a lack of vision in the early days. A ring road, bypass or orbital around western Sydney was needed; we currently do not have it. There is a desperate need for it. Cars and trucks are a fact of life: they are not going to go away. We appreciate that there is a need to achieve a correct balance between road and rail. Future transport options such as very fast train travel are being discussed at a Federal level. A feeder line is going in that we can connect to.

We believe that the amendment is completely outside the leave of the bill. If agreed to, it would give rise to significant disruptions to the environment that have not yet been contemplated. I would have thought that the Australian Democrats would have foreseen the possible significant environmental destruction caused by railway lines, railway stations and other railway facilities. To simply put it in the manner proposed is environmentally irresponsible.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.38 a.m.]: The Government does not support the amendment. The Western Sydney Orbital is being designed to allow for the possible future construction of public transport options within the corridor. Busways or light or heavy rail could be constructed if justified in the future within the median of the road. But it would not be appropriate at this stage to place an easement on any land until a detailed study of the possible alignment and usage of a public transport option is undertaken. Given the present relatively low population densities in the area and the proximity of the Liverpool to Parramatta transitway to part of the corridor, there are no plans for such a project at this stage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.39 a.m.]: I must respond to the comments of the Hon. Charlie Lynn, who seems very concerned that rail will damage the environment in western Sydney.

The Hon. Charlie Lynn: I did not say that

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, you did. The clear implication was that the environmental effects of rail seem of great concern to the Hon. Charlie Lynn. Rail is the modality of transport that has the least environmental impact but it is of concern to the Hon. Charlie Lynn. Does he seriously think that having no public transport in western Sydney and using only cars is better for the environment than having rail? If he does, he has a fairly individual point of view. The Hon. Charlie Lynn made an absurd swipe that because I do not live in western Sydney I cannot legislate in relation to western Sydney. By this logic, members could legislate only in relation to where they live. That is obviously a complete nonsense and just a throwaway line.

In fact, I am the one arguing for better rail and road infrastructure in western Sydney. I agree that an orbital road is needed—the Australian Democrats have always taken that position—but rail is also needed. This Government has the appalling habit of selling off everything, even when it is needed for future use, and of taking a short-term view. That is evident from its flogging off schools and other things. As I do not trust the Government, I am trying to amend this legislation. I had hoped that I would get some support from the Opposition but—golly gosh—the sad reality is that the Opposition does not support my amendment.

The Hon. RICHARD JONES [11.40 p.m.]: I support the amendment of the Hon. Dr Arthur Chesterfield-Evans. Honourable members should not lose sight of the aim of the amendment, which is not necessarily to have rail or whatever, but to have clean transport. According to polls, air pollution is the number one environmental problem. There are various ways to reduce air pollution. More people could travel in one vehicle so that the per capita air pollution is reduced, or more rail or non-polluting vehicles could be provided. For example, gas-powered buses are far less polluting than diesel buses. We should look at achieving the aim of the amendment—which is to have virtually non-polluting transport in this State, whether it be private or public—rather than the method of providing it.

For a number of years I lived in the United Kingdom, where an orbital road—I think it is the M25—was built through green fields and the most beautiful area where I used to go to school in London. The M25 orbital was supposed to reduce all the traffic problems. It now has something like six blocked lanes, and several more lanes will be constructed. When a road is created, additional traffic is created. Unfortunately, we generate traffic to fill the roadway. The M25 worked for a while but it is now an absolute disaster. They have decided to put in 10 lanes in some areas, at the expense of rural areas. The answer to the problem is not necessarily to create more expressways and put in more rail but to consider how to move people around in the best, most efficient and cleanest way.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 4

Dr Chesterfield-Evans
Mr Cohen
Tellers,
Mr R. S. L. Jones
Ms Rhiannon

Noes, 21

Mr Breen	Mr Johnson	Ms Tebbutt

Mr Colless	Mr M. I. Jones	Mr Tingle
Mr Della Bosca	Mr Lynn	Mr Tsang
Mr Dyer	Mrs Nile	
Mrs Forsythe	Reverend Nile	
Miss Gardiner	Mr Oldfield	*Tellers,*
Mr Gay	Mr Pearce	Mr Jobling
Mr Harwin	Mr Ryan	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Clause 5 agreed to.

Clauses 6 and 7 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and report adopted.

Third Reading

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [11.54 a.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 25

Mr Breen	Mr Harwin	Mr Ryan
Dr Chesterfield-Evans	Mr Johnson	Ms Saffin
Mr Colless	Mr M. I. Jones	Ms Tebbutt
Mr Della Bosca	Mr Lynn	Mr Tingle
Mr Dyer	Mr Macdonald	Mr Tsang
Mrs Forsythe	Mrs Nile	
Mr Gallacher	Reverend Nile	*Tellers,*
Miss Gardiner	Mr Oldfield	Mr Jobling
Mr Gay	Mr Pearce	Mr Primrose

Noes, 3

Ms Rhiannon
Tellers,
Mr Cohen
Mr R. S. L. Jones

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

PRISONERS DRUG DEALING

The Hon. MICHAEL GALLACHER: I direct a question without notice to the Minister for Juvenile Justice, representing the Minister for Corrective Services. Did prison officers find six mobile phones and a phone charger in the possession of Telopea Street Gang members at the Metropolitan Remand Centre at Silverwater last weekend? Were those inmates continuing to carry out drug dealing from within the prison system, despite being guilty of serious drug and violence offences? Did inmates obtain those phones and drugs from blackmailed prison officers?

The Hon. CARMEL TEBBUTT: The question raises an issue of some seriousness, but it is not a matter on which I am able to respond. I will refer the question to the Minister for Corrective Services and undertake to obtain a response as soon as possible.

DRUG SUMMIT INITIATIVES EVALUATION

The Hon. JANELLE SAFFIN: I direct a question without notice to the Special Minister of State. Can the Special Minister of State inform the House what practical steps the Government has taken to evaluate Drug Summit initiatives?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her question and commend her ongoing interest in Drug Summit matters. One of the key outcomes of the New South Wales Drug Summit is that programs and therefore resource allocations would be evidence based. All Drug Summit programs are being evaluated. The best way to find out whether drug programs are achieving their intended goals is to thoroughly evaluate each and every program. The Government wants to ensure that all agencies responsible for Drug Summit funded projects gather credible evidence about the impact of those projects and develop a scientific basis for decision making.

An officer is employed by the Office of Drug Policy to concentrate on this key aspect of the Government's plan of action. The New South Wales Office of Drug Policy, in consultation with the New South Wales Senior Officers Co-ordinating Committee on Drugs and the New South Wales Expert Advisory Group on Drugs, has prepared a brief and simple guide to evaluation. The guide aims to assist those embarking on an evaluation of a drug program. The guide provides some key points to consider when embarking on a program evaluation. It is not intended to be a definitive guide to evaluation but to provoke ideas and raise critical issues that are important to consider for planning and carrying out a useful evaluation.

The new guide is a component of the New South Wales Government's evidence-based approach to tackling illicit drugs. The evaluation guide will assist agencies to measure whether they have met the Government's key objectives in tackling the drug problem. Those objectives have been published and distributed to all government and non-government agencies to assist in developing evaluation plans and performance indicators. The guide outlines those objectives. This is part of the Government's strategy to ensure that all drug programs are delivering the best results for the people of New South Wales. Members interested in obtaining a copy of the *Brief Guide to Evaluation for NSW Drug Summit Programs*

can do so via the New South Wales Government's web site on drug issues at *www.druginfo.nsw.gov.au.*

COMMISSION OF INQUIRY INTO WORKERS COMPENSATION COMMON LAW MATTERS

The Hon. MICHAEL GALLACHER: I direct a question without notice to the Minister for Industrial Relations. Will the Sheahan inquiry into workers compensation common law matters hold public hearings? If so, when will those public hearings be advertised? If it is not the Minister's intention that the inquiry hold public hearings, can he explain what the Government has to hide by not holding public hearings?

The Hon. JOHN DELLA BOSCA: I previously advised the House about the establishment of an independent inquiry into workers compensation common law matters. Her Excellency the Governor of New South Wales has commissioned Justice Terry Sheahan to conduct the inquiry. On 20 June 2001 I tabled the inquiry's terms of reference in this House. Justice Sheahan is to report to the Governor by 17 August 2001. The inquiry was advertised in the mainstream press on Saturday 30 June 2001 inviting organisations and individuals to make submissions to assist the inquiry. The advertisement provided details on how to obtain copies of the inquiry's preliminary issues paper to assist interested parties in the preparation of their submissions. The inquiry can be contacted on 02 9329 7111, or by visiting the inquiry's web site *www.sheahan.inquiry.nsw.gov.au.* Submissions should be addressed to the Executive Director, Commission of Inquiry into Workers Compensation Common Law Matters, and be provided to the inquiry by 13 July 2001. For the information of honourable members, WorkCover will be making a submission to the inquiry. Questions about the conduct of the inquiry should be directed to Justice Sheahan. I have a copy of the terms of reference of the Commission of Inquiry into Workers Compensation Common Law Matters.

The Hon. Duncan Gay: What about a public hearing. It should be a public hearing.

The Hon. JOHN DELLA BOSCA: I hate to disappoint honourable members opposite because they know the answer to this question, and I should not have to labour the point. The inquiry is transparent. A judge is conducting it. The Government is not directing that judge about the way in which he carries out his duties. I will not be directing Justice Sheahan whether there will be public hearings. In fact, to make sure that the process is absolutely transparent and allows for consideration of all relevant facts, I have not had direct communication with Justice Sheahan since his appointment. If honourable members opposite want to argue that Justice Sheahan have public hearings, then I suggest—

The Hon. Duncan Gay: Would you undertake to request Justice Sheahan to have public hearings?

The Hon. JOHN DELLA BOSCA: I think the Deputy Leader of the Opposition is quite competent to do that himself.

The Hon. Michael Gallacher: Do you refuse to do that?

The Hon. JOHN DELLA BOSCA: I am happy to answer the persistent interjections by the Leader of the Opposition and the Deputy Leader of the Opposition. The Government has absolutely no objection. In fact it would be quite happy for the inquiry to have public hearings.

The Hon. Michael Gallacher: Will you request him to have public hearings?

The Hon. JOHN DELLA BOSCA: It is not up to me to request him.

The Hon. Duncan Gay: You have drafted the terms of reference.

The Hon. JOHN DELLA BOSCA: It is not up to me to make such a request. He is the judge, and

he has been given the terms of reference.

The PRESIDENT: Order! I call the Leader of the Opposition to order.

The Hon. JOHN DELLA BOSCA: As I was trying to point out to the House, Justice Terry Sheahan is conducting an independent inquiry. He will make the decisions about the way in which he goes about that inquiry. The Government would not argue, either publicly or otherwise, to Justice Sheahan that he not conduct public inquiries. Indeed, I anticipate that he will be going through the full gamut of public investigation. But I am not going to be directing that inquiry. If the Deputy Leader of the Opposition and the Leader of the Opposition have views about the way in which the inquiry should be conducted, I have already given them the telephone number for the inquiry and its web site address, so they can make their views known to the inquiry. [*Time expired.*]

SYDNEY HARBOUR JET SKIS

The Hon. MALCOLM JONES: My question is to the Special Minister of State, representing the Premier. One of the Premier's reasons for banning jet skis on Sydney Harbour was the danger to marine life. Is he aware that jet skis do not have a propeller and are far less likely to endanger marine life than conventional boats with a propeller or keel? Is the Premier aware of the "satisfaction" expressed by Waterways with the effectiveness of new regulations introduced last year? Would further regulation of noise levels and behaviour have achieved a better result than banning jet skis on the harbour?

The Hon. JOHN DELLA BOSCA: Let me commence by saying that the Hon. Malcolm Jones has asked a question about alternative policy approaches to the management of the jet ski issue. I am not able to answer the question as I have not been involved in consideration of the issues in relation to jet ski operations anywhere, let alone in the precincts of the harbour. All I can do is offer to obtain a detailed answer to the honourable member's question from the Premier and make it available to him and the House as soon as practicable.

J. P. MORGAN SYDNEY HEADQUARTERS

The Hon. JOHN JOHNSON: My question without notice is to the Acting Treasurer. Can the Minister tell the House of the operations of the J. P. Morgan organisation, set up after the merger of several American and Australian companies last year?

The Hon. JOHN DELLA BOSCA: I think we will have to nickname the Hon. John Johnson Dame Nellie Melba. We thought it was his last question yesterday but he has made another comeback. Premier Bob Carr officially opened J. P. Morgan's new Sydney headquarters in Grosvenor Place last week. The organisation now employs 1,700 people in Australia, after combining the operations of Chase Manhattan, J. P. Morgan, Ord Minnett and BT Custody. The J. P. Morgan Sydney office includes regional headquarters for its bullion operations and commodities group. The company is expecting to locate other back-office functions in Sydney, so it is likely that it will hire several hundred additional staff. J. P. Morgan recognises that there is an astonishing range of information technology and language skills available to business in Sydney and it sees a long-term build-up of its operations here.

The Hon. Duncan Gay: Have you searched the personal register for Joe Tripodi?

The Hon. JOHN DELLA BOSCA: I am sure he would be interested in it. As with many other major international financial services firms, J. P. Morgan appreciates the stable political and economic environment in New South Wales plus the business opportunities opening up from deregulation of the banking sector. Sydney's time zone means that it is very attractive to investment firms that want to trade foreign currencies and commodities around the clock. The Government, through the New South Wales Department of State and Regional Development, is working with many other global financial houses that want to establish or expand their operations here. Major companies like Deutsche Bank, ABN Amro and

the Royal Bank of Canada have recently moved their regional foreign exchange dealings to Sydney. Overall, the financial services industry is growing rapidly in Sydney and is generating highly skilled jobs and high levels of investment and opportunities for New South Wales.

POLICE SNIFFER DOGS

The Hon. RICHARD JONES: I ask the Special Minister of State whether he has an answer to my question concerning the appalling breaches of civil liberties caused by police using the notorious sniffer dogs. Is it a fact that there have been numerous reports of totally innocent people being stopped, searched and traumatised by police? How long will this outrage continue?

The Hon. JOHN DELLA BOSCA: I appreciate the passionate interest of the Hon. Richard Jones in this issue. I have indicated in the House and to him privately that this matter is under active consideration. Indeed, I have commenced discussions with the office of the Minister for Police about some of the concerns raised by the honourable member. The Government has made no secret of the fact that it retains its strong position not to legalise the use of cannabis. I do not seek to argue against all aspects of the position taken by the honourable member. One needs to separate situations of harassment of people such as he described as distinct from the use of sniffer dogs in police operations targeting hot spots and dealing. When I have had time to discuss the matter with the Police Service and the Minister I am sure that we will be able to establish an appropriate protocol.

I cannot answer the question in any further detail, except to repeat the Government's strong view that it will attack with all vigour any large-scale active marketing and recruitment in relation to cannabis sales. The Government will not reverse that policy position. I will be discussing this matter with the Minister for Police in the future in an attempt to answer some of the matters of concern to the honourable member.

CABRAMATTA ANTI-DRUG STRATEGY

The Hon. DUNCAN GAY: My question is to the Special Minister of State. Is the Minister aware that the Premier informed the Parliament on 21 June that $4.4 million had been set aside to fund additional drug treatment as part of the Cabramatta strategy? Is he aware that this is exactly, to the dollar, the same amount by which the Minister told General Purpose Standing Committee No. 1 on 20 June that the Kings Cross injecting room has blown its budget? Did the injecting rooms budget blow-out come at the expense of drug treatment and rehabilitation places? Will the Minister now increase the funding for treatment to compensate for the diversion of those funds? It is too much of a coincidence that it is the same amount.

The Hon. JOHN DELLA BOSCA: It is just one of those coincidences. The issue here is what is important in the Cabramatta drug strategy. The Government has made the allocation and it has a strategy in place for enhanced treatment services. Whether it is the same amount of money is really not to the point.

The Hon. Charlie Lynn: You just can't keep passing the same cheque around.

The Hon. JOHN DELLA BOSCA: Why not? That's what treasuries do. The honourable member knows that the two matters are not linked. He is trying to make a fatuous link to score a cheap political point. As I have said consistently, as a result of the New South Wales Drug Summit there has been a massive enhancement in treatment facilities for drug users at all levels of addiction.

The Hon. Duncan Gay: I think I am right.

The Hon. JOHN DELLA BOSCA: No, you are not right at all. You are actually wrong in your description because the $4.4 million is the total estimated new cost of the injecting room trial as distinct

from the previous estimated cost, which, if I recall correctly, was about $1.7 million. Therefore, the blow-out, to use the member's terminology for the sake of brevity—although I do not accept that terminology—is $2.2 million. In response to Reverend the Hon. Fred Nile in the estimates committee hearing on 20 June I advised—and I have been quite up front—that the cost of the trial being conducted by the Uniting Church Board of Social Responsibility has increased from initial estimates. At both the estimates committee and in this place the following day I provided a full account of the reasons behind this increase.

The Hon. Duncan Gay: It is $4.4 million.

The Hon. JOHN DELLA BOSCA: No, it is not $4.4 million; it is a little over $2 million. The main point to keep in mind is that our initial estimate was just that—an estimate based on the fact that there was no real basis for costing it on experience. It is a unique trial, one not undertaken before in Australia. It is also unique by world standards because of its emphasis on providing a gateway to treatment. I shall repeat the key numbers. In the first month of operation, four lives were saved, people who would otherwise have probably overdosed; and 42 people, those in the depths of the addiction cycle, were referred for further treatment services and counselling.

Although it is too early to start talking about the trial being a success, these numbers are healthy indicators to suggest that the trial is worthwhile and should proceed. The trial should proceed so that the Government and community can ascertain whether the injecting room helps those in the depths of the addiction cycle tackle the problem, thereby saving lives. The question of the honourable member is a fatuous attempt to connect two completely unconnected matters. Of this $176 million allocation of new money, a huge amount is going into treatment services. As the Deputy Leader of the Opposition knows, many of those services will go into regional areas. For many years the Opposition ignored the drug problem in those areas but this Government is seeking to help regional and country communities tackle their local drug problem. The Government is proud of that fact. A small component of this allocation is for this unique trial and the Opposition should not be seeking to score cheap political points.

TRANSPORT AND STORAGE INDUSTRY OCCUPATIONAL HEALTH AND SAFETY

The Hon. RON DYER: I direct my question to the Special Minister of State, and Minister for Industrial Relations. Can the Minister inform the House of the action taken by the Government to improve occupational health and safety in small businesses in the transport and storage industry?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Ron Dyer for his question and for his ongoing interest in improving occupational health and safety across the State, especially in small businesses. In 1999 the New South Wales Government established 13 industry reference groups to reduce the incidence and severity of work-related injuries and improve return-to-work rates among injured employees. The transport and storage industry was identified as a high-risk area. Many small businesses need particular assistance to implement basic occupational health and safety systems to enable them to improve prevention and injury management for their employees. The transport and storage industry reference group recognised that these small businesses are often owner operated and have very little knowledge and understanding of the legislative requirements and how to comply with them. To assist these small businesses the industry reference group, representing bus, coach, taxi, waste and road transport employer organisations as well as the transport unions, has produced a guide that small businesses can readily use.

The guide enables managers to obtain key information from a single document and to apply a risk-management approach to occupational health and safety. I launched that guide late last year at the State Library at a well-attended function for industry representatives. The guide is highly recommended in all areas of the transport and storage industry as it both fills a need and is user friendly. The guide continues to have high usage rates among small businesses. It is an excellent example of providing practical help to improve occupational health and safety for small businesses in the transport and storage

industry. It will also assist small businesses that wish to participate in WorkCover's premium discount scheme.

ATTENTION DEFICIT HYPERACTIVE DISORDER

The Hon. ELAINE NILE: I direct my question to the Special Minister of State, representing the Minister for Health. Is it a fact that children as young as two years old are being prescribed drugs to control what is often simply age-appropriate behaviour? Is it a fact that early childhood consultant Karen Behrens from SDN Children's Services Inc. told a New South Wales parliamentary committee that the use of psychotropic drugs, such as Ritalin, in children is alarming, and that doctors often succumb to pressures from parents and the community to medicate problematic children instead of addressing the real reasons for their behaviour? What action is the Department of Health taking to ensure the correct diagnosis of attention deficit hyperactive disorder? What action is the Government taking to assist parents in improving parenting techniques rather than relying on drugs to address behavioural problems?

The Hon. JOHN DELLA BOSCA: That is a very good question that goes to the heart of a major concern for parents and educators throughout the Western world. I have a personal connection with this issue as my two sons suffer from attention deficit hyperactive disorder. I am familiar with the dilemma facing parents in deciding whether to medicate youngsters who are so affected. It is a matter of striking a balance between medical advice and other ethical considerations. I sympathise with the basis of the Hon. Elaine Nile's question. I think medical doctors, specialists and parents are crying out for better education about the issues involved in medicating children for real or perceived learning difficulties and behavioural problems. I will refer this question enthusiastically to the Minister for Health, and I hope that he will provide a very good answer.

FOWLER FEDERAL ELECTORATE LABOR PARTY MEMBERSHIP

The Hon. JENNIFER GARDINER: I direct my question to the Special Minister of State. Why did the Minister order in 1997 that no grassroots preselection ballot be held for the Federal seat of Fowler after Phuong Ngo was charged with the murder of John Newman? Was it because of allegations that Phuong Ngo had been so busy stacking the local branches that the number of registered members of the Australian Labor Party in the electorate had reached more than 4,000—which is more than the membership of the West Australian and Tasmanian branches combined?

The Hon. JOHN DELLA BOSCA: I noticed the other day—

The Hon. Duncan Gay: Do you know where the membership lists are?

The Hon. JOHN DELLA BOSCA: Johno probably has them: he is the keeper of many important secrets. I appreciate the stunt that the Hon. Jennifer Gardiner is trying to pull and the fact that she almost managed to keep a straight face while asking that question. Madam President, I think we must consider the appropriateness of asking that sort of question. It is the last sitting day of Parliament so perhaps it is like the last day of school when students need to play pranks to assure the teachers that they are on their way out the door. The other day the Hon. John Jobling attempted to ask the Deputy Leader of the Opposition a question.

The Hon. John Jobling: It was a very fair question.

The Hon. JOHN DELLA BOSCA: Maybe—the problem is that it was not a fair process. Unfortunately, Opposition members have been hoist on their own petard because of the change in sessional orders.

The Hon. Duncan Gay: That was the old standing order.

The Hon. JOHN DELLA BOSCA: I am a novice, so I will take the honourable member's word for it. This question is as relevant as my asking the Hon. Jennifer Gardiner—if I were able to do so—about her career as director of the National Party. I thank the honourable member for having a go at amusing the House on the last day—I hope it is the last day—of sittings. However, I do not have much to say in response to the question other than to make the general point that the question is both outside the sessional orders and my public responsibilities, and I do not think I need waste any more time of the House on it.

DEPARTMENT OF JUVENILE JUSTICE GRAFFITI CLEAN-UP TEAMS

The Hon. HENRY TSANG: I direct my question to the Minister for Juvenile Justice. Will the Minister update the House on the success of the graffiti clean-up teams coordinated through the Department of Juvenile Justice?

The Hon. CARMEL TEBBUTT: I thank the Hon. Henry Tsang for his question. As a former Deputy Lord Mayor of Sydney City Council and someone who has been involved in local government, he will be well aware—as I am—of the community's concern about illegal graffiti, which is a blight on our neighbourhoods. The Department of Juvenile Justice has co-ordinated clean-up teams for quite some time. It has 17 clean-up teams statewide, staffed by young people on community service orders, which are removing graffiti. The clean-up teams, which work in partnership with local councils, are stationed in Blacktown, Penrith, the Blue Mountains, Wollongong, Campbelltown, Leichhardt, Woollahra, Maitland, Shellharbour, Fairfield, Wagga Wagga, Gosford, Dubbo, Griffith, Ryde, Randwick and Lake Macquarie. Honourable members would agree that quite a spread of the State is now covered by clean-up teams. Two additional clean-up teams operate independently of councils—one in partnership with the Sutherland Police Citizens Youth Club and the other in partnership with the Cobham Children's Court.

While the final figures are still being calculated, the estimate is that between 16,000 and 18,000 hours of graffiti removal was completed during the last financial year. With recent legislative changes that allow councils to reach agreement with private landholders to facilitate the removal of graffiti from private property, the department hopes to be able to expand its operations next year. The graffiti clean-up teams are working on a range of sites, including council properties, private residences, bus shelters, shopping centres, parks and playgrounds, and court facilities. Graffiti is removed by applying non-toxic, citrus-based remover or is covered by overpainting. Sometimes a combination of both methods is necessary. I have viewed the work of the graffiti clean-up teams on several occasions, and they are making a significant difference.

Through the partnerships that have been established, councils identify affected sites and provide graffiti removal and safety materials. The department provides supervision by specially trained sessional supervisors and transport for young people. Under the arrangements made with many councils, the clean-up teams are also responsible for the continuing maintenance of sites, and feedback from councils and residents indicates that the program has been well received. Fairfield City Council made a statement in relation to the work of the clean-up team in its area. It stated:

> A cleaner and greener City of Fairfield is taking shape thanks to a graffiti removal program sponsored by the Council and the NSW Department of Juvenile Justice.
>
> The young people and the Department of Juvenile Justice are to be congratulated for their efforts which are very much appreciated.

The department also received a touching letter from a Campbelltown resident expressing thanks and appreciation for the removal of graffiti by young people from the resident's back fence. It is pleasing to see that these efforts are being acknowledged and appreciated by both councils and community members. The department recently produced a brochure on the Graffiti Clean-up Community Orders scheme to promote the scheme within the community and within local councils. I am happy to make a

copy of that brochure available to any honourable member who would like one. I will also be opening a forum on the department's clean-up teams and the partnership with local councils at Blacktown council later this month. The purpose of the forum is to provide demonstrations and information so that more councils can become involved in the program. I thank Blacktown council for hosting this forum and I commend the initiative to the House.

EMINEM SUPERDOME CONCERT

Reverend the Hon. FRED NILE: I ask the Special Minister of State, representing the Premier and the Attorney General, a question about a serious matter. Is it a fact that controversial rap singer Marshall Mathers, who is known as Eminem—a preacher of hate with a musical background—is facing a current one-year probation for firearm offences? Does Eminem preach hatred of women, parents, homosexuals, et cetera, which is an offence under the New South Wales antidiscrimination and antivilification laws? What action is the Government taking to urge the Federal Government to reject his visa application, or declare his concert at the SuperDome an R-rated event under our State censorship laws so that it is restricted to young people over 18 years and so that it protects impressionable 13-year-old and 14-year-old teenagers?

The Hon. CARMEL TEBBUTT: As the honourable member asked specifically about action that has been taken—and I cannot comment on that—I will refer his question to the Premier. As I understand it, under our classification laws we cannot put a rating on concerts. At the moment classification laws apply to a range of things, including films, books and magazines, but they do not apply to concerts. I am thinking about referring that matter to the Youth Advisory Council to obtain advice on whether it believes that the classification laws should be extended to concerts. I must say that I am not that familiar with Eminem's music but, from what I know of it, I find it fairly offensive.

On Monday I had the chance to talk to some young people at the launch of the Better Futures framework in an attempt to obtain their views on the matter. Some young people were fans of Eminem and some were not, but they all seemed to be saying that an attempt to ban Eminem would be more likely to increase the desirability of attending his concert and that it would almost turn him into a hero. In their view, banning him from coming into the country would be problematic. They believed that, in many ways, he would then become a focal point for youth support because he would have the added status of having been banned. They also said they believed that government action should be directed at encouraging young people to make reasonable and sensible choices about what they hear, whether it be through concerts, over the Internet, through the radio, or the music to which they listen

Reverend the Hon. Fred Nile: These 13-year-old children are not old enough to be critical about those issues.

The Hon. CARMEL TEBBUTT: I am aware that Eminem appeals to a fairly young audience. I was making the point that government activity and efforts should be directed at ensuring that young people make sensible and reasoned choices. We want them to come to conclusions themselves rather than necessarily having things taken away from them, thus demonstrating a lack of trust in them. They must be able to distinguish between what a rap artist such as Eminem is singing about and the music that they enjoy listening to. They must then also be able to determine what they will do in their day-to-day lives. The young people to whom I spoke also made the point that most young people do not listen to the lyrics, which is something that I would like to believe. The honourable member asked whether any action had been taken to contact the Federal Government in relation to Eminem's visa application. I would suggest that no action has been taken, but I will refer that aspect of the honourable member's question to the Premier as it is not an issue on which I have advice. I reiterate that if we ban someone like Eminem we will make more of a hero of him than is probably desirable.

PHUONG NGO CHARACTER REFERENCES

The Hon. CHARLIE LYNN: My question without notice is directed to the Special Minister of State. Will the Minister tell the House whether he or any other Labor Minister will be giving character references for Phuong Ngo at his forthcoming sentencing hearing?

The Hon. Ian Macdonald: Point of order: As the case is still before the courts it is highly irregular for the Hon. Charlie Lynn to refer to it in this House. Such a matter should not be dealt with in this House, and particularly not the way in which the Hon. Charlie Lynn has dealt with it.

The Hon. Ron Dyer: To the point of order: Last week Phuong Ngo was convicted of a serious criminal offence in the Supreme Court of New South Wales. He has been remanded in custody for sentence to a date next October. The asking of this question of the Minister has the tendency to interfere with the administration of justice and it should be ruled out of order.

The Hon. Michael Gallacher: To the point of order: The honourable member asked a simple question: whether this Minister or any other Minister will be giving character references at the sentencing hearing. The honourable member did not enter into any debate about the evidence before the court and his question had no bearing on the sentencing procedure. It was a simple question about whether this Minister or any other Minister will give a character reference at the sentencing hearing.

The Hon. Greg Pearce: To the point of order: The Minister lunched with Mr Phuong Ngo and he undertook to promote Phuong Ngo as a candidate for the Labor Party. Clearly, he may well be asked to give the gentleman a character reference. Accordingly, the Minister should answer the question.

The Hon. Michael Gallacher: Absolutely.

[*Interruption*]

The PRESIDENT: Order!

The Hon. John Della Bosca: I apologise to the House for that unparliamentary response. To the point of order: The honourable member specifically asked whether Ministers or other persons would provide references for someone. As the Hon. Ian Macdonald and the Hon. Ron Dyer pointed out, the sentencing of Phuong Ngo is still before the court.

The PRESIDENT: Order! As members are aware, in this House we are guided by previous practice and standing orders. There are many rulings of Presidents of this House on the sub judice rule. The issue in this case—and no member raised this point—is whether a distinction can be drawn between a matter being heard by a jury and a matter, such as sentencing proceedings, being heard by a judge alone. President Johnson ruled that a judge is not a delicate flower. As the question refers to proceedings over which a judge, and only a judge, has jurisdiction I rule that it is in order. Had another point been taken, the question may have been ruled out of order. The Minister's time for speaking has expired.

HUNTER VALLEY LAND CONSERVATION

The Hon. PETER PRIMROSE: My question is to the Minister for Juvenile Justice, and Minister Assisting the Minister for the Environment. What is the latest information on conservation gains in the Hunter Valley?

The Hon. CARMEL TEBBUTT: I am pleased to inform the House that an area of high conservation and cultural significance in the Cessnock district is being conserved by the National Parks and Wildlife Service and returned to the community to enjoy for generations to come. The site, containing remnants of early European history, covers about five hectares of a picturesque clearing in the Lower Hunter National Park at the end of Lomas Lane, just north of Cessnock. The National Parks and Wildlife Service will now turn the land, set in a glade ringed by forest and running along a creek line, into a

recreational and picnic area with new facilities for the local community to enjoy. This piece of land has a long and interesting history.

This land is the surviving block of a grant of 2,560 acres taken up in 1829 when the original Great Northern Road connected Sydney directly with Maitland. The holding passed through a number of hands over nearly two centuries, and each time the size of the property diminished until its final purchase in 1927 when it was five acres and bought as a family home by the Astill family. They christened it "The Ranch", and James Astill modified and enlarged the cottage standing on the property. The cottage, dated from 1910, on 45 acres was purchased by an Adam Stewart for $2, or £1, an acre on a deposit of 25 per cent. It was a conditional purchase scheme designed to allow selectors to gain independence and security while working their farms. Stewart was required to live on the property and to make improvements on it to the value of £1 per acre for three years, when full payment was due. However, the land was not easily farmed. The local surveyor described the property as undulating, timbered country with poor grazing and no natural water. The story basically came to an end with the Astill family.

The Astill family demolished the cottage for its materials to build a house elsewhere. After James Astill's death in 1957 the property was sold to the State Government and became part of Cessnock State Forest. Occasional short-term permits saw it provide additional feed for local cattle, usually in times of drought. Final permissive occupancy was cancelled when the property was included in a recent transfer of land to the National Parks and Wildlife Service as the Lower Hunter National Park. The ruins of the house—its foundations, a fireplace and the remnants of chicken incubators—provide the potential for present and future generations to gain an understanding of the site's history from first settlement in the district to the present day. I commend the National Parks and Wildlife Service staff for their work in protecting this culturally valuable block of land and for ensuring that the community will be able to make the most of this piece of Hunter history.

REUTERS ASIA PACIFIC CUSTOMER RELATIONSHIP CENTRE

The Hon. PETER PRIMROSE: I ask a question without notice of the Special Minister of State, and Assistant Treasurer. Will the Minister provide the House with details of the latest financial services win for Sydney?

The Hon. JOHN DELLA BOSCA: Last month the Treasurer, and Minister for State Development officially opened the new Sydney Asian-Pacific base for Reuters, the world's biggest information, news and technology organisation. The Reuters Asia Pacific Customer Relationship Centre combines its existing help desk operations in Hong Kong, Japan and Singapore, and forms one of the company's five worldwide centres. Up to 55 new highly skilled finance industry jobs have been created by the Reuters initiative. Reuters, a 150-year-old company, was the first to relay to the world news of historic events, such as: the assassination of President Lincoln, which threw European financial markets into turmoil; the sad news for some members of this House of Kruschchev's denunciation of Stalin; and the fall of the Berlin Wall. This is another major win in Sydney's campaign to become a major international financial centre. It signals to the international financial community that Sydney is now the benchmark business location in the Asia Pacific.

The company remains at the forefront of innovative news and communications technology, reaching millions of people every day, and providing jobs for thousands of journalists and technical staff. Reuters' decision to consolidate in Sydney highlights the city's attractions. Sydney's highly skilled and multilingual workforce was another key factor in securing the Reuters centre. Reuters now joins the 283, or 64 per cent, of Australia's 444 regional headquarters in regional operating centres that are located in New South Wales. The new Reuters centre also reinforces Sydney's position as the e-commerce capital of Australia. Reuters will bring a new dimension in financial services and information to Sydney's rapidly growing new economy business sector. The Government, through the Department of State and Regional Development, is working hard to attract world-leading organisations such as Reuters to New South Wales. I congratulate Reuters on the opening of its Asia-Pacific base and wish it every success in the

future.

WORKERS COMPENSATION IMPAIRMENT ASSESSMENT GUIDELINES

Ms LEE RHIANNON: I direct my question to the Minister for Industrial Relations. Who will be involved in drafting the workers compensation guidelines, formulae and thresholds with respect to assessment of impairment and compensation payments on the statutory scheme? How long does the Minister anticipate this process will take? Will there be a period of public consultation on this aspect of workers compensation? What process will the Minister pursue to ensure that no injured workers will be disadvantaged by the new method of impairment assessment?

The Hon. JOHN DELLA BOSCA: I thank Ms Lee Rhiannon for her very relevant question to a current debate. The first part of her question relates to the process by which the guidelines are being determined. I will briefly outline the significance and relevance of impairment assessment guidelines to the WorkCover debate and the dispute resolution reform discussions that this House has recently been engaged in. To reiterate the key point, currently impairment is assessed as disability, although defined in section 66 as if it were impairment. That is one of the logical problems with the Act as it has been operating, and one of the issues that leads to difficulties and disputes. We are changing from a notion of assessing disability to assessing impairment. The Hon. Dr Arthur Chesterfield-Evans did an admirable job of explaining that distinction. I will not distract the House with a reiteration of his explanation. The critical point is that impairment can be objectively assessed by modern medical techniques.

A world standard practice for assessment—and I do not mean necessarily best practice—is the American Medical Association guidelines, as they are popularly described. The American Medical Association guidelines have now gone to a fifth edition. We will use those guidelines, as well as a range of guidelines that are currently used across the Commonwealth in various jurisdictions—such as the Comcare Australia guidelines, which were introduced by my colleague and friend the Hon. Brian Howe in the Commonwealth jurisdiction. Further, we will draw on the skills and knowledge of a large number of highly qualified medical specialists, both surgeons and physicians, and doctors specifically familiar with the use of guideline assessment. Some of those doctors have been working on guideline assessment for 4½ months but, more recently, additional specialists, nominated by the Labor Council of New South Wales, have been meeting in panels with WorkCover officials to develop guidelines to meet the recent dispute resolution reforms passed through this House.

Those guidelines will be similar, and operate in a similar way, to the American Medical Association guidelines but they will be uniquely developed for WorkCover's purposes. Many of those five working groups are on the verge of being able to report to the WorkCover monitoring group—that is, the central group that will pull all the guidelines together. The simple answer to Ms Lee Rhiannon's question is that the document will be a public document, but I do not anticipate it being completed for at least six or nine weeks or more. This is a very sensitive issue and has to be worked through with care. Although this debate has had an adversarial element, when medical doctors nominated by the trade union movement have worked with the medical doctors nominated by WorkCover there has been a surprising amount of unanimity in the development of these guidelines and some of the key areas— [*Time expired.*]

PHUONG NGO BRANCH STACKING ALLEGATIONS

The Hon. JOHN JOBLING: My question without notice is directed to the Special Minister of State. Did the Minister at any time investigate claims of branch stacking against Phuong Ngo in the Cabramatta area, including claims that he signed up 500 Vietnamese members in a matter of days—

The Hon. Ron Dyer: Point of order: The Hon. John Jobling's question does not relate to any public issue for which the Minister is responsible. It clearly refers to his former role as general secretary of the Australian Labor Party and not to his current role as a Minister.

The Hon. JOHN JOBLING: To the point order: I think you will find, Madam President, that the question does relate to the Minister's responsibilities. May I read the rest of the question before you rule?

The PRESIDENT: Order! I will look at it. The question is in order but the time for asking it has expired. The honourable member can ask the question the next time he gets the call.

The Hon. Michael Gallacher: The Minister can still answer the question as it is.

The PRESIDENT: Order! Is the Leader of the Opposition canvassing my ruling? The honourable member can ask the question the next time he gets the call.

LITTER AWARENESS CAMPAIGN

The Hon. JANELLE SAFFIN: My question without notice is to the Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment. What is the Government doing to raise awareness among schoolchildren of the harmful environmental impact of litter?

The Hon. CARMEL TEBBUTT: As honourable members will be aware, the Government has recognised the importance of reducing litter in the community. Litter has a negative impact on our environment. It can find its way into our waterways and have a deadly impact on marine life. It costs a lot of money to hire people to clean up litter that has been left in our parks, along roads and in other public places. Litter is unattractive and can be dangerous—for example, broken glass. Last year the Government introduced tough litter laws. In April this year new laws came into effect governing the distribution of material in the community. It is now illegal to place advertising material under car windscreen wipers or in outdoor areas where it can finish up as litter. These new laws are providing an effective deterrent to littering, but the Government realises that tough penalties must be backed up with strong education programs that inform the community about the impact of their behaviour on the environment. Further evidence of this is the "It's a Living Thing" community education campaign launched last month by the Premier. The 3½-year, $17 million campaign is informing people about how they can change their everyday behaviour to help protect the environment.

It is all about changing community attitudes, and in the long term nothing can be more important than changing the attitudes of young people. As part of our litter prevention program $25,000 has been made available through the Environment Protection Authority for the Litter Prevention in Schools Project. This new initiative, which also involves Clean Up Australia, aims to help schools to get more involved in learning about the effects of litter, find solutions to prevent littering and reduce the amount of litter within the school environment. Earlier this year Clean Up Australia and the Environment Protection Authority invited schools across the State to apply for $2,000 litter prevention grants. I am pleased to inform the House that a total of 63 primary and secondary schools across the State applied for grants, while a further 123 schools inquired about potential litter reduction programs. Of the 63 applications, 18 have been selected to receive $2,000 grants to implement their project with the help of Clean Up Australia.

The project will engage schools in the New South Wales Government's litter prevention program. It will help them identify and understand the litter problem and its relationship to other environmental issues. If people understand what sort of litter problem a school has, it is possible to recognise how that relates to other environmental issues, such as pollution in our waterways and the cost of cleaning it up. The Hon. Ian Cohen keeps interjecting with references to CDL. It is certainly not the case that there is general agreement that CDL would be the answer to all our littering problems. Very strong views are held on that issue, and the Hon. Ian Cohen is aware that the Government is looking at the issue through an inquiry. Therefore for him to continue to interject as though CDL is the answer to all our problems shows a lack of understanding of the importance of other initiatives that can also play a significant role. This program will play a major role in helping to change attitudes of young people towards littering.

I am not too young to remember getting back deposits on bottles. As a young person I was very pleased to gain that money to buy lollies and all sorts of other things. Nevertheless, I want to talk about this program, which is encouraging young people to develop strategies that not only remove existing litter problems but prevent new ones from occurring. It will help to bring about long-term benefits for our natural environment. Some notable examples among the 18 successful projects are Gundaroo Public School, which will establish colour-coded bins to sort material and encourage recycling; Albury Public School, which will implement an adopt-a-bin project, with each class decorating and naming a bin; and Hassall Grove Public School, which will set up composts, worm farms and recycling systems. I congratulate all 18 schools that have won grants under the first round of the project. [*Time expired*.]

FISH STOCKS PROTECTION

The Hon. IAN COHEN: I address my question to the Minister for Juvenile Justice, representing the Minister for Fisheries. Will the Minister confirm that there are no reciprocal arrangements with the Commonwealth in relation to size limits, species protection and other aspects of fisheries law? Is the Minister aware that, as a result, undersize and protected fish being caught illegally in New South Wales waters are being passed off as being legally caught outside the three nautical mile limit? What is the State Government doing to ensure that the lack of appropriate Commonwealth fisheries legislation does not seriously undermine New South Wales fish stocks?

The Hon. CARMEL TEBBUTT: I will refer the Hon. Ian Cohen's question to the Minister for Fisheries and undertake to get a response as soon as possible.

PHUONG NGO BRANCH STACKING ALLEGATIONS

The Hon. JOHN JOBLING: My question is directed to the Special Minister of State, representing the Premier. Did the Minister at any time investigate claims of branch stacking against Phuong Ngo in the Cabramatta area, including claims that he signed up at least 500 Vietnamese members in a matter of days, giving their addresses as a post office box? Were they correctly enrolled on the Australian electoral roll?

The Hon. JOHN DELLA BOSCA: I cannot recall the specifics of any investigation I conducted into Mr Phuong Ngo alone. I will come to the issue of things that I did and did not do, and that is very much bordering on the area that is not relevant to my immediate concern as a Minister in this Government. The first time I met Mr Phuong Ngo he was a member of the Liberal Party of New South Wales, at the same time as the Hon. Jennifer Gardiner was the State Director of the National Party in coalition with the Liberal Party.

The Hon. Jennifer Gardiner: He was never a member of the National Party!

The Hon. JOHN DELLA BOSCA: He had to draw the line somewhere. I am reminded by some recent press reporting by one of our more eminent journalists—although I am not sure which one—that Phuong Ngo was knee deep in New South Wales politics soon after he emerged from his refugee background. He was a Liberal-backed Independent on Fairfield City Council in Sydney's west when I first met him, as honourable members opposite are no doubt aware. According to many reports he was heavily wooed at the time by the New South Wales Liberals. We have a saying in the Labor Party: If you are prepared to go into a ballot and you have a problem you get a scrutineer; if you have a real problem get McCarthy or one of our eminent Labor lawyers to look after affairs in the ballot. Phuong Ngo took that advice and some years ago when he was holding a council ballot he had the Hon. John Hannaford act as his scrutineer. While he was a member of the Liberal Party he accompanied the Minister for Immigration, a man of high ethical standards for whom I have profound respect, Mr Philip Ruddock—

The Hon. Michael Gallacher: He was a member of the ALP when he blew one of your blokes away. Don't make a joke of it.

The Hon. JOHN DELLA BOSCA: I am not making a joke of it. This is deadly serious in more ways than one.

The Hon. Michael Gallacher: He blew one of your blokes away.

The PRESIDENT: Order! I call the Leader of the Opposition to order.

The Hon. JOHN DELLA BOSCA: Phuong Ngo accompanied the Hon. Philip Ruddock, as Minister for Immigration, to Hong Kong and Singapore on an official study tour. I thank honourable members for observing with some interest the relationships between Phuong Ngo and various Labor Party figures. However, they should balance that with the fact that he had a long and, presumably, frustrating career with the New South Wales Liberal Party before he eventually joined the ALP. The last time I saw Phuong Ngo I was giving evidence as a police witness in his recent murder trial, as I did in the retrial and the first trial. I emphasise that I was asked to appear as a prosecution witness, which I did. That is the last time I saw him. He was in the dock. Now he has been found guilty and is awaiting sentencing. This goes to the point that the Hon. Peter Primrose made: honourable members should not use question time to trivialise the judicial process. But at the end of the day, ethicists, criminologists and many others have grappled with evil. I do not know what entered Phuong Ngo's mind to prompt him to commit the murder for which he has been convicted. [*Time expired.*]

DRIVERS MARIJUANA USE

The Hon. JOHN DELLA BOSCA: Yesterday Reverend the Hon. Fred Nile asked me a question about marijuana use by drivers. I provide the following information:

> The Government is committed to making our roads safer and recognises that drugs and driving is a serious issue. New South Wales has effective legislation and enforcement practices in place to counter driving under the influence of illicit drugs. Driving under the influence of drugs is a serious offence. If police believe a driver may be under the influence of a drug they can require the driver to undergo an assessment of sobriety, and can order blood and urine samples to test for the presence of illicit drugs.
>
> I am advised approximately 600 drug driving convictions are recorded each year. The Government toughened the law in 1997 to ensure the offence of aggravated dangerous driving caught drivers who are "very substantially affected" by drugs. This offence has a maximum penalty of 14 years imprisonment. Research into the development of a road side test for cannabis was recommended by the 1999 Drug Summit. The Australian Police Ministers' Council has been considering a national approach to drugs and driving in Australia and the development of roadside tests. The Government has referred the Drug Summit recommendation to the council. This Government has been very active to try to ensure drivers do not put their own or other lives at risk by driving under the influence of drugs.

WORKCOVER STAFF INVESTIGATION

The Hon. JOHN DELLA BOSCA: On 30 May the Hon. John Ryan asked me a question about the dismissal of two of WorkCover's senior officers. I provide the following answer:

> I am advised that the answer to the honourable member's questions is no. I am further advised that the senior officers in question received a determination of their entitlements from the Statutory and Other Offices Remunerations Tribunal.

WORKCOVER INFORMATION TECHNOLOGY SERVICES REPORT

The Hon. JOHN DELLA BOSCA: On 30 May the Hon. Don Harwin asked me a question about the tender process for market testing of information technology services at WorkCover. I provide the following response:

> I am advised that Mr Wilson's fees for conducting the investigation were $25,375.00, which included G.S.T. of $1,625.00. I am advised that to provide members with a copy of Mr Wilson's report may contravene the *Protected Disclosures Act* 1994.

PORNOGRAPHY

The Hon. JOHN DELLA BOSCA: On 31 May Reverend the Hon. Fred Nile asked me, representing the Attorney General, a question about the availability of pornography and the incidence of sexual assault in New South Wales. The Attorney has provided the following response:

> There is currently no evidence that the growth in recorded sexual assault offences in NSW is related to the availability of pornography.
>
> The Bureau of Crime Statistics and Research has advised that the apparent growth in recorded sexual offences in NSW is due to the fact that child sexual assault offenders are being more effectively identified and prosecuted as a result of the establishment of Child Protection Investigation Teams (CPIT). The CPIT were established as a result of a recommendation of the Wood Royal Commission and involve officers from the Department of Community Services and the NSW Police Service.
>
> The Government shares the concern of community regarding the availability of offensive material on the Internet. In response to this concern, the Government has been working with State and Territory Censorship Ministers, and the Commonwealth Government, on a national approach to regulate on-line services. The Commonwealth has already enacted legislation to regulate Internet service providers and Internet content hosts. The legislation establishes a content regulation scheme and a complaints hotline administered by the Australian Broadcasting Authority (ABA).

STILLBORN BABIES NUCLEAR EXPERIMENTS

The Hon. JOHN DELLA BOSCA: On 5 June the Hon. Elaine Nile asked the Treasurer, representing the Minister for Health, a question about nuclear experimentation on stillborn babies. The Minister for Health provided the following answer:

> The NSW Department of Health is supporting the Commonwealth Chief Medical Officer and the Australian Radiation Protection and Nuclear Safety Authority in their investigation of this issue.

INTEGRAL ENERGY EMPLOYEES BEHAVIOUR

The Hon. JOHN DELLA BOSCA: On 7 June the Hon. John Ryan asked the Treasurer a question about Integral Energy. I provide the following response:

(1) I have now been briefed on the matter by Integral Energy.

(2) Integral Energy was deeply concerned about these comments and has taken a number of steps to investigate this situation further.

> Integral Energy's Code of Ethics specifically deals with the issue of alcohol and drug consumption. It states: "you should not come to work or return to work if you are under the influence of alcohol or other drugs that could impair you in doing your job or cause danger to yourself or others."

The Code of Ethics has been recently re-distributed and discussed widely throughout the corporation.

Integral Energy reviewed its Drug and Alcohol Policy. The policy—finalised in consultation with unions and employees and immediately after the accident—stresses a number of important points, including:

That a prime objective of the policy is to ensure Integral employees are free of the adverse effects resulting from the consumption of alcohol and illegal drugs/substances;

That Integral does not condone or allow unauthorised consumption of alcohol; and, importantly

That any Integral employee driving corporation vehicles must have a blood alcohol level that is below the legal limit.

DEPARTMENT OF HEALTH REDFERN LAND SALE

The Hon. JOHN DELLA BOSCA: On 7 June the Hon. Dr Arthur Chesterfield-Evans asked the Treasurer, representing the Minister for Health, a question about the sale of land at Redfern. The Minister provided the following response:

The Department of Health has properties in Pitt Street and Douglas Street Redfern which have been declared by the Board of the Central Sydney Area Health Service as surplus to need and which have been included as sources of revenue for the Resource Transition Program (major capital redevelopment of CSAHS facilities).

Negotiations are currently under way with South Sydney Council in respect of the Douglas Street land for its purchase as parkland at an agreed valuation.

The Pitt Street property will be sold as three separate residences and is likely to attract private purchasers.

The Area Health Service also plans to offer the Rachel Hospital site (also located in Pitt Street) to the market as a "Barter". The Area Health Service seeks to locate its community health services and a number of services operated by the Aboriginal Medical Service on this site and will seek a developer who will provide these facilities in exchange for development rights. The Area Health Service will open the development opportunity to both the private and not-for-profit sectors.

HIV SOCIAL RESEARCH SURVEY

The Hon. JOHN DELLA BOSCA: On 7 June the Hon. Elaine Nile asked the Treasurer, representing the Minister for Health, a question about HIV surveys. The Minister provided the following response:

The Survey has found 46 per cent of homosexual men had unprotected sex in 2000. The data cited in the Survey relate to men in relationships and include a significant proportion who know their partner shares the same HIV status as their own. The Survey has also found that 26 per cent of homosexual men had unprotected sex with a casual partner.

The recently released *NSW HIV/AIDS Health Promotion Plan 2001-2003* has been developed on the basis of research such as that referred to by the Hon Elaine Nile. This Plan provides strategic direction to HIV/AIDS organisations and professionals in their efforts to prevent HIV/AIDS

transmission among those at risk of infection, including gay men.

Additionally, the Ministerial Advisory Committee on AIDS Strategy recently convened an expert forum to specifically address changing HIV risk and testing practices among gay men. The findings of the *NSW Partnership Forum on Gay Community Responses to HIV/AIDS* are presently being considered and progressed by a specially convened Ministerial Advisory Committee on AIDS Strategy sub-committee.

The NSW Department of Health is proposing to call for expressions of interest from organisations and services for new initiatives to address changes in HIV risk and testing practices. These initiatives will build upon and enhance existing efforts to curb the transmission of HIV in NSW.

ROYAL NORTH SHORE HOSPITAL KIDNEY TRANSPLANTS

The Hon. JOHN DELLA BOSCA: On 6 June the Hon. Dr Arthur Chesterfield-Evans asked the Treasurer, representing the Minister for Health, a question about kidney transplants. The Minister for Health provided the following answer:

I refer the Honourable Member to my answer to a question without notice on 5 June 2001 on the Greater Metropolitan Services Implementation Coordination Group Report. In that answer, I pointed out that the Implementation Group is made up of 42 doctors, nurses, allied health professionals, consumers and health administrators. The group consulted with more than 1000 of their colleagues over the past 12 months to develop a single, long-term plan for key metropolitan hospital services in the greater Sydney region.

The Coordination Group recommended that transplant services be consolidated at Westmead, Prince of Wales, Royal Prince Alfred and John Hunter hospitals as well as The Children's Hospital at Westmead, and that clinicians from other hospitals, including Royal North Shore, be offered full appointments to these services.

The metropolitan hospital services plan was endorsed by the chairs of the Medical Staff Councils of the 21 hospitals in the greater Sydney region.

MARKET IMPLEMENTATION GROUP DIRECTOR FUNCTIONS

The Hon. JOHN DELLA BOSCA: On 6 June the Hon. Duncan Gay asked the Treasurer, representing the Minister for Information Technology, a question relating to market implementation group directors functions. The Minister supplied the following answer:

The Electricity Supply Act allows for the delegation of authority related to Market Operation Rules to specified persons where this is considered appropriate. Further, the Government has sought to be completely transparent about this delegation.

The Market Implementation Group (MIG) is an administrative entity within the NSW Treasury that will have an ongoing role advising the Minister for Energy and Treasurer on electricity matters, and will continue to operate beyond June this year.

Neither the MIG entity nor the delegations are necessarily linked to any specific individual or contractors. The delegation relates to an ongoing position within NSW Treasury.

The demands of implementing Full Retail Competition require decisions on system implementation to be made quickly and centrally. Clearly the Minister would remain informed of any requirements imposed under this delegation.

PACIFIC POWER INTERNATIONAL

The Hon. JOHN DELLA BOSCA: On 5 June the Hon. Duncan Gay asked the Treasurer a question about Pacific Power. The Minister provided the following response:

> The statement made by the Premier that the Honourable member refers to relates directly to the fact that there is only very limited work for Pacific Power International (PPI) in New South Wales. This is clearly evidenced by the fact that around 95 percent of PPI's revenues in 1999/00 were earned outside of the State.
>
> As the Honourable Member points out, the Tarong North project is located in Queensland.
>
> The fact that PPI was able to secure this contract through a competitive bidding process demonstrates the level of skill and expertise the organisation has built up. The importance of maintaining and building on that expertise is the key motivator for the Government in wanting to restructure PPI. In doing so we are committed to ensuring the arrangements chosen for PPI will maximise its value and the opportunities for its employees, while minimising the financial risks faced by the Government.

POKER MACHINE ADMINISTRATION

The Hon. JOHN DELLA BOSCA: On 20 June Reverend the Hon. Fred Nile asked the Treasurer, representing the Minister for Gaming and Racing, a question about Internet gambling and poker machine allocations. The Minister provided the following response:

> As far as the New South Wales Government is aware, the Commonwealth Government's proposed *Interactive Gambling Bill 2001* will have no effect on the operation of linked jackpot systems. Indeed, Senator the Hon. Richard Alston's media release of 19 June indicates that the proposed legislation was never intended to affect existing off-line gambling services that happen to use communication links, such as totalizators and poker machines linked between and within licensed premises.
>
> Senator Alston confirms, in his media release, that the Commonwealth Government will amend the draft Bill to clarify that the ban will not apply to these services. Those proposed amendments are currently before the Australian Parliament.
>
> Clearly, if the proposed legislation does not apply to the operation of linked gaming systems, there will be a nil impact on State revenue in this area. Similarly, I advise that the impact of the proposed legislation on State gaming machine tax income will be nil.
>
> In relation to the second question asked by Reverend the Hon. Fred Nile, concerning the "purchase of country hotel licences by city operators to expand their poker machine allocations", it is important to note that hotel licensees under the current law are entitled to sell their licence for removal to another location and realise a return on their investment.
>
> This relocation, or "removal" of a hotel licence, has been an established feature of hotel licences for many decades, and is not something new. Under the Liquor Act, the Licensing Court must be satisfied that an existing hotelier's licence is <u>not</u> available for purchase and removal before it can consider granting a new hotelier's licence for that site. This encourages developers to purchase existing hotel licences rather than apply for a new hotelier's licence.
>
> The Government has been aware in recent times, however, of growing community concerns, particularly in some regional and rural areas, regarding the removal of country licences to metropolitan areas to establish hotels with gaming facilities. Because of an increase in the value

of hotel licences, some hotel operators in regional and rural NSW have chosen to sell their licence so it can be removed to a new development in another part of the State. In a handful of cases, that has led to a small rural community being left without an operating hotel.

In order to address those concerns the Government has introduced a number of relevant initiatives and reforms. For example, a range of measures was introduced by the Government under the Gaming Machine Restrictions Act as part of its gaming reform package. These new measures included abolition of the automatic entitlement to operate gaming machines in new, or relocated, hotels. The owner of a relocated hotel licence must now apply to the Liquor Administration Board for the authority to operate any gaming machines. As part of this application process, a social impact assessment must be submitted.

The new measures also include a prohibition on the location of a hotel in a shopping centre if the hotelier proposes to install gaming machines.

Finally, I would reiterate the Government's ongoing commitment to the responsible conduct of gambling and to the minimisation of gambling harm in the community. The most recent steps in this regard are contained in the Government's recent implementation of a blanket gaming machine freeze on hotels. Under this measure, hoteliers are prevented from acquiring, keeping, using or operating any additional gaming machines from 19 April 2001 when this policy was announced by the Premier.

This freeze maintains the status quo while the Government finalises the next stage of its gaming reforms.

The Hon. JOHN DELLA BOSCA: If honourable members have further questions, I suggest they put them on notice.

Questions without notice concluded.

[*The President left the chair at 1.04 p.m. The House resumed at 2.15 p.m.*]

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Committee Reports—Orders of the Day Nos 1 and 2 postponed on motion by the Hon. Peter Primrose.

CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.15 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.

In response to Recommendation 111 of the Royal Commission into the New South Wales Police Service paedophile inquiry the Carr Government introduced the Child Protection (Offenders Registration) Act, the first legislation of its kind in Australia.

The Act requires offenders who sexually assault, indecently assault, murder or kidnap a child, or who commit child pornography or child prostitution offences, to inform police of changes to their name, address, employment and motor vehicle details for a period of time after their release into the community.

This is in recognition of the special risk these offenders may still pose to children after they are released back into the community. The Act's purpose is to:

Increase, and improve the accuracy of, child sex offender intelligence held by police;

Assist in the investigation and prosecution of child sex offences committed by recidivist offenders;

Provide a deterrent to re-offending;

Assist in the monitoring and management of child sex offenders in the community;

Provide child abuse victims and their families with an increased sense of security;

Enable child murder and kidnapping offences to be considered for the purposes of employment screening and prohibiting child related employment.

The Act also contains provisions, which the Government has already commenced, to allow the Commissioner for Children and Young People to compel Government agencies to provide her with information relevant to an assessment of whether an offender continues to pose a risk to child safety. This information is used by the commissioner in proceedings before the Industrial Relations Commission or Administrative Decisions Tribunal where a serious sex offender seeks to have their ban on working with children lifted.

I am advised that these new provisions have, to date, helped the commissioner get the evidence she needed in 53 cases. After the Act was passed, the Minister for Police established an inter-agency implementation committee to develop the new systems necessary to support the effective operation of the Act. The committee is chaired by the Ministry for Police, and includes members of the Police Service, Attorney General’s Department, Office of the Director of Public Prosecutions, Judicial Commission, Law Society of New South Wales, Corrective Services, Department of Juvenile Justice, New South Wales Health, the Pre-Trial Diversion of Offenders Program, Ombudsman's Office, Commission for Children and Young People, and Privacy New South Wales.

I am pleased to advise this House that implementation of the Act is nearing completion. The Police Service has almost fully developed the child protection register, a secure computer system that will contain the information provided under the Act, as well as other intelligence information about offenders against children. The final technical upgrades are being made and the system is currently being tested by police from the field. The service has established and staffed the child protection register unit within its information and intelligence centre. The Police Service has nearly finalised its standard operating procedures for the administration of the Act and will be able to complete this task upon this bill being passed. Other justice agencies are implementing systems necessary to track relevant offenders against children across the justice system, and to inform offenders of their obligations under the Act. An explanatory pamphlet on the Act has been developed for offenders and their legal representatives, and police and judicial education material is now being prepared.

Subject to final systems testing being successful, I am advised that it is expected that the Act will

be fully operational by the end of August. However, the committee responsible for implementing the Act has advised the Government that the Act will be more effectively administered if a number of minor amendments are made. The Government is committed to making these changes before the Act comes into force, and that is the reason I bring this bill before the House today. I will now detail the specific amendments contained in schedule 1 of the bill.

The bill closes two loopholes that may allow a small number of recidivist offenders, or offenders against multiple victims, to benefit from the shorter registration periods provided for one-off offenders. Firstly the bill, in items [1], [2], [12] and [13], ensures that persons convicted of the offence of persistent sexual abuse of a child under section 66EA of the Crimes Act 1900 are dealt with as recidivist class 1 offenders, being the most serious class of offenders under the Act. This means a person found guilty of such an offence will be required to report to police for 15 years, or the rest of their life if they have previously been registered for another class 1 offence. This is appropriate as the offence of persistent abuse of a child carries a maximum penalty of 25 years, which is the same penalty for murder and homosexual intercourse with a male under the age of 10, and a greater penalty than for all other offences covered by the Act.

The Government introduced section 66EA in response to the problems raised in the judgement of *S v The Queen*, to enable a conviction where child sex offences against a particular child are established on three or more separate days, but where it is difficult to sufficiently particularise each offending incident. Whilst section 66EA by its very nature involves recidivist behaviour, it may result in a single conviction. The amendment makes it clear that persons found guilty of this offence are to be treated as recidivists under the Act. The Act treats offences arising from the same incident as a single offence, as it is possible that an offender may be charged with multiple offences for the same action. The Act seeks to impose longer registration periods on recidivists, not people who receive multiple charges for a one-off offence against a single victim.

However, the implementation committee recommended that the "same incident" test needs to be more clearly defined to prevent some high-risk offenders from pursuing legal arguments that they should be subject to the lower registration periods of one-off offenders. For example, they may argue that their offences over a period of time stem from some common causal incident, perhaps their own abuse as a child. The Act creates a system under which a person's registrable person status or registration period is not a matter for determination by the courts. Rather these matters flow automatically from a finding of guilt, subject to very low sentencing thresholds being met, and the offender's overall registrable offence record. The role of the courts is simply to inform registrable persons of their obligations under the act, with this being done by the administrative arm of the courts, rather than by the judiciary. It was never the intention of the Government that lawyers would spend valuable court time arguing the meaning of "arising from the same incident". Accordingly, new section 3 (3) of this bill makes the meaning of that term precise and transparent.

New section 3 (3) adopts the 24 hour threshold used in distinguishing the separate incidents in the offence of persistent sexual abuse of a child. Offenders who commit offences outside a single period of 24 hours demonstrate clear recidivist behaviour and will not be able to satisfy the same incident test. The test also excludes persons who commit offences against more than one victim, even where those offences were committed at the same time. It must be recognised that such offenders pose an increased risk to child safety and should be subject to the more stringent reporting periods imposed on multiple offenders. New section 3 (1) makes it clear that a reference to a good behaviour bond under the Act includes a bond issued to a child, as well as one issued to an adult. Children subject to such bonds are already captured by the Act under the definition of "registrable person". The amendment will ensure the Department of Juvenile Justice has a statutory obligation, under section 5 (3) (c) of the Act, to inform children subject to such bonds of their obligations as registrable persons.

New section 3 (1) responds to legal advice from New South Wales Health that persons found to

have committed registrable offences, but who are detained as forensic patients by orders made under sections 27 and 39 of the Mental Health (Criminal Procedure) Act 1990, are not technically sentenced for those offences. New section 3 (1) corrects this minor drafting matter by defining such orders as sentences for the purposes of the Act, ensuring that the Act applies to forensic patients in the manner already supported by Parliament. New sections 3 (1) and 5 (3) (d) of the bill recognise that some registrable persons with mental health conditions, who are found guilty and detained under the Mental Health (Criminal Procedure) Act, receive orders of detention more akin to a home detention or periodic detention order than an order for full custody. Whilst this has only happened on rare occasions, it is important that these offenders who are allowed some time in the community immediately after sentencing are treated like other such offenders, not those who are placed in full time custody.

As the Act applies to offences in other jursidictions, so to must it recognise successful appeals against convictions for registrable offences in other jurisdictions. The Act currently only recognises New South Wales appeals. New section 3 (1) corrects this. New section 3 (1) makes a minor amendment to the definition of strict Government custody by clarifying the meaning of "at large" in the current definition. Correctional agencies were unsure if the provisions applied to all persons who leave their place of custody, or just those who leave their place of custody and are unsupervised at all such times. The amendment clarifies that supervising authorities, Corrective Services, the Department of Juvenile Justice and New South Wales Health, need only notify police when an offender has unsupervised leave from their place of custody. New section 6 (1) extends the circumstances in which supervising authorities must notify police of a change to a registrable person's supervision status. Currently the Act only requires those bodies to notify police when an offender leaves custody or is allowed some unsupervised time in the community during their period of custody.

There is no requirement for supervising authorities to provide information on the completion of a sentence served in the community, such as a community service order, periodic detention order, home detention order, or supervised bond. There is also no requirement for police to be notified of a change to a registrable offender's parole status or completion of their participation in the pre-trial diversion of offenders program. This position was taken because these registrable persons would already be reporting to police. However, the Police Service believes the provision of this additional information would assist police in verifying information provided by registrable persons. Registrable persons are more likely to change behaviour patterns and living arrangements following the completion of a sentence or period of parole/license, increasing the likelihood of registration details being altered. A change in supervision status may also increase the likelihood of re-offending. The bill therefore requires supervising authorities to inform police of the above matters.

New section 6 (2) enables supervising authorities to inform offenders of their obligations under the Act as soon as practicable before their release, as well as soon as practicable after their release, as is currently the case. As a general rule, supervising authorities will find it easier to serve the notice as part of the release process, rather than after the release when they no longer have the same level of contact with the offender. The amendment will enable notices to be served as part of the release process, simplifying procedures and increasing the likelihood of offenders being made aware of their obligations. New section 22 is a key provision of the bill. It enables an agency with responsibilities for notifying offenders under the Act to transfer some of those responsibilities to a more appropriate agency. These arrangements would only be entered into with the consent of relevant Ministers and would be made transparent by recognising them in the regulations. Any such arrangements would still ensure registrable offenders were notified of all their obligations as soon as practicable after sentencing and upon their release.

The implementation process has identified a clear need for a more flexible notification system. For example, lodging the court’s notification functions with the registry, rather than judicial

officers, makes it difficult for the court to notify offenders who are immediately taken into correctional custody as such offenders do not pass the registry desk. Government agencies are currently negotiating supervising authorities taking on the notification role in such instances. Negotiations are also being finalised for the Police Service to take on a more active notification role under section 7, rather than just acting as a safety net to catch offenders not notified by the courts or supervising authorities. It is envisaged that all offenders will be served with an additional full notification at the time they first report to a police station. The regulations would enable notifications to be served by the most appropriate agency, depending on levels of contact with the offender. This will maximise successful notifications and result in administrative savings for Government. This flexibility will also allow the legislation to respond to changing contact arrangements justice agencies have with offenders.

These amendments will support the effective operation of the Act. The Government believes it is responsible to address issues raised in the implementation process at this stage, rather than wait for the commencement of the Act and then impose system changes when procedures have been finalised. I would like to take this opportunity to address an issue that is not specifically dealt with in the Act. That is the possibility of courts considering the impact of the Act on offenders in determining sentences. It would obviously be of great concern to this Government and all members of the community if legislation designed to protect children resulted in offenders against children being released into the community earlier than is currently the case. As I have previously advised, the role of the courts under the Act is to issue certain notices, with this being done by the court registry rather than judicial officers. There is no judicial discretion in determining whether an offender is a registrable person or in setting the period for which such an offender must report to police. These matters are an administrative by-product of sentencing and the offender's total relevant criminal record.

The Act is quite clear that sentencing determines registration—registration does not determine sentence. Nevertheless, crown advocate's advice was sought on whether courts should consider the impact of the Act in determining sentence. The crown advocate has advised that he believes it would be inappropriate for the impact of the Act to be considered at sentencing, stating that obligations for certain classes of people to provide information are commonly imposed by statute and contract. He also cites recent decisions of the court of criminal appeal that bail reporting obligations should not be considered in reducing sentences, and notes that the reporting obligations under the Act are less stringent than bail reporting obligations. If the more regular bail reporting obligations of a person who has not yet been convicted are not relevant to sentencing, it is clear that the requirements imposed on a convicted child sex offender are also not relevant. The judicial commission has kindly agreed to publish an article on the Act, which will discuss sentencing issues.

I am confident that the courts will apply the law in the proper manner. The Act and this bill reflect the Carr Government's proud child protection record, a record unequalled by any Government in the history of Australia. It was this Government that passed the Children and Young Persons (Care and Protection) Act 1998, which ensures all Government agencies work together in responding to child abuse. It was this Government that established the Child Protection Enforcement Agency in the New South Wales Police Service, which has been recognised by the FBI as a world leader in investigating child abuse. It was this Government that introduced the Commission for Children and Young People Act 1998, to screen applicants for child-related employment for offences against children. It was this Government that introduced the Child Protection (Prohibited Employment) Act 1998, that makes it a criminal offence for persons found guilty of child sex and other offences to seek or remain in child-related employment. The Child Protection (Offenders Registration) Act and this bill build on these important achievements.

I commend this bill to the House.

The Hon. GREG PEARCE [2.16 p.m.]: The purpose of this bill is to amend the Child Protection (Offenders Registration) Act. That Act sets up a framework for offenders who sexually assault, murder or kidnap a child, and it requires them to inform the police of changes to their name, address, employment and motor vehicle for a period of time after their release back into the community. The Opposition supported the legislation. The original Act was an important one that provided greater security for those who are most vulnerable in our society. It meant that accurate records could be kept on those who are most likely to re-offend. That legislation fulfilled the responsibilities of this Parliament to the people of New South Wales.

However, an interagency implementation committee was set up after the Act was passed. That committee consisted of a number of appropriate stakeholders in this issue, including representatives from the Police Service, the Attorney General's Department, the Office of the Director of Public Prosecutions, the Judicial Commission, the Law Society of New South Wales, the Department of Corrective Services, the Department of Juvenile Justice, New South Wales Health, the Pre-trial Diversion of Offenders program, the Ombudsman's Office, the Commission for Children and Young People, and Privacy New South Wales. The committee recommended a number of changes that are required before the legislation is fully implemented. These changes provide either clarification of the bill or removal of the loopholes in the Act that the committee identified.

Again, on this occasion the Opposition is pleased to support these changes. Members of the Opposition want to send a loud and clear message to the community: the Parliament of New South Wales is acting in a strong and resolute bipartisan way to curb, as much as is humanly possible, offences against children. I congratulate the New South Wales Police Service, which, I am advised, has almost fully developed the child protection register. The register is a secure computer system that contains information that this bill provides. Pending final testing, I am told that the system will be fully operational by the end of August.

I now discuss some of the amendments proposed in the bill. The first amendment will close a loophole whereby offenders against multiple victims and some recidivist offenders may benefit from shorter registration periods that are intended for one-time offenders. This bill will ensure that those who are convicted of persistent sexual abuse of a child under section 66EA of the Crimes Act will now be dealt with as recidivist class 1 offenders, which is the most serious class of offender under the legislation. The provision requires people who are found guilty of this offence to report their details to police for 15 years or, if they have previously been convicted of another class 1 offence, for the rest of their lives.

The bill also clarifies that offences that occur more than 24 hours apart are separate offences when consideration is given to whether the offender is a recidivist. As the original Act treated offences arising from the same incident as a single offence, the interagency implementation committee believed that the incident test needed to be more clearly defined. This was so that technical legal arguments could not be pursued by high-risk offenders to try to gain the lower registration periods of one-off offenders. The registrable status of a person will now flow automatically from a finding of guilt and will not be subject to judicial discretion. The definition of "same incident" is made precise under new section 3.

If an offence is committed outside one 24-hour period, the offender will be deemed to be a recidivist. The offender will also be deemed to have exhibited recidivist behaviour if he or she has committed offences against more than one victim, even if that is within one 24-hour period. New section 3 (1) also applies the legislation to forensic patients and clarifies the meaning of "at large" in the current definition of strict government custody. New section 6 (1) is important because it broadens the circumstances under which authorities must notify the police of a change in an offender's supervision status. Changes on registrable offenders' parole status, completion of their involvement in a pre-trial diversion program or completion of the community sentence must now be notified to police.

This will certainly help in verifying information provided by offenders to police in a situation in which the police must have as much information as possible. This is particularly important, as a change in

an offender's supervision status may also increase the offender's likelihood to re-offend. This is an odious possibility that this Parliament has a moral obligation to minimise in any way possible, and that is the fundamental reason why the Opposition will support the bill. The Opposition does not resile from its responsibility to protect those in our society who most need protection. But it is a responsibility that must be carried by the entire Parliament and all of those in our community who are repulsed by the spectre of child abuse of any type.

The Hon. IAN COHEN [2.21 p.m.]: Although the Greens support this bill; we are concerned about how it will operate at a practical level. The requirements of the bill could be particularly onerous for certain groups of people such as children, those who have impaired intellectual physical functioning, Aboriginal people, Torres Strait Islanders and people from non-English speaking backgrounds. These groups can be classified as vulnerable people. Some or all of these groups may have difficulty communicating. The 2000 Act sets out in part 2, division 1, the types of notices that are to be given to registrable offences. The notices are to be given in writing. For example, section 4 specifies that:

> (1) As soon as practicable after a registrable person is sentenced, the sentencing court is to give written notice to the person of:
>
> (a) the person's reporting obligations and
>
> (b) the consequences that may arise if a person fails to comply with those obligations.

The consequences are quite severe. The offence of failing to comply with reporting obligations is set out in section 17. The maximum penalty is 100 penalty units, or imprisonment for two years, or both. Vulnerable people may not be able to read the notice in writing given to them, or may have great difficulty understanding it. It is essential that those people be given the reporting obligations in an oral fashion, as well as the written notice, so that they are more likely to understand their reporting obligations under the Act. The Greens will move an amendment in Committee to address this issue. Another aspect of the Act that is problematic is its non-discretionary nature. Persons are registrable persons if they have committed a registrable offence. A registrable offence is a class 1 or class 2 offence as defined in the Act. Section 14 of the Act sets out the period for which reporting obligations continue. Depending on the class of offence and other circumstances as set in section 14, the registrable period ranges from four years to life. Generally this is unproblematic except for certain categories of offences.

I will use a case example. Peter is 14 years old and Wendy is 15 years old. They start going out together. After they have gone out together for a while they engage in sexual intercourse. Both parties consent to the sexual intercourse and are happy in their relationship. Wendy's parents find out and become extremely upset. They decide that Peter should be prosecuted for his conduct. They approach police and put enormous pressure on them to prosecute. Reluctantly, the police agree. Peter is prosecuted. Under the Act he has committed a class 1 offence, which is set out in the definitions section of the Act. A class 1 offence includes "an offence that involves sexual intercourse with a child". Peter is convicted and sentenced. He receives a two-year good behaviour bond. Under section 14, Peter must report for five years—10 years divided in half because he was a child when he committed the class 1 registrable offence. Peter and Wendy stay together and when they are old enough they marry and have children.

Peter, in the meantime, has to satisfy his reporting requirements such as notifying the Commissioner of Police where he is living; where he is working and who he is working for; and the make, model, colour and registration number of the car that he is driving. In another case example, Brigid suffers from postnatal depression. She kills her child shortly after it is born. At the trial she is found not guilty by virtue of mental illness. By virtue of the operation of the Act, in particular section 3 (2), even though at her trial Brigid is found not guilty by reason of mental illness, there is a qualified finding of guilt under this section. The qualified finding of guilt amounts to a finding of guilt for the purposes of the Offenders Registration Act. Brigid is detained in a psychiatric hospital until she recovers from her mental illness.

Eventually the Mental Health Review Tribunal assesses her case and recommends that she be released.

The Tribunal does this because it considers she is no longer suffering from a mental illness and the safety of any member of the public will not be seriously endangered if she is released. The Minister agrees with the recommendation and Brigid is released. According to the Act, Brigid has committed a class 1 offence because the offence committed was "the offence of murder, where the person murdered is a child". She must report for 15 years. Again, Brigid must provide details of where she lives and works, who her employer is and any car she drives. I use these case examples to highlight the non-discretionary aspects of the Act. Under the Act an individual can apply to the Administrative Decisions Tribunal [ADT] for an order suspending the registrable person's reporting obligations. However, an individual can only do this before the prescribed period. Only a person who is subject to life registration can apply in certain circumstances. The Greens believe this is extremely harsh considering the case scenarios mentioned earlier in my speech.

Sections 25 and 26 make provision for the monitoring of the operation of the Act by the Ombudsman and a review of the Act by the Minister. The Greens would ask the Ombudsman and the Minister to seriously consider case scenarios such as this when they are conducting the review. Perhaps the Act, particularly the provision relating to review by the ADT, should be reassessed so that the Act is more discretionary. It is the Greens view that cases such as this should be able to go before the ADT at an earlier stage. Another possibility may be that where the offence has been committed by a child, the Children's Court should be given jurisdiction to review an individual's reporting requirements. I would like an assurance that the issues raised by the Greens will be properly looked at by the Ombudsman and the Minister in due course, during their reviews. The Greens support the bill.

The Hon. PATRICIA FORSYTHE [2.26 p.m.]: The principle of offender registration was accepted by Parliament in 1998. This bill picks up what have, perhaps, been identified as anomalies. It clarifies issues that arose out of the initial legislation and have come about as a result of the interagency implementation committee. Therefore, as my colleague said earlier, the Opposition supports the bill. Indeed, the Opposition certainly accepted the principle in the first place. I remind the House that the concept of registration grew out of the Royal Commission into the New South Wales Police Service. It is worth noting some of the comments relating to paedophilia that are set out in volume 4 of the 1997 report of that commission.

Honourable members will be aware that offender registration will include offenders who have been found guilty of the sexual assault, murder or kidnapping of a child. As I said, it grew out of the quite horrific evidence about paedophilia that emerged at the time of the police royal commission. I note in particular some comments contained in the preface to that commission's August 1997 report. The royal commissioner said:

> The paedophile, whilst generally but not necessarily male, can present in almost any guise. He may come from any background or walk of life. It is a mistake to assume, in any investigation, that the holding of a particular position of responsibility or eminence automatically disqualifies a person from being a suspect. Sad to say, it can be a trait of a paedophile that he seeks and attains positions where he can be in contact with, or have influence over, children.

We have taken steps insofar as employment is concerned to correct that. The commissioner went on to state:

> Also sad but true is the fact that the paedophile may well be extremely plausible, devious in the exploitation of children, and capable of gulling those caring for them and of covering up his activities.

Following that report it was deemed to be appropriate that an offenders registration system be established. Such a system is not unique to New South Wales. Although the need for it came about as a

result of the police royal commission, we know that every State in the United States and almost every province in Canada now has an offenders registration system of one kind or another. As I said earlier, the Opposition accepts this as an important safeguard with respect to protecting the vulnerable young people in our society.

Given that this legislation arose from the work of the Interagency Implementation Committee, I was surprised to receive advice from the Law Society of New South Wales expressing concerns raised by the society's criminal law committee. It seems that either the Law Society wants to raise more matters than it previously raised or there is some breakdown in consultation. I was surprised to learn that the society suggests that some of the clauses in the bill are still not satisfactory. In particular, the Law Society says:

> The proposed definition of "arising out of the same incident" continues to be of concern to the Committee. It is the Criminal Law Committee's view that the selection of a 24 hour time frame is to arbitrary and, further, the Committee believes that the question of whether offences arise from the same incident is one that should be left to the determination of the Court in each circumstance.
>
> Accordingly, it is submitted that Schedule 1[8] (proposed section 3(3)) should be deleted from the Bill.

I certainly do not believe that that is what the Government has done. However, it would be worth getting on the record the Government's opinion on the Law Society's point of view. The Law Society also says:

> The proposal that the sentencing court or supervising authority may, by regulation, assign their notification responsibilities to each other or the Commissioner of Police differs from the Implementation Committee's recommendation.

Therefore, it would be good to know why the committee took the steps that it took. I do not suggest that we have a different point of view but, given that those comments have been made, it would be worthwhile having the matter placed on record. The Law Society's other comments are of concern to me. It says:

> The Criminal Law Committee also has continuing fundamental concerns about the impact the reporting requirements of the Act will have on :
>
> forensic patients as registrable persons—

and that point has been made by the Hon. Ian Cohen—

> Young people, particularly where sexual intercourse was consensual.

That was never the intention of the original legislation. I am certain that the Government has an answer to that, but that is not what was intended in the establishment of the offender registration system. I do not suggest that it is not a serious offence, but in identifying people who would be a potential risk to young people it must be considered that young people below the legal age engaging in sexual intercourse falls into a different category.

I will return to registrable persons, particularly vulnerable people within the criminal justice system, and in particular people with an intellectual disability. I am aware that the Intellectual Disability Rights Service has contacted all members about this issue. Many prisoners within the criminal justice system, at either the juvenile justice level or in the adult system, have a very low intellect. People who have an IQ of less than 70 have very limited cognitive skills. Placing an onus of responsibility on those people—though some of them may live independently in the community—perhaps places a greater expectation on them than would be their capacity to respond. However, that does not lessen the fact that many of those people

represent a potential risk to the people whom we seek to protect through this legislation. It is important that we find a way of ensuring that people of low intellect are able to conform with all the requirements of the legislation, including reporting to police.

The Intellectual Disability Rights Service has expressed some concerns about whether placing the onus of responsibility on such people is greater than their capacity to meet the legislation's requirements. We sometimes forget that we have enabled many people of mild to moderate intellectual disabilityto live independently in the community and that some of them from time to time get themselves into trouble because they have a lesser understanding of legal requirements than others have. With those comments I commend the legislation and look forward to hearing the Government's response to some of the points I have raised.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.35 p.m.]: The Australian Democrats support the bill in general. The sexual abuse of children offends the very nature of a civil society. The proverb that it takes a community to bring up a child is very important. We are concerned about the contraction into a nuclear family and the lack of ability to have children simply play in the community, as opposed to being highly supervised. Obviously, the control of sexual predators to keep the community safe is a very high priority in terms of children's freedom to develop within the community. It is therefore a question of balancing what I regard as the pre-eminent rights of children and the rights of people who have been accused of sexual crimes. I believe that the rights of people who have been accused of sexual crimes must, to some extent, take a back seat to the rights of children to be able to play untrammeled and untroubled.

The issues raised by the Intellectual Disability Rights Service, however, need to be addressed. Given the overall thrust of the bill, probably only a small number of sexual offenders have some intellectual disabilities; however, such people still deserve protection. The problem may be that in a deinstitutionalised society there is a shortage of services for the disabled in general and the intellectually disabled in particular. The unsupervised and probably underserviced people with intellectual disability who have problems that make them a risk to children are further placed at risk under the criminal justice system.

At the time of the Richmond report into the deinstitutionalisation of the mentally ill I spoke with a solicitor who had just watched the movie *One Flew Over the Cuckoo's Nest* and as a result felt that he knew all about mental illness. He expressed the view that mental illness basically does not exist and that people with the illness should be dealt with, as he put it, according to the due process of the law. He seemed to suggest that the due process of the law would, with great gravitas, effectively solve all society's problems with regard to the mentally ill. When one considers the position of the intellectually disabled in relation to the court system, one sees the extraordinary folly of such a proposition.

As a member of the Select Committee on the Increase in Prisoner Population I note that a research program is currently being conducted at the Central Local Court in which the court, with psychiatrists' and psychologists' help, interviews people who come before the local courts. As a result of the program, the court has found that there is a very high incidence of mental health problems in general matters before the local courts. The Government deserves much credit for such initiatives, and we hope that it will continue to resource them.

One of the objects of the bill is the establishment of reporting requirements so that people who have a history of convictions for crimes of a sexual nature will be required to report—a measure that I believe should be supported. The question is whether such reporting requirements can be met by those who are intellectually disabled, and whether those requirements can be made more flexible. We will support amendments that were initially put forward by the Intellectual Disability Rights Service and that the Greens have incorporated in quite sensible amendments. However, we believe that the first priority of the legislation is the protection of children, and if that involves some reduction in the rights of those who prey upon children, that is the price they pay.

Reverend the Hon. FRED NILE [2.40 p.m.]: The Christian Democratic Party supports the Child Protection (Offenders Registration) Amendment Bill. In June 2000 the Government introduced the Child Protection (Offenders Registration) Act. The Act, which responds to a key Wood royal commission paedophile inquiry recommendation, is the first legislation of its kind in Australia. It requires child sex offenders and other specified serious offenders against children to inform police of changes to certain personal information for a period after their release into the community. Information obtained under the Act will be kept on the Police Service Child Protection Register, which will be used by police to monitor offenders against children in the community and to investigate child abuse offences. It will also be used in child-related employment screening under the Commission for Children and Young People Act 1998 and to assist in detecting offences under the Child Protection (Prohibited Employment) Act 1998. Access to the register will be strictly controlled, so police will be able to use it only on a needs basis. The Police Service will not use information or the register to tell members of the community where offenders against children live and work.

The Act's implementation, which is nearing completion, is being co-ordinated by an interagency committee that includes the police ministry, the Police Service, the Attorney General's Department, the Office of the Director of Public Prosecutions, the Judicial Commission, the Law Society of New South Wales, the Department of Corrective Services, the Department of Juvenile Justice, New South Wales Health, the Pre-trial Diversion of Offenders Program, the Office of the Ombudsman, the Commission for Children and Young People and Privacy New South Wales. The bill, based on advice from the implementation committee, will stop offenders who commit offences on separate days or against separate victims from mounting legal arguments that their offences arise from a single incident. In closing this possible loophole the Government will ensure that such offenders are subject to the stricter registration period imposed on repeat offenders. The bill will make sure that people who are sentenced for the offence of persistent sexual abuse of a child, which is a single offence comprising multiple incidents of child sexual or indecent assault, are subject to the tougher registration period imposed on recidivist offenders guilty of the most serious offences against children—class 1 offences.

The bill requires the Department of Corrective Services, the Department of Juvenile Justice or New South Wales Health to advise police whenever a relevant offender finishes a period of supervised parole or licence, a community service order, a periodic detention order, a home detention order, a supervised good behaviour bond, or participation in the Pre-trial Diversion of Offenders Program. The bill will clarify that the Department of Corrective Services, the Department of Juvenile Justice and New South Wales Health must advise police whenever relevant offenders are allowed to leave their place of custody on unsupervised leave. It will also enable the Department of Corrective Services, the Department of Juvenile Justice and New South Wales Health to inform relevant offenders of their obligations as soon as is practicable before release rather than just after release, as is currently the case.

The bill will also enable Ministers responsible for bodies with a notification role under the Act to agree that one such body should assign its responsibilities to a more appropriate body, which will ensure that the most appropriate government agencies can provide offenders notices as soon as practicable after sentencing and upon release of offenders. The bill will help people to better recognise the types of orders that may be made in respect of offenders with mental health issues. This point has been raised by some members. Finally, the bill will recognise successful appeals made by offenders in the High Court and the courts of other jurisdictions. Members of the social issues committee visited various centres dealing with sexual offenders, including paedophiles. Authorities with a great deal of expertise on this issue—from memory I think it was in Minnesota—said that they had very little success in rehabilitation and that is why these offenders need to be under constant supervision. An offender may seem to be rehabilitated but will reoffend. It is very difficult to completely eradicate in adult offenders a sexual attraction to children, mainly small boys.

The Christian Democratic Party and the Festival of Light have sought strong laws in this regard. But paedophiles are very devious. Sadly, they are usually successful in joining organisations to have

access to children. That is their motive in joining rather than to become a genuine member of the organisation. They could become boy scout leaders or ministers or priests of Catholic or Protestant religions—without going into history of what has happened over recent times. Recently in Adelaide a judicial officer was found guilty of molesting boys, even in his rooms at the courthouse. These people are very devious and can conceal their activities for long periods.

I am pleased that following laws introduced by the Government checks are made of people employed in any organisation that has access to or contact with children. Such people are sent a form that has to be returned indicating whether the person has been charged with such activities. Every minister and priest in New South Wales has received such a form. When I received one I did not fill it in because I was not in a parish running youth groups, but I received a further letter insisting that every minister, no matter what he is doing, even if he is retired, must fill in the form. So I completed the form showing that I had not been charged with such offences. But the procedure showed me that those implementing the system were interpreting it very strictly. Their responsibility is to check everyone they employ, even those not directly involved in activities giving an opportunity to be involved with children, male or female.

If a paedophile is attracted to a boy—it may be a young boy with blond hair—and he knows that he would not be successful in just approaching the boy, he sets out to win the friendship of the mother so that in due course he can get access to the child. I have heard a tape recording of a paedophile boasting that it may take as long as 12 months to gain the confidence of the mother to the stage of being able to take the boy out. It is hard for us to understand that a deviate would engage in that activity for so long to achieve a certain aim. I am not suggesting that every woman needs to be suspicious of every male that shows any interest in her.

The Hon. Janelle Saffin: Yes, we do.

Reverend the Hon. FRED NILE: You have to have reasonable suspicion—and perhaps make a deduction—if a man shows more interest in your son than in you. It is a tragedy that Judge Yeldham took his life. It is a great pity that people who have that temptation do not have access to absolutely confidential professional counselling. But in our society he would have felt that he would have been sacked as a judge. If there is a genuine desire for treatment of the sexual deviation, there should be an opportunity for confidential counselling. As I said earlier, it is difficult to rehabilitate offenders but it may be possible with minor cases. The Parliament has debated the issue of people from Australia going overseas on sex tours to Thailand and other places. I am glad that legislation now allows such people to be charged in Australia for offences committed overseas.

The Government does not accept this controversial position but there is a strong argument—I do not think it has been adequately countered—for parents being advised if a paedophile is living in their district. I know that it has caused problems in the United Kingdom; innocent people have been attacked in their homes by mobs. There is merit in the argument that parents with children in the immediate area of a paedophile should have knowledge of the whereabouts of the paedophile. The police will know the whereabouts, but that is no protection for children. America observes what is known as Megan's law, which at this stage the Government—and probably the Parliament—is not prepared to accept. However, it should be given consideration as in some circumstances it may be necessary. We support the bill.

The Hon. PETER BREEN [2.50 p.m.]: Some of my concerns have been allayed by the results of discussions I have had with officers of the Police Service and the office of the Minister for Police. A matter of concern to me was access to the database. What prevents police from not only accessing the information—that is, names, addresses, photographs and other details of child sex offenders—but also circulating the material? Recently in the United Kingdom somehow information about the family of one of the killers of James Bulger was accessed and circulated by an unauthorised person. As a result, that family was forced to move. It suffered great persecution because of the unauthorised release of information. I have been advised that on one occasion members of the family were surrounded, taunted

and attacked by a crowd of people in the street. I have been assured by the Minister's office that strict protocols will be placed on access to the database. Because of the potential for considerable problems, unauthorised police use of the database must be guarded against.

Whilst we do not have a Megan's law operating in New South Wales—whereby photographs, names and other personal details of offenders are publicly available—we have not been spared the type of case such as that I referred to took place in Great Britain. For example, last year when child murderer John Lewthwaite was released from gaol, public opinion was very much against him. There were repeated calls from various groups for vigilante-type action to be taken against him. I clearly recall that he had to be smuggled from one house to another. I also still recall seeing a photograph in a newspaper of somebody putting a hose through the letterbox hole in the door of his house. The image of that is still very vivid in my mind, I have to say. We must to take precautions about people taking the law into their own hands.

Similar scenes have been evident at parole hearings of other child sex offenders, some of whom have been released and, it has to be said, have continued to abide and live by the law. I am not suggesting that police will access confidential files of sex offenders willy-nilly, but I am concerned that such cases will lead to emotion prevailing over commonsense. The importance of police abiding by the law should not be understated. Honourable members may recall only a few years ago a police officer was charged with accessing files of an alleged sex offender. The officer gained details of the offender, including his name and address, and then actually murdered the offender. The police officer in that circumstance was related to a child victim of the offender. One can understand on a human level the kind of emotion that would prevail in that situation, but the importance of abiding by the law and having strict protocols in place to prevent that kind of activity cannot be understated.

After speaking with an adviser of the Minister for Police I am satisfied that there are sufficient sanctions and protocols in place to prevent unauthorised access to the database. I also understand that other factors are built into the database software and program to prevent wrongful access by other persons. It would be interesting if the Minister could put those protocols that are in place on the record so that those of us who are concerned about this issue can be more secure about the legislation.

I refer also to offenders who may be intellectually disabled or mentally ill. Under the bill, forensic patients are required to comply with the registration requirements. I am concerned that if they do not comply, police will be in a position to exercise undue influence over them. Will a failure to report automatically mean a breach of parole, resulting in the offender going back to gaol? That raises the question of the impact that will have on the rehabilitation of such offenders and their ability to lead a lawful and normal life? In my discussions with police I flagged the idea that offenders in this category should have someone else—a family member or a nominated person—who can report for them. I understand that the Greens have also expressed the same concern and will move an amendment to that effect. I will certainly support an amendment that extends the category of person who can report on behalf of an offender with an intellectual disability so that they comply with the registration requirements. I understand that the Government will also support such a proposal. I note in passing that this mirrors a similar proposal that I raised in debate on the Industrial Relations (Leave for Victims of Crime) Bill. I am pleased that the Government is adopting a more sensible approach on this occasion than it did during that debate.

Although a forensic patient or intellectually disabled offender will be brought under the reporting requirements of the bill, the amendment permits a support person, who may be a relative, friend or carer nominated by the offender, to comply with the reporting requirements. This is in recognition that not all perpetrators of crime have immediate family or a partner on whom they can rely to assist them to comply with the registration requirements. In some cases, it will be more appropriate for another person to attend the police station to report a change of address or variation in the offender's conditions.

Reverend the Hon. Fred Nile touched on a matter that I shall mention in passing. He noted that some people are very devious and can conceal activities associated with child molestation. He referred to

the case of a judicial officer in South Australia. Such cases are disturbing and must be guarded against. Other statements have been made by a member of Federal Parliament about alleged child molesters in various areas. Such statements are very dangerous. They cast aspersions on people, and they are place in the terrible situation of having to disprove the allegations. As Michael Duffy reported in the *Daily Telegraph* today on the statements to which I have just referred, there has been neither evidence nor explanation of these kinds of wild allegations. In concluding my remarks on the bill, I note that the implications for society of people in the community who were child molesters are very serious, and we need to guard against them. But, by the same token, such outrageous and unsound allegations also need to be guarded against.

The Hon. RICHARD JONES [2.59 p.m.]: This bill amends the Child Protection (Offenders Registration) Act, which requires child sex offenders to inform police of changes to their names, addresses, employment and motor vehicle details for a period of time after their release into the community. The bill provides that offenders who commit offences on separate days, or against separate victims, are subject to the stricter registration periods that are imposed on repeat offenders. It also makes sure that people sentenced for the offence of persistent sexual abuse of a child are also subject to tougher registration periods. This means that persons found guilty of such an offence will be required to report to police for 15 years, or for the rest of their lives if they have previously been registered for another class one offence. The relevant government departments will also be required to advise police whenever an offender does such things as finishes a period of supervised parole or licence. They must also advise police whenever relevant offenders is allowed to leave their place of custody on unsupervised leave.

As soon as practicable before the release of relevant offenders departments must also advise them of their obligations. As parliamentarians it is important that we do what we can to protect children. Supporters of the bill have stated that this bill provides an opportunity to offer children better protection. However, we should also ensure that child sex offenders are not put at risk of becoming severely discriminated against, especially offenders who also are young people or may be intellectually disabled. Concerns have been raised that those persons have committed a crime, been found guilty, served their sentence and now, when they are released, further sentences are being imposed on them.

The requirements placed on them are not imposed for any other types of crime. For example, the intent of the bill could be undermined if police officers were to reveal information on the paedophile register to unauthorised persons such as their partners. In small rural towns that information could spread very quickly. Civil libertarians have claimed that one of the most important matters is the provision of opportunities for rehabilitation. That measure is worth pursuing, as offenders have often been victims themselves and, therefore, stopping the cycle of abuse is both effective and proactive. The New South Wales Law Society stated:

> The Criminal Law Committee also has continuing fundamental concerns about the impact the reporting requirements of the Act will have on:
>
> Forensic patients as registerable persons;
>
> Young people, particularly where sexual intercourse was consensual.

More generally, it has been argued that an ongoing concern is that this kind of legislation will remove the rights of many people and provide for limited scope in accomplishing the objective of reducing violent crime against children.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.01 p.m.], in reply: I thank all honourable members for their intelligent and precise comments on the bill. Honourable members would be aware that the bill responds to the recommendations of the committee responsible for implementing the Child Protection (Offenders Registration) Act 2000, on which 14 organisations are represented. The

amendments are necessary for the prompt commencement of the Act. The issues raised by the Hon. Ian Cohen will be referred to the Ombudsman for consideration.

In response to comments on the age of consent, I advise that the Act does not discriminate against children, but recognises that they need to be treated more sensitively. That is why the Government has provided shorter registration periods for children, on the basis of research that shows that they are more susceptible to rehabilitation. That is why there are special provisions provided for children reporting under the Act and specific age-related defence mechanisms for children who are unable to understand or comply with their obligations.

The Act does not discriminate against child offenders, but provides them with additional support. The age of consent issue is a furphy and was addressed by the Government in the second reading speech on the original bill last year. The Police Service has previously advised that it would be extremely rare for offences involving children engaging in consensual sexual activity to result in charges. First, it would be hard to prove such a defence as the parties will generally refuse to testify against each other. Second, the courts are unlikely to record a conviction. Third, the Police Service has advised that it has a discretion not to prosecute offences and it does not have a policy of pursuing offences of that kind.

The Act has an in-built safety mechanism to ensure that such matters, if they reach the courts, are appropriately dealt with. The Act does not apply to persons against whom an offence is proven when no conviction is recorded as a result of orders under section 10 of the Crimes (Sentencing Procedure) Act 1999 or the Children (Criminal Proceedings) Act 1987. The issues raised in respect of forensic patients stems from comments made by the Intellectual Disability Rights Service Inc. and the Law Society of New South Wales. Forensic patients are persons found to have committed offences and who, for mental health reasons, are dealt with under the Mental Health (Criminal Procedure) Act 1990.

In passing the Child Protection (Offenders Registration) Act 2000, Parliament has already made it clear that the registration scheme should apply to forensic patients found guilty of relevant offences against children. Throughout the Act there are numerous references to forensic patients. The registration schemes in the United States of America and the United Kingdom do not exempt offenders with intellectual disabilities or mental health conditions. Since the introduction of the Act, the Government has received legal advice that orders of detention made under sections 27 and 39 of the Mental Health (Criminal Procedure) Act 1990 are not technically sentences.

Item [6] of schedule 1 to the bill corrects that minor drafting error by defining such orders as sentences for the purposes of the Act, ensuring that the Act applies to forensic patients in the manner already supported by Parliament. If item [6] is not supported, all of the Act's current provisions relating to forensic patients will have no effect, thus frustrating the intention of Parliament and compromising the safety of children. In some circumstances, a forensic patient's sex offending behaviour may arise from his or her mental illness. In other cases, the behaviour is independent of that illness. It is often difficult to causally link the mental illness with the sex offending behaviour.

Whether or not the offending behaviour is caused by mental illness, those offenders pose a real risk to child safety and should be required to register. The bottom line is that all of the forensic patients to whom the Act applies have been found by the courts to have committed relevant offences against children. Intellectual Disability Rights Service Inc. states that it is unjust to punish offenders with mental illnesses. The Act and the bill are not about punishment. People are not required to report to police for the purpose of the police punishing them; they are required to report to police for child protection purposes.

Intellectual Disability Rights Service Inc. suggests that the Act already exempts persons from registration on the grounds of diminished culpability and similar provisions should be made for forensic patients. The Act does not apply to offenders who have no conviction recorded. Also, the Act exempts one-off offenders who commit one of the less serious offences covered by the Act and receive a sentence that does not involve any supervision. Those provisions do not necessarily reflect diminished culpability;

they reflect a court's assessment that an offender poses insufficient danger to warrant any level of supervision. Forensic patients are ordered into custody, the strongest level of supervision available.

The provisions of the Act that impose higher sentencing thresholds for some juvenile offenders and lower registration periods for all juvenile offenders are not based on some notion of diminished culpability. As the Minister for Police noted when the Act was introduced in 2000, this approach was taken having regard to international registration schemes because research shows that juvenile offenders are generally more responsive to treatment and have lower rates of recidivism than adult offenders. The Constitution of the United States of America prohibits additional punishment and its courts have found that registration schemes are not an additional punishment.

The Crown Advocate has provided legal advice that states that obligations to inform particular government agencies of changes to certain personal information, which is what the registration scheme involves, are commonplace in both statute and contract. For example, people must inform government agencies of changes to addresses for motor vehicle licence and social security purposes. The Child Protection (Offenders Registration) Act provides more protections to the interests of forensic patients and other persons with disabilities within the meaning of the Anti-Discrimination Act 1977 than any other child sex offender registration scheme in the world.

The Act makes it clear that a person is not to be convicted of failing to report to police in accordance with the Act if the person has a reasonable excuse for that failure. Section 17 (2) (b) makes it clear that a person has a reasonable excuse if the person has a disability that affects his or her ability to understand, or comply with, the obligations. Section 12 (5) of the Act allows a parent, carer or guardian of a forensic patient or other person with a disability to register on that person's behalf. These safeguards recognise the special needs of forensic patients and other disadvantaged patients. The Hon. Peter Breen requested information concerning protocols. I advise that the commissioner's directions, in conjunction with clause 46 of the Police Service Regulation 2000 and section 62 of the Privacy and Personal Information Protection Act 1998, are sufficient to prevent police from inappropriately disclosing information about child sex offenders. Necessary disclosures to other government agencies are permitted by legislation and current administrative arrangements. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. IAN COHEN [3.10 p.m.]: I move Greens amendment No. 1:

No. 1 Page 5, schedule 1. Insert after line 10:

[12] Section 7A

Insert after section 7:

7A Vulnerable persons also to be given oral notice

(1) This section applies in circumstances in which written notice is given to a vulnerable person for the purposes of this Division.

(2) In addition to the written notice, the person giving the notice must also take such steps as are necessary to ensure that the vulnerable person is given an oral explanation of:

(a) the person's reporting obligations, and

(b) the consequences that may arise if the person fails to comply with those obligations.

(3) The regulations may make provision with respect to the manner and form in which oral explanations must be given under this section.

(4) In this section, ***vulnerable person*** means a person:

(a) who is a child, or

(b) who has impaired intellectual functioning, or

(c) who has impaired physical functioning, or

(d) who is an Aboriginal person or a Torres Strait Islander, or

(e) who is of non-English speaking background.

This amendment ensures that for vulnerable people oral notification as well as a written notice is to be given to a registrable person. A vulnerable person is defined as a child, a person with impaired physical or intellectual functioning, an Aboriginal person, a Torres Strait Islander or a person who is of non-English speaking background. Some or all of those groups may be unable to understand and manage the administrative requirements of the Act if they are only notified in writing. The amendment recognises that those groups may have communication problems or deficits that need to be addressed. Therefore, oral notification as well as a written notice must be given to those categories of individuals. That will help ensure they are not disadvantaged due to any communication difficulties that they may be experiencing. I commend the amendment.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.11 p.m.]: Whilst the Government understands the rationale behind the proposal to provide for oral notifications for special needs groups and intends to provide additional notification supports for such groups, it would not be prudent to support a proposal that has been provided late and has not been discussed with the courts and other bodies with a notification role under the Act. Elements of the proposal put forward appear flawed. There is no clear definition for what constitutes impaired intellectual functioning, whilst the Act's existing provisions for persons with disabilities clearly define disability in terms of the Anti-Discrimination Act 1997. It is also not clear why a person who has impaired physical functioning, unless the person is visually impaired, has any special oral notification needs. On the issue of people from non-English speaking backgrounds, I am advised the Government is currently preparing translations for material under the Act in five additional languages.

The Government is looking at a number of additional notification strategies for juvenile offenders or offenders who have disabilities, mental health issues or other special needs. For example, New South Wales Health has suggested that the regulations enable interpreters and specialist assistants to be employed to communicate notices in a more effective manner. Other discussions have taken place with the Office of the Protective Commissioner about serving duplicate notices on parents, carers or guardians of people who are not able to manage their own affairs. The Commission for Children and Young People has suggested strategies for effectively notifying children. The Government does not intend to hold up this bill to address those matters, which all parties, including the Intellectual Disability Rights Service, have

previously acknowledged may be provided for by regulation. The Government makes a commitment to address alternative notification strategies for persons with special needs in the regulations, and to consult those bodies that have supported amendments to the Act in this regard in preparing those regulations.

The Hon. GREG PEARCE [3.13 p.m.]: The Opposition understands the concerns of the Greens, but given the comments of the Parliamentary Secretary and the commitment of the Government, the Opposition will not support the amendment.

Amendment negatived.

The Hon. IAN COHEN [3.13 p.m.]: I move Greens amendment No. 2:

No. 2 Page 5, schedule 1. Insert before line 11:

[12] Section 12 Manner in which relevant personal information to be given

Omit "or carer" from section 12 (5).
Insert instead ", carer or other person nominated by the registrable person".

[13] Section 12 (6)

Omit "or carer" wherever occurring.
Insert instead ", carer or nominee".

This amendment simply extends the category of persons who can report on behalf of a person with a disability for the purposes of complying with the registration requirements. Many registrable persons with a disability do not have supportive relationships with their parents and may not have a guardian or carer. However, they may still need support to comply with their reporting obligations. The category of person is extended to anyone nominated by the registrable person. For a person with a disability, his or her parent, guardian, carer or nominated person may give the required information to the Commissioner of Police. However, the registrable person must accompany the parent, guardian, carer or nominated person unless the disability renders it impracticable for the person to do so. I commend the amendment.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.14 p.m.]: The proposed amendment to section 12 (5) of the Act proposes that children or persons with a disability that prevents them from providing police with relevant personal information should be able to have that information provided on their behalf by a person of their own choosing, as well as by a parent, guardian or carer, as currently provided for under the Act. We express our reluctant support for this amendment because, whilst the idea appears reasonable on the face of it, the Government has some reservations about the practicalities of confirming the identity of persons providing information on an offender's behalf when they have no formal relationship with the offender.

The Government will ensure that the regulations in support of the Act will require persons giving information on behalf of an offender to prove their identity. We will make sure that the practices put in place to support this amendment do not in any way weaken the protections that the Government is committed to providing to the children of New South Wales. With that reservation, the Government will support the amendment moved by the Hon. Ian Cohen, who has once more shown his ability to win support for effective amendments.

Amendment agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with an amendment and passed through remaining stages.

LIQUOR AMENDMENT (GAMING MACHINE RESTRICTIONS) BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.17 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 19 April 2001, the Governor made a regulation under the *Liquor Act*. This regulation froze gaming machine numbers in New South Wales hotels for a period of three months. The Government imposed this three month freeze on hoteliers following media speculation about the Government's gaming reform package. The freeze is designed to stop hoteliers from speculating on future directions of Government policy in this area.

The Government shares the community's concerns about the growing number of gaming machines in hotels. The Government is finalising a reform package to respond to these concerns. An announcement about the details of these reforms will be made in the near future.

Until that package is considered by Parliament, it is important that the freeze continue. The freeze was originally imposed by regulation due to the urgent need to prevent speculation about the Government's gaming reform package. The Government now proposes to continue the freeze by legislation.

This Bill amends the *Liquor Act*. It introduces the same freeze as was applied by regulation. The Bill is to take effect from 19 April 2001, which was the date the freeze was first imposed by regulation. The Bill also contains amendments to ensure that compensation is not payable by the State to any hotelier as a result of the freeze. This is consistent with the freeze already imposed on registered clubs.

The Government recognises that the hotel industry has concerns about the impact of the freeze on hoteliers. It must be remembered, however, that this freeze is a necessary interim measure until broader gaming machine reforms are introduced. This Bill will ensure that the status quo continues until the Government's reform package is considered and publicly debated. I commend the Bill to the House.

The Hon. GREG PEARCE [3.17 p.m.]: The Coalition will not oppose the bill, which will result in an extension of the freeze on poker machines. The Minister says that this bill is simply an administration bill. However, it goes to the core of the disease that the Carr Government suffers in relation to gaming in this State and the epidemic that is now engulfing the people of New South Wales from the Government's addiction to gaming revenues. The Government has presided over the most disturbing growth in poker machine numbers anywhere in the world. The number of poker machines in this State has increased from 62,332 when Carr came to power to more than 102,000 throughout clubs, pubs and shopfronts across this State.

According to the Productivity Commission, the devastating result of this epidemic is 293,000 problem gamblers in Australia. That means that approximately 110,000 people across New South Wales are doing untold damage to their families, friends and workmates. But the Government is addicted to the

$1.2 billion revenues from gaming machine taxation. We recognise that sensible gambling is a legitimate and enjoyable form of entertainment and that the extension of gambling facilities has played an important role in the revitalisation of the hotel industry and contributes to the economy and tourism.

However, the Government has been derelict in its duties to the people of this State by failing to properly regulate gambling and to properly understand and address the social consequences of unparalleled access to addictive gambling. As with most things the Government does, there has been a failure to properly consult with anyone on this bill and the extension of the freeze on poker machines. It is a regrettable feature of the Government that it now has become so arrogant and so out of touch that it simply does not consult. Therefore, it does not hear about the problems and, of course, does not address them.

When faced with the obvious and frightening social impacts of the Government's gambling addiction and its gambling policies, as usual it has reacted in a way best designed to get a media story—in this case, by extending the freeze. However, it has not thought about the economic or social impacts of the action and, indeed, about the promises that the Minister made, when the quota was first introduced, that country hoteliers and others would be able to fulfil their quota. In other words, as usual the Government has botched it up.

Another disturbing feature of the policy of the Government and the administration of gambling in this State is that the Government has virtually wiped out the compliance division of the Department of Gaming and Racing. It has done so in part by shifting responsibility for the imposition of tax on profits on gaming machines and gambling from the Department of Gaming and Racing to Treasury. The Gaming Machine Tax Bill consolidates legislation in relation to gaming machine taxes, and the House will deal with that bill in due course.

The Opposition has no quibble with Treasury collecting the revenue. However, the gutting of the Department of Gaming and Racing has meant that the responsibility for compliance monitoring and enforcement is a low priority for the Government, which does virtually nothing to ensure proper monitoring compliance and enforcement. It pays lip-service to the social issues arising from problem gambling. Even when the Government is made aware of issues of compliance, it fails to act. For example, in relation to the significant backlogs of the Licensing Court the shadow Minister told the other place that the court has an extraordinary 1,117 general prosecutions pending, 46 casino prosecutions and more than 11,000 applications.

The problem is not just dealing with the applications. By introducing gaming into the hotel industry the Government introduced a whole new suite of social issues that need to be considered before agreement can be given to allow hoteliers and managers to operate gaming machines. The Licensing Court has been given no assistance by the Government in dealing with the very difficult assessment of the social impacts of gaming before extending it to new premises such as hotels and shop fronts. Make no mistake about it: New South Wales revenue collection from liquor and gaming is the Government's priority. Compliance, monitoring, enforcement and the social fallout of the gaming epidemic are of no concern to the Government.

As the shadow Minister pointed out in the other place, the result of the introduction of new legislation will be extra work for the Licensing Court and the Liquor Administration Board. That is of concern because of existing backlogs in the court and restrictions on staff and resources in both those bodies. The bill does not attempt to deal with the difficult issue of assessing the social impact of the extension of gaming facilities and locations. The legislative approach taken by the Government has a number of potentially unforeseen consequences The legacy of the Carr Government will be the Government's addiction to gambling and the crushing impact of the fallout from the epidemic of problem gambling, exacerbated by the Government. Enough is enough. The bill does not address the epidemic unleashed by the Carr Government. However, the Opposition will not oppose this bill.

The Hon. RICHARD JONES [3.24 p.m.]: I support the legislation. In doing so I point to some interesting figures that emerged from research on gambling that was conducted in Victoria a couple of years ago. Those statistics indicate that 57 per cent of problem gamblers had incomes below $20,800; 16.9 per cent were unemployed; problem gamblers were overrepresented in the 30 to 49 age group; and 24.4 per cent of problem gamblers were born overseas. Therefore, it would appear that the more vulnerable members of our society are more open to addiction to gambling and we should do whatever we can to reduce gambling in our society.

The Hon. IAN COHEN [3.24 p.m.]: I support the Liquor Amendment (Gaming Machine Restrictions) Bill. The bill places a further freeze on gaming machines in hotels. The Government's reliance on gambling taxes, particularly poker machine tax, has grown at an alarming rate over the last few years. According to this year's budget papers in 1999-2000 the Government received more than $1.5 billion in revenue from gambling and betting. It is projected that this will be $1.4 billion in 2004-05. Of this amount, revenue from club and hotel gaming devices is projected to increase by 20 per cent, from $748 million in 2001-02 to $909 million in 2004-05. It is estimated that nearly $1 billion will be raised from poker machines by 2004-05, a huge amount of money.

Those figures demonstrates that the Government itself is addicted to gambling but in a different way. It is addicted to the revenue raised from gambling, particularly from poker machines. The Greens fully support a freeze on poker machines and, in fact, support an indefinite freeze. However, despite the freeze an enormous number of poker machines remain in clubs and hotels. The total number of poker machines is said to be around 110,000. This is a 76 per cent increase since the Carr Government's election in 1995. New South Wales has half the number of poker machines in Australia and one-tenth of the machines in the world. They are remarkable statistics. Australia has 300,000 problem gamblers. New South Wales gamblers lose $3 billion each year, most of which is wagered in the poorest areas of Sydney such as Fairfield and Liverpool.

More money raised through poker machines and gambling generally needs to be spent on problem gamblers and their families. This addiction to gambling by the New South Wales Government leads to an ever-increasing number of gamblers in our society. Therefore, it is the responsibility of the Government to ensure that adequate safeguards and services are available to help stop potential gamblers moving into gambling. Once they commence gambling it is important to ensure that sufficient services are available to help them during this difficult time in their lives.

Recently I co-hosted a Homelessness Summit at Parliament House and the link between gambling and homelessness was referred to often. The Government must accept that link and provide significant resources to help alleviate the problem. The introduction of massive numbers of poker machines into Sydney pubs and clubs has changed the nature of those pubs and clubs. Previously, they were places where friends could meet, have a chat, play a game of pool, partake of a meal, listen to a band, see a play or listen to poetry or political debate. Many pubs and clubs, particularly pubs, no longer provide those services. Poker machines have taken over.

The Hon. Ian Macdonald: Do you go to a pub to listen to poetry?

The Hon. IAN COHEN: Indeed, there are places.

The Hon. Ian Macdonald: Name one.

The Hon. IAN COHEN: The Railway Hotel, Tom Mooney, Labor Party stalwart in Byron Bay. On the first Sunday of each month after the markets there is a poetry afternoon, which is attended by several hundred people.

The Hon. Ian Macdonald: Name a second one.

The Hon. IAN COHEN: That's the only one I go to.

The Hon. Richard Jones: The Great Northern has great music.

The Hon. IAN COHEN: The Great Northern, which is in my home town.

The Hon. Ian Macdonald: It is a great pub, I might add.

The Hon. IAN COHEN: Indeed. I am glad the honourable member agrees.

The Hon. Ian Macdonald: The Railway Hotel is a great hotel. I have been there often but I have not heard any poetry.

The Hon. IAN COHEN: If you visit on the first Sunday afternoon in the month you will hear poetry and share this cultural experience in a pub. And what is more, there is not a poker machine to be found.

The Hon. Ian Macdonald: I look forward to the invitation.

The Hon. IAN COHEN: Consider it to be a standing invitation. Many pubs and clubs have completely changed and that is a real tragedy. Previously, local musicians were paid by the publican to entertain the audience, but poker machines have taken over. The hotel provided an opportunity for local bands and young people to express themselves musically. In many ways poker machines in this State have cut through the cultural fabric of society and have had an adverse impact, particularly on young musicians, who need the pub circuit. Many New South Wales people yearn for the old pubs—I am sure that the Hon. Ian Macdonald has a similar yearning—which were great places for a social gathering. When one goes to pubs and clubs now, one sees row upon row of poker machines and people, like robots, glued to their pokies. Bright lights flash while people lose desperately needed cash. There is no social atmosphere. It is a tragedy.

The Hon. Duncan Gay: Come to country pubs.

The Hon. IAN COHEN: There is suddenly a rash of invitations to visit pubs.

The Hon. Greg Pearce: Bush poetry.

The Hon. IAN COHEN: That is great.

The Hon. Ian Macdonald: Do the Greens read poetry in these hotels?

The Hon. IAN COHEN: Yes, I read my only published poem in that hotel.

The Hon. Ian Macdonald: "Surfing in Front of a US Warship"?

The Hon. IAN COHEN: That is poetry in motion but it is not necessarily suitable for pub. I support the Government's move to exert some control over the insidious expansion of poker machines in pubs and clubs.

The Hon. PETER BREEN [3.30 p.m.]: The Liquor Amendment (Gaming Machine Restrictions) Bill is one of a package of fairly minor administrative bills dealing with liquor regulation, gambling control and gaming machine restrictions that this House is to consider. The bill extends the freeze on approved gaming devices. We do not know the exact date on which that freeze will expire because the Government wants more time to develop and evaluate the gambling reform package that it has been devising for some time. As the Minister for Gaming and Racing, the Hon. Richard Face, remarked in his second reading speech on an associated bill, there has not been a time when amendments to a gambling bill have not

been before the House in some form or another.

While I support the bill, I would like to put on record some of my concerns regarding the inordinate amount of time that it seems to be taking to implement gambling regulations that we have passed. For example, I wrote to the Minister enclosing copies of amendments that I moved successfully to the responsible gambling bill. Those amendments—which I am pleased to say had the support of both the Government and the Opposition—provided for the inclusion on each entry or ticket for a public lottery a warning notice about gambling and the name and contact details of a gambling counselling service to which people could refer if they were concerned about their gambling. The Minister's response, dated 28 June, reminds me that the amendments provided for community consultation about the best way to incorporate the changes through regulation. The Minister further advised:

> Consultation on the relevant draft regulations with key stakeholders has now been finalised. Those draft regulations, incorporating your amendments, will shortly be forwarded for the Governor's approval.

While I accept that the solution to gambling addiction is complex and consultation takes time, given that we passed the responsible gambling bill in October 1999—some 18 months ago—I believe we could have acted on this matter with a bit more haste. That said, I look forward to the implementation of the regulations addressing my concerns, which I understand will be finalised by the end of the month. On that basis, I support the bill.

The Hon. Dr PETER WONG [3.33 p.m.]: The Unity Party supports the Liquor Amendment (Gaming Machine Restrictions) Bill. In speaking in support of previous gaming legislation a few weeks ago, I made my position clear about the need for better regulation of gambling in New South Wales. As the Hon. Peter Breen said, legislation in this area has been much delayed, but I hope that the Government will spend this time productively and produce proper regulation and measures that will address problem gambling in this State. If the Government produces half measures and tricky non-solutions and tries to sell them in the media before they reach Parliament, many members will undoubtedly move necessary amendments in this place. There will be overwhelming public support for real gambling reform—including a permanent cap or, even better, a buyback of poker machines— and practical measures, such as reducing poker machine maximum bets to lessen the damage being done. It is better that a few hotels and clubs have reduced profit margins than thousands of families lose their homes and have their lives destroyed.

Reverend the Hon. FRED NILE [3.34 p.m.]: The Christian Democratic Party supports in principle the Liquor Amendment (Gaming Machine Restrictions) Bill. On 19 April 2001 the Governor made a regulation under the Liquor Act that froze gaming machine numbers in New South Wales for a period of three months. The Government imposed that three-month freeze on hoteliers following media speculation about the Government's gaming reform package. The freeze is designed to stop hoteliers from speculating about the future directions of the Government's policy in this area.

When the legislation that allowed poker machines into hotels was introduced in this place, crossbenchers united to oppose it completely. We said correctly that it would lead to a dramatic expansion in the number of poker machines in hotels, and that is what happened—within a very short time the number of poker machines in hotels increased from nil to 28,000, and it is still increasing. The original freeze applied only to registered clubs not hotels, and controls must be extended to both clubs and hotels. I know it upsets Opposition members to hear this but, if they had voted with crossbenchers on the original bill, we would have had the numbers to defeat it. I understand that Opposition members had planned to oppose the legislation but decided—for unjustified reasons—to vote for it at the last minute. That was a sad day in this House as the bill created additional social problems.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.37 p.m.], in reply: I thank all honourable members for their comments on the bill and commend it to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NATIONAL PARKS AND WILDLIFE (ADJUSTMENT OF AREAS) BILL

In Committee

Consideration of the Legislative Assembly's message of 20 June.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.40 p.m.]: I move:

> That the Committee does not insist on the Council's amendments Nos 1 to 7 disagreed to by the Assembly in the bill and agrees to the further amendment proposed by the Assembly in the bill.

The Hon. IAN COHEN [3.40 p.m.]: The Greens oppose the position taken by the Government. The Greens were opposed to the bill when it first came before this Chamber and we remain opposed to it. The amendments passed by the Legislative Council do not make the bill unworkable, as claimed by the Government. The intention of this Chamber was clear. Honourable members did not agree with the Government's proposal to vary the boundaries of national parks to retrospectively validate illegal encroachments on national parks. However, we acknowledge the work that has been done by the National Parks and Wildlife Service in preparing a report on procedures to rectify the obviously deficient procedures which resulted in the bill coming before the Parliament. I quote from a submission from the Environmental Liaison Office. Rachel Walmsley, Environmental Liaison Officer, states:

> The report *Review of Revocation Procedures: Report to the Minister for the Environment* (June 2001) prepared by the National Parks and Wildlife Service is a significant improvement to obviously deficient procedures for proposing revocations to areas reserved or dedicated under the National Parks and Wildlife Act.
>
> The peak environment groups will continue to apply pressure and seek confirmation from the government that they formally intend to adopt the findings and recommendations of the report. Specifically, we will continue to lobby for
>
> 1. Government support for the findings and recommendations of the NPWS report to the Minister for the Environment *Review of Revocation Procedures*;
>
> 2. An additional recommendation in the report for new developments proposed in NPWS reserves, no revocation should take effect, or a Bill be introduced into Parliament, at least until Government has approved the development; and
>
> 3. A commitment that future legislation to revoke areas from the National Parks and Wildlife Act should be fully assessed on its merits and no Bill be passed unless the procedures in the *Review of Revocation Procedures* report are followed.

The Greens agree with many of the recommendations in the report but some aspects of the report fall short of adequately protecting reserve integrity. The report recommends that a list of factors be considered in relation to the options for dealing with illegal developments and uses which encroach on reserves. These factors include: the nature and financial value of the development or use and the potential management benefit of the development or use. Of the seven factors to be considered, only one specifically refers to the importance of achieving a conservation outcome. It is unacceptable to the Greens that factors other than conservation outcomes are considered in such decisions. The community must be confident that the National Parks and Wildlife Service carries out reserve management to protect

the integrity of the reserve, not to cater to the interest of adjoining land-holders. The Greens agree with recommendations 14 and 15 which relate to compensatory lands.

The Hon. Duncan Gay: It should be "and".

The Hon. IAN COHEN: I will refer to that issue later.

The Hon. Duncan Gay: It is a philosophical difference: The words should be "and look after adjoining land-holders".

The Hon. IAN COHEN: In circumstances such as that we are not obligated to do so, especially when land-holders are powerful.

The Hon. Duncan Gay: You do have an obligation. You have to be good neighbours.

The Hon. IAN COHEN: And the reverse should apply, but often that is not the case.

[*Interruption*]

I do not need to apologise to the honourable member about the fact that the National Parks and Wildlife Service is selfish in its conservation of public lands.

The Hon. Duncan Gay: They should be good neighbours.

The Hon. IAN COHEN: The honourable member is living in another age if he believes that conservationists are bad neighbours. They are bad neighbours to those who are degrading particular areas. The Greens do not support the qualifying words "where possible" and "where practicable" in the recommendations. Those qualifications mean that the Government regards compensation as an option rather than an essential aspect of the process. Compensatory habitat is essential. This issue should be addressed at the same time as the revocation decision is made. Compensatory habitats should be transferred to the service prior to the enactment of the revocation legislation. If adequate compensatory habitat is not available, the proposed revocation should not be entertained.

The other issue is the question of the relationship between project approval and the revocation. Planning approval must be considered prior to the revocation decision. I note that the Karuah-Bulahdelah section of the Pacific Highway, which requires the revocation of part of the Myall Lakes National Park, has not yet been approved. Obviously, there will be a significant impact on North Coast habitat as a result of the Pacific Highway upgrade. Anyone who travels along the Pacific Highway would be aware of the beautiful highland pass and the magnificent eucalypt forest in that region. It is the first indication that one is travelling out of the city. I am aware that the Bulahdelah bends are dangerous, but adequate signage in that area alerts traffic to those dangers and traffic slows down. I must be out of touch with the rest of society but I am always amazed, after coming out of the city, the Hunter and all the industrial sites, by that first sight of beautiful country and forest. I have been travelling up the coast since 1970.

The Hon. Duncan Gay: Don't you notice the forest between Sydney and Newcastle?

The Hon. IAN COHEN: Not in the same way. The Bulahdelah bends area is a stunning example of native forest and wonderful tall eucalypts.

The Hon. Jennifer Gardiner: The native animals are actually protected.

The Hon. IAN COHEN: I hope that the upgrade of the Pacific Highway will not destroy that forest area. I think it will, which is a terrible shame. Some people who drive along that highway have another set of values. That area will be lost to us all. Many options are available to the Government to save lives in

that area. One of the things that should not be considered is the construction in that area of a dual carriageway or motorway. There could be certain ameliorating aspects in relation to that roadway. However, we do not need to destroy that magnificent forest area. National parks and nature reserves should not be the subject of encroachment for any reason, unless there is no alternative and a clear public interest reason for the encroachment.

[*Interruption*]

I will talk more about that later. It is good to see members of the National Party are at least showing some sensitivity in relation to these environmental concerns.

The Hon. Duncan Gay: Open-mindedness.

The Hon. IAN COHEN: That is very much appreciated. National parks and nature reserves represent the last remaining refuges for many endangered plants and animals. It is simply unacceptable that the Government regards these areas as being available for development, which is contrary to the purposes for which they were established. It is of great concern that this bill is again being debated in this Chamber. The Government was able to ram this legislation through the other place because of the numbers. In light of the comments made earlier by the Deputy Leader of the Opposition, it appears as though we now have an opportunity to make a statement in defence of the conservation of these special areas. It would be a shame if those worthy aims do not receive support.

The Hon. RICHARD JONES [3.48 p.m.]: I am extremely disappointed about the way in which the Minister chose to respond to the amendments that were moved in this Chamber. It is uncharitable, to say the least. All the amendments that were moved in this Chamber were highly commendable. The bill, as it was originally presented, was deficient in many aspects. For example, it did not provide for the compensation that was said to be offered to offset the revocations contained in the bill. The bill did not ensure that any revoked areas would not be transferred from National Parks and Wildlife Service management to the new owner until the proposed compensatory land had been transferred to the National Parks and Wildlife Service.

The amendments that were moved in this Chamber rectified both of those deficiencies. The amendments also ensured that the proposed review of the National Parks and Wildlife Service revocation processes, which allowed the unlawful uses of reserve land and necessitated the retrospective revocations contained in the bill, would be independent and conducted in a timely manner—all laudable aims, no matter how we look at them.

The proposed independent inquiry may have been more expensive than an in-house inquiry conducted by the National Parks and Wildlife Service, but it would also have been more transparent and accountable. Transparent and accountable government is a hallmark of true democracy, as we all know. You cannot put a price on democracy! While the final set of amendments that were moved on 10 April 2001 made the amendments ineffectual, the only reason those amendments were passed was because the Government failed to call a division on them. Whilst one would like to think that that move was a stroke of strategic brilliance by the Government, it clearly was not. It was just an extremely fortunate oversight. Otherwise, why would the Minister have written to members of the crossbench as late as 2 May declaring that the amendments "were opposed by the Government and a number of the crossbench members" and "were narrowly passed"? Those comments clearly show that the Minister and the Government were confused about what occurred in the House that day, and they still are.

After all, the final set of amendments moved to this bill made the other successful amendments ineffective and that final set of amendments was not narrowly passed. The Government did not call a division against the amendments and, as a consequence, there was no vote at all on them. Therefore, the decision to let the amendments pass did not come down to the number of individuals supporting them and the amendments could not be said to have been narrowly passed. Those amendments were passed

because the Government failed to call a division on them. If the Government had bothered to call a division, it would have found out that the majority of crossbench members did not support them. All the other amendments passed to this bill would then have been perfectly workable and we would have had an independent inquiry into the National Parks and Wildlife Service revocation processes.

Although the amendments to set up an inquiry did not in the end have any legal force, they did, by their mere existence, ensure that the proposed in-house review of the revocation processes was far more extensive and inclusive than it would otherwise have been. The environment groups were able to negotiate much more far-reaching terms of reference for the review and a far more interactive role for themselves and for the concerned members of the public that they represent in that review. The Minister's letter to crossbench members of 5 June states:

> … the NPWS provided a draft of the report (resulting from the review of the NPWS revocation processes) to the National Parks Association [NPA] and the Environmental Liaison Officer [ELO] (for comment).

The Minister's letter also states that the NPA and ELO made "a number of comments" on the report, that the Minister "accepted" most of those comments and that "a number of modifications were made to the original draft report" as a result. As a consequence of the NPA and ELO involvement, the report has also been far more objective and constructive in analysing past revocation case studies and identifying where administrative, policy and consultative processes can be improved. While the Minister has indicated in writing that he has now endorsed the report's recommendations and can advise that the new procedures recommended in the report will take effect on the date the current bill becomes law, I urge the Government to confirm that commitment in this House tonight.

I also urge the Government to make a commitment in this House this afternoon to ensure that: no revocations will be allowed to take place for new developments unless those developments have been approved; all future legislation revoking areas from the National Parks and Wildlife Act are fully assessed on the merits; and no further revocation legislation is passed unless the procedures outlined in the Review of Revocation Procedures report are followed. I commend the Government for the level of liaison that it has ultimately undertaken with the environment groups on this issue. I hope that from now on the same level of co-operation is instigated at the outset.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.52 p.m.]: The amendments passed by the Legislative Council when this bill was last before us rendered the bill entirely unworkable. When read as a package, the amendments have the extraordinary effect of requiring the Government to hold an inquiry into nothing. The Hon. Richard Jones probably thinks that is fantastic and would want to chair it. One of the amendments sought to establish a formal inquiry to review all the proposals in the bill except those involving Brunswick Heads and Karuah nature reserves and Morton and Myall Lakes national parks. The Government opposed this amendment at the time because the holding of such an inquiry would most likely be extremely costly.

An inquiry is also now unnecessary because the National Parks and Wildlife Service has already completed a review of its revocation processes. New procedures will now be adopted to improve the administrative and consultative processes where it may be necessary for future revocations to occur in the public interest. The document describing these new procedures has been provided to crossbench members and the Opposition spokesperson. I can advise that the Minister for the Environment has approved the recommendations in the report. On the enactment and commencement of the bill, the recommendations will be formally activated. The Government also moved an amendment in the Legislative Council to clarify its commitment to ensure that in cases where compensatory land is being sought, such land should have equivalent or better conservation value than the land that is to be revoked.

Unfortunately, this amendment was caught up by other amendments and has, as a result, been similarly rendered unworkable. An almost identical Government amendment was carried by the

Legislative Assembly and is in the bill that is now before us. The final set of Legislative Council amendments deletes from the schedules to the bill all the proposed revocations, except those in Brunswick Heads and Karuah nature reserves and Morton and Myall Lakes national parks. In adopting these amendments this House resolved to hold an inquiry into nothing—an untenable proposition from the Government's point of view.

However, the Government also opposed the policy behind the amendments, which ignores the practical reality facing the National Parks and Wildlife Service. Should such a policy become law, it would ensure that the service continued to own land over which it has no management responsibility, thereby exposing the service to continued legal liability over these areas. I understand that the Coalition now supports the bill. On behalf of the Government, I thank the Coalition for the constructive approach it has taken.

Reverend the Hon. FRED NILE [3.55 p.m.]: I am pleased that this has been resolved by the Government and Opposition jointly. From memory, I spoke strongly in opposition to the amendments at the time and said that they would cause the problems that the Government has now identified. I am pleased to support the Government's motion.

The Hon. JOHN RYAN [3.55 p.m.]: The Opposition supports the position outlined by the Government. The Hon. Ian Macdonald must be dizzy with the amount of spin he put on the actions that occurred in the other place. The truth is that a great deal was achieved by the amendments moved in this place. I have no doubt that there would not have been an inquiry into the revocation processes that the Government conducted and the Government would not have given the commitment it finally gave in another place as to what may happen in the future. The exercise was not pointless; in fact, it was productive. Shame on Reverend the Hon. Fred Nile for not standing up for the environment at the time, as the Opposition and crossbench members did. We have achieved a great deal.

Reverend the Hon. Fred Nile: I stood up for reality.

The Hon. JOHN RYAN: The reality was that the reason the National Parks and Wildlife Service owned land for which it had no management responsibility was that it was not looking after it. The service did not even notice when people built roads and houses on land under its control. That was the reality. The National Parks and Wildlife Service does not have the capacity to look after the areas for which it is responsible. If someone were to encroach on my property, I would notice. Apparently if someone encroaches on National Parks and Wildlife Service areas it is possible that the service will not notice. Now the Government has admitted to the need for a proper process for revocation. It has also conceded a very important point: it will not revoke an area of national park for development purposes unless an equivalent area with the same level of conservation value is added to the national park. That result was worth fighting for.

I am not ashamed at all that the Opposition supported the amendments in this place because we have been able to get some important concessions from the Government which otherwise would not have been forthcoming. We would have post facto justified all of the outrageous things that had happened. Now we have a decent process in place for the future and a commitment from the Government about the revocation of areas of national park. So I do not have any shame at all for having stood up for the amendments. The exercise was worth it. We have made our point and we have gained our concessions. For that reason, we do not see any further reason to hold up progress of the bill. When the bill is finally processed and proclaimed as an Act of Parliament, some of the hard won concessions we got from the Government will be activated. The Opposition considers that is a worthwhile gain.

Motion agreed to.

Legislative Council amendments Nos 1 to 7 not insisted upon. Legislative Assembly's further amendment agreed to.

Resolution reported from Committee and report adopted.

Message forwarded to the Legislative Assembly advising it of the resolution.

HOUSING BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.01 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to be able to introduce this Bill to the House.

This is not a major review of housing policies and the legislation that supports them; instead, this Bill will bring about a number of relatively small, but important, changes to the housing legislation.

These changes will reflect some of the developments across the housing portfolio in recent years and they will also refine and extend the powers of the New South Wales Land and Housing Corporation in a number of areas.

In New South Wales there are three Housing Acts—1912, 1976 and 1985.

The Housing Act 1985 came into effect on 1 January 1986 and created the new Department of Housing and the Land and Housing Corporation. These Acts no longer provide an adequate or administratively straightforward framework for the Government's full range of housing assistance programs.

This Bill will improve the administration of the housing legislation by consolidating the existing legislation into one Housing Act.

In addition to consolidating the earlier Housing Acts, the Bill repeals the Home Purchase Assistance Authority Act 1993. The Home Purchase Assistance Authority was established in 1993 as a separate, single-purpose statutory corporation. This was designed to simplify the management of HomeFund and to improve accountability by creating a single authority dedicated to its administration.

Over the past eight years the authority has been very successful in fulfilling its statutory functions. The HomeFund scheme has been restructured with the provision of substantial financial relief and assistance for those borrowers in hardship. The restructure has placed the HomeFund scheme on a more sustainable financial footing and has provided a sound basis for the ongoing management of the loans remaining in the scheme.

The Home Purchase Assistance Authority has also been instrumental in achieving a negotiated settlement of the long-running HomeFund class action litigation which was initiated by HomeFund borrowers in 1994. That settlement was approved by the Federal Court in March 2001 and has been accepted by the overwhelming majority of HomeFund borrowers.

As part of a range of measures designed to streamline administrative arrangements within the

housing portfolio, the staff of the Home Purchase Assistance Authority were transferred to the Department of Housing in April 1999. Those staff currently administer the Home Purchase Assistance Authority Act as a specialised and accountable unit within the department. In the light of these developments there are benefits in centralising the remaining administrative functions of the authority with those of the Department of Housing. The authority will be dissolved, with its assets, rights and liabilities transferred to the Land and Housing Corporation. This will improve the co-ordination and integration of the State's various housing assistance programs as well as reducing operational expenses.

This bill will also update the legislation to help address the problem of rental rebate fraud. The Department of Housing leases its residential properties at market rent. However, households with incomes below specified limits are eligible for a rent rebate. Since April 2000, all new public housing tenants eligible for rebates have been required to pay 25 per cent of their household income in rent. Over 90 per cent of current public housing tenants receive a rental rebate. In 1999-2000, rebates granted amounted to $550 million. An earlier rebate fraud amnesty and subsequent subsidy reviews indicate that between 5 per cent and 10 per cent of tenants may, inadvertently or deliberately, be abusing the rebate system.

The current legislation does not provide sufficient power for the Land and Housing Corporation to fully investigate and deal with rental rebate fraud, despite the substantial increase in the proportion of tenants who receive a rental rebate. In the early 1990s the regulations under the Housing Act 1912 were allowed to lapse under the Subordinate Legislation Act 1989. Those regulations gave extensive powers to the Land and Housing Corporation in relation to granting and revoking rental rebates and in relation to investigation. The Land and Housing Corporation currently relies on sections 48 and 49 of the Housing Act 1912, and on existing contractual and administrative principles of law.

This bill will provide the necessary powers to deal with rental rebate fraud. The powers will include the capacity to investigate suspected rebate fraud, cancel or vary a rebate, and require repayment of arrears where a rebate has been fraudulently claimed. The bill will not establish a harsh or punitive system. The Land and Housing Corporation will continue to be governed by privacy principles and legislation. Tenants' rights will not be changed at all, including the right to appeal decisions to an independent appeals committee. However, taxpayers and the vast majority of tenants who do the right thing deserve to be certain that everyone is paying their fair share.

The bill also includes a relatively minor change giving the Land and Housing Corporation the power to meet any obligations that might be agreed by the Government under the current and future Commonwealth-State Housing Agreements. This will ensure that the legislation is sufficiently flexible to support future directions for the housing portfolio. There are similar provisions in the New South Wales Aboriginal Housing Act 1998. As well as updating the legislation, the bill will facilitate some important policy directions. The housing policy and funding cuts by the Federal Government provide a strong incentive for us to seek out the co-operation of others, notably local governments, not-for-profit organisations and the private housing sector, to find innovative and practical partnership solutions to housing challenges.

It is important that the ongoing viability of the social housing sector is improved by increasing the capacity to raise revenue and encourage investment in social housing. In this context, the powers of the New South Wales Land and Housing Corporation will be refined and extended in line with two key objectives. The first is to attract investment in, or enter shared arrangements for, social housing as well as related activities such as tenant employment or provision of integrated support services. The second objective is to be able to provide for a fee or otherwise for corporate, technical and information technology [IT] services. Services may be provided to other government and non-government agencies within or outside New South Wales. The Department of Housing

and the Treasury have liaised extensively to identify appropriate mechanisms to implement these objectives. The Department of Public Works and Services has also been consulted.

The result of this liaison is that the bill will extend and refine the powers of the New South Wales Land and Housing Corporation in three important areas. First, the bill will amend the legislation to extend the range of purposes for which the corporation may enter joint venture arrangements. The purposes will be expanded to include provision of housing-related services and products, and to implement the objects of the Housing Acts and such other purposes as the Treasurer may approve. The legislation notes the role of the Treasurer in approving entry into joint ventures. Under the current legislation, the Land and Housing Corporation is able to enter into joint ventures with the approval of the Minister. However, this power is limited to involvement in joint ventures for the purpose of acquiring, developing, managing or disposing of land. Joint ventures that are not based around land are currently outside the provisions of the Housing Acts.

The New South Wales Land and Housing Corporation has been participating in joint ventures for some time, but these have been focused on physical construction only. The amendments will give the corporation the capacity to enter joint ventures involving additional support services. This is increasingly important as more and more people with complex needs seek help with their housing. The second change is that the capacity of the New South Wales Land and Housing Corporation to form and take interests in private corporations, including subsidiaries, will be amplified, and the corporation will be given the capacity to form trusts. As is the case with joint ventures, this will also be subject to the agreement of the Treasurer.

The current legislation provides no explicit power to form subsidiary companies or trusts and generally only allows the corporation to act on a commercial footing when the corporation is involved in a joint venture. In addition, even where joint ventures involving investment in affordable housing are possible, the current housing legislation fails to reflect the relative sophistication of financial structures required by contemporary markets. The bill will amend the legislation to give the corporation the power to form subsidiary companies and trusts so that the corporation can better transact business and undertake particular roles within the objects of the Act. The third change will give the corporation the ability to capitalise on expertise developed within the corporation and provide goods or services to other authorities and non-government entities in exchange for payment of a fee for service. This capacity will be limited to individuals or organisations involved with the provision of housing or in the housing industry.

The Land and Housing Corporation has been approached by other housing authorities and organisations to provide information, advice and systems. The expertise developed by the department in information technology, residential design and related services, as well as corporate systems, has provided an asset that could return some funds to the organisation. In its entirety, this bill will result in small, but significant changes. On the one hand, it will update the housing legislation to reflect some of the developments and achievements we have made in recent years. On the other hand, it will support important policy directions for the future of the housing portfolio and help facilitate stronger, more diverse partnerships to better help the people of New South Wales with their housing.

I commend the bill to the House.

The Hon. DON HARWIN [4.01 p.m.]: The Housing Bill is fairly straightforward legislation that will not be opposed by the Opposition, although we will move our amendments and support amendments by other honourable members. There are two major purposes for the bill. First, it is a periodic and timely update of housing legislation to reflect events and developments within the State Government's administration of housing since the last major review of the legislation, in 1986. Second, we have been advised by the Government that the amendments are necessary to give proper statutory support for the new housing policy directions being pursued by the Government.

The changes include the consolidation of three Acts into one, the expansion of the functions of the New South Wales Land and Housing Corporation, and the merging of the Home Purchase Assistance Authority into the New South Wales Land and Housing Corporation. The first primary change concerns tenant fraud. The Government claims that 5 per cent to 10 per cent of public housing tenants may be inadvertently or deliberately taking advantage of the system outside their entitlement. It will be interesting to see whether, as a result of the changes in the bill, there will be any greater willingness to pursue that abuse.

The second primary change will enable public-private partnerships with the non-government sector to increase the capacity to raise revenue and encourage investment in public housing. As a result of the bill, joint ventures will be able to use non-government land. This is very much to be welcomed. A frequent criticism by various organisations such as the St Vincent de Paul Society and the Wesley Mission has been that the Government has not been able to take full advantage of a partnership with non-government organisations. This legislation will put us on the road to being able to address that.

More than 98,000 families and individuals are on the public housing waiting list in New South Wales, which has the highest waiting list in Australia. My colleague the Hon. John Jobling interjects that the list is getting longer, and he is quite right. Since 1995, when this Government was first elected, the waiting list has grown by more than 5,000 families and individuals. According to the 1999-2000 annual report of the Department of Housing, at any one time 3,500 taxpayer-funded public housing dwellings are vacant out of a total of 113,463 dwellings managed by the State Government. That is a significant number. Statistics show that as at June 2000 the Department of Housing took an average of more than 34 days to rehouse families into vacant housing. That does not include weeks taken to redevelop homes that have been vandalised.

Each year the Department of Housing sells off more and more homes, and this reduces the pool of homes available for people on the waiting list. That is something of concern to many honourable members, and it will be the subject of an amendment. It is something my colleague the honourable member for Davidson has talked about in the other place. He foreshadowed Opposition support for amendments that will ensure that income from the sale of housing property stays within the public housing sector. That is an important measure in view of the serious concerns about growing public housing waiting lists.

But that is not the whole dimension of the problem. It is estimated that some 33,000 people in New South Wales—and that is probably at the bottom end of calculations—are homeless, and the number is growing. It is estimated that some 80 per cent to 85 per cent of homeless people suffer psychiatric illness or alcohol or drug dependence, and that is another absolutely tragic dimension to the problem of homelessness. If in some small way this bill and the amendments that may be made to it are able to address that very severe problem, we will all be able to derive some satisfaction from that, knowing that we have done something to help people in a very serious situation.

The Opposition has a problem with two other measures in the bill and they will be the subject of two sets of amendment. They complement disclosure amendments that I understand the Hon. Ian Cohen will move. The first deals with matters of disclosure in relation to the housing account. While we support the measures in the bill to address tenancy fraud, we feel there is a necessity to include in the bill additional protection for public housing tenants. As such, our second set of amendments will deal with those matters. With those amendments and our support for other amendments, we believe the bill is desirable and we will not oppose it.

The Hon. IAN COHEN [4.09 p.m.]: The Greens support the bill, but we have some concerns about various aspects of it. The bill consolidates the three Housing Acts of 1912, 1976 and 1985, and the Greens support that because it will make the housing legislation much easier to understand. The bill incorporates many of the sections contained in the three Housing Acts and it also adds new sections. In

particular, the "Rental rebate" measure in part 7 is new. For the first time, rental rebate will be regulated by statute. Some aspects of this measure are worrying. Clause 57 (4) (b) in part 7 specifies that if a tenant has not been paying the correct amount of rent and owes the corporation money, the corporation can demand interest at the same rate as is payable on unpaid judgments of the Supreme Court, which is something like 11 per cent and therefore substantial.

This development is alarming. Even Centrelink, which is renowned for its tough policies with low-income people, particularly for breaching policy and for automatically deducting money from an individual's account if an overpayment has been made, is not as harsh. Centrelink does not charge interest; it simply deducts the money over a period until it is repaid. Individuals on very low incomes, who often do not have reserve funds, could either purposely or accidentally pay less rent than is required. These individuals could end up owing thousands of dollars, and may be made to pay interest. It is likely that they will never be able to get out of debt. They may struggle to keep up with the interest payments for the rest of their lives. That is manifestly unfair, and the Greens will move amendments in Committee to deal with it.

Currently, almost 100,000 people are on the waiting list for public housing accommodation, and the waiting list is growing at around 2,000 per year. In the previous budget almost $53 million was allocated to public housing programs, yet only $28.7 million was spent. Almost 50 per cent of the allocated money was unspent. This year only $26 million has been allocated to public housing programs, yet the waiting list continues to grow. It is appalling that last year the department did not spend money on desperately needed housing. It is even worse when one realises that that money is not available for public housing this year.

Recently, the community and public housing sector have been concerned about the sell off of land previously used for public housing. For instance, 50 per cent of one housing estate in Maroubra, Coral Sea, has been sold to private developers. Housing estate residents are watching the estate disappear before their eyes. Developers are making a fortune out of old housing estate land. The Greens opposed the sell off. At the very least there should be a comprehensive public record of this sell-off that lists properties and the amount for which they are sold. Such a list would enable the public to have a thorough and proper understanding of the extent of the sell-off. The Greens will move amendments in Committee to deal with this matter. In support of our position I refer to a letter that Shelter New South Wales sent to me and to Chris Hartcher in the Legislative Assembly, which states:

Re: Housing Bill 2001

This letter is to indicate that Shelter NSW, the peak organisation for NSW low-income housing consumers, is generally in support of this Bill, currently before the Legislative Council. We feel, however, that the Bill can be approved, through your support for some of the amendments being proposed. Specifically, we believe the amendments being presented by the Hon. Ian Cohen MLC, will ensure greater accountability by the NSW Land and Housing Corporation to the public and to tenants, greater transparency in such accountability, and some safeguards to require money raised from sale of public housing lands to be maintained in the social housing domain.

We also support the amendment being proposed by the Shadow Minister for Housing, Mr Andrew Humpherson, M.L.A., in relation to rental rebate fraud, under Clause 58 of the Bill. While we do not think the amendment meets all of our concerns, we believe it will improve the legislation by ensuring due process is followed and that tenants are given the opportunity to present their case before cancellation of rental rebate. Accordingly, we request you to consider supporting the Bill, with the amendments we are recommending.

HARVEY VOLKE
Policy and Liaison Officer

A matter of weeks ago we conducted a homelessness conference in this Parliament. We have conducted estimates committee hearings and assessed the budget. Those who are attempting to look after people and provide them with public housing are very concerned about the current situation. We want a degree of protection and transparency, which a number of Opposition amendments will facilitate. With that we could support the bill, but there is a significant need for amendment before the Greens will feel comfortable with it.

The Hon. MALCOLM JONES [4.15 p.m.]: I welcome the opportunity to speak on the bill. I acknowledge that it is basically a housekeeping measure, but I want to put a few comments on the record regarding housing. New South Wales has 112,000 tenants, yet each year only 600 are able to purchase their homes from the department. Margaret Thatcher, to her everlasting credit, implemented an enormously successful program in the United Kingdom whereby the number of public housing tenants able to buy their rental properties rose dramatically.

The Hon. Richard Jones: Then they became Conservative voters.

The Hon. MALCOLM JONES: But one would, if one had access to such a successful program.

The Hon. Richard Jones: That was the idea, for the voters to become Conservative voters.

The Hon. MALCOLM JONES: I do not agree with the Hon. Richard Jones, because Margaret Thatcher was a very successful Prime Minister for a long time. Her sale of public housing homes and her privatisation programs put money and assets into the hands of working-class people, which was part of the reason for her success. I reject the comments of the Hon. Richard Jones.

The Hon. Richard Jones: It also gave them debt.

The Hon. MALCOLM JONES: When one buys a house one usually takes on a mortgage or a substantial loan. That equals debt, but it also equals assets. If one offsets the other, surely that is not a bad thing. Anyone who does not own a home usually wants to own one. If one wants to own a home, one generally has to have a mortgage. That is considered a good thing. Australia is the lucky country because it has a very big middle class. The middle class and diversity of wealth is as a result of home ownership. Does the Hon. Richard Jones understand that?

The Hon. Richard Jones: I do.

The Hon. MALCOLM JONES: It is very important to ordinary people to own their own homes. I am advocating that that be extended to people in housing commission homes.

The Hon. Richard Jones: Half of them can't afford the mortgage.

The Hon. MALCOLM JONES: And some can. Deposits are a problem. I want the Government to focus its attention on this aspect of housing policy. Tenants who know they have a chance to purchase their properties either now or in the future have demonstrated their willingness to maintain their homes to the highest standards. As to the restructuring of HomeFund, I say: Good riddance to the old HomeFund! It was an overly ambitious and badly thought out scheme. It was made unworkable by the monetary policy of, and the correspondingly astronomical interest rates presided over by, the then Prime Minister, Paul Keating.

The Housing Bill also deals with rental fraud. I do not know why the power to investigate and deal with rental rebate fraud was allowed to lapse years ago. However, I am pleased to see that addressed in the bill. The Department of Housing definitely should be able to pursue tenants who abuse the system. The waiting list for public housing currently encompasses 98,000 people. Those who abuse the system should be penalised, as many people are willing to take their place. I am not necessarily saying that they

should lose their homes, but if they continually abuse the system they should be substantially penalised.

During the past week advertisements for a television current affairs program have shown some dreadful pictures of abuse of public housing. I have not seen the program, but the images were quite dreadful. The bill will introduce a number of measures to enable the Land and Housing Corporation to charge a consultancy fee for specialist expertise in managing real estate estates or tracts of land. I have not seen any evidence to suggest that the Department of Housing has specific expertise in that matter. The department will be in competition against Johnston Property Consultants and L. J. Hooker, and I really wish the department luck. I am in favour of the department being able to compete, and I wish the department every success in its endeavours. As an encore, I would say, "Good luck Housing Department!"

Reverend the Hon. FRED NILE [4.20 p.m.]: The Christian Democratic Party supports the bill. This is not a major review of housing policy; rather, it is a machinery bill that reflects recent changes and refines the powers of the New South Wales Land and Housing Corporation. The bill will repeal the Housing Act 1912, the Housing Act 1976 and the Housing Act 1985 and consolidate their powers and functions into once piece of legislation. The bill will repeal the Home Purchase Assistance Authority Act 1993 and will dissolve the Home Purchase Assistance Authority, as well as transfer its functions to the New South Wales Land and Housing Corporation.

The bill will dissolve the board of the Home Purchase Assistance Authority and the HomeFund Advisory Panel, which were established under the Home Purchase Assistance Authority Act. All honourable members would be aware that HomeFund matters have been resolved satisfactorily. The bill will also assist to address the problem of rental rebate fraud. Some years ago a rebate fraud amnesty revealed that between 5 per cent and 10 per cent of tenants may be deliberately or inadvertently abusing the rebate system. The bill will reinstate powers to investigate and deal with rental rebate fraud. Those powers were allowed to lapse under the Subordinate Legislation Act 1989 in the early 1990s.The bill provides for privacy principles and tenants' rights to appeal decisions made by the Department of Housing. The Christian Democratic Party supports the bill. It should lead to the creation of greater efficiency in the Government's administration of public housing.

The Hon. RICHARD JONES [4.21 p.m.]: I must have received the same memorandum from the Minister's advisers as the one read into *Hansard* by Reverend the Hon. Fred Nile. I point out that housing stock in New South Wales has not diminished during the past six years of the Carr Labor Government's administration. Actually, it has increased from 132,000 to 149,000. Judging by previous remarks made by members of the Opposition, one would think that public housing stock in New South Wales had diminished quite considerably, but that is not the case.

The Hon. Malcolm Jones is quite correct in asserting that those who wish to acquire homes should be able to do so. The Hon. Malcolm Jones was not a member of this House when the HomeFund disaster occurred. That matter has been cleared up, but it should be remembered that many people lost their homes because they could not afford to make the mortgage repayments. In contrast to that, a number of people who would otherwise have not been able to buy homes were able to as a result of the scheme. The HomeFund program was something of a mixed bag.

The Hon. Malcolm Jones is correct to say that people who can possibly afford to purchase a home will make the effort to do so, and now is a good time to do that. The Federal Government's $14,000 first home purchaser's grant has been extended and it is hoped that a number of people, particularly young people, will be encouraged to get their foot in the door now. It seems likely that because housing is under pressure in Sydney, prices will rise during the next few years. It is a good time to buy when prices are relatively low in some areas.

The bill will dissolve the Home Purchase Assistance Authority Act, as Reverend the Hon. Fred Nile said. Although this is said to be not a major bill, it is worthwhile considering, as the Hon. Ian Cohen

observed, that those who are charged with fraud as a result of underpayment of rent should first have a right to a review of the charge rather than simply being required to pay back-rent and any interest. It has been shown that up to 10 per cent of public tenants underpay their rent, so that would be a good idea.

People who go into public housing do not always remain poor. Fortunately, some manage to organise themselves, obtain employment or commence a business. Their incomes rise and that is fortuitous as well as very pleasing. But, public housing tenants are, of course, subsidised by the public purse, and those who can afford to purchase private housing are preventing deserving people from obtaining subsidised housing. New South Wales has 149,000 units of public housing stock and 100,000 people on the waiting list. Many of them could have public housing much more quickly if those who can afford to purchase or rent on the open market did so and left their public housing.

I note that all money raised from the sale of the public housing assets is channelled back into the housing budget. That is a requirement under the Commonwealth-State Housing Agreement [CSHA]. The bill is relatively simple. It cleans up the final mess of the HomeFund program and the Home Purchase Assistance Authority. I understand that there are now only 3,000 HomeFund loans. Honourable members may recall negotiations that were undertaken some years ago in an attempt to prevent some people from losing their homes. Fortunately, the negotiations were successful, but they were achieved at enormous public cost. Many people were saved from losing their homes.

This bill represents a final tidy-up. The point should be made that the HomeFund program was not a total disaster. As a result of it, many people who would not otherwise have been able to purchase a home were able to do so with a HomeFund loan—and, more importantly, they were able to keep them—so it was a worthwhile exercise. I support the bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.25 p.m.]: I commend the bill to the House. I will deal with some of the assertions made by individual honourable members when I speak to the proposed amendments.

Motion agreed to.

Bill read a second time.

In Committee

Parts 1 and 2 agreed to.

Part 3

The Hon. IAN COHEN [4.28 p.m.]: I move Greens amendment No. 1:

No. 1 Page 9, clause 11. Insert after line 35:

(3) In the exercise of its functions relating to the provision of public housing, the Corporation is, as far as practicable, to consult with public housing tenants and organisations representing the interests of public housing tenants.

Clause 11 of the bill deals with consultation and negotiation. This amendment specifies that when the corporation exercises its function it must, as far as is practicable, consult with public authorities whose functions are similar. The corporation must also negotiate with any other authorities as necessary. However, there is no requirement in the legislation for the corporation to consult public housing tenants or their representative organisations on public housing issues.

This amendment ensures that public housing tenants or their representative organisations, in

addition to other public agencies or authorities, are to be consulted by the corporation when it exercises its functions in relation to the provision of public housing. I regard this amendment as quite reasonable. It brings those who are tenants into the loop for full consultation. It is an issue of transparency. It is an issue of bestowing rights to those who are tenants, often people who are struggling and at least deserve the right to be given a full and clear indication as to the state of play in this regard. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.30 p.m.]: The Government rejects the amendment. There is an opportunity for public housing tenants to participate in management of their housing and in the development of public housing policy. The object in clause 5 (1) (e) of the bill provides for this. In addition, clause 5 (1) (p) encourages mechanisms and forums for input into housing policy by representative community housing organisations and non-government agencies. The Tenant and Community Initiatives program encourages tenants of and applicants for public and other housing to have a greater say in the decisions of their housing managers. I suggest honourable members read page 31 of the department's annual report. Public housing forums are also held. It is not appropriate, however, for consultation to occur in relation to the exercise of a corporation's functions, other than through the development of housing policy and in management of tenancies.

The Hon. DON HARWIN [4.31 p.m.]: The Opposition supports Greens amendment No. 1, which relates to consultation with public housing tenants and representative organisations. The Opposition believes that this is a reasonable addition to the bill, and that it will improve the bill. It will have our support.

Question—That the amendment be agreed to—put

The Committee divided.

Ayes, 16

Mr Breen	Mr Gay	Mr Pearce
Dr Chesterfield-Evans	Mr Harwin	Mr Ryan
Mr Cohen	Mr M. I. Jones	
Mr Colless	Mr R. S. L. Jones	*Tellers,*
Mrs Forsythe	Mr Lynn	Mr Jobling
Miss Gardiner	Mr Oldfield	Ms Rhiannon

Noes, 15

Dr Burgmann	Mrs Nile	Dr Wong
Ms Burnswoods	Reverend Nile	
Mr Della Bosca	Ms Tebbutt	
Ms Fazio	Mr Tingle	*Tellers,*
Mr Johnson	Mr Tsang	Mr Dyer
Mr Macdonald	Mr West	Mr Primrose

Pairs

Mr Egan	Mr Gallacher
Mr Hatzistergos	Mr Moppett
Mr Kelly	Dr Pezzutti
Mr Obeid	Mr Samios

Question resolved in the affirmative.

Amendment agreed to.

The Hon. IAN COHEN [4.40 p.m.]: I move Greens amendment No. 2:

No. 2 Page 12, clause 17. Insert after line 5:

(2) The annual report of the Corporation is to include, in relation to the relevant year:

(a) all information required to be made publicly available under section 22, and

(b) the amount received by the Corporation from the leasing of land.

This amendment lays the framework for Greens amendment No. 3. I intended to move Greens amendments Nos 2 and 3 in globo. However, there is a conflict between Greens amendment No. 2 and Opposition amendment No. 1, which the Greens support. I will therefore move Greens amendments Nos 2 and 3 in seriatim, the Committee will be able to debate the Opposition amendment and the Greens amendment together, and following that I will move Greens amendment No. 3. Greens amendment No. 2 specifies that the annual report of the corporation must include all information required to be made publicly available under section 22 as set out in Greens amendment No. 3. It also specifies that the annual report must include any amount received by the corporation from the leasing of land. This is a public accountability provision. The public has a right to know what money is being received from the leasing of any public housing land. I commend Greens amendment No. 2 to the Committee.

The Hon. DON HARWIN [4.41 p.m.]: I seek to amend Greens amendment No. 2 by adding to it paragraphs (c), (d), (e) and (f), which were foreshadowed in Opposition amendment No. 1. I move:

That the amendment be amended by inserting after (b):

(c) the balance of the Housing Account as at the beginning and the end of the year, and

(d) the amount paid into the Housing Account during the year resulting from the sale of land vested in the Corporation, and

(e) the total expenditure from the Housing Account for the year, and

(f) details of expenditure from the Housing Account during the year on land acquisitions, including the purchase price and address of each property acquired.

The Opposition supports Greens amendment No. 2. As Opposition amendment No. 1 complements Greens amendment No. 2, I believe the two amendments should be considered concurrently. Opposition foreshadowed amendment No. 1, which will form part of Greens amendment No. 2 should it be successful, seeks to ensure disclosure of the housing account, income and expenditure, and the nature of the property acquisition using funds from that account. The Opposition believes that there should be full disclosure in relation to the housing account, in particular, to ensure public confidence that there is no ongoing accumulation of funds. It is also important to confirm that proceeds of all housing sales are returned to the housing account, and that the amount spent on new land and property acquisitions is

clearly identified. These disclosures provide transparency in the management of housing funds, particularly in the context of record waiting lists.

The Hon. IAN COHEN [4.43 p.m.]: I understand that the Opposition foreshadowed that amendment No. 1 is an extension of Greens amendments Nos 2 and 3. While the Greens amendments require public disclosure and a record to be kept of any sale of public housing land, the Opposition amendment goes one step further. That amendment will require the corporation to include in its annual report information regarding the housing account. That information will include the balance of the housing account, the amount paid into the account from any sale of public housing land, the total expenditure from the account, and details of expenditure on land acquisitions, including the purchase price and address of each property acquired. The amendment will ensure further transparency with regard to the expenditure of money obtained from the sale of public housing land, which the Greens believe to be of significant importance. The Greens support the Opposition's amendment.

The Hon. IAN MACDONALD (Parliamentary Secretary) [4.45 p.m.]: These two very important amendments should be rejected by the Committee for very clear and solid reasons. With regard to Greens amendment No. 2, the annual report indicates the number of properties sold and the income generated from such sales but does not individually list such sales. It is not appropriate to list each individual property sold, which is the effect of Greens amendment No. 2. First, for many reasons which I will outline in a moment, private buyers may not approve of such details being published. Second, such information is available from the Land and Property Information Office, but not in a consolidated form or free of charge. The income and expenditure statement, which is referred to on page 62 of the annual report, shows rent—that is, income earned from leasing land. The effect of Greens amendment No. 2 is to override the wishes of private purchasers of housing properties. Once a property is sold, the purchaser may not wish to have the property listed in a publicly available form.

With regard to the Opposition amendment, the housing account is the department's general operating account. First, the annual report annexes at pages 80 to 111 a copy of the department's income and expenditure statement, balance sheet and cash flows, which clearly show the financial position of the department and the housing account. Second, page 75 of the annual report specifies the amount yielded from land disposal. Note 11 to the accounts, at page 90, also shows sales figures. Third, the income and expenditure statement shows total expenditure from the housing account for the year. Fourth, page 35 of the annual report shows the number of units of accommodation and expenditure on each of the categories, acquisitions, redevelopment and construction. It does not individually list each property but, as I have said, it is possible to obtain that information from the Land and Property Information Office, which is the new name for the Land Titles Office. Also, under the Commonwealth-State Housing Agreement all sales are reported annually to the Commonwealth.

The point I wish to make to honourable members about these two amendments is a general one. The department aims to integrate public housing into the community so that public housing appears no different to private housing. To individually list each property acquired would hinder this aim and intrude upon the privacy of the occupants of public housing. Records are held within the department of each individual property purchased. As I have said, there are clear prudential steps to be taken in relation to the overall sale of properties and the funds raised from those sales. The Government is strongly opposed to these amendments, which would in effect have no other result than to intrude upon the privacy of people who have sought to purchase public housing.

The Hon. IAN COHEN [4.48 p.m.]: I listened with interest to the details presented by the Hon. Ian Macdonald. The Greens are equally supportive of proper transparency. We want to know about land sold, not land acquired. With regard to the disclosure of people's private details, the *Sydney Morning Herald* regularly issues a property guide listing the amounts that properties sell for. The newspaper obtains that information from the Land Titles Office, which, I am told, is now the Land and Property Information Office. The *Sydney Morning Herald* can still obtain that information from that office because people have to pay stamp duty. It is therefore not correct to argue that the amendments relating to public disclosure breach

people's privacy. I understand that no names are mentioned, but simply the address of the property, folio identifier details, and price—in other words, the usual information required to be kept by the Land Titles Office. The information required under the amendment is already available and accessible at the Land Titles Office, so I do not see that there would be an invasion of privacy problem. Again, the Greens believe that it is a transparency issue.

Question—That the amendment of the amendment be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr R. S. L. Jones	
Mr Colless	Mr Lynn	*Tellers,*
Mrs Forsythe	Ms Rhiannon	Mr Jobling
Miss Gardiner	Mr Ryan	Mr Pearce

Noes, 16

Dr Burgmann	Mr Macdonald	Mr Tsang
Mr Della Bosca	Mrs Nile	Mr West
Mr Dyer	Reverend Nile	
Ms Fazio	Mr Oldfield	*Tellers*
Mr Johnson	Ms Tebbutt	Ms Burnswoods
Mr M. I. Jones	Mr Tingle	Mr Primrose

Pairs

Mr Gallacher	Mr Egan
Mr Moppett	Mr Hatzistergos
Dr Pezzutti	Mr Kelly
Mr Samios	Mr Obeid

Question resolved in the negative.

Amendment of amendment negatived.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr R. S. L. Jones	
Mr Colless	Mr Lynn	*Tellers,*
Mrs Forsythe	Ms Rhiannon	Mr Jobling
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Noes, 16

Dr Burgmann	Mr M. I. Jones	Mr Tingle
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Mr Della Bosca	Mrs Nile	
Mr Dyer	Reverend Nile	*Tellers,*
Ms Fazio	Mr Oldfield	Mr Primrose
Mr Johnson	Ms Tebbutt	Mr West

Pairs

Mr Gallacher	Mr Egan
Mr Moppett	Mr Hatzistergos
Dr Pezzutti	Mr Kelly
Mr Samios	Mr Obeid

Question resolved in the negative.

Amendment negatived.

Part 3 as amended agreed to.

Part 4

The Hon. IAN COHEN [5.00 p.m.]: I move Greens amendment No. 3:

No. 3 Page 14. Insert after line 31:

22 Information on sale of Corporation's land

(1) The Corporation must keep a separate record of the following information:

(a) the address of any land vested in the Corporation that is sold by the Corporation and such other information that enables it to be accurately identified (such as a folio identifier),

(b) the amount for which any such land is sold.

(2) The Corporation must, on completion of the sale of any land vested in the Corporation, provide the Registrar-General with the following information:

(a) the address of the land and such other information that enables it to be accurately identified (such as a folio identifier),

(b) the amount for which the land was sold.

(3) The Registrar-General must keep a separate record at the Land Titles Office of all information provided to the Registrar-General under subsection (2).

(4) All records required to be kept under this section must be made available to the public for inspection free of charge.

There is a great deal of concern among public housing tenants and community groups representing the interests of public housing tenants regarding the amount of public housing land currently being sold off. In my contribution to the second reading debate I gave the example of the Coral Sea Housing Estate, 50 per cent of which has been sold off to private developers. It is very distressing for residents to see the estate being sold off before their very eyes. One of the Government's advisers with whom I had discussions disputes that percentage. Nevertheless, I have been given information by concerned people who reside in the estate that it is the case.

The sell-off appears to be leading to a reduction in public housing stocks in expensive areas such as the eastern and northern suburbs. When land in those expensive areas is sold it is particularly difficult further down the track to buy extra land in those areas to accommodate public housing tenants. While the Government argues that there is no overall loss of land in those areas—which the Greens dispute—the end result may be that public housing tenants will eventually be squeezed out of expensive suburbs such as the eastern and northern suburbs or may be forced to live in high-density dwellings in those areas if they wish to remain there. Public housing tenants should be able to live where they want, in appropriate accommodation. They should not be forced to live in cheaper areas of Sydney because of a lack of public housing in any area in which they want to live.

These amendments ensure that when the corporation sells land it must provide to the Registrar General information specifying the address of the land and how much it sold for. The Registrar General must compile a list of information, which will be kept at the Land Titles Office for members of the public to inspect free of charge. That information must also appear in the corporation's annual report. This amendment will, once and for all, give the public easy access to information regarding the perceived public housing sell-off. The information, which will be easily available at the Land Titles Office, will show clearly if it is a public housing sell-off. Real estate values are rapidly increasing, not only in cities but also in some coastal areas, and public housing is under threat. Places such as my home town of Byron Bay become enclaves for the wealthy, and public housing is driven out because the land values are just too high.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.03 p.m.]: The amendment proposed by the Hon. Ian Cohen is unnecessary, expensive and a burden, particularly on the Registrar General. Paragraphs (a) and (b) of new section 22 (1) make it clear that the corporation does keep a separate record of all land sold, including address, folio identifier and price, so that information is already retained within the corporation. New section 22 (2) provides that upon each sale the corporation is required by the Land and Property Information Office to lodge the transfer which states the folio identifier; a notice of sale which clearly sets out, amongst other things, property address; transaction details such as price, dates of exchange and settlement; and property details relating to tenancy, area and type. Subsections (3) and (4) of new section 23 provides that the Registrar General does record this information but does not, as far as we are aware, keep a separate record. As a consequence the amendment is unreasonable and an expensive administrative burden to place upon the Registrar General. The Government opposes it as being an unnecessary duplication.

The Hon. DON HARWIN [5.04 p.m.]: As I said in the second reading debate, the Opposition will

support this and a number of other amendments which deal with information relating to the sale of public housing and the proceeds from sale being retained for public housing purposes. This amendment is part of the arrangements that are necessary for that, and it will have the Opposition's support.

Amendment negatived.

Part 4 agreed to.

Parts 5 to 6 agreed to.

Part 7

The Hon. DON HARWIN [5.06 p.m.], by leave: I move Opposition amendments Nos 2, 3 and 4 in globo:

No. 2 Page 32, clause 54, line 2. Omit "**Application of Part"**. Insert instead "**Interpretation"**.

No. 3 Page 32, clause 54. Insert after line 9:

(2) A notice required to be served on a person by the Corporation under this Part is to be served personally, or in the event that an attempt at personal service fails, may be served by post.

No. 4 Page 33, clause 58. Insert after line 22:

(3) If the Corporation has reason to believe that any information or evidence produced to the Corporation in relation to the weekly income of an applicant for, or a recipient of, a rental rebate or of a resident in the house concerned does not accurately represent the true weekly income in question, the Corporation may require the applicant or recipient to complete a declaration as to that weekly income.

(4) A requirement made by the Corporation under subsection (3) is to be made by notice in writing served on the applicant or recipient and is to state that the applicant or recipient has 21 days from the date of issue specified in the notice to complete the declaration and return it to the Corporation.

(5) The Corporation may:

(a) refuse an application for a rental rebate if the applicant does not provide a declaration in accordance with subsection (4) when required, or

(b) may cancel or vary a person's rental rebate if the person does not provide a declaration in accordance with subsection (4) when required.

(6) The Corporation may not determine an application for a rental rebate, or cancel or vary a rental rebate, earlier than 14 days after a declaration is returned, or if it is not returned within the time required, before the end of the required period within which it is to be returned.

(7) A person must not make a declaration under this section knowing that is false or misleading in a material particular.

Maximum penalty (subsection (7)): 10 penalty units.

These amendments ensure that the department cannot act unilaterally and must gain information from a tenant prior to terminating a rental rebate, and also that the tenant should be served in person in the first instance. These amendments are important to ensure that the department cannot act without attempting to check the facts of a tenancy. The Opposition is strongly supportive of addressing genuine abuse of the system but is concerned that without this amendment overzealous or careless action by some departmental staff could unfairly and unjustly penalise tenants. These amendments require the department to make a genuine attempt to confirm tenant income information prior to varying rental rebates. If suspicions are without foundation, no unfair disadvantage is caused to a tenant. If suspicions are confirmed, the process can be seen to be fair. Any deliberate fraud can attract a penalty of 10 penalty units.

The Hon. IAN COHEN [5.08 p.m.]: The Greens support the amendments, which deal with the same issue as Greens amendment No. 4. These amendments ensure that the corporation cannot reduce or cancel a tenant's rental rebate unless a notice has been served upon the tenant by the corporation and the tenant has had a chance to respond to the issues raised by the corporation by way of declaration. Current practice has led to some tenants having their rental rebate cancelled or varied before they are given the opportunity to prove whether they are entitled to the rental rebate. That can take weeks or months. This is particularly distressing for tenants if the allegations made against them are simply not true. In the meantime they have unnecessarily lost their rental rebate for a period of time. There have been cases where public tenants have been accused of housing people and not notifying the Department of Housing of this fact. My office has been advised that the department is sometimes misinformed by malicious, revengeful individuals that tenants are not disclosing who is living with them. This, of course, affects the amount of rental rebate a tenant is entitled to. Some tenants have had their rental rebate stopped and have been told to pay back the money but, following an investigation, it has been found that some tenants have not been underpaying rent. The amendments simply ensure that before individuals have their rental varied or cancelled, they must be given an opportunity to submit a declaration. The Greens support these reasonable amendments.

The Hon. RICHARD JONES [5.11 p.m.]: Here we have a curious reversal of roles, with the Opposition supporting the battling public housing tenants. The amendments do exactly that, and it would surprise me if the Government does not support them.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.11 p.m.]: Referring to Opposition amendment No. 2, the use of the term "application of Part" and the word "interpretation" is a drafting issue, and I do not know what the Opposition's concerns are. The Government will stand by Parliamentary Counsel on that point. Referring to Opposition amendment No. 3, the serving of notices to vary rebates would be impractical and costly. The Department of Housing has 112,000 tenants, who potentially have variations of their rebate several times a year. For example, pensioners receive two consumer price index [CPI] increases per year and, as a consequence, their rent increases.

To serve notice of an increase several times a year would cost an inordinate amount of money. The department's prime responsibility is to spend that money on putting people in houses. While at first blush the amendment might appear appropriate, in reality it is a totally costly and impractical proposition, given that there are several alterations each year following CPI increases, and so forth. Opposition amendment No. 4 is incredibly confusing, given that in the other House the shadow Minister stated in his contribution to the second reading debate on 27 June:

> Changes are necessary to give greater powers to the department. There needs to be a greater intent, even under the current powers, to pursue tenants who abuse the privileges given to them … The Opposition supports any changes that will improve the area of fraud and abuse in public housing.

If honourable members read that speech they will find a litany of accusations against housing tenants. The major thrust of the speech is about various forms of abuse of their rights by the Department of

Housing. Opposition amendment No. 4 seeks to enable a tenant who is suspected of committing rental rebate fraud to give a declaration stating that he or she is not doing so, and thus circumvent the corporation's investigation powers. Rather than strengthen the existing powers, the amendment would weaken the powers. The only penalty for giving a false declaration under this part is 20 penalty points, or $2,200. In many instances that amount is far less than the rental rebate fraudulently claimed. The bill provides that the making of a false statement carries a prison term of up to six months. That provision will be deleted from the new Housing Bill, so I wonder what the shadow Minister in the other place and the Opposition spokesperson on Housing in this Chamber are up to! They have made incredibly contradictory statements. The Government opposes the amendments.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Mr Gay	Mr Ryan
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr R. S. L. Jones	
Mr Colless	Mr Lynn	*Tellers,*
Mrs Forsythe	Mr Oldfield	Mr Jobling
Miss Gardiner	Ms Rhiannon	Mr Pearce

Noes, 16

Dr Burgmann	Mr Macdonald	Mr West
Mr Della Bosca	Mrs Nile	Mr Wong
Mr Dyer	Reverend Nile	
Ms Fazio	Ms Tebbutt	*Tellers*
Mr Johnson	Mr Tingle	Ms Burnswoods
Mr M. I. Jones	Mr Tsang	Mr Primrose

Pairs

Mr Gallacher	Mr Egan
Mr Moppett	Mr Hatzistergos
Dr Pezzutti	Mr Kelly
Mr Samios	Mr Obeid

Question resolved in the negative.

Amendments negatived.

The Hon. IAN COHEN [5.19 p.m.]: I will not move Greens amendment No. 4. By leave, I move Greens amendments Nos 5 and 6 in globo:

No. 5 Pages 32 and 33, clause 57 (4), line 29 on page 32 to line 8 on page 33. Omit all words on those lines. Insert instead:

(4) If the Corporation reduces or cancels a tenant's rental rebate under this Part with effect from a preceding date, the Corporation may, by notice in writing to the tenant, require the tenant to pay to the Corporation an amount equal to any rental rebate or part of a rental rebate received by the tenant on or after the date that the variation or cancellation took effect to which, because of the variation or cancellation, the tenant was not entitled.

No. 6 Page 33, clause 57 (5), line 9. Omit "(together with interest)".

These amendments remove the requirement that a tenant who owes money to the corporation due to a cancellation or variation of a rental rebate must pay interest. As I said earlier, the Supreme Court rate of interest is currently 11 per cent. This requirement is manifestly unfair, given that public housing tenants are, by their very nature, almost always low-income people. That is how they come to be public housing tenants in the first place. Even Centrelink, which is renowned for its harsh treatment of welfare recipients and low-income people, does not require individuals to pay interest where there has been an overpayment. I commend the amendments to the House.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.21 p.m.]: These amendments will be opposed by the Government. The effect of them is to delete the requirement to pay interest on rental rebates wrongfully claimed. The amendments ought to be rejected, as there needs to be a penalty to act as a disincentive to tenants from committing rental rebate fraud. Of course, there is a cost factor involved. It must be borne in mind that we are not dealing here with a great big bucket of money in relation to housing.

The Hon. DON HARWIN [5.22 p.m.]: The Opposition will not support Greens amendments Nos 5 and 6. It is important to support reasonable attempts to deal with fraud, but the Opposition does not believe this further amendment is appropriate.

The Hon. Dr PETER WONG [5.22 p.m.]: I support Greens amendment No. 5, as I feel it is unfair to impose an interest rate of 11 per cent. I ask a question of the Hon. Ian Cohen in relation to amendment No. 6. If the corporation cannot compel a tenant to produce evidence of income, how will it assess the income to determine the appropriate rebate? I ask the honourable member to elaborate on amendment No. 6.

The Hon. IAN COHEN [5.23 p.m.]: Amendment No. 6 is consequential upon amendment No. 5. It addresses the issue of the added expense of having to pay interest. I understand that amendments Nos 5 and 6 are not supported by either side, so that it is an academic issue at this point.

Amendments negatived.

Part 7 agreed to.

Part 8 agreed to.

Part 9

The Hon. IAN COHEN [5.24 p.m.], by leave: I move Greens amendments Nos 7, 8 and 9 in globo:

No. 7 Page 37, clause 63 (3), line 16. Omit "The". Insert instead "Except as provided by subsection (4), the".

No. 8 Page 37, clause 63. Insert after line 17:

(4) All money referred to in subsection (5) (a) is to be applied for the purpose of the provision of public housing.

No. 9 Page 37, clause 63 (5). Insert after line 21:

(a) money received in respect of land sold by the Corporation under this Act,

These amendments simply seek to ensure that if the corporation sells any public housing land vested in it, the money will be separately accounted for and will be used for the purpose of providing public housing. With a public housing waiting list of almost 100,000 people, it is absolutely essential that any money obtained from the sell-off of public housing is used for the provisions of public housing. This amendment will ensure that that occurs—I am sure it would occur anyway, as I know the predisposition of the Labor Government. Nevertheless, the amendment will enshrine that provision in the legislation. This is a basic principle of justice. The Greens strongly believe that this type of hypothecation is appropriate.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.25 p.m.]: The effect of these amendments is that all money from sales by the corporation—which would include sales by Landcom of commercial, surplus, community housing, as well as public housing—is to be applied for the purpose of the provision of public housing. Even if this provision were narrowed down by the exclusion of Landcom, the corporation still would not have freedom to retire debt. I remind the Opposition that Commonwealth-State Housing Agreements contain requirements relating to the way in which money that flows from those agreements can be expended. The amendments being considered by the Committee run directly counter to those agreements.

The Government is committed to providing low-cost, affordable housing to people on low incomes. This bill provides the Department of Housing greater opportunities to form joint ventures with the private sector to develop affordable housing. In contrast to the Commonwealth Government, which has made considerable cuts to funding under Commonwealth-State Housing Agreements, the New South Wales Government has responded by providing an extra $26 million for public housing in its latest budget. The New South Wales Government takes the view that the amendments under consideration run counter to controls already in place in relation to expenditure of public moneys.

The Hon. DON HARWIN [5.27 p.m.]: I would not seek to add too much to the Committee's deliberation on this matter. I note that it was the subject of extensive remarks by the honourable member for Davidson in another place. I simply say that the waiting list for public housing has grown by more than 5,000 individuals and families since the Carr Government was elected in 1995, and that more than 98,000 individuals and families are now on the public housing list. Though the Department of Housing is selling off more homes year by year, the waiting lists are getting larger. The Opposition has decided to support these amendments by the Greens as one small step to deal with a very serious crisis in public housing.

The Hon. IAN COHEN [5. 28 p.m.]: I thank the Hon. Don Harwin for his recognition of the public housing crisis, and I appreciate the acknowledgement by the Opposition that a major social issue is at stake. I ask the Parliamentary Secretary: If there are no further Commonwealth-State Housing Agreements, will the State have no restraints against the sell-off of public land? Is that not the situation?

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.29 p.m.]: The answer is no.

The Hon. IAN COHEN [5.29 p.m.]: Then the question is: Why?

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.30 p.m.]: That might take more time to explain.

The Hon. DON HARWIN [5.30 p.m.]: I put on record that under the Carr Government $300 million to $400 million has been realised from the sale of public housing. That money has gone into consolidated revenue and not into the provision of public housing.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.31 p.m.]: The New South Wales Government supports the retention of the Commonwealth-State Housing Agreement. If there were no Commonwealth-State Housing Agreement, the arrangement would be that all money would remain in the housing system.

The Hon. Ian Cohen: Where is the agreement?

The Hon. IAN MACDONALD: In the agreement. Do you want us to produce the agreement?

The Hon. IAN COHEN [5.31 p.m.]: I do not understand. I am still of the understanding that there will be no restraint if there is no Commonwealth-State Housing Agreement and, therefore, there is no guarantee. Can the Parliamentary Secretary respond to this with some authority?

The Hon. Patricia Forsythe: Are we in some danger of losing the Commonwealth-State Housing Agreement?

The Hon. IAN COHEN: I do not know, but I am concerned that there would be no restraint if that were the case.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.32 p.m.]: I have nothing further to add. If in the unlikely scenario the Howard Government wants to do away with the Commonwealth-State Housing Agreement, I am sure it will be an issue and we will deal with it at that time. However, my understanding is that all housing funds would remain funds and would not go elsewhere. With regard to the point last made by the Hon. Don Harwin, I am informed that his contention is absolutely untrue.

The Hon. Dr PETER WONG [5.32 p.m.]: If it is absolutely untrue, maybe the figures are wrong. Can the Government enlighten us as to how much of the surplus from the sale of public land went into consolidated revenue last year; how many millions?

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.32 p.m.]: I am informed that all funds raised from the sale of housing land have gone back to housing.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 15

Mr Breen	Mr Gay	Dr Wong
Dr Chesterfield-Evans	Mr Harwin	
Mr Cohen	Mr R. S. L. Jones	
Mr Colless	Mr Lynn	*Tellers,*
Mrs Forsythe	Ms Rhiannon	Mr Jobling
Miss Gardiner	Mr Ryan	Mr Pearce

Noes, 16

Dr Burgmann	Mr Macdonald	Mr Tsang
Ms Burnswoods	Mrs Nile	Mr West
Mr Della Bosca	Reverend Nile	
Mr Dyer	Mr Oldfield	*Tellers,*
Mr Johnson	Ms Tebbutt	Ms Fazio
Mr M. I. Jones	Mr Tingle	Mr Primrose

Pairs

Mr Gallacher	Mr Egan
Mr Moppett	Mr Hatzistergos
Dr Pezzutti	Mr Kelly
Mr Samios	Mr Obeid

Question resolved in the negative.

Amendments negatived.

Part 9 agreed to.

Part 10 agreed to.

Schedules 1 to 3 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and report adopted.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.42 p.m.]: I move:

That this bill be now read a third time.

The Hon. IAN COHEN [5.42 p.m.]: I missed the opportunity to move Greens amendment No. 10 so I wish to explain its intention now. The amendment would require any money gained from the sale of public housing land to remain with the corporation in the housing account. It would not be paid into the Consolidated Fund, as provided in the bill. Any proceeds from the sale of public housing land should remain in the housing account and be used to provide further public housing. The Minister has argued that this amendment will fetter the Government's right to sell assets and then use the money in any way it thinks fit. He said that, if no more public housing is needed in the future, the Government should be able to sell housing assets and use the proceeds in another government policy area.

The Greens disagree with the Government's assessment of this amendment. First, unless there is a total policy shift, public housing will always be needed. At present the waiting list for public housing is growing at a rate of 2,000 per year, and is nearing 100,000. Certainly in the foreseeable future there will be a desperate need for public housing. If any future government were to decide not to provide public housing, it could simply repeal—

The Hon. Ian Macdonald: Point of order: Standing orders clearly provide that in speaking to the third reading of a bill a member is limited to debating whether the third reading should be supported. The Hon. Ian Cohen has made some admirable points in this debate, to which I have listened intently, but it is clearly outside the scope of the third reading debate for him to speak about an amendment that he wanted to move in Committee. It is not the Government's fault that he missed his opportunity to do that. Given the time, we should proceed and honourable members should confine their remarks to whether the third reading should be agreed to.

The Hon. IAN COHEN: To the point of order: As to the time considerations, I would have finished my remarks by now if the Hon. Ian Macdonald had not taken a point of order. I do not accept that the point raised is valid. Furthermore, these are valid comments to make in the third reading debate. I admitted to having missed the opportunity to move my amendment and so tied my remarks to that amendment. However, I could simply say that my comments apply to the entire legislation on the third reading. Mr Deputy-President, if you require me to dissociate my remarks from the amendment, I can do so easily. I was about to conclude my remarks.

The Hon. Richard Jones: To the point of order: The Hon. Ian Macdonald is being somewhat churlish in trying to prevent the Hon. Ian Cohen from continuing his speech. The Hon. Ian Cohen would have been finished by now—and I would not have had to speak to this point of order—if the Hon. Ian Macdonald had not taken the point of order in the first place.

The Hon. John Jobling: To the point of order: The Hon. Ian Macdonald is basically correct in his comments about the third reading and the relevance of speeches made at this time. However, in view of the fact that the Hon. Ian Cohen missed the opportunity to move his amendment, I think we could allow him a degree of latitude to permit him to explain his position. I am sure that his comments relate to whether the bill should be read a third time. Mr Deputy-President, I put it to you that there is no point of order. If, in your wisdom, you choose to ask the Hon. Ian Cohen to confine his remarks to the question before the Chair, that will be an eminently sensible solution.

The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile): Order! The primary purpose of the third reading of a bill is to give members a final opportunity to oppose the legislation. Therefore, comments made in the third reading debate should be confined to that question. I suggest that the Hon. Ian Cohen dissociate his reasons for opposing the third reading from his comments about the amendment.

The Hon. IAN COHEN: I certainly have great concerns about this bill, and I am seeking to state them at the third reading stage. If any future government decided that it did not want to provide public housing, it could simply repeal this Act and sell off the current public housing stock. However, as a strong supporter of public housing, the Greens would oppose any such move vehemently. It is not unreasonable for the Government to use the proceeds from the sale of public housing stock to provide further public housing, particularly when there is an enormous waiting list. The Greens believe the Government's hands should be tied in this regard: money gained from the sale of public housing land should be used to provide public housing. It could be used to maintain the current stock or to buy new public housing. I believe this is not an unreasonable position.

Motion agreed to.

Bill read a third time.

EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.48 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 Evidence (Audio and Audio Visual Links) Act 1998 facilitates the appropriate use of audio and audio visual technology in the administration of justice and allows New South Wales to participate in a substantially uniform interstate scheme for the taking or receiving of evidence, and the making or receiving of submissions, from or in other participating States.

The use of such technology can help reduce costs of travel and use of court time for those engaged in litigation in this country. In particular, it can significantly reduce the risks and costs associated with escorting, transporting and holding people who are in custody. It will also allow witnesses, particularly expert witnesses, to give evidence from any suitable location around the world.

In June 2000, the Government committed $4 million to extend the use of video conferencing as a major initiative across justice agencies. Under this project, video conferencing equipment will be installed at:
15 courts in metropolitan and regional areas;
adult correctional facilities at Silverwater, Grafton, Cessnock, Parklea, Long Bay and Bathurst (a total of 13 facilities);
seven juvenile justice facilities across the State; and
four Police Service locations.
Facilities will also be installed at the Legal Aid Commission (two locations), DPP (two locations), Ethnic Affairs Commission (two locations) and Public Defenders Office (one facility in Chambers).

It is anticipated that the use of video conferencing for preliminary criminal proceedings alone will deliver savings in inmate transportation of more than $1.5 million per year.

The Bill will amend the Evidence (Audio and Audio Visual Links) Act 1998 to ensure that the benefits of this technology are realised, particularly in criminal proceedings.

To apply only in circumstances where these facilities are available, this Bill establishes a presumption in favour of using audio visual links to facilitate the use of video conferencing in appropriate circumstances by justice agencies. This presumption applies to preliminary criminal proceedings which generally deal with procedural matters only, such as:
certain proceedings relating to bail;
any arraignment on a day other than the day appointed for the trial of an accused person; and
any interlocutory proceedings held in connection with any criminal proceeding, such as an application for an adjournment.

Where a person has previously been remanded in custody, the presumption will also apply to any subsequent proceeding relating to the remand of the accused person in custody for the same offence.

The presumption, however, will not override the court's inherent jurisdiction to generally control proceedings and protect the right of the accused or defendant to a fair trial. The presumption can be rebutted if the Court is satisfied that it is in the interests of justice to do so.

In order to protect the rights of an accused or defendant in criminal proceedings who may be in danger of losing his or her liberty, the proposed amendments will also establish a presumption in

favour of physical attendance for certain criminal proceedings. These include:
(a) committal proceedings;
(b) any inquiry into a person's fitness to be tried for an offence;
(c) any trial or hearing of charges;
(d) any sentencing hearing;
any hearing of an appeal arising out of a trial or hearing;
any proceeding relating to bail where it is the accused or defendant's first appearance before a justice; and
any proceeding relating to bail which is the accused or defendant's first appearance before a magistrate.

A presumption in favour of the physical attendance of the accused can only be displaced with the consent of the parties, or if the Court is satisfied that it is in the interests of justice.

A presumption in favour of using video link facilities for proceedings before the Supreme Court concerning bail already exists under Part 7A of the Supreme Court Act 1970. As the provisions of the Bill are broader than Part 7A, this Part will be repealed.

Where there is a presumption in favour of using audio visual link, a party opposing the appearance of the accused or the giving of evidence or making of a submission by audio visual link must satisfy the court that the use of the audio visual link is not in the interests of justice.

In recognition of the special nature of proceedings before the Children's Court, the presumptions established by the Bill will not apply where the accused or the defendant is a child.

It is important to note that the Bill ensures that an accused person appearing before a court via audio visual link is able to communicate with their legal representative privately via telephone link if their representative is where the court is sitting.

The Act presently restricts the court to making such an order where either party makes an application. This Bill takes this a step further to also permit a court to make an order for the giving of evidence by audio or audio visual link of its own motion. This will be most useful in civil matters, where the aforementioned presumptions do not operate. Before an order is made the existing tests set out in the Act will need to be satisfied. These include ensuring that the facilities are available, that it is not unfair to a party and that it is in the interests of the administration of justice.

A number of people and organisations have been consulted about the changes proposed by the Bill. These include the Chief Justice, Chief Judge, Chief Magistrate, the Bar Association, the Law Society, the Legal Aid Commission and Aboriginal Legal Services. Where appropriate, these comments have been taken into account.

The Bill acknowledges current thinking amongst the Judiciary, the profession and court administrators that there is a legitimate role for technology in the justice system. It seeks to encourage the expanded use of technology in the courtroom but not at the expense of the interests of justice.

Accordingly, this Bill clarifies what types of evidence or submissions should be given and what types of matters should be dealt with by audio visual link. By the provisions in this Bill, the court will be required to balance questions of cost, convenience and expedition with the proper dispensation of justice.

I commend this Bill to the House.

The Hon. GREG PEARCE [5.50 p.m.]: The Opposition does not oppose the Evidence (Audio and

Audio Visual Links) Amendment Bill. We welcomed the introduction of the Evidence (Audio and Audio Visual Links) Act in 1998. We note that the Government has committed $4 million to expanding the availability of video conferencing across justice agencies. It is our hope that, next year, the Government will keep its spending promise rather than defer expenditure to a later year, which is what it usually does. I do not intend to speak at length on this bill, as the shadow Minister in the other House spoke at length in debate on the bill in that Chamber. However, I draw to the attention of honourable members and the Government some comments submitted by the Law Society in the last couple of hours.

The Law Society expressed some concerns and some reservations about certain aspects of this bill, which I am sure will be taken up by the Attorney General. Amongst those reservations were some requests that the Attorney General and the Government ensure that appropriate technical equipment is available so that the people affected by this legislation are able to benefit from it. In addition, some safeguards were discussed in the other House relating to a presumption in favour of physical attendance for certain criminal proceedings—important safeguards about which the Law Society made some further comments which the Attorney General should review in detail. In conclusion, the bill strikes an important balance between the rights of the accused and the concerns of the community relating to cost convenience and the expedition of criminal proceedings. As I said earlier, the Opposition does not oppose this bill.

The Hon. RICHARD JONES [5.52 p.m.]: I support the bill.

The Hon. IAN COHEN [5.52 p.m.]: On behalf of the Greens, I support the Evidence (Audio and Audio Visual Links) Amendment Bill, which creates a presumption in favour of using audio visual links to facilitate the use of video conferencing. This bill will apply only to preliminary criminal proceedings. It will not apply to main trials and proceedings such as first bail hearings—when a person is arrested and taken to court and that person is granted bail. In any criminal proceeding where there is a danger of loss of liberty there will be a presumption in favour of the defendant attending. Generally, this legislation is supported by the Law Society, though it is concerned about how it will impact on child defendants. After sounding those words of caution, the Greens support this bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.53 p.m.], in reply: I thank honourable members for their erudite but succinct comments. In particular, I thank the Hon. Richard Jones for his short speech. I do not believe I have heard a shorter speech. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

HOME BUILDING LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from 26 June.

The Hon. JOHN RYAN [5.54 p.m.]: When I was speaking to this bill when debate on it was adjourned some time ago I was explaining some of the difficulties that people have with the Fair Trading Tribunal—the agency to which people normally go to resolve disputes between consumers and builders. A few weeks ago, when business was interrupted for question time, I was illustrating how people can have their matters delayed in the Fair Trading Tribunal by referring to Mr Lloyd Thomas, a constituent of mine, who had written to me outlining his experiences in the tribunal. He had problems with a builder and he made an insurance claim on his home warranty insurance policy from the insurer, Home Owners Warranty. The insurer refused his claim.

Mr Thomas immediately filed a claim with the Fair Trading Tribunal against the insurer. Six weeks

later, on 16 March 2000, he received a letter from the tribunal telling him that a hearing would take place on 6 April 2000. That was about two months after he had filed the claim. Two weeks before the hearing was due to take place he received a letter telling him that the hearing had now become a case conference. Two days before the hearing date, which had now become a case conference, he received a letter telling him that the case conference had been adjourned, I think at the request of the insurer. Some time later he received a letter through the mail which stated that the case conference was to be rescheduled for 5 May 2000. So it took four months for nothing to happen.

The case conference came and went and resulted in nothing more than the obvious. It was decided that each of the parties would hand over various documents to one another. It took the tribunal a further two weeks—until 16 May 2000—to issue a written order which recorded the decision of the case conference. It ordered the parties to file documents by 19 May, three days later. Notwithstanding the fact that the insurer was legally represented at the case conference and that it had agreed to hand the documents over by 19 May 2000, it complained to the tribunal that it could not comply with the order in the time given. Two weeks later, on 30 May, the parties received a further letter from the tribunal stating that documents were now to be filed by 5 June 2000.

Mr Thomas wrote to me on 7 June telling me that he had still not seen the documents from his insurer defending its decision to refuse his claim. Five months of waiting, and nothing had happened—a period of time longer than it takes to actually build a house. Yet apparently that was not sufficient time for the tribunal to work out what documents were relevant to a dispute and then to instruct both parties to exchange those documents. I wish I could say that Mr Thomas' experience was unusual, but it is not. I could refer to dozens of chronologies exactly like that. Orders from the tribunal to professional litigants like insurers and project home builders are never enforced. That also results in delays. After many delays, some consumers can wait no longer and they simply walk away from their disputes.

I could refer to the dispute between Mr Juchuan Chen and the infamous company Vico and Associates. Mr Chen finally won his case after the tribunal ordered the demolition of the entire house because of its serious structural defects. Mr Chen lodged his application in the tribunal on 29 May 1999. A full hearing did not take place until 10 March 2000, nearly a year later. On 10 April 2000 there was another day of hearings. The decision was reserved and not delivered until 21 September 2000, one year and four months after the application and nearly two years after the builder had abandoned the building site.

I refer to one final example—the case of Mr and Mrs Moore against Rocco Vitalone, trading as Vital Homes. The application was lodged on 23 March 1999. The tribunal member, Mr Jeffrey Smith, finally delivered a decision on this matter on 21 September 2000, a year and six months later. The dispute involved building works that were worth only about $30,000. The whole project, which was a Villa Home extension, was worth about $80,000. It took the tribunal three months—until 23 March 1999—before it convened to hear anything. It took until 10 November for the matter to be formally heard for one day.

In the end, the member, Mr Smith, made orders against the builder that acknowledged the truth of every single complaint made by Mr and Mrs Moore. At one stage the case was delayed for some months because the builder claimed that he was the ill, yet he was found working on other building sites. The builder's reputation was so bad that last August the Director-General of Fair Trading suspended his licence. The consumers in this matter requested only one adjournment during the entire case, and that was with the mutual consent of the builder. That request was made only because the tribunal had not sent notices to both parties. At the time they were told to attend it was the mid-January holiday season and the home owners' solicitor was out of Sydney on vacation. However, he indicated that if the builder wanted to proceed he would return. I believe that the builder was also seeking an adjournment to brief a new solicitor.

Astonishingly, the tribunal member in his judgment made virtually no adverse comment about the

builder's behaviour and then had the temerity to blame the aggrieved home owners for the delay in determination of the dispute. Mr Smith has an interesting way of resolving disputes. At one stage he asked the home owners, "Why didn't you just walk away when the loss was only $30,000?" On another occasion he stood over the home owners in what was laughingly called a mediation session and yelled a countdown at them, aimed at telling them how many minutes they had before he would end the session and determine the result according to the offer made by the builder.

If that represents the level of understanding that members of the tribunal are prepared to show towards genuinely aggrieved consumers who make applications to the tribunal, what chance is there of the tribunal winning any respect? About 30 per cent of disputes launched in the tribunal are abandoned. I wonder how many of that 30 per cent are abandoned not because there is no case but simply because it is cheaper for consumers, or contractors for that matter, to take it on the chin and walk away. Some builders and insurers know that the patience of consumers is limited—sometimes by their resources, sometimes by their capacity to endure the stress of waiting. So they try their luck through a host of well-practised delay tactics in the hope that they will be more successful in winning their case by delay than on its merits. It is scandalous. The tribunal not only tolerates this kind of sloppy procedure, it practically fosters it.

I note that even the Government is abandoning the tribunal. This bill effectively strips the tribunal of its responsibility to discipline builders. The Administrative Appeals Tribunal will now hear appeals against decisions of the director-general. Recently when the Department of Fair Trading took action against Henley Properties Ltd, a building company that has aggrieved hundreds of consumers in New South Wales, it did not go to the tribunal but to the Supreme Court. Why? I am informed that one of the considerations was that action in the tribunal takes too long, it is too cumbersome and it is too expensive. Another problem is the inconsistency of the tribunal's judgments. I have already mentioned Mr Vitalone and his company Vital Homes. I can illustrate the inconsistency of the tribunal by examining the outcomes of some cases that were completed against him. About 17 of his customers had cases determined in the tribunal.

What I have found astonishing is that people who had the same builder, received similar contracts and suffered from similar shonky building practices, received different outcomes. Work found to be defective at the home of Mr and Mrs Moore of Ambarvale led to them receiving a small money award. Yet the member hearing the case against Vital Homes brought by Mr and Mrs Wahlstrom of Hassall Grove simply terminated the building contract, enabling the applicants to make an insurance claim. In both cases, the builder's licence had been suspended. In both cases, the builder had commenced the construction of the house and progressed only to the initial stages before work was interrupted by a dispute, causing the builder to leave.

I know of others who were ordered to pay this rotten builder for his defective building work, sometimes for little less than the contract price, just to get rid of him so that they could hire another builder. In most cases the work was found to be seriously defective or in breach of the warranties provided in section 18 of the Home Building Act. In most cases the builder had been prevented from completing the work by virtue of the suspension of his building licence. But the outcome for the two owners I have referred to in detail was very different, mainly because of the difference in the orders they received from the tribunal. Mr Wahlstrom has been able to have his house completed by an insurance company at the cost of more than $100,000. Mr and Mrs Moore are limited to the money order made by the tribunal, which was about $35,000.

That amount has not been enough for them to demolish the faulty work and replace it. The terms of the order also made it very difficult for the Moores to make a speedy insurance claim. They have also been left to meet the costs of witnesses and building consultants who assisted them in the tribunal. Although they were awarded money by the tribunal in liquidated damages, they were unable to recover these amounts because the builder has now declared himself bankrupt. In another matter involving Mr Vitalone, another member of the tribunal, Dr Stephen Smith, found that work done at the home of Mr and

Mrs Oskham at Raby, near Campbelltown, was defective. Because the builder refused to fix the paintwork, the consumer paid another contractor to rectify the work. The consumer produced to the tribunal an invoice for $600, which he had paid for the work. The member made an astonishing finding, based on his own judgment: "The charge does seem excessive for the aggregate works. I find that a reasonable charge would be $300, representing round figures of $35 per hour plus $54 for materials."

The member in his judgment seems to have given his own evidence and ignored the fact that the applicant had already paid for the work and produced an invoice. The member's estimate was not based on any hard evidence that the work could be done for a lower amount. That is a further example, albeit a simple one, of the extraordinary logic of the tribunal's inconsistency. I note that new section 48O (3) inserts a reference to sections 9 to 13 of the Consumer Claims Act 1998. That is an excellent start in attempting to bind the Fair Trading Tribunal to some sort of aspirational statement that defines the principles of fairness. For example, the Fair Trading Tribunal will now be obliged to give consideration to issues such as potential for intimidation or inequality in bargaining power, which may arise from lack of capacity in the English language or lack of legal representation. The tribunal is in need of major reform, but the measures required are not in this bill.

I believe that the time has come to put all the non-judicial powers of the tribunal into the hands of its registrar, who should be accountable to the Minister and the government of the day. The tribunal should offer an advice service to consumers similar to the sort of service provided by a Chamber Magistrate at the Local Court. Frequently, consumers and builders only want independent and trustworthy advice to guide them in their own efforts to resolve disputes. They do not wish to have to go through the cost and waiting times involved in a full-blown dispute. It took the tribunal in excess of a year to establish a code of conduct for its members, but, astonishingly, the code does not include any complaint-making procedure, nor does it describe any means by which complaints may be lodged and independently determined.

A list of independent assessors should be established forthwith and should be used as much as possible to resolve the technical issues that plague building disputes. The tribunal needs to publish better statistics about its waiting times in its annual report. Members of the tribunal should also be obliged to report builders to the Department of Fair Trading for investigation in instances where they have reasonable cause to doubt their competence. Finally, the tribunal should publish a representative sample of its judgments on its Internet site to inform the public as to the matters it takes into consideration when making decisions. This sample can also provide a basis for establishing precedents, which would enable the decisions of the tribunal to become more consistent.

This legislative package provides some changes to the insurance scheme. But the greatest miscalculation made by the Government in introducing the current scheme in 1997 was the expectation that private underwriting of home owner warranty insurance would result in more rigorous supervision of operators in the home building industry. In line with the abolition of the old insurers scheme, the number of government-employed insurance assessors was allowed to decline. It was expected that home owner warranty insurers such as Home Owners Warranty, FAI and HIH would act as policy regulators of the industry. It was thought that they would not provide insurance to bad builders. If that were to occur, section 96 of the Home Building Act provides that builders cannot undertake residential building work unless the contract of insurance which complies with the Act is in force. Section 22A also provides for the director-general to suspend the licence of contractors if they are unable to obtain insurance for their work.

As I said earlier, for a variety of reasons that did not happen. That stands to reason: Insurers are in the business of managing financial risks, not regulating the behaviour of builders. Insurance companies that provide motor accident insurance assess the risks and impose appropriate levels of premiums. They do not teach bad motorists how to drive safely. In the same way, insurers do not operate a crime prevention program merely because they offer home contents insurance.

The bill makes a number of improvements to the current insurance scheme. Many of the

measures are welcome, but they do not as yet represent all of the measures needed to ensure that insurers properly look after their customers. As a means of illustrating how bad some insurers have been to their customers, I refer to the case of the Dyason family of Vaucluse. They contracted builder Gary Cohen for an upper floor extension to their home. They paid him $69,000. The builder went broke and abandoned six building projects. Since then Mr Cohen's licence has been cancelled and he has been fined more than $100,000. It was an open and shut insurance claim but the insurer refused the claim on the basis that the policy covered the builder and not his company, Action United.

My first job after leaving school was as a filing clerk for the insurance company National and General. I spent only a month in the office, but I can still remember a maxim that my old boss, Mr Myers, used to repeat over and over, "The first principle of insurance is good faith." That appears to have been forgotten at FAI. Why am I not surprised that FAI is the insurer involved in the Dyason matter? FAI refused the claim and Mr Dyason had to fight the claim in the Fair Trading Tribunal. The insurer argued that because Mr Cohen had described himself on the building contract as "builder" and was not in a position to sign on behalf of the company, the job was not covered. The Fair Trading Tribunal found in favour of the insurer. Why am I not surprised by that lack of logic? Not only did the insurer let Mr Dyason down by abandoning the first principle of good faith, but the Government also let him down. Mr Dyason could not possibly have known that the Home Building Act would be read in that way. He did the right thing by choosing a licensed builder. He had paid for a contract of insurance, but it did not protect him because of a technicality.

The bill fixes that problem by requiring the contractor to inform the insurer of the identity of the parties to the contract, the address of the premises where the work is to be done and such other matters as may be prescribed. If the insurer issues a certificate of insurance covering the work, the consumer will be covered, whether or not the contractor's name shown on the building contract is different to that shown in the certificate of insurance. I am pleased that Mr Cohen was the subject of a show cause action, the only show cause action conducted by the department from 1997 until last year. He has been barred from doing residential building work for 10 years. In all fairness, Mr Dyason and his family should have been assisted by the Government by an ex gratia payment. One of the Minister's staff indicated to me once that that would happen. I would like to know, perhaps in the Minister's reply, whether it did.

The bill also extends insurance cover to building work where the reasonable market cost of labour and materials involved exceeds $5,000 whether or not part of the work or materials is to be provided by the other party to the contract. It is one part of the bill for which I can take some credit. My first speech in the House on the subject of builders involved a family who had hired a tiler to install floor tiles in their home. The tiler charged $4,800 for the job. The family supplied all of the tiles, which were worth more than $4,000. The job was a disaster. All of the tiles had to be removed. The full cost of rectification was more than $15,000. However, the job was not covered by an insurance policy because the builder was paid less than $5,000. The new requirements will take into consideration the fact that a builder can cause more than $5,000 worth of damage to a home even though the job may be worth a great deal less.

The bill also contains various provisions to improve the monitoring of the home warranty insurance scheme and to stop fraudulent traders. First, the director-general will be given the power to require an insurer to provide information to the Department of Fair Trading relating to the insurance scheme, including information about claims handling, the settlement of claims as well as particular claimants and licensees. It is further proposed that the director-general may, with the consent of the insurer, pass on some of this information to other insurers particularly in relation to the misconduct of licensees. Again, that is one of my ideas. Last year I asked for some basic information about the insurance scheme in the budget estimates, only to be told that it was not available because, as the Minister explained, "I am advised that the insurers have been inconsistent in supplying relevant information".

The home warranty insurance scheme, like the motor accident insurance scheme, is a statutory insurance scheme. It is not subject to the normal impact of market competition because it is compulsory. One means of ensuring that the scheme does not charge excessive premiums and that it pays legitimate claims promptly is to demand some basic information about the rate at which claims are paid and the

amount of premium collected. As I recommended, insurers will now be required, by means of the regulations, to supply information to the Director-General of the Department of Fair Trading, and they can be fined a significant amount if they do not comply. That is because the bill also introduces monetary penalties of up to $50,000 that can operate in addition to licence cancellation. Often these penalties are more effective, because few companies believe that their licence is at risk for non-compliance with minor matters.

I would suggest one further improvement that could be made to the bill immediately with regard to the insurance scheme. To make the details of the insurance scheme public I have had to ask for this information by placing questions on notice at budget estimates for two years running. In the past all the details of the old Building Services Corporation [BSC] scheme such as the premium collected, the number of claims accepted or denied and the value of the claims paid was published in its annual report. Similar information is published about the privately underwritten major accident insurance scheme in the annual report of the Motor Accidents Authority. It is anomalous that similar details about the home warranty insurance scheme are not published annually. We should amend the bill to provide for the Director-General of the Department of Fair Trading to report annually about the scheme in the annual report of the Department of Fair Trading. Since I wrote this speech I note that one member on the crossbenches has proposed an amendment that seeks to achieve that purpose.

I have said that this package of reforms should only be the start. I want further reforms to the insurance scheme. Future reforms, introduced by the legislation or by regulation, should attempt to better define when an insured event occurs. The reforms should impose an obligation on insurers to admit liability quickly and process claims properly. They should ensure that when home owners take responsible measures to mitigate an insurance claim they do not eliminate their right to make a claim, as I have known to happen in some cases. The reforms should prevent insurers from forcing home owners to endure unsatisfactory behaviour by builders and prevent them from submitting home owners to pointless dispute procedures. I understand that clause 57 of the Home Builders Regulations could be amended to achieve that objective. The reforms should provide clearly that legal and consultant's costs incurred by consumers to prove they have a case against a builder must be included in the definition of the term, in clause 43 (4) (1) (b) of the regulations, "loss or damage arising from a breach of a statutory warranty". Consideration should be given to future reforms including loss from liquidated damages if the builder goes broke, as it is a loss arising from a failure to honour a statutory warranty.

Having made those remarks about the bill I would like to thank some people who have been helpful in assisting me to understand the system that regulates the home building industry. First and foremost I thank Mrs Irene Onorati, President of BARG, the Building Action Review Group. She is a longstanding and outstanding campaigner for consumers. She has given unstintingly of her time and resources to help hundreds of consumers affected by shonky builders. In doing so, she has been greatly supported by her long-suffering husband, Joe. Irene spends many hours writing letters and drafting submissions for court hearings. Sometimes she even attends court with the victims of shoddy builders to assist them in the presentation of their cases when they are unable to pay for legal assistance. She has made other efforts to highlight problems faced by some unfortunate consumers in the building industry. One of the best examples is her frequently organised Defective Homes Exhibition. I think we are now at number 15. I cannot think of anyone within the general community who has fought harder for consumers, frequently at great heartache to herself.

Earlier this year the Minister for Fair Trading announced an award scheme to acknowledge those in the community who have worked for consumer protection. Today I called at the office of the Department of Fair Trading in Elizabeth Street to collect a nomination form. I intend to nominate Irene. I am sure she will do very well when the awards are announced for the first time later this year. I also acknowledge the efforts of her friend and sometime legal assistant, Sal Russo. The Minister recently acknowledged his work and expertise by appointing him to the Home Building Council. I also thank my friend Mr Byron Photios. He and his wife, Shirley, are longstanding family friends. He too has been a tenacious campaigner for consumers, particularly those affected by one builder. His efforts never seem to

end. His phone bill must be enormous, particularly when his phone is connected to my mobile.

Mr Russo has fought his own battle, and he has been available to help many others with advice and practical assistance. He has developed an encyclopaedic knowledge of the Home Building Act and its regulations. I would have been totally lost without his advice. I must also acknowledge hundreds of other constituents who have contacted me in the past two years with their problems. They are too many to name, but I am tempted to table a schedule of them if only to prove to some scornful members in another place that members of this House have plenty of individual constituents who seek their help.

The Hon. Richard Jones: How many are there? Can you incorporate them in *Hansard*?

The Hon. JOHN RYAN: I will not. There are a whole lot; there are more than 100. I must also thank other experts such as Mr Kevin Jubilin, the former Chief Executive Officer of the Building Services Corporation, and Mr Doug Cornish, who was formerly a member of the Building Disputes Tribunal. Several building inspectors in the Department of Fair Trading probably do not want me to acknowledge them. Mr Richard Jolley, Mr Michael Cooper and Mr Paul Dengate have assisted me—with some reluctance. They go into a convulsion just about every time I identify myself to them on the phone because they are worried sick that by speaking to me without the permission of the Minister's office they will break protocol. Notwithstanding that limitation, they have provided me with more assistance than they know, because I have mastered the art of drawing out a great deal of information from even the most cursory answers.

I would like to thank Mr Chris Aird, Mr Steve Jones and Ms Mary Louise Battilana from the Department of Fair Trading who have been responsible, I understand, for drafting the bill. I would also like to thank them for the generous amount of time and patience they have extended to me with numerous briefings about the bill. I compliment them for the work they have done so far on the bill. I would also like to thank Ms Jane Fitzgerald from the Minister's office who has also been extremely helpful and, I must say, prompt in resolving many issues I have referred to her. I commend the bill to the House for further examination. I propose to make a couple of further short comments at the Committee stage. The bill is a good start. More work needs to be done. I am assured by the Minister that he is not finished, and that is gratifying. I look forward to retiring from this job in the next couple of years and moving on to something else.

[*The Deputy-President (The Hon. Janelle Saffin) left the chair at 6.21 p.m. The House resumed at 7.15 p.m.*]

The Hon. IAN COHEN [7.15 p.m.]: It is with a degree of reluctance that the Greens support the Home Building Legislation Amendment Bill. The bill is an attempt by the Government to improve the performance of the home building industry. It is certainly a welcome and long-overdue acknowledgement of regulatory failure. However, the bill is not the complete overhaul that such serious problems require. We should not be fooled into thinking that the passage of the bill will solve the crisis of confidence in the home building industry. I know that everyone in this place has received large amounts of correspondence from people who have been affected by defective building work.

I commend the Hon. John Ryan for his determined and persistent representations on behalf of many people who have been badly affected by unacceptable builders. I have listened with interest to his complete dissertations on this matter. Over a period of time a number of people have written to my office. It is quite an eye-opener to read about what has been happening and to hear what has been reported by other members of this House, particularly the Hon. John Ryan. I will not go through all the letters I have received in detail because I have received a significant number. Many people who have written letters to the Minister have passed copies on to me. One of the letters I received was from Christine and Geoff Steel. The letter stated:

During the building of my house at 13 Wards Hill Road, Killcare Heights, Central Coast (which

took 11 months to build) we have had to resort to all kinds of protests to try to get the builder Henley to respond (including my presence outside the Showhomes at Castle Hill wearing a sandwich board and distributing leaflets to anyone who drove into Henley.)

What sort of circumstances would force people to do that sort of thing? The letter continued:

> Having signed a contract with a well known builder, we did expect that as a common law contract, we fulfilled our part of the contract, with payment, but the Licensed Builder has not, we believe, fulfilled theirs or duty of care.

The letter goes on to detail some of the problems they have experienced:

> Internal walls repositioned, many small defects to the gyprock
> The balcony sloped down from one side to the other by 30mm and had to be jacked up.
> We have cracks in the slab in the lounge, family and garage
> The mortar between the bricks is washing out.
> One wall overhangs the slab by up to 30 mm (Aust. Build. Code allows 15 mm)
>
> We wrote to Gosford Council, asking for Building pass, they were never inside to do a final inspection, even though the house has been lived in for 18 months.

It is an absolutely appalling and terrible time for these people. I am pleased that the bill may be able to assist them in some way. Another letter was written by Mr and Mrs Frantzis of Marriott Street, Redfern. Their letter states:

> We could not understand how the three builders who were involved in the renovation work of our house were able to get licences to build houses. We only undertook one renovation to our house and we had three builders, each trying to rectify the bad workmanship of the previous one. Who gave them the licence to build?
>
> To date, seven years later, we need a fourth builder as we still have defective work and the local Council is not prepared to issue a final certificate.
>
> You also mention that you are going to speed up the disciplinary proceedings, etc. - this is an absolute must. We started to build in April 1993 and we are still suffering, whilst my three builders are still working …
>
> We herewith briefly state our last experience with your department ... Our complaint was about defective work. We did not know what to do and where to turn. The only way to prove the defective work was to employ a consultant to prepare a report (at a cost of $1,100). A licensed builder quoted $58,196.42 to rectify the defects ... We could not afford an appeal and were forced to go ahead with Asquith Construction in hope that this builder would prove to be reliable. After all, Asquith was introduced to us by the department with the promise that all defects would be rectified at the quoted cost. To date our house still has defects …
>
> We believe that not only amendments are needed to the HBA but an investigation should be called into the conduct of the DFT and certain employees and/or consultants to the department. In our case there are many questions that need to be answered. Why was Asquith paid by the department when we still have defective work and the Council refuses to issue a final certificate? Why is no disciplinary action being taken against this builder? Why does the department force consumers to accept builders incapable of doing the job properly?

Another letter about the proposed changes to the Act was sent by Maureen Bailey of Station Street, Newtown, who states:

I can tell you in my case the existing laws have not protected me in any way. Not only did they not protect me but have damaged me.

How is the Minister of Fair Trading going to be aware of consumers grievances unless there is a full public judicial inquiry prior to any amendments? I myself have experienced long delays and in action by the Department of Fair Trading and the Tribunals under the present legislation ...

On 28.2.98 I signed a Plain English Residential Building Contract with a licensed builder to carry out renovations and additions for the sum of $48,760. The Home Owners Insurance was issued by the builder to cover the building work ...

The work was to have been completed by 11.4.98 and the building contract carried a $700 per week penalty clause ...

Unfortunately everything that could have gone wrong went wrong ...

The builder requested a deposit of $6,000 which is 12% of the contract price. This is a breach of the Home Building Act 1989. The maximum deposit should have been 5%. I was not aware of this at the time.

The licenced builder did not supervise the job himself but appointed an unlicensed supervisor who, after obtaining my deposit cheque disappeared. I could not contact him and he did not turn up on my job for a number of days. I was advised to stop the cheque immediately which I did.

I was also concerned as the building contract included an optional $4,900 for floor sanding. I told the builder this price was outrageous and I would have this work done independently for $2,900. This reduced the building contract price to $43,860.

The unlicenced supervisor phoned me two days after I stopped the cheque and the builder demanded I make available $6,000 cash to him before he returned to the job. Unfortunately the work continued to be carried out in a defective manner.

The builder demanded money constantly despite the fact that the work was defective and way behind schedule. The builder's supervisor threatened me and said that if I didn't give in to his demands for money he would walk off the job.

Two & ½ months after the completion date and having received $38,020 of the contract price which was now $43,860 about $^1/_3$ of the work was carried out. There were significant goods which had not been supplied and work not performed.

He abandoned the job on 27.6.98. The property was/is a rental property and my only source of income. I was desperate I did not know which way to turn.

Despite all the happenings the builder had the gall to terminate the contract and take me to the Consumer Claims Tribunal. He demanded the balance of the money despite the fact that the work was far from completed, defective and not supplying the materials in the contract.

For almost 3 long years there have been numerous hearings before the Building Disputes Tribunal, Commercial Tribunal and the Fair Trading Tribunal against the builder and the Home Owners Warranty Insurer HIH.

Dare I mention HIH? The letter goes on to state:

> Since I commenced drafting this letter I now find myself a victim of the HIH collapse.
>
> I have just received notification from the Fair Trading Tribunal that my Section 63 Application for a Rehearing has been refused. I have been denied natural justice by this unjust decision.
>
> It is an inconceivable decision. My Rehearing has been denied despite the strong overwhelming evidence and documentation which proved my case. This evidence has been totally ignored by the Fair Trading Tribunal.

A letter from Paul Vogel states:

> [Despite] all good intentions and a willingness to provide a greater level of consumer protection [this] will not be achieved unless the appropriate legislation is enforced. As you are aware my wife and I attended a meeting with BARG and the Department of Fair Trading to discuss the various proposals. I am very concerned that the proposals are endeavouring to seek a cure against disease to help people in the future while the poor unfortunate people that are currently suffering are simply left to die.
>
> After 2 years we are still suffering financially and physically destroyed and without a house. Will the proposals help us?
>
> Moreover, I am concerned that the real root of the problem is still not being addressed, consumer complaints are still not being investigated promptly by the Department of Fair Trading, disciplinary action is not taken against the serious misconduct of builders and the fair trading tribunal is not meeting and securing its objectives in expediting matters in a prompt and inexpensive manner. Builders are continuing to exploit the loopholes and are not being held accountable for their actions and people like us have to continue to fight disputes before the tribunal …
>
> It is 20 months since we lodged our complaint against our builder with the Department of Fair Trading but he has not been prosecuted yet. Why? Our house is so badly built that the structural engineer recommended demolition …
>
> Moreover, our builder to date has five licences and he continues to work even though he has gone into liquidation …
>
> On 2/8/1999 when we first incurred difficulties with our builder I lodged a detailed complaint complete with (photographs, plans, contracts, correspondence, etc) with the Department of Fair Trading. The complaint manager dutifully told us that the department was unable to provide any assistance and urged us to seek legal help. It seems the complaint manager had verbally spoken to the builders partner (i.e. his wife) prior to receiving a complaint.
>
> Before we engaged our builder we made inquiries with the licensing section of the FT department and were told that the builder is licensed and has no record.

I do not wish to waste unduly the time of the House. Many of these letters have similar content and they well and truly illustrate the problems. I have received letters from Lyndy Trang of Bonnyrigg Heights, Ms Xuereb from Harbord, Glen Martin, Michael Pantziaros and Ms D. Sutter all outlining similar problems—a small part of a litany of complaints that have been well ventilated in this House. It is certainly time to remediate some of these tragic situations that are having a shocking effect on these people's lives. One can hardly imagine how frustrating it would be.

The Building Action Review Group [BARG] should be congratulated for the extensive campaign it has conducted on behalf of building consumers. Unfortunately, I was unable to attend the Defective

Home Exhibition held by BARG at Wentworthville in February last year. It was attended by hundreds of people, and successfully publicised the appalling denial of justice that has affected so many people in their dealings with sections of the building industry. BARG has provided the Minister with evidence of seriously deficient building work as a widespread problem. It is clear that the experiences of these consumers are not isolated incidents. They establish a clear pattern of defective building work, lack of action by the department and failure by the Fair Trading Tribunal and insurers to provide an adequate remedy for aggrieved consumers.

Consumers have raised serious questions about whether the bill is an adequate response to the crisis of confidence in the home building industry. The major concern is that the bill does not deal with the main problem, which is lack of enforcement of the existing law. Some of the areas in which the existing law is not being enforced include a lack of thoroughness of Department of Fair Trading investigations and licensing, and a lack of disciplinary action against builders. As I said, I have received many letters that identified the lack of political will in enforcing the existing law. The Greens agree with BARG, Mr Pantziaros and Ms Suttor that the underlying problems in the building industry are not addressed in the bill.

Those problems were highlighted recently with the collapse of HIH Insurance which had 30 per cent of the home building insurance market. Both of the big parties in government pursue policies that reward business and deregulate industry. The result is that the profits are privatised and the costs are met by the community as a whole. The minor tinkering contained in this bill should be contrasted with the determination of the Government to attack the rights of injured workers. Why is the Government so determined to reduce the entitlements of injured workers but so hesitant to take on shonky builders? The answer is that the Government takes advice from people such as the directors of HIH Insurance who can afford to attend $1,000 a plate fundraising dinners. Injured workers and people whose lives have been ruined by shonky builders cannot afford to get the ear of government.

The building industry is a dangerous industry with high injury rates. Many of the same shonky builders who are ripping off consumers are also ripping off workers by failing to pay their workers compensation premiums and failing to provide a safe working environment. Rather than targeting injured workers, the Government should be targeting builders who exploit both customers and workers. If the Government is really serious about cleaning up the building industry, it should act to improve occupational health and safety and employer fraud. The building industry is notorious for contributing to the workers compensation scheme deficit through non-payment of premiums. I will move amendments designed to tighten up the bill.

The objects of the amendments are to assist consumers who have established complaints against builders. There needs to be a clear direction to the Department of Fair Trading, the Minister and the Fair Trading Tribunal that disciplinary action be taken in these cases. This bill is a small step in the right direction. However, it is essential that the major problems that remain unresolved are addressed. The Greens hope the Government will work with consumer groups to ensure that justice is available for people who have legitimate complaints about the home building industry. As I said earlier, it is with a degree of reluctance that the Greens support the bill before the House.

Reverend the Hon. FRED NILE [7.33 p.m.]: The Christian Democratic Party supports the bill before the House, the Home Building Legislation Amendment Bill. The objective of the legislation is to improve consumer protection in the home building industry through reforms to the home warranty insurance scheme and contractor licensing system, to establish a better process for the resolution of building disputes and to alter the jurisdiction of the Fair Trading Tribunal. The bill contains a package of reforms for the home building industry. In particular it will remove the need for the director-general to give 48 hours notice of the issue of a public warning if there is an immediate risk to the public. It will make it an offence for a contractor to knowingly mislead the director-general as to whether an order of the Fair Trading Tribunal has been complied with.

The bill will provide for the purchaser of a dwelling from a speculative builder to be able to rescind the contract for sale of land if the required home warranty insurance is not taken out. It will amend the provisions relating to injunctions contained in the Act to make them consistent with those in the Fair Trading Act 1987. It will extend from one year to three years the period within which proceedings for offences may be instituted. In relation to the proposed five-day cooling-off period for building contracts, it is proposed to give the consumer the right to waive the period by giving a certificate signed by a legal representative. The bill will also modify the provisions relating to the early intervention dispute resolution scheme, and specify the requirements for approval of insurers in the Act and regulations.

Most importantly, in view of the collapse of HIH Insurance, the bill will remove any doubt that HIH Insurance certificates issued on or before 15 March 2001 are valid for the purposes of the Act. Like other honourable members, I have received a number of letters from long-suffering consumers who entered into contracts and have been put through what can only be regarded as something close to hell on earth. Some of those letters were read onto the record by the Hon. John Ryan and the Hon. Ian Cohen. It appears that a lot of consumers placed a great deal of faith in what was called the builders "gold licence". It was flashed around as if there had been some evaluation, assessment or testing of the builder; or that it indicated a long record of successful building operations.

The consumers were happy with the gold licences, when it appears they were virtually worthless. They meant nothing and every builder had one. It was a blatant example of misleading the consumer. People do not build a house every week. For many it is probably the only contract they are ever likely to enter into. Many consumers were unaware of the pitfalls, because they were not confronting them every day. As I said, building a house occurs probably only once in a lifetime. Those consumers had no forewarning that the gold licence could be a mere front for a very dishonest builder—perhaps someone who could not build a house at all, judging from many of the letters I have read and that other honourable members have quoted. I note that in one letter, Mr A. Maugeri makes a point relevant to this debate. He said:

> My own experience with the BSC/DFT [Building Services Corporation and the Department of Fair Trading] has taught me that no laws and amendments to those laws can protect consumers unless the responsible government body administers and enforces those laws.

I agree with that. In fact, I would have said, "Government body—and government". A government cannot wash its hands of the matter and say, "We have set up the department. We do not have to worry any more." A government has to ensure the administration and enforcement of those laws. That does not appear to have happened in this instance. In fact, the opposite has happened. The second point that Mr Maugeri made in the letter was:

> What guarantees are you prepared to give to consumers that the Department of Fair Trading will change its way of doing business and actually administer the amended Act, should it be legislated?

Those questions can only be answered by the Government. The Government should give an unqualified commitment that it will ensure that the laws, including those envisaged in this bill, are enforced to the nth degree; and that there will be justice, not only for those who have been involved in home building in the past, but for any consumers who enter into building contracts in the future. As other speakers in the debate have referred to the letters they received, I will not take up the time of the House by reading them onto the record. Instead, I will merely note the names of some of them: Maria Di Santo, F. Richardson, Juchuan Chen, Janette Nix, Nadia Karen, David and Rosemary Hinton, Paul Vogel, Maureen Bailey, Mr and Mrs K. Frantzis and Christine and Geoff Steel. Each of those persons has made out a good case and the letters have been well presented.

I acknowledge that no member of the upper House is directly responsible for the suffering of those people, but perhaps we are indirectly responsible. I wish to place on record my apology to those people

for the suffering they have experienced and the lack of proper government supervision of and response to their dire situations.

The Hon. RICHARD JONES [7.40 p.m.]: As we know, the Hon. John Ryan has been extremely busy on this issue and has represented the constituency very well indeed. I have received numerous letters from Irene Onorati, the president of the Building Action Review Group [BARG], who has been extraordinarily active in addressing the issue. I hope that other groups will have the success that Irene is beginning to have with her struggle. I too have inspected some of the buildings that have been poorly built. Frankly, they are unbelievable. The legislation is therefore long overdue.

The Government says that the main purposes of the bill are to improve consumer protection in the home building industry through changes to the home warranty insurance scheme and contractor licensing system, and to establish a better process to resolve building disputes. The struggle that many individuals face with shonky builders certainly needs to be addressed, and I hope the bill does so. However, I and other honourable members have concerns about it.

BARG is a collective of individual home owners that runs on a purely voluntary basis with little funds. The group tries its best to fight for consumer justice, but it is extremely overworked and faces a difficult task in competing against the industry lobby groups—the builders and insurers. It is a great pity that BARG feels excluded from the legislative process. In fact, its president, Mrs Irene Onorati, was surprised when told by my office on 30 May that the bill was already in the second reading stage in the other place. This seems particularly strange, given the Minister's lauding of her in his second reading speech.

The Hon. John Ryan: You sent her the bill.

The Hon. RICHARD JONES: As the Hon. John Ryan says, we sent her the bill. After calling and faxing the Minister on numerous occasions requesting a copy of the bill, Mrs Onorati only received a copy of the bill on Friday 22 June. I wish to draw the House's attention to the case of a woman involved in BARG. Her case has been going on for 3½ years, and her story is heart-rending. She has been shuffled between the Department of Fair Trading, the Fair Trading Tribunal, HIH, the Consumer Claims Tribunal and the Commercial Tribunal. She has been threatened with Supreme Court action by HIH, solicitors and barristers. Finally she was told to appeal to the Supreme Court, but by that stage she had run out of money. All of those hearings resulted only in a litany of non-attendance by the builder and his failure to lodge documents.

Administration of the Act is certainly a problem. Amendments I will move in Committee provide for a review of the Act three years after its commencement. This will provide a solid indication of the effectiveness of the legislation. In addition, I will move an amendment that will require the director-general to publish, in the annual general report, information about how insurers are handling and settling claims, and relevant information about persons licensed under the Act. Currently the legislation requires only that this information be given to other insurers. In the interests of transparency and consumer protection, I urge all honourable members to support the amendment, which will ensure that information will be more freely available.

There have been calls for an inquiry, which may be an appropriate avenue in the future should this bill fail to achieve its aim of providing a new dispute resolution process that the Minister says "will help everyone in the building game". I sincerely hope it will put an end to reports such as the one that appeared in the *Daily Telegraph* last month. It said:

> A builder whose work resulted in the demolition of a house was allowed to keep trading until yesterday despite being reported to the Department of Fair Trading two years ago.

BARG agrees that the bill is a step in the right direction, but it certainly advocates for an inquiry. I am

aware that the Greens will move amendments in response to the concerns expressed by BARG, and I shall support those amendments in Committee. BARG says:

> The fact that a new scheme is being introduced is an acknowledgment of the past failures, but we are fearful that little will be done to address these problems after the new scheme is introduced.
>
> The bill covers a very complex area of consumer protection. Even experienced lawyers and industry professionals would have difficulty with some of the issues. BARG does not have the same access to expert advice as do builders and the insurance industry.
>
> The 1989 Home Building Act has been a nightmare for some of us, and we want to ensure that every protection is taken before the new scheme is introduced, that we are not being given false hope once again.

I am aware that the Government will move amendments to the bill. Some of them seem reasonable, but I am concerned about others. One refers to the Minister's review of the impact of the five-day cooling-off period for building contracts. While the Government briefing note states that, "Industry representatives will be invited to participate in the review," no reference is made to consumer advocates. The Minister's office has since stated that any interested consumers will be included in such a review. This is good news, as it is fundamental that from the beginning of the process the Government sincerely recognises the importance of a consultation process involving all parties. It should be remembered, however, that these are tough times for builders generally, who, by and large, are fair, honest, qualified and hardworking people. Just last month the *Sydney Morning Herald* reported:

> The building industry is in the midst of its worst year since the deep 1982-83 recession, says a leading forecaster, and the collapse of HIH Insurance could hamper an expected recovery because many builders have been forced to stop work while they make new insurance arrangements.

The Minister says that home owners are the big winners under this legislation. I hope this is true, and that builders and consumers will reap the benefits. We will all certainly keep a watching brief to determine the outcome. I note that Jane Fitzgerald helped to save the jobs of 15 people who worked for a builder who was about to go down the tube, until the Minister for Fair Trading organised for him to get insurance. That builder, who builds houses worth from $750,000 to a million each, was going to lay off 15 workers the following week, but Jane Fitzgerald saved their jobs.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [7.46 p.m.], in reply: I thank all honourable members for their contributions to the debate. A number of members raised significant issues; obviously they have had a close and keen involvement with this matter and a particular interest in it through their contacts with individual constituents. As part of the commitment of the Minister for Fair Trading in the other place, consultation has continued to take place on the provisions of the Home Building Legislation Amendment Bill. In response to issues raised by consumer advocates, industry organisations and members of Parliament, a number of Government amendments will be moved in Committee.

On behalf of the Minister for Fair Trading, I thank the Hon. John Ryan for his contribution towards the development of these important reforms. I am advised that a number of meetings have been held between the Hon. John Ryan, Minister the Hon. John Watkins, members of the Minister's office and representatives of the Department of Fair Trading to discuss these reforms to the home building industry. As a result of the Hon. John Ryan's involvement with home building consumers who had experienced difficulties with the current scheme, the honourable member has been able to provide valuable insights into the current home building regulation. I note that during his rather long speech the Hon. John Ryan raised interesting issues about various aspects of the bill. As I have said, the Government will move amendments to the bill to address a number of the matters raised by the Hon. John Ryan. I commend the

bill to the House and urge all members to support it.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

New Clause 6 and schedules 1 to 7

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [7.51 p.m.]: I seek leave to move Government amendments Nos 1 to 13 in globo.

The Hon. Ian Cohen: If the amendments are moved in globo, I ask that the questions on them be put seriatim.

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! The questions on the amendments will be put seriatim.

The Hon. CARMEL TEBBUTT, by leave: I move:

No. 1 Page 2. Insert after line 14:

6 Review of certain amendments

The Minister must review the operation of those amendments made by Schedules 2 that create cooling-off periods. That review must be conducted as soon as possible after the first anniversary of the commencement of the amendments.

No. 2 Page 4, schedule 1 [6], line 9. Omit "may". Insert instead "must, subject to the regulations,".

No. 3 Page 5, schedule 1 [6], line 10. Omit "may". Insert instead "must, subject to the regulations,".

No. 4 Page 9, schedule 1. Insert after line 6:

[13] Section 39 Applications for renewal or restoration

Omit "1 year" from section 39 (2). Insert instead "3 months".

No. 5 Page 9, schedule 1 [13], line 30. Omit "five". Insert instead "3".

No. 6 Page 14, schedule 2 [5], lines 8-11. Omit all words on those lines. Insert instead:

contract:

(a) in the case of a person who has been given a copy of the signed contract—at any time before the expiration of 5 clear business days after the person is given a copy of the contract, or

(b) in the case of a person who has not been given a copy of the signed contract within 5

days after the contract has been signed—at any time before the expiration of 5 clear business days after the person becomes aware that he or she is entitled to be given a copy of the signed contract.

No. 7 Page 14, schedule 2 [5], line 25. Insert "reasonable" after "any".

No. 8 Page 18, schedule 2 [10], lines 19-22. Omit all words on those lines. Insert instead:

contract:

(a) in the case of a person who has been given a copy of the signed contract—at any time before the expiration of 5 clear business days after the person is given a copy of the contract, or

(b) in the case of a person who has not been given a copy of the signed contract within 5 days after the contract has been signed—at any time before the expiration of 5 clear business days after the person becomes aware that he or she is entitled to be given a copy of the signed contract.

No. 9 Page 19, schedule 2 [10], line 3. Insert "reasonable" after "any".

No. 10 Page 31, schedule 3 [7], line 26. Omit "may". Insert instead "must, subject to the regulations,".

No. 11 Page 45, schedule 4 [1], line 9. Insert ", unless the agreement or arrangement was arrived at through collusion or other fraudulent conduct on the part of that person" after "arrangement".

No. 12 Page 57, schedule 5 [8], line 11. Insert "(in the case of an individual) or $22,000 (in the case of a corporation)" before "within".

No. 13 Page 64, schedule 6. Insert after line 10:

[10] Section 94 (4)

Insert after section 94 (3):

(4) If a person commenced residential building work before 30 July 1999 and entered into a contract of insurance that complies with this Act in relation to that work after the contract for the residential building work was entered into, that contract of insurance is, for the purposes of this section or any previous version of this section, taken to have been in force in relation to the residential building work done under the contract for the residential building work whether that work was done before or after the contract of insurance was entered into.

As part of the commitment by the Minister for Fair Trading in the other place, consultation has continued on the provisions of the Home Building Legislation Amendment Bill. My comments will be to all the amendments. In response to the issues raised by consumer advocates, industry organisations and members of Parliament a number of Government amendments are proposed. Firstly, in response to representations by the Master Builders Association, the Housing Industry Association and Tony Windsor, MLA, it is proposed to amend new section 14 in schedule 1 [13] to reduce from five years to three years the restriction on the renewal of licences by former bankrupts or directors or persons concerned in the management of companies that have been the subject of a winding-up order. This will make the provision consistent with the Commonwealth insolvency laws.A number of amendments are proposed to the

cooling-off provisions in response to issues raised by consumer advocates, industry and Tony Windsor.

Secondly,, it is proposed to further clarify the operation of cooling-off provisions contained in schedule 2. In this regard the provisions have been redrafted to make it clear that the cooling-off provisions apply to the following two circumstances: first, where a person receives a signed contract that person has five clear business days in which to rescind the contract; second, where people are not provided with a copy of a signed contract they also have five clear business days from becoming aware that they were entitled to be given a copy of the contract to rescind the contract. Another amendment to the cooling-off provisions inserts the word "reasonable" in new sections 7BA and 7BB and new section 16 DBA (3) (b) so that in cases where a consumer rescinds a contract the contractor may claim reasonable out-of-pocket expenses.

In light of concerns raised by the Master Builders Association and others about the possible impact of the cooling-off period a provision is also being inserted permitting the Government to review the cooling-off provisions as soon as possible after 12 months of commencement. Industry representatives will be invited to participate in the review. To further tighten the licensing system an amendment is proposed to the cancellation provisions in relation to contractor licences and building consultancy licences. The director-general must, subject to any regulations, cancel a licence in certain circumstances outlined in the bill. This will make it absolutely clear that a licence must be cancelled in the circumstances set out in new sections 22 and 32D. This change was proposed by consumer advocates.

The bill proposes that where an insurer has been notified that a dispute has been referred to an independent expert for assessment the insurer cannot claim that consumers rights under the insurance policy are prejudiced by any agreement or arrangement between the consumer and the builder. Concern was raised by one of the insurers that there may be collusion or fraud between the parties that would result in inflated or false claims. It is therefore proposed to amend section 48 (2) to provide that the consumer's rights are not prejudiced unless the agreement or arrangement was arrived at through collusion or other fraudulent conduct on the part of the consumer.

A further amendment raised by consumer advocates is to new section 62 (c) to impose a more appropriate penalty to corporations. The penalty of $11,000 is considered an insufficient deterrent, given the size of some of the larger building companies. Where disciplinary action is taken against a corporation the director-general will be able to impose a maximum penalty of $22,000. Individuals will remain subject to a maximum penalty of $11,000. Another amendment reduces the restoration period for renewal of a licence from 12 months to three months. The proposed period of three months has been recommended as part of the review by the Department of Fair Trading of consistent licensing provisions.

The Hon. Ian Cohen: Point of clarification: The Minister is not giving any clear indication of which amendment she is referring to. I find her remarks impossible to follow.

The Hon. CARMEL TEBBUTT: They were moved in globo.

The Hon. Ian Cohen: The amendments were moved in globo but there is no explanation of the amendment that is being referred to; it is just a general speech. It is like a second reading speech.

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! Because the amendments were moved in globo the Minister can speak about the amendments generally. The honourable member may ask the Minister, if he wants more information.

The Hon. CARMEL TEBBUTT: Another amendment reduces the restoration period for renewal of a licence from twelve months to three months. The proposed period of three months has been recommended as part of the review by the Department of Fair Trading of consistent licensing provisions. Lastly, schedule 6 [9] amends section 94 to give a court or the Fair Trading Tribunal the discretion to allow a contractor who did not have home warranty insurance to recover payment where it would be just

and equitable.

The Master Builders Association has expressed concern about whether the amendment to section 94 is adequate to enable contractors who entered into building contracts prior to 30 July 1999 to recover payment. Up until that date, contractors who obtained insurance after the date of the building contract were precluded by the operation of the then version of section 94 from recovering any money. To put the matter beyond doubt an amendment to the bill provides that where work was commenced prior to 30 July 1999 and the contractor took out a contract of insurance, that insurance is taken to be in force for the purpose of the Act.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [7.57 p.m.]: The Government is to be congratulated on the bill, which addresses a longstanding problem of shonky builders. Amendment No. 1 shows that the Government recognises the need to review the situation annually. I have had a great number of representations about this issue. To save the time of the Committee I will not go through them now. Taking action to deal with shonky builders is extremely important and this bill is a step in the right direction. The Act needs to be tightened up and it is reasonable, as the Minister said, to do this incrementally.

I foreshadow my support for the amendment to be moved by the Hon. Richard Jones, which provides that the review in three years will allow a tightening of the legislation. As has been said, there should be neutral inspectors who make a career of being inspectors. Although the legislation has not reached that point yet, that will become necessary if we are to have independent opinions on which to base decisions about continuing to licence contractors. This is the key to keeping an ethical framework within the home building industry. I support the Government's amendments.

The Hon. RICHARD JONES [7.59 p.m.]: I support amendment No. 1, which provides for a review of the five-day cooling-off period as soon as possible after 12 months of the commencement of the Act. The Government says that industry representatives will be invited to participate in the review. The Minister's office has stated that consumer representatives will also be invited to participate, and the Building Action Review Group [BARG] has stated that it definitely wants to participate. It claims that it is always excluded. I also support amendments Nos 2, 3 and 10. These amendments were proposed by consumer advocates. The intent is to tighten up the licensing system so that the director-general must, subject to any regulations, cancel a licence. The Building Action Review Group [BARG] states:

> The Director General has not taken action nor ever enforced the present Act. Why give him more power?
>
> It would be an enforcement if the functions were carried out and the existing Act enforced. But that is what has not been happening with the present Act.

I sincerely hope that will not be the case under the current legislation, and I urge the Minister to ensure that does not happen. I oppose amendment No. 4, which reduces the restoration period for renewal of a licence from 12 to three months. BARG also strongly opposes the amendment. I oppose amendment No. 5, which reduces from five years to three years the restriction on the renewal of licences for former bankrupts, directors or persons concerned in the management of the company. BARG also strongly oppose this amendment. It has a twofold negative effect of perhaps not being a strong enough deterrent for problematic builders and it fails to adequately protect consumers. I support amendments Nos 6 and 8, which clarify the operation of the five-year cooling-off period. A person may rescind a contract either within five days after they have been given a copy of the contract or, if they have not been given a copy of the contract in that five-day period, within five days after they become aware that they are entitled to be given a copy of the signed contract.

I support amendments Nos 7 and 9. In cases where the consumer rescinds a contract the builder may claim any reasonable out-of-pocket expenses. Currently the word "reasonable" is omitted. These are

good amendments as they make it clear the builders cannot claim extravagant out-of-pocket expenses. I support amendment No. 11. The bill proposes that where an insurer has been notified that a dispute has been referred to an independent expert for assessment, the insurer cannot claim that a consumer's rights under the insurance policy are prejudiced by any agreement or arrangement reached between the consumer and the builder. I have not had much opportunity to look at this amendment very carefully but, from my cursory reading of it, I support it.

I support amendment No. 12, which increases the penalties for companies from $11,000 to $22,000. Although I say that this a good amendment, BARG says the current penalties are not being enforced anyway. Minister, how many corporations have been fined? It is not much of a penalty for large corporations. I support amendment No. 13, which gives the court or the tribunal the ability to allow contractors in certain situations to recover payment if they took out insurance during the time they were doing the work. Overall the amendments are good, except for the ones that I do not support.

The Hon. JOHN RYAN [8.02 p.m.]: A couple of new amendments have crept into the Government's schedule of amendments; they were not included in the original copy of amendments given to the Opposition. Amendment No. 11 appears to be causing difficulty on the crossbench. It initially caused me difficulty. It states:

> ", unless the agreement or arrangement was arrived at through collusion or other fraudulent conduct on the part of that person" after "arrangement".

The amendment refers to a period of time in which there might be a dispute between a builder and a consumer. As I understand it, the dispute can be resolved and reported to the tribunal in a form with which both parties are happy. Apparently, the insurance industry in Victoria has reported that there have been circumstances in which builders and insurers have colluded together. I cannot for a moment think why it would be advantageous for a builder to collude with the consumer in order to fraudulently organise an insurance claim. One might imagine such collusion would involve a bankrupt builder or one who does not have a licence or something of that nature. They would not care much about the arrangements. They would be happy to let consumers have whatever they liked from the insurer, and then they could come to some arrangement.

The bill already includes a provision that allows the insurer to attend and be a part of the dispute resolution procedure. To some extent the bill already has a provision which guards against fraud at that point. If that amendment provides an opportunity—if it can be proven at some stage down the track that the consumer and the builder colluded in some fashion—for the insurer to overturn the decision I would see no problem with it. I am concerned because it has been my experience that insurance companies have to use every available avenue of appeal to delay the payment of a claim. They go on and on, grasping at every straw. In my contribution to the second reading debate I referred to the Dyson family, where good faith would have demonstrated the insurer should have paid, and it did not.

My only concern about amendment No. 11 is that there needs to be a cast-iron guarantee from the Government, to the extent that that is possible, that insurers will not be able to use this as another grounds of appeal in order to simply avoid paying an insurance claim. Other than that, I have no problem as to why there would not be the additional safeguard provided by amendment No. 11. In relation to amendment No. 5, some concern has been expressed by crossbench members about the change from five to three years. It will mean that a bankrupt builder can apply to come back into the industry after three years instead of five years. The Minister has decided to make that change because Commonwealth law would override the New South Wales law in any event. It really does not matter what we legislate in New South Wales—if our law is inconsistent Commonwealth law would apply.

I agree with the Minister that rather than express a particular point of view that cannot be implemented it would be better if our law reads clearly. Whilst there might be some reservations on the part of members of the crossbench about that amendment, I have no particular trouble with it. In any

event, three years is a fairly significant period for a person to be out of business and, unless they have seriously retrained themselves in some other way to participate in the building industry, it virtually means that they are out of the industry in any event. I have a question for the Minister in regard to amendment No. 4. The amendment to new section 39 (2) changes one year to three months. As I understand it, the purpose of this amendment is to allow the director-general to readmit a building contractor into the industry with a licence if he inadvertently failed to renew his licence. Would the Minister assure me that that provision applies only to an inadvertent failure to renew a licence? I have no problem with a builder being able to renew his licence almost immediately if he inadvertently failed to fill out the paperwork. I am sure all honourable members have inadvertently failed to fill out paperwork at some time.

The Hon. Duncan Gay: Paul Keating forgot to do his tax!

The Hon. JOHN RYAN: Exactly, the former Prime Minister inadvertently failed to fill out a tax return. We would not want a good builder, or his customers, put to inconvenience because he failed to fill out his paperwork. I want to be assured that this particular amendment applies only in the circumstance of a builder seeking to address an omission which amounts to nothing more than failure to do paperwork. If it means builders can annoy the Department of Fair Trading or can appeal to the Administrative Appeals Tribunal to get their licence back, when they should not have it for 12 months, and virtually reapply three or four times, then I can understand why consumers would have difficulties with amendment No. 4. I ask the Minister to clarify whether that provision will apply only to the problem of an inadvertent failure to do paperwork.

The Opposition supports amendment No. 1. Essentially, this amendment provides a review time for the cooling-off period. The cooling-off period is fairly controversial. This amendment applies only to the cooling-off period; it does not apply to the whole legislation. This legislation is experimenting with something which I understand already works successfully in Victoria and already works in the real estate industry in New South Wales. Essentially, its purpose is that people are allowed to sign a building contract and they then have five days in which to obtain legal advice. People may sign off on the cooling-off period, if they want to. If people ask a solicitor to determine whether the building contract is in order and to provide a certificate to that effect—and only a solicitor can provide that certificate—and they want to get the building work under way, they are able to make that arrangement with the builder. I cannot see any good reason why we should not allow consumers to make their choice.

I support the provision of a cooling-off period. The building industry said that there are likely to be controversies about the cooling-off period. For example, the industry said that the same objective could be achieved by the bill stipulating that builders have to provide the consumer with a full building contract and allow the consumer five days to obtain legal advice before signing the contract. From a consumer perspective that might be a better arrangement than entering into a contract, finding the deposit and all those other difficulties, without getting the necessary legal advice. The only difficulty would be proving that the contract had been handed over. I suspect that that is why the bill provides for a signed contract. The review does not negate the cooling-off period. If at some stage consumers believe that that is a useful provision that will work in their interest, they can make submissions to that effect, and I suspect that the Minister would be likely to leave that provision in the bill.

The Hon. Richard Jones referred to this amendment in his contribution to the second reading debate. He said that he hopes that consumers will have the opportunity to participate in the review. I think that all honourable members who have spoken referred to the fact that consumers are at a disadvantage in participating in reviews, because reviews are wildly complicated and the consumers would not have easy access to lawyers and other people to explain the implications. Of course, that is true. Recently in the estimates committee hearings the Minister said that the Labor Party has had a longstanding commitment to fund a consumer advocacy service which will provide that service for consumers. Usually consumers build a home only once or twice in their life, and most of them want to get the job done quickly. They are not like motorists, for example, who are usually motorists for life and are prepared to fund an organisation such as the NRMA.

It seems to me that the building industry needs an equivalent organisation for building consumers. The difficulty is that as people pass in and out of the industry they are not prepared to fund an organisation forever. In my view Government assistance is needed to kick-start that service. In the estimates committee hearing the Minister offered to allow a group, for example the Building Action Review Group [BARG], to seek funding to kick-start that process; and I agreed to assist. The problem is—and I place this on the record because it might be the subject of a later controversial discussion between me and the Minister—that the schemes to which the Minister has invited BARG to apply for that sort of funding do not really fit that objective. I have gone through the paperwork and I am having great difficulty fitting the justification for those grants to the sorts of things that BARG wants to set up.

The money needed to kick-start the process is relatively modest, probably a grant in the order of $50,000. That is certainly not what is available to implement that promise. As I said, there is a real need for a consumer advocacy service. If we are to have reviews of the Act in 12 months and three years, and so on, it will be necessary to have an organisation of that type up and running. Other than those two points, I am familiar with the other amendments and have no difficulty with them. I hope I have spoken for sufficient time to give the Minister the opportunity to sort out her briefing and report to the Committee.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.13 p.m.]: In fact, I have a prepared briefing on every amendment. However, it seemed that honourable members were happy for the amendments to be moved in globo so I spoke to them in globo. If honourable members would like me to address each amendment, I am happy to go slowly through my three-page brief. However, I will begin by speaking to the amendments that have raised some concern. The Hon. Richard Jones indicated that he had some problem with Government amendment No. 4. The Act currently provides that when a licence is not renewed by the renewal date the holder may apply for restoration of that licence within 12 months.

The restoration period is to enable a licence holder who, due to inadvertence or other reasonable grounds, failed to renew the licence by the due date. The Government proposes to amend the bill to reduce the restoration period for renewal of a licence from 12 months to three months. Amendment No. 4 significantly strengthens consumer protection by reducing the time that a builder has to renew his or her licence. It is a tightening-up of the licensing provisions. It is the Government's view that builders should not be unlicensed for 12 months, because that places consumers at risk. I stress that Government amendment No. 4 significantly strengthens consumer protection.

In relation to Government amendment No. 11, I did not form the same view of honourable members' comments that the Hon. John Ryan formed. It was my understanding that the Hon. Richard Jones supported the amendment. Nonetheless, if there is a hint of the concerns raised by the Hon. John Ryan I am advised that the Minister would withdraw that amendment. The Minister is responding to a potential legislative concern which has arisen in Victoria. The Minister is happy to give a commitment that if the insurance companies attempt to use this provision inappropriately the Government will remove it from the bill. If honourable members wish other amendments to be clarified I will respond to them throughout the debate rather than attempt to go through my lengthy briefing note.

The Hon. IAN COHEN [8.15 p.m.]: I thank the Minister for clarifying some of our concerns—I had difficulty keeping up with her when she spoke to the amendments in globo. Perhaps that is an indictment of my ability to understand this bill. The Greens do not support Government amendment No. 1. I would be interested to hear further comments from the Minister on the review, but we understand it is to be instituted in response to the concerns of the Master Builders Association about the cooling-off period. The Greens support the provisions in the bill which strengthen the cooling-off period. That essential consumer protection measure should not be subject to review. The Greens support Government amendments Nos 2, 3 and 10. The amendments give a major improvement to the consumer protection provisions of the bill. The bill states that the director-general may cancel a builder's licence in certain circumstances, which include the bankruptcy of the builder.

One of the main problems identified by consumers is the lack of enforcement by the department. The stipulation that the director-general must cancel a licence would restrict the discretion of the director-general and bring about better enforcement of the law for the benefit of consumers. The Greens believe that it is essential that bankrupt and insolvent builders are prevented from continuing in the industry. I congratulate the Government on moving that amendment. I hope it will send a clear message to the department that the Government regards enforcement as an important and necessary aspect of the administration of the Act. The Greens support Government amendment No. 4 and concur with the Minister's statement that it strengthens consumer protection. The amendment will place a more stringent requirement on builders who seek to renew or restore their licence. It is a consumer protection measure and is supported by the Greens, if I understand it correctly.

The Greens strongly oppose Government amendment No. 5. It allows builders who have become bankrupt to obtain a licence after three years. The Greens support the original five-year period, which is seen to be a necessary protection for consumers given the recent history that many members have alluded to on various occasions. However, I acknowledge the point made by the Hon. John Ryan that Commonwealth law overrides State law. I do not fully understand that, but I know that there is a need for consistency. I would like conditions that are as strong as possible put on builders who go bankrupt to stop them from obtaining a licence. I appreciate that three years may be sufficient time to break a builder, but builders seem to find many ways around that and continue to operate in shonky, substandard ways, ripping off the general public. I feel very poorly about anything that gives such builders a break.

The Greens oppose Government amendments Nos 6 to 9. We believe they reduce the effectiveness of the cooling-off provisions. The purpose of the cooling-off period is to protect consumers by allowing them to get out of a contract within five days of signing it. Consumers who may be pressured into signing a contract have time to reconsider. The Greens support the original provisions, as I understand them. The amendments will allow builders to claim reasonable expenses during that period, though this may lead to possible worse outcomes for consumers.

It appears that Government amendment No. 11 is the fulfillment of a Government commitment to the insurance company, unless I am very much mistaken. The Greens feel very uncomfortable about this amendment. As was said earlier, insurers use every available avenue and all the expertise and financial and legal support available to them to get out of these systems. This is an insurer's amendment, and the Greens do not support it. The Greens support Government amendment No. 12. The Greens support the increase in penalties which may lead to better enforcement of the Act. Government amendment No. 13 is strongly opposed by the Greens, who are opposed to any lessening of penalties applicable to builders who operate without adequate insurance.

The Hon. JOHN RYAN [8.21 p.m.]: The only way that one can make sense of Government amendment No. 4 is by re-inserting it in the Home Building Act itself. For the assistance of the crossbench, and so that I may give a detailed explanation that can be read in *Hansard*, the Home Building Act already enables building contractors to renew a licence for a period of up to a year after it has expired. That means that builders can operate for a year without a licence. The Government is seeking to cut that period down to only three months. But for three months, instead of the year, those builders definitely will be able to operate without a licence. I have had the opportunity to check that. In those circumstances I agree entirely with the amendment.

The Greens have expressed reservations about Government amendments Nos 7 and 9. It might help the Greens to understand that I am the consumer advocate who suggested these amendments. The legislation, as the Government suggested, contains what appears to me to be an unlimited provision for the recovery of expenses after the cooling-off period has expired. I thought the provision should be restricted to only reasonable out-of-pocket expenses, and that the quantum of expenses should not be virtually unlimited. I know of some builders who have got stuck into the building work immediately after signing a contract, leaving the consumer with an anonymous bill for excavation works and so on. Signing

a contract gives the builder the right to get started on the work. It seems to me to be appropriate to limit the provision to reasonable out-of-pocket expenses. With those remarks, the Opposition supports all Government amendments. They are entirely reasonable and in many instances advance the causes of consumers. They also provide some areas of fairness for contractors, whom the Opposition does not want to be treated unfairly either.

Reverend the Hon. FRED NILE [8.23 p.m.]: The Christian Democratic Party supports the Government amendments to the bill. My only concern relates to a matter I raised earlier about people who should not have a licence. Amendments Nos 2, 3 and 10 refer to the phrase "may cancel a licence". That seems to be a reference to builders being bankrupt and so on. Amendment No. 4 refers to the non-renewal of a licence. I see no reference to the conduct of the builder. As the amendment provides, the renewal of a licence can be rejected in the areas of bankruptcy, liquidation or administration. Could the Government confirm that there are powers available to evaluate and cancel a licence where a builder lacks the ability to carry out efficient building operations? What procedure enables that to happen? I seek an assurance that there is provision to cancel a builder's licence, and to take other action, where it is reported and subsequently establish that the builder is inefficient, does not know how to build or does not care how he or she builds.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.24 p.m.]: With reference to the comments made by Reverend the Hon. Fred Nile, the Government's view is that the amendment moved by the Government toughens the provision contained in the bill. The bill currently uses the word "may" and the amendment states "must". The current wording of the new section 22 (1) sought to be inserted by item [6] of schedule 1 to the bill is:

> The Director-General may cancel a contractor licence that authorises its holder to contract to do residential building work or specialist work, or both (whether or not it also authorises the holder to contract to supply kit homes for construction by another person) if:

The new section then sets out a whole range of criteria. The Government's amendment seeks to replace the word "may" appearing in the bill with the word "must", thereby toughening the provision.

Amendments 1 to 13 put seriatim and agreed to.

The Hon. IAN COHEN [8.29 p.m.]: I move Greens amendment No. 1:

No. 1 Page 48, schedule 4 [1], proposed section 48O. Insert after line 35:

> (3) If the Tribunal determines a building claim against the holder of a contractor licence in favour of the claimant, the Tribunal must make an order that the costs payable in respect of the claim are to be borne by the holder.

This amendment would specify that a consumer who has obtained an order against the builder to rectify defective work should be able to recover the cost of expenses such as building consultants, witnesses and legal expenses. At present there is no direction in the bill, with the result that successful consumers could be required to pay their own costs. I commend the amendment.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.29 p.m.]: The Government opposes this amendment. Making it compulsory to order costs in favour of a successful consumer but not a successful licensee is considered to be unfair and contrary to the normal procedure in judicial matters. The Fair Trading Tribunal currently has a range of powers to award costs in respect of building claims and it should be given responsibility to determine who should bear the costs, if any are to be awarded.

Making costs automatic on all occasions for a successful consumer militates against the role of the Fair Trading Tribunal as a low-cost forum for the resolution of building disputes. An amendment of this kind limited only to building disputes will result in inconsistent treatment of consumers and traders in a range of other industries over which the tribunal has jurisdiction. Any reform of the powers of the tribunal to award costs are appropriately dealt with as part of the current review of the Fair Trading Tribunal. The Government has given the Hon. Ian Cohen a commitment to further examine this matter in that context.

The Hon. JOHN RYAN [8.30 p.m.]: The Opposition does not support the amendment. As the Government has already explained, this provision will certainly put the tribunal in a lopsided position in respect of the determination of costs. There would be a guarantee of costs for consumers following the award, but not for builders. I am not a great supporter of the Fair Trading Tribunal, but I must say that in respect of all complaints made to me about the tribunal I am yet to encounter someone who was unsatisfied with the way in which the tribunal handled costs—other than contractors. A few contractors have complained that they have not been able to recover their costs. Generally, this occurs in circumstances where the builder wins but the consumer's claim has a fair degree of merit and the tribunal does not award the full costs against the consumer.

The tribunal takes the view that those who represent builders and insurers in the Fair Trading Tribunal are often retained to do that work, so it does not involve an additional cost. Therefore, it would be unfair for consumers to pay large sums in damages to barristers and consultants. Some insurers deliberately go over the top when preparing cases against consumers in order to threaten them. The tribunal is aware of that practice and takes that into consideration when awarding costs. The legislative package now imposes on the Fair Trading Tribunal clauses that relate to the Consumer Claims Act, such as inequity in representation before the tribunal—for example, those who are legally represented and those who are not. The tribunal will have the opportunity to take that into account and, therefore, to some extent this legislation moves a step closer towards the fairness the Hon. Ian Cohen is seeking.

It is the Opposition's view that the operations of the tribunal and the insurance scheme need to be subjected to further scrutiny. Therefore, the Opposition recommends, and hopes that the House will one day support, an inquiry into the operation of the insurance scheme. This will include an open review of the Fair Trading Tribunal. If a parliamentary committee has the opportunity to examine these issues it might find a way to ensure that the system is absolutely fair in a reasonably sophisticated manner. The difficulty with this amendment is that it is anything but sophisticated. It is a blunt instrument that deals with something that might require a level of subtlety. Therefore, on this occasion the Opposition is not able to support the amendment, although it has sympathy with what the Hon. Ian Cohen is trying to achieve.

To the best of my knowledge and experience, by and large the tribunal delivers the outcome that the honourable member is seeking. It gives the game away, so to speak, if it is written into the Act. I have no doubt that, if this amendment is passed, the next people to beat a path to the Government's door would be contractors who would seek the same opportunity and, in all fairness, the same consideration might have to be extended to them. If there was a strict rule that damages follow the award handed down by the tribunal, that would wipe out the opportunity for consumers to make a complaint to the tribunal because they would be too frightened to do it. Therefore, the Opposition has reservations about this amendment and I hope the honourable member understands that.

The Hon. IAN COHEN [8.33 p.m.]: I thank the Hon. John Ryan for his fulsome explanation of the overall situation. I do not agree entirely with him, but he has given clarity to some of the more subtle issues involved, and I appreciate that.

Amendment negatived.

The Hon. IAN COHEN [8.34 p.m.]: I move Greens amendment No. 2:

No. 2 Page 57, schedule 5 [8], proposed section 62 (a), line 7. Omit all words on that line.

One of the main criticisms made by consumers is that the department has failed to take action against builders in cases where consumers have made valid complaints about defective work. This amendment would require the director-general to take some action against the builder, if there were reasonable grounds for disciplinary action to be taken. I commend Greens amendment No. 2.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.35 p.m.]: The Government does not support the amendment. The director-general should have the capacity to take no further action even if a ground of improper conduct has been established. This might be appropriate in the following circumstances: where the licensee may have a long and sound record in the industry but a problem has arisen due to circumstances beyond his or her control—such as family illness that diverted his or her attention for a short time, or a staff member who acted without authority; where the licensee has rectified the problem and the consumer is fully satisfied with the outcome; or where the allegation is of a technical nature and the consumer has not suffered any loss, for example, a breach of the Home Building Act 1989 for failure to erect a sign outside the building work.

Another important reason for the director-general having the capacity to take no further action is that if a penalty has to be imposed in all cases, it will act as a disincentive for the licensee to fix the problem because no matter what the licensee does to remedy the problem, a detrimental determination will be made against the licensee and will be recorded on the public register. Having a "show cause" determination on the public register will dissuade future customers from dealing with the licensee and will operate unfairly if the licensee had done everything to fix the problem.

The Hon. JOHN RYAN [8.37 p.m.]: This amendment goes to the heart of concerns expressed by me and other members about a perceived lack of action by the Department of Fair Trading in relation to pursuing shonky builders. I can almost count on the fingers of my hand the number of builders who have been the subject of formal warnings under section 23 of the Home Building Act, or who have been prosecuted or asked to show cause why they should not have their licence cancelled by the Department of Fair Trading. Frequently—and I suspect this is at the heart of the amendment—the "do nothing" option is not the last option chosen by the Department of Fair Trading in the limited circumstances outlined by the Minister, but it seems to be the only option pursued.

Figures from the annual reports bear out the inactivity of the Department of Fair Trading in respect to prosecutions. On average over the past couple of years the department has received approximately 1,500 complaints a year. Last year it prosecuted 33 people out of 1,500 formal complaints. That does not include complaints that were not accepted, although they might have been legitimate and dealt with by the Fair Trading Tribunal. It also would not include those who simply gave up the concept of complaining. Of those few builders who are being prosecuted, almost all of them were the subject of prominent media attention long before the Department of Fair Trading took any interest in prosecuting them. A strong case could be made that the media plays a stronger role in regulating the building industry than does the Department of Fair Trading. That is unfair because I have found it very difficult to get space in the media for shonky builder stories. Unless the case is really desperate or many people are involved, one has no chance of getting the necessary attention in order to spark action.

One company that comes to mind is the large project home building company Henley Properties Ltd. This company has become almost infamous for the number of angry and dissatisfied customers it has left in its wake. The company has admitted using unlicensed tradespeople, its directors have admitted to taking on more business than they can handle, and there has been bad management and poor response to consumer complaints. The Fair Trading Tribunal also found that company guilty of building at least one house without insurance coverage.

The Department of Fair Trading has reports from respected building authorities indicating that company has constructed a number of houses so badly that much of the building work will have to be

demolished. It has been shamed publicly by the media into buying defective houses on the spot. The Department of Fair Trading has received more than 140 complaints about the company but it has not yet even attempted a prosecution, issued a public warning notice or sent a warning letter. One action has been taken, to which I will refer in a moment.

I have a photograph of a burn mark that was found by Henley home owners—I am happy to pass this photograph around the Chamber—on the wall behind an oven directly underneath the bedroom of the owners' son. Honourable members should note that this burn occurred after the residents had used the oven for less than two years. In January this year the consumers reported this incident to the Department of Fair Trading, and departmental officers expressed great concern about it. The consumers were no longer worried about their house because they had disconnected and replaced the offending oven. The building investigator from the Department of Fair Trading informed them that the oven had been installed incorrectly and not according to the manufacturer's instructions—a copy of which he faxed to the consumers. The instructions revealed that the oven was not ventilated properly: the burn was caused because heat was vented behind the oven rather than into the atmosphere. The customers involved were concerned for other house purchasers because the wall oven fitting in their kitchen was the same as the fitting they had seen in the display home, so it was likely that the same fitting had been installed in hundreds, if not thousands, of other homes.

However, nothing happened. The builder, the Department of Fair Trading and the manufacturer sought independent advice on whether wall ovens in other Henley houses were safe only late last April when interest was suddenly sparked by the fact that radio broadcaster Terry Willesee planned to air a story about the incident. I have an e-mail, a part of which I think I have read to honourable members before, from the white goods company in which it reports the internal goings-on as a result of this incident. It states:

> We went into damage control mode when I received the attached e-mail of photos of a wall oven, because Henley … are a BIG customer of ours and this particular customer had a long list of defects in her home, prepared by some building consultant. I prepared the attached letter from home on Wed night which was e-mailed to HP director @ 22.30—

they were burning the midnight oil—

> because he was due to be grilled on a Sydney talkback radio Thurs am.. … HP and us want to avoid at all costs having to modify either the product or the installation in 1000's of homes …

I think honourable members can clearly discern from that quote the attitude of the wall oven manufacturer and the building company. To my knowledge, there has still been no independent check of the oven installation or what might have occurred in other homes. If a problem was discovered with a motor vehicle, there would be a recall and inspection of every vehicle. That has not happened with Henley Properties homes.

I am also aware that the Department of Fair Trading has two other reports prepared by building consultant, Mr Marton Marosszeky, who is well respected by the department—if I remember correctly, he has some association with the University of New South Wales. In his reports he gives an unprompted critique of the guttering systems on two houses constructed by Henley Properties. He concluded that the roof drainage on the houses was totally inadequate to cope with Sydney rainfall and that stormwater was likely to cascade out and over the guttering whenever the rain was reasonably heavy. The consultant said that that defect must be rectified. Project homes are not one-off constructions, so it is likely that this critical defect affects hundreds of other houses. However, this problem has not yet received any attention from the Department of Fair Trading or Henley Properties except when individual houses were identified by the department's reporting consultant. The company has not received even a warning letter from the Department of Fair Trading.

The company has been taken to the Supreme Court but will not face prosecution because the Department of Fair Trading is not prepared to use those resources. I put it to honourable members that that court action was taken to avoid prosecution. I was kept informed of the action that it was intended to take against the builder on the condition that I did not speak to the media until the matter was resolved, and I honoured that commitment. However, I can reveal to the Chamber that the Department of Fair Trading intended to have the Supreme Court order Henley Properties to do far more than was specified in the order that was eventually obtained. The department wanted to force Henley to refund to customers, without penalty, any deposits on houses that had not yet been started. It was also seeking an order to stop Henley Properties building any more houses in New South Wales until it had completed all the houses for which it had orders and contracts and until all customer complaints had been addressed to the satisfaction of the Department of Fair Trading.

Finally, the department wanted Henley to provide details of every customer who had complained to the company about its work. Subject to certain conditions, the department wanted to suspend the licence of Henley Properties. The Minister explained the outcome of this action in the Supreme Court in an answer to a question from me during the budget estimates hearing and he also provided an explanation in a letter about another matter. Unfortunately, his two explanations differed slightly, but I will read from the letter, which suggests the stronger action. He said:

> Under the consent orders, Henley has agreed to provide the Director General with details of all unresolved complaints; advise the Director General of all contracts that have been entered into but work has not yet commenced; and provide all necessary resources to resolve all outstanding complaints in a timely fashion.
>
> Henley has also agreed to give the Director General 14 days notice before entering into contracts for new building work in NSW and not to begin any building work until it is able to ensure completion of the work in the time provided in the contract.

In the budget estimates hearing the Minister described these conditions as "extensive" and "onerous"; I think they are the equivalent of being thrashed with a wet lettuce. Henley has agreed to do nothing more than obey the law of New South Wales. While I am on the subject of rolled gold cases on which the Department of Fair Trading could mount prosecutions, I should refer briefly to a case that has been brought to the attention of many honourable members by Mrs Irene Onorati. It involves a company called Architectural Glass Projects Pty Ltd. Mrs Onorati is the founder and president of the consumer organisation known as BARG [Building Action Review Group], and she would be disappointed if I did not mention this matter.

The building company supplied and fitted a number of glass panels in her apartment. The glass installed was subject to a building approval from the local council. The conditions of that approval required the glass to conform to the conditions of Australian Standard 2208-1997 for Safety Glass. This means that the installer should have obtained the glass from a licensed supplier, the glass should have been appropriately marked as being safety glass, the customer should have been supplied with a compliance certificate, and the supplier should have held documentation that proved that the glass had been tested to ensure that it met all the performance standards for safety glass. It is agreed by all sides that the company has done none of those things.

As an extra check, Mrs Onorati arranged for a suitable expert to test a sample of the glass to the point of destruction, and the glass failed that test. Yet so far nothing has happened to that company. It would appear that, rather than prosecute, the Department of Fair Trading is trying to assist the company in securing retrospective approval for the glass, which is apparently used extensively throughout Sydney. If this job folds, thousands of others will fold as well. That would be catastrophic for the insurance scheme, so nobody wants to deal with this embarrassing matter.

I could provide endless evidence of that sort to the Chamber and give many reasons why the

Department of Fair Trading is exceedingly reluctant—no matter how good the evidence—to do its duty and protect consumers by using all its powers to issue formal warnings and public notices or to initiate prosecutions. I can understand why the Hon. Ian Cohen has moved this amendment. However, there are limited technical circumstances in which it might be appropriate for the director-general not to exercise that power. The department tends to choose that option more often than not.

I hope that this Parliament, through the committee to which I referred earlier—the committee that my colleague the Leader of the Opposition suggested should be established—conducts an inquiry that reveals this sort of activity and investigates closely the prosecution of builders by the Department of Fair Trading. Even though additional building inspectors have been appointed to the Department of Fair Trading, it takes months before formal complaints are dealt with by that department. I have grave reservations about the commitment of the director-general to prosecute shonky builders.

I have a long-standing commitment to concepts such as the principles of natural justice but in certain limited technical circumstances this sort of action is appropriate. Members of the Opposition, reluctantly, are not in a position to support the amendment moved by the Hon. Ian Cohen, though we have every sympathy with it. If we cannot find some way to address this vast array of circumstances, we might have to revisit this legislation and do what was suggested by the Hon. Ian Cohen.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: [8.51 p.m.]: Well might Opposition members put up their hands in a gesture of surrender! The man who incited them—the man with the conscience and with a ticker, the Hon. John Ryan—is hidebound by the conservative lot opposite.

The TEMPORARY CHAIRMAN (The Hon. Janelle Saffin): Order! Is the Hon. Dr Arthur Chesterfield-Evans speaking to the amendment?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am speaking to Greens amendment No. 2. The Hon. John Ryan, who knows about these problems, who has been to the exhibition of defective homes to which I have been, who has talked to the people to whom I have talked and who has a larger file of letters than I do—which is saying quite a lot—has told us what needs to be done. Opposition members, who are more concerned about going home to bed, are throwing up their hands in a gesture of surrender, which is exactly what they have done to the building industry.

The Hon. Jan Burnswoods: But he is opposing the amendment!

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: He is opposing the amendment because, like many members of the major parties, he is hidebound by tribal loyalty—an inability to cross the floor and to make his own decisions. He would like to vote the other way but he cannot, just as that interjector on the Government benches who disagrees with a number of things—

The TEMPORARY CHAIRMAN: Order! I ask the honourable member to direct his comments to the amendment. Has the honourable member finished?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, Madam Temporary Chairman, I have not finished. However, I realise that I am not being afforded the same privileges that are afforded the Treasurer during question time. The Treasurer is permitted to hector people who hector him.

The TEMPORARY CHAIRMAN: Order! We are in Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I will try to be succinct, which is what I was trying to do earlier before my patience was tried. No mortal man should have to put up with such hectoring from Opposition and Government members.

The Hon. Charlie Lynn: Tell us about Hunters Hill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The problems being experienced in Hunters Hill in relation to the building industry are the same as those that are being experienced by people all over this State. The director-general does not do much about shonky builders even when he has discovered that they have done a totally inadequate job. Once the director-general establishes that something is wrong he has to do something. He cannot ignore these problems in the hope that he will not rock the boat because of some prejudice in favour of builders and against consumers.

If the Greens amendment is agreed to, the director-general will have to caution or reprimand the holder of a building licence. To use the phrase used earlier by the Hon. John Ryan, that may be akin to hitting someone with a wet lettuce, but at least some action will be taken against the holder of a building licence. If the director-general determines that something is wrong, at least there will be a caution, which is a step in the right direction. Honourable members should support this amendment. We want to ensure that the department acts in relation to these matters. We do not want a *Yes, Minister* department until there is a change of Minister, which is what departments quite often do, particularly if there is an ingrained culture of non-action—which is what the Department of Fair Trading is guilty of in the building area.

The Hon. PATRICIA FORSYTHE [8.55 p.m.]: It seems to me that the Government has some explaining to do about the "do nothing" issue. Approximately 1,000 issues are outstanding in the home building industry. I ask the Minister to respond to these concerns when he speaks in debate on the amendment. Those outstanding issues have been sent to arbitrators or experts for appraisal as the Minister does not know how to resolve them. As a consequence of the HIH reconstruction proposal the Minister has not established what he will do about all the issues that have previously been sent to arbitrators for appraisal. It is a disgrace that we still have in this State in excess of 1,000 issues that cannot be resolved, even though they have been sent for appraisal. This amendment contains within it an option to do nothing.

The Hon. John Jobling: It has just dawned on Della Bosca.

The Hon. PATRICIA FORSYTHE: It has indeed. The Minister should realise that this is an issue that the Government must take seriously. Opposition members might not agree with this amendment, but that does not mean that we are not concerned about the fact that the system is wrong. This Government has a responsibility to get that system right. In excess of 1,000 issues cannot be resolved because the Minister for Fair Trading does not know how to resolve them. What a disgrace that is! What a black mark against the Minister for Fair Trading.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.57 p.m.]: The Government opposes Greens amendment No. 2. I thank honourable members for their contributions to debate in Committee.

Amendment negatived.

The Hon. RICHARD JONES [8.59 p.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 Page 69, schedule 6. Insert after line 29:

(4) The annual report prepared for the Department of Fair Trading under the *Annual Reports (Departments) Act 1985*:

(a) must identify all occasions on which information is provided to insurers under this section during the period to which the report relates, and

(b) must describe the nature of the information so provided (leaving out particulars

that identify, or could lead to the identification of, any particular claimants or insured persons).

No. 2 Page 72, Schedule 7. Insert after line 21:

[11] Section 145

Insert after section 144:

145 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken 3 years after the date of assent to the *Home Building Legislation Amendment Act 2001.*

(3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 6 months after the end of the 3-year period referred to in subsection (2).

Amendment No. 1 will require the director-general to make public in the department's annual report certain information regarding insurers, such as claims handling, settlement of claims and persons licensed under the Act. Currently, the legislation requires this information to be made available only to other insurers. However, in the interests of transparency and consumer protection, I urge honourable members to support this amendment so that information is more freely available. This amendment has the support of the Building Action Review Group [BARG].

Amendment No. 2 provides for the Attorney General to review the effectiveness of the legislation three years after its implementation. A report on the outcome will then be tabled in both Houses within six months of the end of that three-year period. Such provisions are not revolutionary or progressive; they exist in many pieces of legislation. Most recently, they were included in the bill that was introduced by the Hon. Alan Corbett. Some honourable members of this House had expressed concerns about that bill. They can now rest easy in the knowledge that the legislation will be reviewed. Similarly, this amendment ensures that the consumers of New South Wales can rest easy in the knowledge that the Home Building Act, as amended, will also be open to a process of review in order to provide a detailed account of its effectiveness. This amendment has the support of the Building Action Review Group. The group claims that it is essential that the legislation be reviewed in this manner to determine its effectiveness.

The Hon. IAN COHEN [9.00 p.m.]: The Greens support both amendments. As to amendment No. 1, any increase in transparency and consumer protection is to be welcomed. I am pleased to support amendment No. 1. I also welcome amendment No. 2, which provides for a review of the effectiveness of the legislation three years after its implementation. A report on the outcome will then be tabled in both Houses within six months of the conclusion of that three-year period. That is a small step in the right direction and one that is probably acceptable to the Government. However, the building industry is in a terrible state. I hope that this debate, leaving aside its absurdity and entertainment value at the end of the session, will send a message to the Government that significant sections of the community are crying out for substantial moves in these areas where people continue to suffer.

The Hon. JOHN RYAN [9.01 p.m.]: The Opposition supports both amendments. Amendment No. 1 is a particularly good amendment. It will save me the task of having to write a heap of questions for the estimates committee to obtain such information. I will now be able to read this information in the annual

report. The Opposition welcomes the review of the Act in three years. The only comment we would make is that a review in three years does not obviate the need for the parliamentary inquiry that I referred to. I know that Irene Onorati would want me to make that clear to the House. As the Hon. Ian Cohen said, there is a clear need for us to take an interest in the building industry and the operations of the Department of Fair Trading in regulating the building industry. I cannot put too strongly the need for this review.

However, it is important that this legislation be reviewed. Such a review will provide an opportunity to get rid of any bugs in the system, particularly given the performance the last time we did this. This will be the last occasion that I speak to this bill. I again thank the Minister's office for the assistance his staff have given me, particularly officers of the Department of Fair Trading. I also thank honourable members for their support and kind words about the interest I have shown in this matter. My concern in this matter has nothing to do with my own interests. The facts themselves have spoken loudly, and I am simply reflecting the views of many members of the community. I support the amendments and hope that the areas the Minister has promised to examine in the future are reviewed quickly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.02 p.m.]: I support these sensible amendments moved by the Hon. Richard Jones. I congratulate the Hon. John Ryan on support for these amendments. The amendments are consistent with Australian Democrats philosophy that the process should be open and information should be provided. As the Building Action Review Group has pointed out, in many building cases individuals fight their own battle. They feel that they are not getting support from the Department of Fair Trading, which they regard as being almost a captive of the building industry. These amendments will bring the process out into the open. I do not know whether the Government will support these amendments. I hope and assume it will, although on a number of occasions the Government has shown reluctance to put information in the public arena. If it did so, that would assist in the making of sensible decisions. I congratulate the Building Action Review Group and Irene Onorati on her good work and her lobbying. I am impressed by her support for improvements in the home building industry. The consumers who, in many cases, have gone to the wall have to be vindicated. This House should take action to help their cause.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.04 p.m.]: As I indicated previously, the Government supports the amendments moved by the Hon. Richard Jones. I thank honourable members for their contributions.

Amendments agreed to.

New clause 6 and schedules 1 to 7 as amended agreed to.

Schedules 8 to 10 agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.06 p.m.]: I move:

That this bill be now read a third time.

The Minister has been negotiating on this bill for a little over 18 months. It is the thoughtful result of

consultation and a collection of opinions from across the building industry. Given the colourful debate at times during the Committee stage the House ought to remember that fact. I thank honourable members for their contributions to that consultation process by way of debate in this House.

Motion agreed to.

Bill read a third time.

INDUSTRIAL RELATIONS AMENDMENT (CASUAL EMPLOYEES PARENTAL LEAVE) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.08 p.m.]: I move:

That this bill be now read a second time.

The second reading speech is lengthy, but I believe that all honourable members are familiar with it. I seek leave to have it incorporated in *Hansard*.

Leave granted.

The Industrial Relations Amendment (Casual Employees Parental Leave) Bill will amend the Industrial Relations Act 1996 to allow casual employees to have access to one year's unpaid parental leave subject to a 12-month qualifying period.

Since the introduction of the Act in 1996, this Government has sought to identify any anomalies that may exist with its practical application. We have sought to improve the Act where and when appropriate.

Essentially we have made this Act a tool which all industrial participants can use to serve legitimate workplace interests and achieve harmonious workplace relations.

The Act itself was built on a platform of consultation and inclusiveness—a platform that reflects this Government's continuing goal of workplace justice and fairness. It fosters an industrial system that meets the need for efficiency and productiveness in employment arrangements.

This amendment changes the eligibility period for regular casuals to have access to parental leave from two years to one year.

Last year this Government introduced an amendment to the Act that recognised and enshrined casual employees' rights to access parental leave—an entitlement that is available to permanent employees.

Provisions were made to allow casual employees who were employed by the same employer for a period of 24 months on a regular and systematic basis and had a reasonable expectation of ongoing employment, to access 12 months of unpaid parental leave.

It is well documented that the number of casual employees in the work force has risen over the last several years. It is this Government's intention that employment status alone should not be the single defining criterion that grants some workers a certain entitlement, while denying others a benefit that many of us take for granted, such as maternity leave and parental leave.

The simple label of the employment status does not take into account the length and nature of the employment relationship.

On 31 May this year the Australian Industrial Relations Commission (AIRC) handed down the decision in favour of the ACTU's application to provide parental leave to casuals who have worked on a regular and systematic basis for 12 months or more.

Data from the Australian Bureau of Statistics used as evidence in the recent AIRC decision shows there have been significant shifts in the profile of the casual workforce. For example:

over two thirds of self identified casuals work "regular hours";

40.6 per cent have a guaranteed minimum number of hours;

over one half have been in their jobs for more than one year;

13.6 per cent have been in their job for five years or more;

almost three quarters expect to be in the same job in 12 months time; and

some 39.1 per cent report that their earnings have not varied.

Often the only difference between a permanent and casual employee is access to entitlements such as sick leave and parental leave. Loadings paid to compensate casual workers for the absence of sick and other paid leave do not reflect the lack of entitlement associated with maternity and parental leave.

The decision last year to amend the Act to provide casuals with parental leave was to be reviewed after 12 months. That period has now elapsed. There now exists even greater broad-based support across the community, employer groups and State Governments for a 12-month standard eligibility requirement.

In response to the growing expectation that the right of return to the job after the birth of a child should be a basic standard, the State Governments of Victoria and Queensland have made a commitment to extend parental leave to casuals after 12 months of regular and systematic service. Tasmania has taken an award-based response to achieve the same goal.

Both Victoria and Queensland provided the AIRC with submissions in support of the ACTU's claim to give regular casual workers parental leave, while the Federal Government gave "in principle" support for giving casual employees a fairer go, during the recent test case hearings before the AIRC.

Employer organisations—Australian Industry Group, Australian Chamber of Commerce and Industry, and the Australian Hotels Association—reached an agreed position with the ACTU to the principle of allowing casual employees to have access to parental leave after 12 months of regular and systematic employment.

The extension of parental leave entitlements to long-term casual employees will benefit the growing number of employees who can only obtain casual employment.

In many cases, this form of employment may offer some immediate flexibility to accommodate family responsibilities but with the longer term impact of reduced access to family friendly entitlements. The amendment also recognises the broader goal of this Government in assisting workers with family responsibilities.

This amendment will ensure that all employees who have worked for the same employer for 12 months will have access to the same entitlement. It is this balance of entitlements that this Government is seeking to achieve.

The amendment is not about altering the status of employees but rather ensuring that employees' entitlements are commensurate with their service and expectation of ongoing employment.

I commend this Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [9.09 p.m.]: The Opposition does not oppose the bill. The object of the bill is to provide casual employees with the same entitlement to unpaid parental leave as full-time employees by conferring that entitlement after they have worked for one year on a regular and systematic basis with the same employer. This matter was the subject of substantial debate in the Legislative Assembly and it is not my intention to labour the point by regurgitating that debate. I refer honourable members to the contributions made in the other Chamber. This is likely to be the last bill debated in this session. I realise it is an interesting and special bill because it will be the last debate to which the Hon. Johno Johnson will contribute. The subject matter of the bill is extremely important to him and has been close to his heart for many years.

The Hon. JOHN JOHNSON [9.10 p.m.]: At the outset I congratulate the Minister on introducing this important piece of legislation for the working men and women of New South Wales. It is in the reforming tradition of a good labour government. As was noted in the second reading speech, the number of casual workers has increased over the past several years, as the Australian Bureau of Statistics figures attest. Therefore, it is more important than ever that regular casual employees can enjoy secure employment in the same way as permanent and part-time employees if they need to take up to 12 months unpaid parental leave. I have no doubt that such security for casual employees will assist employers to maintain a satisfactory, labour-intensive and stable work force. Employers will be better able to retain experienced staff. Regular casuals with service of 12 months or more will be secure in the knowledge they will be able to return to their positions after taking parental leave.

I understand that recent decisions of the Federal Industrial Relations Commission have allowed casual employees under Federal awards access to parental leave after 12 months of regular and systematic employment. The granting of that access was supported by key employer groups, the Australian Industry Group, the Australian Chamber of Commerce and Industry and the Australian Hotels Association. That is further evidence that access to unpaid parental leave for regular casual employees after 12 months employment has become a community standard. Many good people need this type of work. They need the protection of the law when they take parental leave. What greater task can be allocated to parents than the nurturing of children? If parental leave is necessary to nurture children, it should have the approbation of all of us. It certainly has my approbation. My own union, the Shop Distributive and Allied Employees Association, supported by the Labor Council of New South Wales, has been a constant advocate of this proposal. I commend the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.13 p.m.]: The Australian Democrats support this bill. It is a modest and reasonable amendment to the Industrial Relations Act. The right of employees to unpaid maternity leave resulted from a decision made by the Australian Conciliation and Arbitration Commission in 1979 in what is referred to as the maternity leave test case. It was an important step in recognising the right of women to work and have families. Many Australian families now take paid maternity leave for granted. The bill has the modest objective of amending section 57 of the Industrial Relations Act by amending from 24 to 12 months the period that casual employees must work for the same employer on a regular and systematic basis to earn unpaid parental leave. There is a serious need for this amendment.

From data collected during the 1996 Commonwealth census the Australian Bureau of Statistics

released an alarming finding on part-time and casual employment in New South Wales. It showed that 25 per cent of all employed people in New South Wales were working as part-time, casual or temporary employees in their main job. That represented a 50 per cent increase since 1991. A little more than two-thirds, 68 per cent, of the part-time, casual or temporary workers were female, compared to 78 per cent in 1991. In 1997 females comprised 86 per cent of all permanent part-time workers. That figure is down from 91 per cent in 1991. Females comprised 73 per cent of regular casual workers in 1997, that figure having fallen from 79 per cent in 1991. In 1997 females made up 69 per cent of irregular casual workers, which was around the same level as in 1991.

An economics analysis report of the New South Wales Labour Economics Unit in March 2000 revealed that more than half—55 per cent—of self-identified casuals employed in New South Wales had been with their current employer for more than one year, while 4 per cent had been with their current employer for more than 10 years. There are many reasons for the increased number of casual employees in the New South Wales work force. I will not go into those reasons at this time. However, as casual employment represents a significant proportion of the job market, it is only reasonable and practical that this amending bill be passed. However, there is an argument that the entitlement to paid maternity leave should extend to casuals as well. The 1999 Human Rights and Equal Opportunity Commission report entitled "Pregnant and Productive" stated:

> Many Australian workers face considerable difficulty from being without their income during maternity leave. HREOC received many submissions on this issue.
>
> As we approach the 21st Century most working women in Australia still do not have access to paid maternity leave … for most women in Australia, motherhood means substantial loss of earning and emotion and insecurity in the world of work.
>
> No matter how progressive workplace policies and practices are, the condition of twelve months continuous employment excludes a significant proportion of women from paid maternity leave. In 1994, 24% of employed women had been in their jobs for less than 12 months (ABS, Labour Mobility, February 1994). Furthermore, only 20% of Australian women are currently entitled to paid maternity leave (NWJC Submission to the International Labour Organisation Conference 87th Session, 1999 …), and only 59% of public sector workplaces and 21% of private sector workplaces offer paid maternity leave (Affirmative Action Agency Annual Report 1997/98)
>
> The relatively limited application of paid maternity leave in Australia is a strong disadvantage for pregnant women.
>
> Organisations reporting to the Agency have found that after the introduction of paid maternity leave, retention rates improve … They recognise that there are substantial costs associated with losing an experienced and skilled staff member.
>
> The availability of paid maternity leave, family friendly policies, and flexible work practices do impact on when women return to work, and whether they return full-time or part-time. One survey respondent stated that not having access to paid maternity leave was an issue for her, and she had to return to work much earlier than she wanted to due to her financial needs.

We will have to keep a watch on that if we are committed to equal employment opportunities and equality between the sexes. We have to make sure that issues like maternity leave change in response to changes in work force patterns and, in this case, the increasing number of casuals in the work force. That is the reason we support the bill and ask everyone else to support it.

The Hon. RICHARD JONES [9.18 p.m.]: I congratulate the Hon. John Johnson on his very last speech in this Chamber.

The Hon. John Johnson: It was not my last speech.

The Hon. RICHARD JONES: I share his views that children should be nurtured, and that it is important to give casual employees 12 months parental leave. I congratulate the Government on introducing the legislation.

Ms LEE RHIANNON [9.18 p.m.]: The Greens are happy to welcome this legislation. We support it strongly. As people are starting to become aware, the Greens have a commitment to ensuring that the industrial relations system is not used to exploit working people. By bringing in this legislation the Minister has shown that he has not forgotten what side of politics he is from. As honourable members have said, the bill does one thing: it gives casual employees the right to unpaid parental leave after one year's regular and systematic employment. That is welcome.

Although the Greens support the direction the Minister is taking I would agree with other honourable members that the bill does not go far enough. The legislation will not grapple with the fact that globalisation is creating a new class of families who will never know full-time, long-term jobs. That is just how it is at the moment. Although it is pleasing that the legislation goes some way to ensuring that unpaid parental leave will no longer be the exclusive reserve of people in what we might call old-school, full-time employment, it goes only so far. Some 52 per cent of jobs in sales, service and basic clerical occupations are now casual. Many young people with whom I work do work full time, but in the course of a year they can have many, many employers.

We need legislation that acknowledges how dramatically the nature of work has changed, and does not discriminate against casual employees. In its current form the bill does nothing for people whose careers will consist of shifting between short-term service sector, sales and office jobs like the fruit pickers of the Great Depression. That is very much how many people live their lives these days, yet those people continue to be excluded by the legislation. We will be happy to support the legislation. I congratulate the Minister on bringing it forward. I congratulate Johno Johnson. We will miss that name. I have heard that his replacement, in name, is Mr Ego Egan, but we will see what happens in two months.

Reverend the Hon. FRED NILE [9.21 p.m.]: The Christian Democratic Party is pleased to support the Industrial Relations Amendment (Casual Employees Parental Leave) Bill, which will amend the Industrial Relations Act 1996 to allow casual employees to have access to one year's unpaid parental leave subject to a 12-month qualifying period. This amendment changes the eligibility period for regular casuals to have access to parental leave from two years to one year. Employer organisations—the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Australian Hotels Association and others—have reached an agreed position with the ACTU to the principle of allowing casual employees to have access to parental leave after 12 months of regular and systematic employment.

The bill recognises the broader responsibility of the Parliament to assist workers who have family responsibilities. This has always been a priority for the Christian Democratic Party, which is why we support family-friendly legislation and why we introduced the family impact commission legislation, which has been debated in the upper House. We are still waiting on support for the traditional family from a majority of members so that we can proceed with the bill. We are pleased to support the bill.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.23 p.m.], in reply: I thank all honourable members for their contribution, specifically my friend and colleague the Hon. Johno Johnson, who, I am reliably informed, has one more speech in him. He is probably the only one in this Chamber who would have one more speech in him. I look forward to hearing it as much as I looked forward to hearing the speech he made yesterday and the one he made earlier this evening. It is fitting that he made his last speech in this Chamber on such important and evocative legislation.

Johno was a battler for the trade union movement, and an avid supporter of the aspiration of the rights of working people and their advancement. An old aphorism from a well-respected person on our side of the Chamber who is no longer with us goes something like this: We manage as a civilisation to advance in spite of ourselves. With sensible legislation, goodwill, and the activities of the trade union movement and the labour movement I am sure that we can overcome the great perils of globalisation of which Ms Lee Rhiannon reminded us. In response to her pleasant reminder about the side of politics I am on, anyone who has seen her web site, *Lee.Rhiannon.com,* need no longer wonder what side she is on. I thank all honourable members for their contribution and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SPECIAL ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.25 p.m.]: I move:

> That this House at its rising today do adjourn until Tuesday 11 September 2001 at 2.30 p.m., unless the President, or if the President is unable to act on account of illness or other cause, the Chairman of Committees, prior to that date, by communication addressed to each member of the House, fixes an alternative day or hour of meeting.

The Hon. JOHN JOBLING [9.26 p.m.]: I move:

That the question be amended by the addition, at the end, of the following paragraphs:

2. Notwithstanding the above, the President, on receipt of a request by a majority of the members of the House that the House meet at an earlier time, must by communication addressed to each member of the House, fix a day and hour of meeting in accordance with the request.

3. That for the purposes of paragraph 2, a request by the leader of any organised party or group is to be deemed to be a request by each member of that party or group.

4. A request may be made to the President by delivery to the Clerk of the House, who must notify the President as soon as practicable.

5. In the event of the absence of the President, the Clerk must notify the Deputy-President, or if the Deputy-President be absent, any one of the Temporary Chairmen of Committees, who must summon the House on behalf of the President, in accordance with this resolution.

Amendment agreed to.

Motion as amended agreed to.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.26 p.m.]: I move:

That this House do now adjourn.

GOVERNMENT DEPARTMENTS AND AGENCIES COMPUTER SOFTWARE USE

The Hon. GREG PEARCE [9.26 p.m.]: Very disturbing information has come to the attention of members of the Opposition regarding government departments and agencies and concerns that they using computer software in breach of their licensing conditions. This is very serious for taxpayers in two ways. First, if government departments are in breach of licensing conditions, they could make the taxpayer liable for fines in the order of $300,000 per breach under the Copyright Act. This could mean that taxpayers in New South Wales are potentially liable for millions of dollars in fines if the alleged breaches are prosecuted successfully, plus court costs and counsel costs. Second, when a licensing agreement lapses, so, too, does the obligation by a licensee to deliver support, backup and virus controls.

The potentially large amounts of data held by government departments could be at risk if the departments were using computer software whose licence was no longer valid. I have been given information that three government departments are potentially in breach of computer software agreements. The Environment Protection Authority [EPA] was apparently in breach of a software license for a period of three weeks, forcing a licensee to have to write to the EPA on Tuesday 5 June 2001 seeking a formal statement to the effect that the EPA was no longer using software whose license had lapsed. The second department, the Department of Public Works and Services, is also believed to have been in breach of licence conditions for particular software for a period of three weeks.

Despite the fact that both these departments have apparently since adopted different software, the fact remains that the taxpayer is vulnerable for enormous costs if breaches are prosecuted through the legal system. The final instance is the most concerning. The Roads and Traffic Authority [RTA] is understood to be in breach as I speak of a computer software licensing agreement. It is understood by members of the Opposition that a demand from the licensee to the RTA to explain its position and confirm that the software is not being used in breach of an expired licence period has, as of 24 hours ago, elicited no response from the RTA. It is very disturbing that there is potential exposure of New South Wales citizens to million-dollar legal costs, plus the inestimable damage and cost if any data held in software, which is no longer supported through normal licensing maintenance arrangements, is lost, with disastrous commercial and administrative consequences.

This demands an immediate explanation from all Ministers involved in these allegations and also calls for a guarantee from the Treasurer that every department and agency is 100 per cent compliant with licensing agreements with software providers. I thank the House and I look forward to the Hon. Johno Johnson's adjournment debate speech.

SEXUAL ABUSE

The Hon. DAVID OLDFIELD [9.31 p.m.]: Last week I participated in a forum on sexual abuse and assault which was aired on Channel 9's *Sunday* program a few days ago. While I believe that such programs are useful in assisting to raise awareness and are informative in so much as they provide insight to the terrible experiences of victims, it is clear that such gatherings resolve little and ultimately are ratings winners rather than social successes. There are so many issues, it is often difficult to know where to begin and it is easy to sometimes see yourself as being pushed to say a little about a lot, rather than concentrating the time necessary to positively progress the resolution of any one issue.

It is not my intention to ever become a single-issue campaigner. However I and others need to be more vocal about sexual abuse, especially abuse perpetrated against children. I am allowed only five minutes for this speech so, given that short time, I will restrict myself to a broad, rather than long approach to the topic of child sexual abuse. I very strongly believe that much of what is socially wrong is a consequence of a dramatically higher level of pederast and paedophile activity than is understood by the general public. Several years ago I attended an anti-violence seminar where experts in their fields

claimed that one in six male children and one in three female children experience some form of sexual molestation.

No amount of sexual abuse is acceptable. Figures such as those that have been expressed to me are so horrific that they defy imagination. I am fortunately not one of those statistics, but my life has been badly impacted by those who have suffered terribly at the hands of the adults they trusted and thought were meant to protect them. It is not appropriate for me to give identifying details, but my own experiences with women who were abused as children, and who have clearly been psychologically scarred as a result, have been numerous enough for me to believe that the stated figure—one in every three female children having been sexually molested—is likely to be correct.

To proactively address any speculation, I must place on the record that my wife to be, Lisa Johnston, is not one of the women of whom I speak. Like me, she has had the good fortune not to become a victim. From my observations, men who have been molested as children tend to be less willing to speak of their experiences than are women. Admittedly in relatively recent times there have been a number of disclosures of widespread molestation of young boys. But largely these have been confined to groups who experienced their suffering while in the care of religious institutions, rather than having suffered a series of individual or unrelated attacks. Perhaps these male victims who have told their story find comfort in being one of many as opposed to the loneliness and unrealistic guilt that might be felt and not shared when a victim comes forward on his own.

Without being the victim myself, it is impossible to reasonably judge which crime is the worst of the worst. Some would argue that in the case of murder the pain for the victim is over, whereas an abused child may have ahead a lifetime of reliving the suffering of a betrayal of trust.

I believe that the level of damage to society as a consequence of the psychological effects suffered by child sexual abuse victims is currently incalculable. The time is not available for me to be as descriptive as I would like, but, in short, a great deal of substance abuse, terribly dysfunctional people and violent crimes—the vast majority of which are committed by men—will likely trace their roots to the mental torment experienced by child victims of sexual abuse. Many parents also become victims through no fault of their own because children often suffer at the hands of a previously trusted family member or friend. We now know how inadequate it is for parents to only say to their children, "Don't talk to strangers."

Children are generally as close to pure innocence as you will find. They are impressionable and vulnerable, and whatever rights it may be argued that children have, at the very least they have the right to expect the protection of adults. We all suffer from the lack of concentrated effort to address this wide-ranging problem. The cone of silence needs to be lifted higher and the debate focused and intensified. Regardless of their position, no perpetrator should be protected. Society needs to come clean on this issue, regardless of the cost.

PARLIAMENT HOUSE ACCESSIBILITY

The Hon. JOHN JOHNSON [9.36 p.m.]: Before I take my leave of this establishment, I feel I should say something about two issues. One is the magnificent service that most of us have received from the fourth estate. There is no doubt that Paul Mullins, as the doyen of the fourth estate, is a man of immense integrity who has rendered tremendous service to the Parliament, to his station and to the people of New South Wales generally. He is not alone. There are many others who have come to the press gallery of this Parliament as working journalists and have gone on to much greater things. I wish them well in all of their endeavours.

Second, I want to implore honourable members to make sure that Parliament is always accessible to the people. When I first came here I would stand on the front veranda from time to time, particularly after the establishment had been refurbished and the extension was finished. There was a sign attached

to the front gate that read "Parliament House". I would observe people walk past, look at the sign, look at each other, look at the building, shake their heads and walk on.

One day I thought there must be something that could be done to encourage people to come into the Parliament. I said to the Building Manager, "I would like a new sign out the front." He said, "But, we have just got a new sign out there." I said, "Yes, but just put another one underneath it that reads, 'Parliament House. Visitors welcomed'." If you stand on the front veranda now you will see people walk along, look at the sign, look at the building, look at each other, nod in concurrence and walk in.

It was tremendously hard to get everyone to agree to opening the Parliament for functions hosted by members of Parliament and for displays in the Fountain Court. There was opposition from my fellow Presiding Officer at the time and opposition from the Premier. But, having an eye to the future, a member of the National Party approached me to ask if they could hold a function here. I said yes, but that I would have to get the concurrence of my fellow Presiding Officer—who did not appreciate the approach. I rang Graham Richardson, told him the story, and said, "I can guarantee that if we grant this one for the Nats, the Libs will ask for the next one and then there will be no excuse for us not to have one."

Graham Richardson saw the wisdom in what I said to him, he spoke to a few people, as was his wont, and permission was given. It is magnificent that the Parliament is now open to the public. On various occasions it has been opened on the weekend. Indeed, I think 26,000 people visited the Parliament one weekend. I am happy to say that the Australian Parliament has followed our example. It is terribly important that we open the Parliament, because it lessens people's perception that we are distant from them. The more people who come to the Parliament, the better it will be for all of us; people will see that it is a normal, working establishment. Members should all ensure that that practice is retained. I wish you well. God bless all of you.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Farewell, Johno, from all of us.

PROSTITUTION CONTROL LEGISLATION

Reverend the Hon. FRED NILE [9.41 p.m.]: I wish to refer to a very thoughtful submission to the Labor Government of Western Australia by the Catholic Archbishop of Perth, the Most Reverend P. J. Hickey, concerning legislation to control prostitution, and to comment on some of the matters raised in it. Reverend Hickey said:

> Brothels, escort agencies, street walking and prostitution generally have grown to the point where they occupy a significant place in public awareness in Western Australia. Apart from a very recent attempt through new legislation and police action to control street prostitution, particularly in residential areas, little has been done to regulate or control prostitution in Western Australia in the last two decades at least. During that period, at least three Police Commissioners have effectively walked away from responsibility for policing prostitution on the grounds that the laws were inadequate and the risk of corruption in the Police Service too great …
>
> The Government's preferred position is to legalise the trade, either by licensing, or by removing legal proscription or some combination of the two. It is hoped that local government planning and health regulatory powers will ensure that brothels do not appear in residential areas. The philosophy, if that is not too strong a word, is that the way to deal with the problem of prostitution is to treat it in the same way as any other business and then it won't be a problem.

Reverend Hickey was summing up the attitude of the Western Australian Government. He went on to say:

> Experience around the world, but particularly the experience in Victoria and New South Wales within the last decade, indicates that neither legalisation nor decriminalisation of prostitution will produce the results the Government wants in WA. Both those States have seen a sharp increase

in prostitution, a significant rise in the number of illegal brothels, and a related rise in other illegal activities such as trafficking in drugs, child prostitution, and (particularly in NSW) the use of illegal Asian immigrants in virtual sex slavery. Detailed information about these problems is available and I do not propose to deal with it in this submission. The information is even more readily available to Government than it used to be and I would expect the Government to present a detailed factual picture where it introduces legislation to Parliament. Commitments to openness and accountability in Government would surely require the Government to present to the public a full and frank exposition of the facts about prostitution.

Reverend Hickey then provided a summary and made certain recommendations. He said:

> … prostitution cannot be legalised and treated as just another industry because:
>
> > It seriously damages all who are involved in it, but particularly young women. It damages them both in the immediate term and in their future prospects and potential.
> >
> > The suffering inflicted on prostitutes would require that such "employment" be banned under various statutes and principles which our society rightly values. Society cannot ignore its own laws and values without itself suffering harm.
> >
> > It enriches pimps, madams, brothel owners and organised crime figures at the expense of the life and well-being of prostitutes.
> >
> > Legalisation of brothels simply expands the trade and creates a two-tier system of legal and illegal brothels, with consequent increases in drugs, child prostitution and the virtual enslavement of illegal immigrants. The facts of this from our own Australian experience in New South Wales and Victoria are irrefutable.
> >
> > The Police cannot be removed from prostitution control, and to the extent that they are removed illegal practices flourish.

Reverend Hickey then went on to say:

> In setting itself against organised prostitution and the organised crime that accompanies it, the Government ought to:
>
> > Ban all advertising and open soliciting for prostitution, escort agencies and bogus massage parlours, as Queensland has done. Advertising fuels prostitution and creates the harmful illusions that society approves it and young women and men can enter it with impunity. A legal ban on advertising would also remove our news media from the list of those benefiting from the prostitution of others.
> >
> > Create appropriate laws—including laws about the gathering of evidence, the presumption of guilt, and the onus of proof—to enable the police to suppress organised prostitution. Penalties should reflect the extent of the law and the effort required to enforce it. Some of the legal niceties that have found their way into our judicial system have distorted the balance between society and those who prey on it. It is right and proper for Parliament to take a hand in these matters.
> >
> > Require the WA Police Service to present a thorough analysis of the powers it believes it needs to suppress organised prostitution. Parliament will have the final say, but the Police need to be able to see that they have been empowered to carry out the task given to them. Even if organised prostitution were legalised, the Police would be required to suppress illegal brothels and their associated activities, so the question of appropriate laws must be

addressed. The notion that Local Governments could suppress illegal brothels but the Police could not is dangerously absurd.

Retain and enforce the existing legislation on streetwalking while other measures are being prepared.

Finally, but far from least, the Government needs to commit more financial assistance to organisations offering escape and rehabilitation to prostitutes. This is serious work and needs serious support. Rehabilitation from prostitution itself deserves at least as much support as recovery from alcoholism and drug addiction, and in the great many cases it involves those sorts of treatment as well as recovery from the harmful effects of prostitution. On behalf of the Archdiocese of Perth, I have already made the Church's commitment to this work.

[*Time expired.*]

MOBILE PHONE THEFT

The Hon. PETER PRIMROSE [9.46 p.m.]: I have spoken in the House a number of times about my interest in bringing attention to other than theoretical models and actual detailed statistics in relation to the problems of crime. This evening I draw to the attention of the House "Crime and Justice Bulletin" No. 56 issued by the New South Wales Bureau of Crime Statistics and Research and dated March 2001. It deals with a topic of particular interest to members with mobile phones. While mobile phone theft may seem a dry as dust issue, I point out what I believe are quite alarming statistics.

The Hon. Duncan Gay: It is not for people who have their phones stolen.

The Hon. PETER PRIMROSE: I agree with the Deputy Leader of the Opposition. Ownership of mobile phones in Australia has increased substantially as improvements in technology have made them more affordable for the average consumer. Coinciding with the spread of mobile phones is an increase in the number of phones stolen each year. This bulletin examines trends in mobile phone thefts in New South Wales over a three-year period. The results indicate that in just two years incidents of mobile phone theft have doubled, rising from 19,433 to 39,891 incidents a year. Those figures bear repeating. Furthermore, the largest growth in crime associated with stolen mobile phones has been in offences that are violent in nature. Contributing factors to this observed increase, as well as options for its control, are explored in the paper.

A vaste majority of mobile phones were stolen from motor vehicles, with this offence type accounting for 38 per cent of all incidents reported during the three-year period. Substantial proportions of mobile phone thefts also resulted from break and enter—from dwellings 11 per cent, stealing from the person 7 per cent, steal from dwellings 5 per cent and "other theft" offences 30 per cent. Perhaps the most concerning of all was the research report's finding that there was a noticeable increase over the three-year period in the number of violent incidents in which mobile phones were stolen. Mobile phones stolen in robbery incidents—without weapon—increased from 330 incidents in the 12 months prior to September 1998 to 1,239 incidents in the 12 months leading up to September 2000. This equates to a 275 per cent growth in two years. Similarly, robbery incidents with a weapon that was not a firearm in which mobile phones were stolen rose from 114 to 405 incidents over the three-year period, equating to a 255 per cent increase.

The report advocates that the simplest solution to the problem is to reduce the opportunity to use mobile phones that have been reported as lost or stolen. Each mobile phone carries an individual international mobile equipment identity [IMEI] that is associated with the phone or handset. When the IMEI number of a mobile phone is known carriers can scan their networks to identify any person who may be using that phone unlawfully.

Once the carrier has obtained information about the IMEI number of a stolen phone and the corresponding SIM card being used with that phone, unauthorised users could simply be electronically logged off the system. Locking phones with a PIN or password when not in use ensures that if the phone is stolen an unauthorised user cannot make outgoing calls. Mobile phone users can also change the PIN and password regularly and keep IMEI numbers secure in case a report needs to be made. With most phones the IMEI number can be determined by simply dialing *#06#.

The Hon. Jan Burnswoods: Do you think Peter Reith has any views about this matter?

The Hon. PETER PRIMROSE: I will not answer that because he is now heading off on holidays. I could say "Good riddance" but I will simply say "Bon voyage".

EMPTY SPACES/TEMPORARY PLACES

Ms LEE RHIANNON [9.51 p.m.]: Tomorrow a caretaker lease will be signed between Empty Spaces/Temporary Places [ESTP] representing a group of squatters, and the Australand development company. This is a most historic occasion. I congratulate the squatters, with whom I have worked closely. They have done some outstanding work and have now had a breakthrough with the signing of this new lease tomorrow. In essence, a caretaker lease is similar to a residential tenancy lease. The differences are that the condition report is dispensed with, and the period of the lease is on a week-to-week basis or two-week notice period. In addition, consideration for the agreement is not monetary, but through the provision of services.

Short-term caretaker leases are consistent and compatible with the needs of landlords and developers, providing landlords with pre-demolition redevelopment-repair access. This model has been developed by a number of the squatters who have lived at the Broadway squats since August 2000, and a working pilot project has been in operation for the duration at properties owned by South Sydney City Council at 147-151 and 159 Broadway, Ultimo. Many honourable members may have seen those sites. Twenty-five people have lived successfully at those sites.

The Hon. Duncan Gay: In someone else's residence.

Ms LEE RHIANNON: In this case Australand—one of your developer mates. If I look in my file I will probably find that it has given money to the Deputy Leader of the Opposition.

[*Interruption*]

But they still hang out with the developers these days—Pitt Street farmers.

The Hon. Duncan Gay: Does that make what you are doing right?

Ms LEE RHIANNON: Ask Australand. They give money, sign leases and seem to be quite happy. Tomorrow's signing will be the signing of the first precedent lease agreement between a developer and a building owner—Australand—and a group of squatters. The new model for housing has considerable support from community organisations, and its relevancy and appropriateness for addressing housing and homelessness is shown by its endorsement by the Homelessness Summit held here a few months ago. I also acknowledge the work of the Construction, Firemen and Municipal Employees Union, construction division in New South Wales, which helped facilitate many of the meetings between Australand and the squatters.

This lease has received substantial support from peak organisations—the Tenants Union of New South Wales, New South Wales Council of Social Service and the New South Wales Trades and Labor Council. Sydney City Council resolved on Thursday 3 May to sign the caretaker lease. Tomorrow the lease will be signed by the new building owners, Australand, and ESTP. It is interesting that this is not the

first time this has happened. Life gradually improves on itself, as many honourable members remind me, and that is certainly the case in this instance. In 1990 there was a large squat in council-owned property in Hollywood Avenue, Bondi. Waverley Council, to its credit, negotiated with those residents and issued them with provisional caretaker leases until the buildings were ready to be demolished.

The Hon. Duncan Gay: That is appalling.

Ms LEE RHIANNON: It is appalling that the Deputy Leader of the Opposition is willing to leave accommodation vacant when so many people are homeless. The caretaker leases help developers, and I am sure, by the smile on his face, that he is aware of that. He is smiling now; he has been won over. The squatters in Hollywood Avenue paid a nominal rent into a trust. The money was used to cover some of the basic health and safety repairs. Another case involved the then Department of Main Roads. In 1970, approximately 300 squatters resided in 150 houses. They remained there for more than 20 years, until the Eastern Distributor was completed. The houses were owned by the department and many were in the South Sydney City Council area. Informal agreements were negotiated.

The Hon. Duncan Gay: Why didn't they pay rent?

Ms LEE RHIANNON: They paid about $20 a week. No insurance claims were lodged, nor was liability an issue in that period. [*Time expired.*]

Motion agreed to.

House adjourned at 9.56 p.m. until Tuesday 11 September 2001 at 2.30 p.m.