

Legislative Assembly

Tuesday, 7 April, 1981

The Ministry (Ministerial Arrangements)—Petitions—Questions without **Notice**—Drought Assistance: (Urgency)—Questions without Notice (Resumed)—**Building** and Construction Industry Long Service Payments Act: **Disallowance** of Regulation—Assent to Bills—Totalizator (Off-Course Betting) Amendment Bill and Cognate! Bills (Introduction, second reading)—Crimes (Sexual Assault) Bill and Cognate. Bill (Committee, third reading)—Bills Returned—National Companies and Securities Commission (State Provisions) Bill and Cognate Bills (second **reading**, third reading)—Adjournment (Hunter Valley Development—West Ryde **School**)—Questions upon Notice.

Mr Speaker (The Hon. Lawrence Borthwick Kelly) took the chair at 2.15 p.m.

Mr Speaker offered **the** Prayer.

THE MINISTRY

Mr WRAN: I wish to inform the House that, during the absence through illness of the Hon. L. J. **Ferguson**, M.P., Deputy Premier, Minister for Public Works and Minister for Ports, I shall carry out the duties appertaining to his various offices.

Mr J. H. Brown: Not half as well.

Mr WRAN: I agree.

PETITIONS

The Clerk announced that the following petitions had been lodged for presentation:

Policing of Darlinghurst

The Petition of certain citizens of New South Wales, respectfully sheweth:

That the residents of Darlinghurst are concerned by the activities of prostitutes and transvestites resulting in indecent acts, traffic hazards, noise pollution, unseemly and offensive behaviour and indecent exposure in Forbes, Liverpool, Darley, Thompson Streets, Darlinghurst Road and Thompson Lane.

Your Petitioners therefore humbly pray that your honourable House will increase police supervision to enable the residential area of **Darlinghurst** to be restored to the safe environment previously enjoyed by residents prior to the introduction of the Offences in Public Places Act.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Barraclough, received.

Traffic Signals for Mount Kuring-gai

This Petition of certain citizens of New South Wales, respectfully sheweth:

That there is an urgent need to improve safety for motorists wishing to join or cross the Pacific Highway from Glenview Road, Mt Kuring-gai.

Your Petitioners therefore humbly pray that your honourable House will give urgent consideration to gaining safe entry on to the highway from Glenview Road, by either installing traffic signals at Glenview Road, or providing vehicular access to Nyara Road; and that it make an early announcement on this matter in order that the safety of the people using the intersection be protected.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Pickard, received.

Road Courtesy

The Petition of certain concerned citizens of New South Wales respectfully sheweth:

That New South Wales drivers are far too aggressive and show a lack of courtesy and patience. These bad characteristics contribute significantly to the shocking road toll.

Your Petitioners therefore humbly pray that the Government design and implement a long-term advertising campaign to educate the driving public on road manners and that questions on road courtesy be made compulsory for all licence tests.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Smith, received.

Aboriginal Land Rights

Whereas the Aborigines of New South Wales have been dispossessed of their lands for almost 200 years, and

Whereas the present New South Wales Labor Government established a select committee of the Legislative Assembly to enquire into Aboriginal land rights in New South Wales, and

Whereas the select committee has completed its report on land rights and tabled its report in Parliament on August 13, 1980, and

Whereas that report recommends that Aboriginal land rights be legislated and implemented in New South Wales, and the Premier, the

Honourable Neville Wran has committed the Government to land rights legislation;

Now we the undersigned call upon the New South Wales Governments to implement at the earliest moment the recommendations of the Select Committee of the Legislative Assembly upon Aborigines.

And your Petitioners, as in duty bound, will humbly pray.

Petitions, lodged by Mr Knott and Mr Maher, received.

Moral Standards

The humble petition of the undersigned citizens of Australia, New South Wales, respectfully sheweth:

That we the undersigned, having great concern because of the spread of moral pollution in our State, call upon the Government to introduce immediate legislation:

- (1) To give positive support **to** the Lord Mayor of Sydney **and** other local government authorities in their attempts to clean up moral pollution in our communities.
- (2) To give local government authorities the power to reject applications from individuals or companies for moral pollution centres which are against the public interest such as so-called sex shops, live sex shows, blue movie cinemas, massage parlours (brothels), escort services (prostitution), et cetera.
- (3) To tighten up the standard used by the New South Wales Indecent Publications Classification Board so as to include the total prohibition of any pornographic publication or film containing child pornography, bestiality, sodomy or violent sex acts against women, such as rape and pack rape, sadism and torture, etc.

Your Petitioners therefore humbly pray that your honourable House will protect our society, especially women and children from moral pollution and its harmful effects.

And your Petitioners as in duty bound, will ever pray.

Petitions, lodged by Mr Cahill, Mr Einfeld and Mr McIlwaine, received.

Rosebery

The Petition of certain residents of the district of Rosebery in the municipality of South Sydney and certain other citizens of New South Wales respectfully sheweth:

That we request that our district be taken out of the boundaries of South Sydney and transferred to that of Randwick for the purposes of municipal administration.

Your Petitioners therefore humbly pray that your honourable House will take the appropriate steps to ensure the transfer of our district from the boundaries of South Sydney to Randwick.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Brereton, received.

Casinos

The Petition of the undersigned electors in the State of New South Wales respectfully sheweth:

- (1) That the gambling facilities in New South Wales are more than adequate.
- (2) That the principle of gambling in general and casinos in particular is harmful to the moral and social welfare of the people.
- (3) The legalizing of casinos is not in the best interests of the economy of New South **Wales**.

Your Petitioners therefore humbly pray that the honourable House will not take any steps to legalize the introduction of casinos, without democratically ascertaining the will of the people by a referendum.

Your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Duncan, received.

Local Government Rates

The Petition of certain citizens of New South Wales respectfully sheweth:

That the present 12½ per cent rate limit set by the State Government, should apply equally to all ratepayers, whereas some residents of the Sutherland Shire are facing increases up to **25 per cent**.

Your Petitioners therefore humbly pray that **your** honourable House request the Minister for Local Government to set a limit on the rate that **can** be charged to individual ratepayers.

And your Petitioners, as in duty bound, **will** ever pray.

Petition, lodged by Mr Robb, received.

Beach Pollution

The Petition of certain concerned citizens of New South Wales respectfully sheweth:

That we the undersigned are greatly concerned about the deteriorating conditions of the surf at Sydney beaches. Offshore pollution appears to be reaching an alarming level.

Your Petitioners therefore humbly pray that the Government research ways of preventing raw sewage from pouring into the ocean as we believe Sydney and the health of the Sydney surfing population should not be at risk when workers at outfall stations go on strike.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr Smith, received.

Vivisection

This Petition of concerned residents of New South Wales respectfully sheweth:

Taxpayers' money has been spent on live animal experimentation in 1977, 1978 and 1979, although many taxpayers are, like ourselves, directly opposed to this practice. In Parliament, the Minister for Health

was requested to say how much money was spent in this way during those years. The reply was that it cost too much to "frame a comprehensive **reply**".

Your Petitioners therefore humbly pray that your honourable House will reconsider and act to make this information available to the public.

And your Petitioners, as in duty bound, will ever pray.

Petition, lodged by Mr **Cahill**, received.

Camdenville Public School

The Petition of certain citizens of New South Wales respectfully sheweth that they are gravely concerned at:

- (1) staff cutbacks at Camdenville Infants Department;
- (2) increased class sizes due to the loss of two classroom teachers;
- (3) loss of an E.S.L. teacher; and
- (4) loss of our clerical assistant.

Your Petitioners therefore humbly pray that the staff at Camdenville Public School be increased.

And your Petitioners, as in duty bound, **will** ever pray.

Petition, lodged by Mr Cahill, received.

Homosexual Acts

The Petition of certain citizens respectfully sheweth:

Concern that necessary standards of public morality are seriously jeopardized by the proposal to legalize homosexual acts between consenting adults. We believe this proposal to be alien to the basically Christian way of life, which the majority of Australians support. Homosexuality has existed in pagan societies but was rejected by the early Christian church and apostolic fathers as totally unacceptable conduct.

Your Petitioners therefore humbly pray that your honourable House:

- (1) reject the proposal because it is not in the best interests of our society;
- (2) refuse leave for the proposal to be moved as an amendment to the Crimes (Sexual Assault) Amendment Bill, 1981, because that proposal is alien to the provisions of that bill and because sufficient public notice of, and opportunity for debate on, the proposal has not been given, and because the proposal lacks majority public approval.

And your Petitioners, as in duty bound, will ever pray.

Petitions, lodged by Mr Caterson, Mr R. J. Clough and Mr Ramsay, received.

Homosexual Acts

The Petition of certain citizens respectfully sheweth:

Concern that necessary standards of public morality are seriously jeopardized by the proposal to legalize homosexual acts between consenting male adults.

Your Petitioners therefore humbly pray that your honourable House:

- (1) reject the proposal because it is not in the best interests of our society;
- (2) refuse leave for that proposal to be moved as an amendment to the Crimes (Sexual Assault) Amendment **Bill**, 1981, because that proposal is alien to the provisions of that bill and because sufficient public notice of, and opportunity for debate on, the proposal has not been given, and because the proposal lacks majority public approval.

And your Petitioners, as in duty bound, will ever pray.

Petitions, lodged by Mr Cahill, Mr Cameron, Mr J. A. Clough, Mr Gabb, Mr Greiner, Mr McIlwaine, Mr Maher, Mr Moore, Mr Pickard and Mr Smith, received.

QUESTIONS WITHOUT NOTICE

CHILD PROSTITUTION

Mr MASON: Has the Minister for Police and Minister for Services been made aware of a report from social welfare workers and the long established, highly regarded Wayside Chapel that action by the special juvenile squad of the police force has resulted in an increase in child prostitution in the suburbs, particularly in Manly and Cronulla, and has driven child prostitution underground, into bars and massage parlours? In view of that and the serious concern in the police force about lack of powers to deal with these matters, will the Minister recommend that the Government support the motions proposed by the honourable member for Lane Cove, which will allow the police to deal effectively with prostitution and other offences?

Mr CRABTREE: No approaches have been made to me by any recognized welfare organizations.

Mr Dowd: Why should they bother?

Mr CRABTREE: The honourable member should keep quiet. His friends are demonstrating outside and they will deal with him later. No approach has been made to me by other than recognized people, such as the Salvation Army, who have told me privately that they acclaim what is being done about child prostitution and other illegal acts, especially in the Kings Cross area. Today I have been advised that since 13th March 1 536 persons have been detained, spoken to or charged in that area.

Mr Mason: How many charges, and what are the charges?

Mr SPEAKER: Order!

Mr CRABTREE: The Leader of the Opposition would like to know that 407 juveniles have been spoken to and a variety of action has been taken by the juvenile crime squad. The action has been to telephone parents, to convey juveniles home, to put them on a train at the parents' request or to contact or consult relevant welfare authorities. I am surprised that the Leader of the Opposition should join with the honourable member for Lane Cove to make another overt attack upon the police force of this State. Members of the Opposition are well known for their attacks upon police officers of this State.

My attention was drawn to an article that appeared in a newspaper some time ago. The honourable member for Lane Cove made comments when officers of this fine police force were sifting out evidence and staking out a place in an attempt to find the Woolworths' bomber. This armchair critic said that these officers were amateurish. I think it was *The Sun* newspaper that said it was time that there were not so many armchair critics in Parliament. Of course he **will** say it now, because he trades—as does the Opposition—on attacks on a fine police force.

[Interruption]

Mr SPEAKER: Order! I call the honourable member for Bligh to order.

Mr CRABTREE: The honourable member for Bligh ought to dissociate himself from such conduct. He should sit on the Government benches for a while and get some clean air. I assure the House that, despite the tactics of the Leader of the Opposition and many of his colleagues, the New South Wales police force will maintain law and order. It will adopt a commonsense attitude. If the Leader of the Opposition is interested in prostitution—whether it occurs in Manly, Cronulla or Dubbo—it is his duty to come and see me or the Commissioner of Police and say whether he has evidence that the law is being broken. The Government has challenged him before and he has done nothing. Again I suggest to him that if he has any evidence of juvenile delinquency he should get in touch with my colleague the Minister for Youth and Community Services.

Mr Mason: The Wayside Chapel has said that this is happening.

Mr CRABTREE: I do not want to knock the Reverend Ted Noffs. The Leader of the Opposition is on the wayside at the present time.

ATMOSPHERIC LEAD LEVELS

Mr RAMSAY: I direct a question without notice to the Minister for Planning and Environment. Is he aware that recently atmospheric lead levels reached **28.2** microgrammes a cubic metre in one day in Port Kembla? Is the Minister aware also that the National Health and Medical Research Council lead incidence target is 1.5 microgrammes a cubic metre? In view of the fact that lead readings have increased sharply, will he advise me and the House of any moves undertaken by the State Pollution Control Commission to stop dangerous fall-out from the Electrolytic Refining and Smelting Company of Australia Limited, which fall-out may be affecting the health of residents and school students in the Port Kembla area?

Mr BEDFORD: I thank the honourable member for Wollongong for his question. He shows continued interest in the quality of air, particularly in the area of Port Kembla near the works of Electrolytic Refining and Smelting Company of Australia Limited. My attention has been drawn to the atmospheric lead level figures he mentioned. Lead levels in the atmosphere of Port Kembla have recently shown a sharp increase. Since late in 1978 levels monitored by the State Pollution Control Commission have shown marked increases particularly in the area near the Electrolytic Refining and Smelting Company's works. Since then some high levels, with the highest monthly average being 18.9 micrograms of lead per cubic metre in September 1979, have been recorded at the State Pollution Control Commission's Military Road sample station. From September 1979 readings showed a steady decline until January 1981 when a monthly average of **13.7** micrograms of lead per cubic metre was recorded.

The company attributes the high level readings recorded in January to operating problems with its blast furnace, which was taken off line for overhaul on 21st January, the day that the highest lead level was recorded. In the meantime, at its eighty-eighth session in October 1979, the National Health and Medical Research Council outlined its long-term goal for atmospheric lead, determined on 24-hour samples taken over a 6-day cycle for three months. The value recommended is, as the honourable member for Wollongong has stated, 1.5 micrograms of lead per cubic metre. Lead values in other industrial areas of Port Kembla have shown 3-monthly values in the range of 0.38 to 0.66 micrograms of lead per cubic metre over the same period. That is a satisfactory result. The State Pollution Control Commission believes that the **difference** at the Military Road sample station is attributable to the industrial premises of Electrolytic Refining and Smelting Company of Australia Limited.

The State Pollution Control Commission considered the main source of **lead** bearing fumes from this plant to be from the Pierce Smith convertors. The company was served a notice under section 17 of the Clean Air Act to hood completely and collect fugitive fume emissions from that section by September 1980. This work was completed but lead fume readings, though falling significantly, have not approached the National Health and Medical Research Council's long-term goal. The commission has asked the company to analyse its fume collection system to indicate how the collection of airborne impurities might be improved from the convertors, and all other sections of the plant. All possible sources of lead emission within the works are being investigated. The Government sees this situation as serious. All members will be aware that the action of the New South Wales Government in pressing for the introduction of lead-free petrol has led to the recent adoption of a national policy which should lead to a significant reduction in atmospheric lead levels resulting from vehicle emissions in major urban areas. The Government will require a total emission control programme and not a piecemeal approach at this industrial site in Port Kembla. The problem is most serious.

DROUGHT ASSISTANCE

Urgency

Mr PUNCH (Gloucester), Leader of the Country Party [2.33]: I move:

That it is a matter of urgent necessity that this House should forthwith consider the following motion, **viz.:**

That the Government must act immediately to declare parts of New South Wales as special disaster areas with needs of assistance beyond existing drought relief and aid schemes.

It is imperative that this House debate this motion to impress upon the Government the need for immediate action. A continuation of the Government's negligent response to the drought will bring a further serious decline in the fortunes of rural areas. Action taken now would save the State far more money in the long run than it would cost to support country people in one of their greatest times of need. It is in the interests of the whole State that immediate action be taken. The matter is even more urgent because this is far from being the first time that I have tried to impress upon the Government that much more needs to be done to help country people survive this drought. It should not be necessary—but unfortunately it is necessary—again to urge

the Government to act now. The prosperity of this State depends ultimately upon a healthy rural economy. Debate of the matter now is vital to spur the action necessary to offer assistance.

Though some rain has fallen in coastal areas, the only beneficial rain which has fallen for up to four years in most parts of the State was over the past week. Spirits were lifted a little by falls which brought a bit of green to some hard, parched country that was still able to respond. But without general rain the country **will** not be able to provide winter feed for stock or give wheat farmers much hope of getting a crop into the ground. In most areas, no matter how much rain falls in weeks to **come**, hand-feeding or agistment of stock will be essential through the winter, and little agistment is available. It is urgent for this House to agree to debate the drastic measures which must be taken by the Government to save the present disaster from turning into a catastrophe.

Mr SPEAKER: Order! There is far too much audible conversation in the Chamber.

Mr PUNCH: I have recently spent two days in three vital centres out west **talking** to community leaders, all of whom tell much the same story. The State Government has moved too slowly and been too mean. Landowners in the drought-stricken areas are living off their capital and have been doing so for as long **as** two years. Most are committed to the land and will see the drought through to the end. But how far off is the end when some landowners—indeed, many—now owe as much as their assets are worth? This winter will be the crunch for rural people and for the town businesses that depend on them. Families operating some shops are on the breadline, with net incomes of about \$100 a week. Families on unemployment benefits do better than that, and already there are far too many of those.

Recent unemployment figures for the two western districts centred on Dubbo and Broken Hill show 4 500 people registered as unemployed and only one vacancy offering for every 25 persons registered. That situation contrasts with the statistics in Sydney where there are 6.8 job seekers for every vacancy. A further indication of the Government's lack of serious attention to maximizing employment opportunities is the awarding of contracts for grain storage silos in country areas. At Cootamundra and Gilgandra contracts have been awarded to a Victorian firm rather than a New South Wales firm, without proper consideration of the 10 per cent preference in price for New South Wales industries and 5 per cent for country industries, and also without any effort by the two local Labor Party members.

Mr Sheahan: Rubbish. That is not true.

Mr PUNCH: The difference in tenders was 3 per cent, but the tender of the New South Wales firm was passed over. It would be bad enough at any time to fail to apply the full country and State preferences: at this time it is reprehensible. An example of how urgently farmers need assistance to save their breeding stock may be taken from figures for the Bourke shire where early in 1978 there were 1.3 million sheep. That number is now down to 330 000, or one-quarter of what it was three years ago. The number of sheep in Walgett shire has halved in the past three years. This statistical picture is repeated in varying degree in the forty-seven drought-declared areas of the State.

The Government has an unavoidable top priority decision to make—to plan **as** a matter of the utmost urgency the means of rescuing country economies from being forced into a worse depression this winter. **Graziers** in this State should not reach the position where they have to go to other States to buy so that they may rebuild the herd they once had. Some **graziers** decided that the only chance of surviving so that

they could resume their grazing operations when the rains come was to sell off the stock that they had remaining. Some properties which three years ago carried as many as 25 000 sheep now have none at all. Honourable members understand why graziers adopt this approach, though it is not in the interest of the State. How else can they minimize expenses when income has ceased but bills continue to come in? Their council rates, their commitments as Western Lands lessees, their contributions to a pastures protection board and their levies for wild dog destruction continue to come in, but they must eat. As well, they must maintain their properties.

Special emergency grants are needed to assist persons affected by the drought to meet their commitments. Those grants should be combined with a drought unemployment relief scheme funded by the State Government through shire councils, similar to the one the former coalition Government had in the 1965–68 drought. That scheme provided direct income and stimulated stagnant rural economies to provide employment. A scheme of that kind should be reintroduced to provide employment opportunities for farmers, graziers, their employees and employees of businesses in the urban communities. The money that would be injected into the local economy by such a scheme would rejuvenate many country towns.

Last year and this year I warned repeatedly that small businesses have been harmed by the drought and that assistance should be provided for them in the same way as it has been given in Queensland and Western Australia. The State Government pays lip-service to granting this assistance when in fact it should initiate such assistance. I cannot understand why the Government has not acted. It's failure to act demonstrates its neglect of country people. Are Queensland and Western Australian shopkeepers, who have been given assistance, somehow different from those in New South Wales? The federal Government wants to provide \$3 for every \$1 that the State Government should put up. Why has the State Government not seriously attempted to initiate such a scheme?

My party would willingly co-operate with the Government to make up for lost time in putting together a detailed package of assistance. Without this assistance, this State faces a further depletion of its herds and a general economic decline to the point at which recovery would become a decade-long grind. City dwellers should beware that the cost to them of neglect to date is yet to be felt. That will be when the turnoff from drought lands ceases and every possible beast is being kept for breeding and restocking instead of for slaughter. Without doubt, meat prices will rise. The farmer will not be to blame; only the Government, which neglected its pressing duty to all its citizens to minimize the drought's effects, will be responsible.

A quick look at the National Country Party's proposals will indicate how much begs to be done and how quickly they need to be examined by this House. A permanent New South Wales drought committee composed of representatives of government, statutory bodies, primary producers organizations, pastures protection boards and chambers of commerce should be established to review all forms of assistance at present available and to recommend how they may be varied to deal with changing drought conditions. At the same time this Government should move to establish a permanent federal-State drought committee to review and recommend forms of assistance and the financing of that assistance. New and appropriate assistance to country communities should be introduced through an immediate State drought employment scheme for rural and urban people whose livelihood is affected by the drought.

Further financial assistance in the form of grants should be made available immediately to save breeding stock from either slaughter or starvation. Grants should be made to those severely affected by prolonged drought to assist them to meet their commitments for council rates and similar charges. Loans for larger sums and over

longer terms should be made to enable those who survive the drought to recover quickly. The Government should grant higher rail freight subsidies, rising from 60 per cent to 75 per cent, for the cartage of fodder and stock to or from agistment. Charity is not sought in these proposals. There is a need for sensible, economic allocation of the State's financial resources for the sake of both country and city. We cannot afford to allow a further deterioration in country economies as a result of a disaster that has developed according to our worst fears. Recovery has already been jeopardized by too little action to plan for the worst. I ask honourable members to ensure that the position is now remedied as far as possible.

Mr WRAN (Bass Hill), Premier and Treasurer [2.43]: All honourable members and persons with the interests of the State at heart are concerned about the continuing effects of one of the longest droughts that this State—indeed, the whole of the eastern part of Australia—has experienced. I find somewhat hypocritical the views expressed today by the Leader of the Country Party, who must know that this Government has lifted the levels of drought assistance higher than ever before in the history of New South Wales. For instance, this year carry-on loans, dairy company loans, restocking loans and freight and rail concessions, which are paid at the rate of about \$8 million a month, will total \$70 million for the financial year. Rail revenue lost because of the drought will amount to almost \$70 million. Drought assistance provided by the New South Wales Government from 1st January, 1980, to 31st December, 1980, totalled more than \$30 million.

The Leader of the Country Party did not mention the fact that drought relief is now covered by the national disaster relief scheme. Commonwealth assistance to this State is covered by that scheme. The agreement provided that until 1978 New South Wales paid the first \$5 million and the Commonwealth paid the rest. In June 1978 a unilateral decision by the then acting Prime Minister, the federal Leader of the National Country Party, The Rt Hon. J. D. Anthony, changed this amount to \$10 million and \$1 in every \$4 thereafter each year. In other words, the Leader of the National Country Party deserted the farmers in the eastern part of Australia in their hour of need: his party backed away from its financial responsibility. This means that in this financial year, of the \$70 million, which will be provided in drought assistance, the State Government will contribute \$25 million instead of the previous figure of \$5 million.

In moving this motion the Leader of the County Party suggested a permanent federal-State drought committee. It is a sensible suggestion, but I remind the House that when this Government approached the Prime Minister on this issue—and presumably the Prime Minister in turn approached the Leader of the National Country Party, the Rt Hon. J. D. Anthony—the proposal was rejected. Therefore, there is no point in the Leader of the Country Party in New South Wales piously suggesting measures of co-operation between the State Government and the federal Government. He must know that the Prime Minister has set his mind and his purse against financial assistance. Indeed, the Rt Hon. J. D. Anthony is the architect of the present restrictive drought relief scheme. If the Leader of the Country Party is genuine in his appeal, as distinct from wishing to engage in histrionics, I advise him to persuade the Rt Hon. J. D. Anthony to give him support. If the National Country Party were to support these proposals, it may then have behind it the weight of the federal Government—although that is highly unlikely.

I remind the House that this year, despite general freight increases as a result of the drought, no increases have taken place in the carriage of wheat, cattle, fruit and vegetables; indeed, there have been no freight increases in those commodities since July 1979, and that has resulted in a loss of income of \$25 million. The Leader of the Country Party told the House that he had recently visited drought-affected

areas. If he visited country areas more frequently, he would be more familiar with these problems. However, I am glad that at last he has made an effort to go out into the bush to find out what is happening there. He must assume that country people do not know what is going on. Let me give the House some before-and-after statistics. Before the Government was elected to office in 1976 the minimum distance set for road and rail freight subsidies was 60 kilometres; the figure is now 30 kilometres; the maximum rebate was 3 cents a kilometre, and it is now 60 cents; carry-on loans were \$3,000, and they are now \$30,000; restocking loans which were \$10,000 are now \$12,000.

I agree that there should be an unemployment scheme, to which the federal Government should be a party. This Government requested the Commonwealth Government to introduce an unemployment relief scheme similar to the 1965–1968 scheme. However, the federal Government—a government supported by the National Country Party—rejected that request. I do not know how the Leader of the Country Party in this House can suggest relief schemes for farmers when the same sort of suggestions are being turned down in Canberra by the federal Leader of the National Country Party, the Rt Hon. J. D. Anthony.

If the Leader of the Country Party wishes to assist the primary producers of New South Wales with some of the proposals he has put forward, he should seek the support of the Rt Hon. J. D. Anthony. As is customary for the Leader of the Country Party, he engaged in falsehoods about the awarding of contracts for the construction of grain storage bins at Cootamundra and Gilgandra. The Minister for Agriculture will deal with that matter in detail in another place. Everything that the Leader of the Country Party said today about that matter is false, and known by him to be false. If that is not so, he made the assertion with reckless irresponsibility.

Let me make the situation perfectly clear. If the Country Party, or any other movement in New South Wales, puts forward a feasible and **practical** proposal on drought relief, it will be considered seriously and, where possible, the Government will implement it. I **admire** organizations like the Livestock and Grain **Producers** Association of New South Wales, which carries out its obligations responsibly. However, I deplore the hypocrisy of the Country Party in New South Wales, which takes one view in the Parliament when it suits the party and takes an entirely different view when it comes to honouring its obligations in Canberra through the Leader of the National Country Party, the Rt Hon. J. D. Anthony. The Government will not agree to urgency.

Question of urgency put.

The House divided.

Ayes, **36**

Mr Arblaster
Mr Barraclough
Mr Boyd
Mr Brewer
Mr J. H. Brown
Mr Bruxner
Mr Cameron
Mr J. A. Clough
Mr Dowd
Mr Duncan
Mr Fischer
Mr Fisher
Mrs Foot

Mr Freudenstein
Mr Greiner
Mr Hatton
Mr Healey
Mr King
Mr McDonald
Mr Mason
Mr Moore
Mr **Murray**
Mr Osborne
Mr Park
Mr Pickard
Mr Punch

Mr Rozzoli
Mr **Schipp**
Mr Singleton
Mr Smith
Mr Sullivan
Mr Toms
Mr West
Mr Wotton

Tellers,
Mr **Caterson**
Mr Taylor

Noes, 58

Mr Akister	Mr Gabb	Mr O'Neill
Mr Anderson	Mr Gordon	Mr Paciullo
Mr Bannon	Mr Haigh	Mr Petersen
Mr Barnier	Mr Hills	Mr Quinn
Mr Bedford	Mr Hunter	Mr Ramsay
Mr Booth	Mr Jackson	Mr Robb
Mr Brereton	Mr Jensen	Mr Rogan
Mr Britt	Mr Johnson	Mr Ryan
Mr Cahill	Mr Johnstone	Mr Sheahan
Mr Cavalier	Mr Keane	Mr A. G. Stewart
Mr Cleary	Mr Knott	Mr K. 3. Stewart
Mr R. J. Clough	Mr McGowan	Mr Walker
Mr Cox	Mr McIlwaine	Mr Webster
Mr Crabtree	Mr Maher	Mr Whelan
Mr Curran	Mr Mair	Mr Wilde
Mr Day	Mr Mallam	Mr Wran
Mr Degen	Mr Mochalski	
Mr Durick	Mr Mulock	<i>Tellers,</i>
Mr Egan	Mr Neilly	Mr Flaherty
Mr Einfeld	Mr O'Connell	Mr Wade

Question so resolved in the negative.

Motion of urgency negated.

QUESTIONS WITHOUT NOTICE (Resumed)

RAIL SERVICES

Mr **McILWAINE**: Has the Minister for Transport received many complaints from constituents of the Yaralla electorate about the late running of trains? Was **a** special rail task force set up to devise ways to improve the on-time running performance of trains and to upgrade the rail service? What initiatives will the State **Rail** Authority take as **a** result of the recommendations of that task force?

Mr **COX**: In 1979 the honourable member for Yaralla made a number of representations about the on-time running of trains. At that time some problems were being experienced with the on-time running performance of the rail service. At my direction, in December 1979 a rail operations task force was formed to study the problems of unsatisfactory on-time running of trains and the standard of rail services. The task force consisted of hand-picked members of the staff of the State Rail Authority who had specific rail operations skill and were directly responsible to the deputy chief executive of the State Rail Authority, Mr Ron Christie.

The task force was established to take over exclusive responsibility for improving rail operations in the lead up to the restructuring of the former Public Transport Commission in July last year. The effect of the work of the task force and the highly successful reorganization of public transport management of rail operations performance has been remarkable. The State rail system now enjoys its best on-time running record in the past eight years. That is testimony to the determination of the Government to get rail transport running properly. Under the administration of the Urban Transit Authority, Government buses have had their best performance for twenty-five

gears. On-time running for the suburban network is averaging 87 per cent approximately, and interurban services are running on time at an increasing average of 80 per cent. That shows the support I have received from the task force.

I thank the officers who served on the task force, which has already completed and seen implemented no fewer than forty-six special initiatives aimed at maintaining or improving train running performances and general standards. A further fifteen major recommendations are at the planning or approval stage. Honourable members will realize that the improvements are far too many for me to enumerate, but I shall inform the House of some of the decisions of the task force that will give an indication of the type of operation that it has been considering. One of the recommendations is for a refuge loop at Leightonfield to be converted to a by-pass loop for passenger trains. That was approved on 22nd February, 1980, and work is to be completed by June 1981. Provision of an up-passing loop at Thornleigh was approved, and work will be completed by July 1981. Design work is in progress for the provision of terminating facilities at Cowan. Approval will be given soon for that work to start. In addition, wiring has been completed for the provision of internal communications in 160 suburban double deck cars. Funds have been allocated for the duplication of the line between Gymea and Caringbah, and that work is expected to be completed during the 1982–83 financial year.

Some other matters that the task force has examined are the elimination of minor problems in train running during intense supervision periods between January and April 1980, and an emphasis on repairs of insulated and glued joints to reduce signal and track failures. During inspections way and works branch track inspection personnel are cleaning insulated joints, particularly in the city underground, on approaches to Central station, and on all platform approaches and sharp curves throughout the metropolitan area. Signalling for trains entering No. 19 platform has been improved. In addition direct telephone connections have been set up between traffic trouble centres and all control rooms on electric train platforms at Central station.

Finally, arrangements have been made for the mechanical branch to monitor wet weather problems on single deck electric rolling-stock. Splashguards, made of cast iron, over resistances are being replaced with stainless steel guards to ensure more reliability. In the Central area, extra crossovers have been constructed to improve performance, particularly during delays in the peak hour service. Those are some of the achievements of the task force, but I shall give the House a more detailed report of its recommendations and approvals granted. I thank the honourable member for his question. It shows once again his interest in public transport in his electorate. I am sure the honourable member would agree that there has been an improvement in the on-time running of trains. The facts I have given the House give an indication of the performance of the task force.

HORNSBY AND KU-RING-GAI DISTRICT HOSPITAL

Mr PICKARD: I address a question without notice to the Minister for Health. Has the board of the Hornsby and Ku-ring-gai district hospital had well in excess of \$1 million set aside for the building of an accident and emergency ward since 1975? Was permission to proceed with that extension withdrawn in 1976 by the Labor Government? Does the hospital at present treat more than 50 000 accident emergency patients in old and inadequate buildings? When will the Minister give permission to the board to expend its own money to provide the needed extensions of this important health service?

Mr K. J. STEWART: I feel certain that the Hornsby and Ku-ring-gai district hospital had permission to proceed with the plan. Approval for the original plan was withdrawn because the construction would have been isolated. The Government felt there should be a master plan for development of the hospital, and that the development should have regard to the whole of the resources of the hospital. I had thought, despite the tenor of the honourable member's question, that he was very much in favour of the attitude of the Labor Government on this matter.

Mr Pickard: I am not, and the Minister knows that.

Mr SPEAKER: Order!

Mr K. J. STEWART: I understand there has been no delay in the planning and redevelopment of the Hornsby and Ku-ring-gai district hospital.

Mr Pickard: It has been in the planning stage for five years.

Mr SPEAKER: Order!

Mr K. J. STEWART: I shall undertake to ascertain what the present position is and inform the House in due course.

HANDICAPPED PERSONS

Mr J. H. BROWN: Is the Premier and Treasurer aware that a large number of handicapped persons have been invited to attend a reception for Prince Charles to be held in Sydney this week? Is he aware also that those persons have been offered rail warrants although many of them are not able to travel by train?

Mr Cavalier: On a point of order. A similar question to the one asked by the honourable member for Raleigh is on the *Questions and Answers* paper for today. I refer to question No. 1096. I submit that the question asked by the honourable member is out of order.

Mr SPEAKER: Order! As the question asked by the honourable member for Raleigh is similar to a question on today's Questions and Answers paper, I rule it out of order.

RAILWAY STATION FOR AMBARVALE: CAMPBELLTOWN-GOULBURN RAIL ELECTRIFICATION

Mr MALLAM: I ask the Minister for Transport a question without notice. First, is it a fact that the Minister has given permission for the construction of a railway station near Arnbarvale in 1981? If so, will he say what stage has been reached with the work? Second, will the Government proceed with electrification of the railway line from Campbelltown to Goulburn?

Mr COX: Approval has been given for a new station to be built at Arnbarvale and funds will be allocated for it in the coming financial year. I am not aware of how long it will take to complete the building of the station. I shall obtain that information and inform the honourable member for Campbelltown and the House. The honourable member for Campbelltown asked also about electrification of the railway line from Campbelltown to Goulburn. That is in the Government's programme for electrification but at the moment I am not in a position to give the

honourable member a time slot for that work. I shall endeavour to obtain that information, also. I shall let the honourable member for Campbelltown and the House know at the appropriate time.

Mr SPEAKER: Order! The time for questions has expired.

HANDICAPPED PERSONS

Mr WRAN: I seek the indulgence of the House. In his point of order the honourable member for Fuller referred to question number 1096 in *Questions and Answers*. I ask for the indulgence of the House in this instance—as it affects the interests of a number of disabled people—to be allowed to answer the question orally so that the matter may be cleared up.

Mr SPEAKER: Order! Has the Premier and Treasurer the indulgence of the House?

Mr Mason: Yes.

Mr SPEAKER: Leave is granted.

Mr WRAN: It is a fact that a significant number of handicapped people, with other people, have been invited to meet His Royal Highness the Prince of Wales in Sydney during his visit to New South Wales next week. A number of organizations of disabled persons have been invited to nominate people to meet the Prince of Wales. So far as I know, no association has boycotted the function because of inability of disabled members to travel by train. A number of organizations brought to the notice of the Government the inability of some disabled persons to travel by train. The Government has gone to considerable pains to provide alternative arrangements, either by way of air warrants, petrol allowances or special buses, whichever is the most suitable means of transport. I am advised that in all instances where problems have been brought to the attention of the Government in respect of difficulties of disabled people, arrangements have been made to make it as easy as practicable for them to attend the function next week to meet the Prince of Wales.

BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS ACT: DISALLOWANCE OF REGULATION

Mr GREINER (Ku-ring-gai) [3.16]: I move:

That this House disallows the amendment to the Building and Construction Industry Long Service Payments Regulations made pursuant to section 40 of the Building and Construction Industry Long Service Payments Act, 1974, as set forth in the Notice appearing in *Government Gazette* No. 23 of 30 January, 1981, a copy of which was laid upon the Table of this House on 5 March, 1981.

On 10th November, 1976, the Deputy Premier, Minister for Public Works, Minister for Ports and Minister for Housing introduced amendments to the Building and Construction Industry Long Service Payments Act of 1974. At that time the Minister said:

The Act provides a scheme whereby long-service benefits are made available to specified workers in the building and construction industry. Many workers in that industry were ineligible for benefits under the Long Service

Leave Act of 1955. Owing to the inherent nature of the building and construction industry, they were not able to maintain continuity of service with the one employer which is a necessary qualification for benefits under that Act. On the other hand, the long-service payments Act relates its benefits to service to an industry rather than to a particular employer. As a direct result of this legislation thousands of workers are now potentially eligible to receive benefits in respect of their long service in the industry . . .

The Deputy Premier, who then administered the Housing portfolio, went on to say, and I stress this:

. . . though they are, so far as employers are concerned, casual workers who may offer their services to many different employers.

The reason the Opposition seeks to disallow the regulation is that it is yet another step in a long process carried out under a rapid succession of Ministers administering the Housing portfolios—the Deputy Premier, Minister for Public Works and Minister for Ports, next the Minister for Technology and Mineral Resources, then the Minister for Consumer Affairs and now the Minister for Housing, Minister for Co-operative Societies and Assistant Minister for Transport—and is in complete contradiction to the original aims espoused in 1974 and endorsed by the Deputy Premier in 1976. The continuing grab for power, the use of the basically desirable scheme as a thin edge of a wedge towards the creation of a vast government-controlled monster long-service scheme has been pointed out repeatedly by Opposition supporters, particularly the Opposition spokesman on Housing, the honourable member for Byron, whom I thank for allowing me to lead in this debate.

The Opposition objects specifically to the part of the new regulation which, in schedule 1, adds "Plant, etc., Operators on Construction State Award", thus including workers under that award within the ambit of the Building and Construction Industry Long Service Payments Act. The Opposition takes this opportunity of expressing its strongest criticism, both of the way the scheme has been expanded in general, and of this particular regulatory amendment.

Mr Sheahan: On a point of order. The honourable member for Ku-ring-gai in moving disallowance of a regulation should not make a second reading speech.

Mr Greiner: On the point of order. The regulation that the Opposition seeks to have disallowed expands the scope of the scheme. It is obviously relevant for me to draw attention to the regulation in order to show its relationship to the ambit of the Act.

Mr Walker: It is a well-known concept of law that a regulation may not expand the provisions of an Act. That would be totally unconstitutional. On former occasions the Opposition has sought to widen the debate on the disallowance of a regulation by claiming that the regulation goes further than the Act. That is constitutionally impossible.

Mr J. A. Clough: On the point of order. The honourable member for Ku-ring-gai is attempting to show how the regulation is not consistent with the Act. He is entitled to do that. Unless he can make reasonable reference to the principal Act, the honourable member for Ku-ring-gai will be unable to show how the regulation is inconsistent with the Act.

Mr SPEAKER: Order! The honourable member for Ku-ring-gai has ten minutes in which to put his argument for disallowance of the regulation. I shall not allow him to make a second reading speech. The honourable member should have sufficient time to make reference to matters raised in the debate on the matter. I ask him to confine his remarks to showing why the regulation should be disallowed.

Mr GREINER: When it was originally introduced the legislation had the concurrence of both sides of the House. The point was made then that the agreement of the industry, that is both the employers and the employees, would be a **substantial** motivating force in the introduction and implementation of a successful scheme. That was the situation in 1974 and through 1976. The administration of the scheme by the Government has brought about a situation in which industry employer groups are close to a state of open revolt and in which there is every danger of the whole scheme collapsing.

Let us examine the regulations, specifically to please the Minister. The regulation before us has sought to encompass a variety of employees who operate front-end loaders, road rollers and tractor operated brooms and are employed under the Plant Operators Award. The majority of companies engaged in earthmoving, road construction and related activities work predominantly for the Government and semi-government bodies in road sealing, sealing subdivisional roads for developers and **only to** a minor extent sealing parking areas or other areas on building sites. I emphasize that to the Minister. In other words the regulation has brought within the scope of the Building and Construction Industry Long Service Payments Act permanent employees of companies and in many cases persons who spend more than 90 per cent of their time nowhere near a building site at all.

It has also the effective impact of making it more difficult for independent owner-drivers in the industry to escape the long service provisions of the scheme. Why should an independent small businessman who has decided to become a sub-contractor in the earthmoving industry—and has clearly evaluated in his own mind and to his own satisfaction the for and againsts and the risks or otherwise of his involvement—be under a direct or indirect compulsion to join the **Government's** scheme? If there is anything clear about the Government's administration of the long service scheme, it is that it has been unable to manage satisfactorily the existing scheme. This has been made clear by successive reports of the Auditor-General and it has been made clear by the Minister on his own admission that there has been a variety of consultants' reports on the building industry. Why enlarge the scheme when obviously the Government cannot manage the existing one?

Because of the compulsion on employers to contribute to the scheme, but with the absence of similar compulsion on employees to contribute, there is already a massive overhang—I guess there would be somewhere between \$10 million and \$15 million in the scheme, which **no** employee will ever be able to claim. **What** a nonsense it is to seek to expand a scheme to include new workers when the **Government** is incapable of running the existing scheme. Presumably the next **logical** amendment would be to include other persons employed under such other awards as the Transport Workers Award, who from time to time work on building sites.

I shall illustrate the cost of this regulation to a company engaged in the **earth-**moving industry. One earthmoving company advised me that its costs until 1st February, 1981—that is, until this regulation came into effect—were approximately \$108.33 per employee per year. The new cost under this regulation will be more than twice that sum—\$287.50 per employee per year. Under the general provisions of the Building and Construction Industry Long Service Payments Act the company would retain the use of the money, but under this regulation, the board will obtain \$287.50 per employee per year and obviously—assuming it gets its act together—will invest it at high interest rates, thus exacerbating the effective cost **to** the company. What benefit is this? There is no real benefit to the permanent employee who **is already** entitled to long service leave in the same way as are the vast majority of employees

in New South Wales. The situation is that there is no benefit to employees, but a **real** cost to industry. At the same time there is a further elimination of effective **freedom** of choice for self-employed people in the industry.

The Opposition, as a matter of principle, considers that this regulation is **an** expansion of the Building and Construction Industry Long Service Payments Act of 1974—far beyond its original intention. It serves no useful purpose whatsoever for **employees** in the earthmoving industry. Yet it adds a significant cost burden to the industry. The Opposition has therefore moved for the disallowance of the **regulation**.

Mr SHEAHAN (Burrinjuck), Minister for Housing, Minister for Co-operative Societies and Assistant Minister for Transport [3.26]: I do not mind if the honourable member for Ku-ring-gai takes advantage of the opportunity to canvass a whole range of matters from within the building and construction industry long service leave schema—if I may use that expression. The fact remains that in much of what he says he misrepresented the situation to suggest that it is limited to building in the normal sense—perhaps to house building or the construction of small commercial premises. As a result of legislation enacted by this Parliament in 1974, introduced by Ministers of the previous Government, some of whom were mentioned by the honourable member for Ku-ring-gai, these regulations deal with the building and construction industry.

Though the scope of the licensing provisions and so forth presently administered by the board may be limited to residential cottage construction and similar projects, the construction industry does include such works as roadways, railways, airfields, breakwaters, dock jetties, bridges, pipelines and the like. That is not the fault of this legislation. I should have thought that if the honourable member for Ku-ring-gai wished to put forward a brief from the Master Builders' Association, or anyone else objecting to the existing scheme, or to support the various suggestions that have been made from time to time to amend that scheme, he might have touched upon some other **aspect** of it and not simply the regulation dealing with plant operators.

[Interruption]

Mr SHEAHAN: The Deputy Leader of the Opposition had his opportunity as did the honourable member for Ku-ring-gai, during the debate on the 1980 amendment. If I remember rightly, the honourable member for Ku-ring-gai contributed to that debate. He spoke very well, but, of course, he woke up later that the speech **he** should have made then was the speech he made today.

[Interruption]

Mr SPEAKER: Order! Should the Deputy Leader of the Opposition **wish** to contribute to the debate he should seek the call at the appropriate time.

Mr SHEAHAN: Therefore the honourable member for Ku-ring-gai opposes the situation that applies as a result of the 1980 legislation, which extended the coverage of the scheme to plant operators specifically. All the matters contained in the **regulation** will be struck out if this motion is carried by the Parliament. The House cannot view the regulation as anything other than a legal extension of the scheme. It is totally in accord with the 1980 Amending Act. If there is some legal argument—and that is not the case---this is not the place to ventilate it. So far as the honourable member limiting his comments to permanent employees working nowhere near a building site, he **defined** building site in a narrow compass. The Government intends to support the implementation of this necessary regulation.

Mr BOYD: Mr **Speaker**—

Mr WADE (Newcastle) [3.28]: I move:

That the question be now put.

The House divided.

Ayes, 59

Mr Akister	Mr Face	Mr O'Connell
Mr Anderson	Mr Gabb	Mr O'Neill
Mr Bannon	Mr Gordon	Mr Paciullo
Mr Barnier	Mr Haigh	Mr Petersen
Mr Bedford	Mr Hills	Mr Quinn
Mr Booth	Mr Hunter	Mr Ramsay
Mr Brereton	Mr Jackson	Mr Robb
Mr Britt	Mr Jensen	Mr Rogan
Mr Cahill	Mr Johnson	Mr Ryan
Mr Cavalier	Mr Johnstone	Mr Sheahan
Mr Cleary	Mr Keane	Mr A. G. Stewart
Mr R. J. Clough	Mr Knott	Mr K. J. Stewart
Mr Cox	Mr McGowan	Mr Walker
Mr Crabtree	Mr McIlwaine	Mr Webster
Mr Curran	Mr Maher	Mr Whelan
Mr Day	Mr Mair	Mr Wilde
Mr Degen	Mr Mallam	Mr Wran
Mr Durick	Mr Mochalski	<i>Tellers,</i>
Mr Egan	Mr Mulock	Mr Flaherty
Mr Einfeld	Mr Neilly	Mr Wade

Noes, 36

Mr Arblaster	Mr Freudenstein	Mr Rozzoli
Mr Barraclough	Mr Greiner	Mr Schipp
Mr Boyd	Mr Hatton	Mr Singleton
Mr Brewer	Mr Healey	Mr Smith
Mr J. H. Brown	Mr King	Mr Sullivan
Mr Bruxner	Mr McDonald	Mr Toms
Mr Cameron	Mr Mason	Mr West
Mr J. A. Clough	Mr Moore	Mr Wotton
Mr Dowd	Mr Murray	
Mr Duncan	Mr Osborne	
Mr Fischer	Mr Park	<i>Tellers,</i>
Mr Fisher	Mr Pickard	Mr Caterson
Mrs Foot	Mr Punch	Mr Taylor

Resolved in the affirmative.

Question—That the motion be agreed to---proposed.

Mr GREZNER (Ku-ring-gai) [3.35], in reply: The Minister, in his brief and quite inconsequential reply, picked on only one point raised in my remarks. He sought to suggest that we were concerned with confining construction to residential construction. That shows that he did not listen to my remarks. The point made by the Deputy

Premier, Minister for Public Works and Minister for Ports in 1976 was that this scheme **concerned** casual workers or workers who followed the job. The essence of the case put by the Opposition today is that the thrust of the regulation is not to concentrate on casual employees or workers who follow the job. Both sides of the House agree there is a legitimate case for a regulation concerning casual workers. What we have today is substantially an extension of legislation to cover people already permanently employed in the industry and covered in respect of long **service** leave.

In 1976, in a debate in this House, the Deputy Premier said that a subcontractor may contribute to the scheme—that it was a voluntary choice. What we have now is an attempt to get away from the voluntary nature of the scheme. The Deputy Premier, Minister for Public Works and Minister for Ports said that it should be voluntary for subcontractors to come into the scheme. Why does the Government not now support the views of both sides of industry and what was said by the Deputy Premier on that occasion? The voluntary aspect of the scheme as it applied to subcontractors was outlined to the House when the legislation was introduced. Why cannot the Government recognize the right of subcontractors to opt for joining the scheme if they so choose and thus remove any element of coercion or compulsion, either direct or indirect? I shall not detain the House unduly, but I must say something about the Government's inability to manage the existing long service leave scheme. The Minister totally ignored that point.

Surely no person with even the most remote knowledge of the operations of this scheme would argue with the proposition that it has been totally and completely mismanaged. It is common knowledge that the board's computer programming was unable to cope with the workload consequent upon an increased number of employer contributions. Approximately 650 000 individual contributions are received each month and the board does not know what to do with those contributions for they do not attach to any individual person or worker. The situation was totally out of control even before this regulation was introduced. Why does the Government seek to extend the scope of the scheme to include another 8 000 to 10 000 workers before it is operating efficiently?

Why will the government not come clean about this long service scheme? Why will it not come clean about the Builders Licensing Board and the housing industry in general? Why will the Minister not have the gumption to table the McKinsey report upon the Builders Licensing Board? Why will he not take into account the Price Waterhouse report upon the structure of housing generally? The operations of the Builders Licensing Board during the period of office of the Minister For Housing, Minister for Co-operative Societies and Assistant Minister for Transport and that of his predecessor have been a complete shambles. Documentary evidence shows the board is unable to run the scheme effectively. In that context, to seek to extend the scheme without giving a benefit to employees but placing an extra burden on another section of industry is totally counterproductive and futile. I urge the House to vote for disallowance of the regulation.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 36

Mr Arblaster
Mr Barraclough
Mr Boyd

Mr Brewer
Mr J. H. Brown
Mr Bruxner

Mr Cameron
Mr J. A. Clough
Mr Dowd

Mr Duncan	Mr Mason	Mr Smith
Mr Fischer	Mr Moore	Mr Sullivan
Mr Fisher	Mr Murray	Mr Toms
Mrs Foot	Mr Osborne	Mr West
Mr Freudenstein	Mr Park	Mr Wotton
Mr Greiner	Mr Pickard	
Mr Hatton	Mr Punch	
Mr Healey	Mr Rozzoli	<i>Tellers,</i>
Mr King	Mr Schipp	Mr Caterson
Mr McDonald	Mr Singleton	Mr Taylor

Noes, 59

Mr Akister	Mr Face	Mr O'Connell
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Mr Booth	Mr Hunter	Mr Ramsay
Mr Brereton	Mr Jackson	Mr Robb
Mr Britt	Mr Jensen	Mr Rogan
Mr Cahill	Mr Johnson	Mr Ryan
Mr Cavalier	Mr Johnstone	Mr Sheahan
Mr Cleary	Mr Keane	Mr A. G. Stewart
Mr R. J. Clough	Mr Knott	Mr K. J. Stewart
Mr Cox	Mr McGowan	Mr Walker
Mr Crabtree	Mr McIlwaine	Mr Webster
Mr Curran	Mr Maher	Mr Whelan
Mr Day	Mr Mair	Mr Wilde
Mr Degen	Mr Mallam	Mr Wran
Mr Durick	Mr Mochalski	<i>Tellers,</i>
Mr Egan	Mr Mulock	Mr Flaherty
Mr Einfeld	Mr Neilly	Mr Wade

Question so resolved in the negative.

Motion negatived.

ASSENT TO BILLS

Royal assent to the following bills reported:

- Co-operation (Amendment) Bill
- Credit Union (Amendment) Bill
- Government Guarantees (Co-operation) Amendment Bill
- Housing Indemnities (Co-operation) Amendment Bill
- Landlord and Tenant (Rental Bonds) Amendment Bill
- Permanent Building Societies (Co-operation) Amendment Bill

TOTALIZATOR (OFF-COURSE BETTING) AMENDMENT BILL
GAMING AND BETTING (GREYHOUND RACING CONTROL BOARD)
AMENDMENT BILL
TOTALIZATOR (RACECOURSE DEVELOPMENT FUND) AMENDMENT BILL
TROTTING AUTHORITY (TOTALIZATOR) AMENDMENT BILL

Introduction

Motion (by Mr Booth) agreed to:

That leave be given to bring in the following cognate bills:

- (i) A bill for an Act to amend the Totalizator (Off-course Betting) Act, 1964, in respect of the constitution of the Totalizator Agency Board, the distribution of surplus commission and income and the advertisement by that Board of its services and in certain other respects.
- (ii) A bill for an Act to amend section 56J of the Gaming and Betting Act, 1912, in relation to the Greyhound Racing Control Board Fund.
- (iii) A bill for an Act to amend section 19A of the Totalizator Act, 1916, in relation to the Racecourse Development Fund.
- (iv) A bill for an Act to amend section 11 of the Trotting Authority Act, 1977, in relation to the Trotting Authority Fund.

Bills presented and read a first time.

Second Reading

Mr BOOTH (Wallsend), Minister for Sport and Recreation, Minister for Tourism and Assistant Treasurer [3.43]: I move:

That these bills be now read a second time.

The main bill is cognate with the Gaming and Betting (Greyhound Racing Control Board) Amendment Bill, the Totalizator (Racecourse Development Fund) Amendment Bill and the Trotting Authority (Totalizator) Amendment Bill. The bill has been introduced by the Government to allow the Totalizator Agency Board, subject to ministerial approval in each instance, to establish offices of the board in premises used for other purposes regardless of the distance of the offices from the General Post Office, Sydney; to permit the TAB to advertise its services; to allow the operating costs of the Greyhound Racing Control Board and the Trotting Authority of New South Wales to be met from the TAB's surplus as a first charge and to make certain other amendments associated with the operation of the TAB.

The principal Act at present requires every office, branch or agency of the TAB to which the public is admitted to consist of separate premises to which access may be had from the street without passing through any occupied premises, and no other business shall be allowed to be conducted on the board's premises. However, provision exists in the Act for the board, subject to the Minister's approval, to establish subagencies in premises used for other purposes in areas situated beyond 64 kilometres from the General Post Office, Sydney. This provision was specifically inserted in 1971 to allow the board to spread its offices into small towns which otherwise could not sustain a full agency or branch. Multipurpose retail and commercial developments in the past few years have changed the older concepts of separate and individual development of shops and offices, and with the establishment of small neighbourhood

shopping centres in the more recently developed suburbs, the board, as a result of the current restrictions, is often faced with the choice between nearby centres. In choosing one site rather than another the board is invariably criticized for neglecting an area.

It should be pointed out also that the growth of shopping malls and arcades with TAB offices located in them and where stallholders operate on the public thoroughfares seems to defeat the purpose of not allowing businesses to mix. Certainly there has been no adverse public reaction to the provision of TAB facilities in arcade-type premises. In fact, developers actively seek TAB participation in their developments. It would be expected that the creation in the suburbs of smaller offices of the board in premises used for other purposes would not only provide the investing public with a more accessible service but also reduce the operating costs of the board. Any savings achieved would, of course, be passed on to the racing industry by way of increased distributions to clubs. At the same time the proposal could provide small business operators with an opportunity to increase their business activities.

The main bill proposes the establishment of subagencies within 64 kilometres of the General Post Office, Sydney to be subject to ministerial approval, as is the case with subagencies now established beyond that area. Basically the amendment before the House seeks only to lift the restriction as to the area in which subagencies of the board might be established. Retaining the need for ministerial approval in these instances is particularly pertinent, having regard to the requirements of the Act whereby the board in establishing offices, branches, et cetera, must have regard to the proximity of the proposed offices, branches, et cetera, to churches, schools and premises licensed under the Liquor Act, a situation that the Government does not seek to change.

The removal of restrictions on advertising by the TAB will give the board the same opportunities as soccer pools, lotteries and lotto. There has been general public acceptance of the advertising of soccer pools and so on, and the Government believes that the TAB also should be able to advertise its services. The Victorian, Western Australian and Tasmanian TABs are permitted to advertise their services and it is understood that the Queensland board will soon be in a similar position. It is considered also that advertising by the TAB of its services might better educate some off-course punters and thereby assist the Government in its crack-down on illegal starting price operators by changing the attitudes of investors.

The proposal to fund the operating costs of the Greyhound Racing Control Board and the Trotting Authority of New South Wales from the annual surplus of the TAB is a further measure by which the Government intends to provide assistance to the greyhound and trotting industries of this State. The payments to the board and the authority of funds in the form of first charges against the greyhound and trotting industries' share of the Totalizator Agency Board's surplus would be similar to the arrangements that exist at present in the galloping industry, whereby certain of the operating costs of the Australian Jockey Club are met as a first charge against the galloping industry's share of the surplus. The Victorian greyhound and trotting controlling authorities also are funded in this manner. Prior to the establishment of the trotting authority, the control and supervision of the trotting industry was in the hands of the New South Wales Trotting Club Limited. This club also had certain operating costs met as a first charge against the trotting industry's share of the surplus.

The funding of the Trotting Authority and the Greyhound Racing Control Board in this manner will provide uniformity in the funding of the three controlling bodies of racing in New South Wales and will provide a fairer and more equitable method of apportioning their costs of operation. In effect, the proposal involves the

Mr Booth]

waiving of the levies now paid by the various trotting and greyhound racing clubs to the Trotting Authority of New South Wales and the Greyhound Racing Control Board and funding any operating deficiencies of the authority and the board by way of payments from the Totalizator Agency Board's surplus. Apart from funding the administrative costs of the Trotting Authority of New South Wales from the surplus of the Totalizator Agency Board, it is intended also that payments made to the authority as a first charge against the trotting pool would include a component towards the conduct of a sires stake programme. The provision of funds for a sires stake programme was specifically sought by trotting industry participants and in effect it will allow for the establishment of a programme similar to that recently introduced in Victoria.

The bill provides also for several other amendments associated with the operation of the TAB, including a reconstitution of the board to provide for the representation on the board of the Trotting Authority of New South Wales instead of the New South Wales Trotting Club Limited. The Trotting Authority Act of 1977 constituted the Trotting Authority of New South Wales and placed the control and regulation of trotting and pacing in the authority in lieu of the New South Wales Trotting Club Limited. As it now stands each of the other controlling bodies of racing, that is, the Australian Jockey Club and the Greyhound Racing Control Board, are represented on the board and accordingly it is believed that the authority should now assume from the New South Wales Trotting Club Limited representation on the board.

I deal next with the Gaming and Betting (Greyhound Racing Control Board) Amendment Bill. In introducing the Totalizator (Off-course Betting) Amendment Bill, 1981, and the Totalizator (Racecourse Development Fund) Amendment Bill, 1981, which provide for the making of payments to the Greyhound Racing Control Board from the annual surplus of the Totalizator Agency Board and from the racecourse development fund, the Government considered it necessary to amend the Gaming and Betting Act, 1912, to provide for the accounting for and application of money paid to the board from these sources. Accordingly, the bill has been drafted to make it a requirement that all money paid to the Greyhound Racing Control Board under the provisions of the Totalizator (Off-course Betting) Act and the Totalizator Act shall be paid into the greyhound racing control board fund. The contingencies under which money may be paid out of that fund are already provided for under the existing legislation.

The next bill is the Totalizator (Racecourse Development Fund) Amendment Bill. In introducing the Totalizator (Off-course Betting) Amendment Bill, 1981, the Government was aware that its proposal to fund the operating deficiencies of the Greyhound Racing Control Board and the Trotting Authority of New South Wales from the annual surplus of the Totalizator Agency Board would preclude the authority and the board from accruing reserves from which they could finance capital projects. Naturally, this would hinder the operations of the authority and the board and at the same time would not be in the best interests of the industries they represent. It would appear that the most appropriate source of finance to overcome this problem would be the racecourse development fund. That fund was established in 1971 following the enactment of the Racing (Amendment) Act, 1971, and was set up as a means of providing financial assistance to race clubs to enable them to make permanent improvements to their racecourses or the facilities thereon.

The legislation provides at present that payments from the fund may be authorized by the Minister on the recommendation of the racecourse development committee. It provides also that financial assistance may be made by way of grant or loan. However, access to assistance from the fund is limited to race clubs. Therefore, it is the Government's intention that the Trotting Authority of New South Wales

and the Greyhound Racing Control Board be also given access to financial assistance from the racecourse development fund. Accordingly the bill has been drafted to enable the Minister, on the recommendation of the racecourse development committee, to authorize payments out of the fund to meet certain expenses of the Greyhound Racing Control Board or the Trotting Authority of New South Wales.

I deal finally with the Trotting Authority (Totalizator) Amendment Bill. In introducing the Totalizator (Off-course Betting) Amendment Bill, **1981**, and the Totalizator (Racecourse Development Fund) Amendment Bill, **1981**, which provide for the making of payments to the Trotting Authority of New South Wales from the annual surplus of the Totalizator Agency Board and from the racecourse development fund, the Government considered it necessary to amend the Trotting Authority Act, **1977**, to provide for the accounting for and application of money paid to the authority from these sources. Accordingly, the bill has been drafted to make it a requirement that all money paid to the Trotting Authority under the provisions of the Totalizator (Off-course Betting) Act and the Totalizator Act shall be paid into the trotting authority fund. The contingencies under which money may be paid out of that fund are already provided for under the existing legislation. I commend the bills to the House. I table for incorporation in *Hansard* a schedule which will give honourable members a better understanding of the legislation.

Totalizator (Off-course Betting) Amendment Bill, **1981**

1. Provision of sub-agencies of the Totalizator Agency Board

1.1. Prior to **1971** the Totalizator (Off-course Betting) Act required every office, branch or agency of the T.A.B. to which the public is admitted to consist of separate premises to which access may be had from the street without passing through any occupied premises and no other business be allowed to be conducted on the Board's premises.

1.2. In **1971** the Act was amended to allow the Minister to approve of the establishment of what are known as sub-agencies, in other business premises situated beyond 64 kilometres of the G.P.O. The purpose of this amendment was to allow the T.A.B. to spread its offices into small towns which otherwise could not sustain a full agency.

1.3. In general, sub-agencies are provided in centres where the urban population is between 500 and 1 400 and where suitable applicants to conduct the sub-agency can be found. To date approvals have been given for the establishment of some **56** sub-agencies in country areas.

1.4. Sometimes a developing suburb, with insufficient local population to justify a separate agency and with limited public transport facilities, is located some distance from an existing agency. The establishment of a sub-agency in premises used for other purposes would be suitable pending the further development of the centre. Again there are some small retail centres where existing premises are tightly held and zoning precludes further development or high rentals preclude an economic operation. It would seem that the only possible solution in these circumstances is to offer a present shopholder the facility to operate a sub-agency.

1.5. In effect, the amendment will provide the means by which the Totalizator Agency Board might improve its services to the general public in so far as access is concerned.

Mr Booth]

2. Advertising by the Totalizator Agency Board

2.1. Section 17 (4) (b) of the Act provides *inter alia* "the Board shall not publish or cause to be published any advertisements inviting, encouraging or inducing members of the public to transact betting operations with the Board".

2.2. The Royal Commissioner in 1963 recommended that advertising of the Totalizator Agency Board system or any of its agencies should be prohibited. This recommendation was no doubt in accord with the then commonly held view that avenues of gambling should not be brought to the attention of the public.

2.3. Currently other forms of gambling such as Lotto, Lotteries and Soccer Pools are being advertised and there has been general acceptance of same. It is considered that the T.A.B. should be in a like situation to advertise its services.

3. Funding of the Greyhound Racing Control Board and the Trotting Authority of New South Wales.

3.1. At present the Greyhound Racing Control Board and the Trotting Authority of N.S.W. are basically funded by two means:

- (a) levies/affiliation fees imposed on racing clubs representing a percentage of their income from racing (3 per cent in respect of greyhound clubs and 4 per cent in respect of trotting clubs);
- (b) the imposition and collection of registration fees, etc., on industry participants.

In regard to the levies/affiliation fees, clubs in both instances are required to submit to their respective authorities by 31st July of each year, returns of income from racing accompanied by the appropriate remittances.

3.2. As a consequence of the proposed amendment to fund the Greyhound Racing Control Board and the Trotting Authority of N.S.W. from the T.A.B. surplus, while the two authorities will continue to raise revenue from registration fees, etc., on participants, clubs will no longer be required to pay levies/affiliation fees to the authorities which in turn will obviate the necessity for clubs to compile their financial returns of income from racing.

3.3. This in itself will provide a savings to the clubs in administration, time and cost with similar benefits accruing to the controlling bodies.

3.4. It is proposed that the two authorities in seeking the funds from the surplus of the Totalizator Agency Board be called on to submit budgets each year for examination by officers of the Department of Sport and Recreation and the Totalizator Agency Board. Such budgets to be subsequently approved by the Minister. In addition, the budgets will be regularly reviewed in liaison with the two authorities to ensure that every endeavour is made to contain costs within the accepted budget.

3.5. The provision of funds to the Trotting Authority for a Sires Stake Programme will be on a \$1 for \$1 basis with the trotting industry up to \$250,000. Terms for the conduct of the Sires Stake Programme and details of the industry's contribution are to be determined by the Trotting Authority of N.S.W. in liaison with industry participants and the Department of Sport and Recreation.

3.6. At present the Act only provides for the distribution of the T.A.B.'s surplus to racing clubs and accordingly in order to provide for the above it is necessary to include in the Scheme of Distribution the Greyhound Racing Control Board and the Trotting Authority of New South Wales.

4. Reconstitution of the Totalizator Agency Board

4.1. Section 3 (2) of the Act provides that the T.A.B. shall consist of 10 members appointed by the Governor, of **whom—**

- (a) one shall be nominated by the Minister;
- (b) one shall be nominated by the Australian Jockey Club;
- (c) one shall be nominated by the Sydney Turf Club;
- (d) one shall be nominated by the New South Wales Trotting Club Ltd;
- (e) one shall be a member of the Greyhound Racing Control Board nominated by that Board;
- (f) one shall be nominated jointly by the **Hawkesbury** Race Club, the Wollongong Racing and Trotting Club and the Newcastle Racing Registration Board;
- (g) one shall be nominated jointly by the Central and Lower Coast Racing Association, the Northern and North-Western District Racing Association, the Northern Rivers Racing Association and the Central Western Districts Racing Association;
- (h) one shall be nominated by the Broken Hill and Far-West Racing Registration Board, the Western Districts Racing Association, the Southern Tablelands and South Coast Racing Association and the Southern Districts Racing Association;
- (i) one shall be nominated by the Minister from persons recommended by the several racing bodies that conduct greyhound racing within the State; and
- (j) one shall be nominated by the Minister from persons recommended to him by the several racing bodies, other than the N.S.W. Trotting Club Ltd, that conduct trotting racing within the State.

4.2. With the transfer of the controlling function of trotting from the N.S.W. Trotting Club Ltd to the Trotting Authority of N.S.W. it is proposed that the Authority now nominate a member to the T.A.B. in lieu of the N.S.W. Trotting Club Ltd.

4.3. Further, as the Wollongong Racing and Trotting Club referred to in section 3 (2) (f) is now defunct it is proposed to delete references to that body.

4.4. The opportunity has also been taken to delete reference to the Southern Tablelands and South Coast Racing Association referred to in section 3 (2) (h) and insert instead the South-East Racing Association as a result of the Association's recent change in name.

4.5. The amendment also seeks to provide for the vacation of office of the members of the T.A.B. who are members of and nominated by the Trotting Authority of N.S.W. and the Greyhound Racing Control Board if they cease to hold the qualifications by virtue of which they were appointed.

4.6. With regard to the Greyhound Racing Control Board the Act provides for the nominee of that Board to be a member of the Greyhound Racing Control Board. Similar provision is contained within the Bill in respect of the nominee of the Trotting Authority of N.S.W.

4.7. In the absence of the proposed amendment the situation could arise whereby a person having been appointed on the nomination of the Greyhound Racing Control Board or the Trotting Authority of N.S.W. would remain a member of the T.A.B. notwithstanding that **he/she**, for any given reason, may no longer be a member of the nominating body. This is particularly pertinent having in mind that members of the Greyhound Racing Control Board and the Trotting Authority of N.S.W. are appointed for a period of three years as opposed to a five year term for members of the T.A.B.

5. Other Matters

5.1. Reference is made in several sections of the Act to those clubs that made financial contributions towards the establishment of the T.A.B. All funds owing to those clubs have now been repaid and accordingly reference to contributing clubs is no longer necessary. The amendments seek to delete reference to contributing clubs wherever appearing in the Act.

5.2. At present the Act requires the Minister to approve of **the** T.A.B. conducting pools on events held outside Australia. When the Board wishes to conduct pools on events held in England, the United States and **New Zealand** it has been necessary to seek the prior approval of the Minister. Experience has shown that a decision to conduct betting on an event such as the Inter Dominion series when held in New Zealand is best left to the T.A.B. The requirement to seek Ministerial approval in these instances is to be deleted from the Act.

5.3. For a number of years the T.A.B. branches in the Broken Hill area have operated on events conducted at the St **Patricks** race meeting, Broken Hill. Because of the general lack of interest throughout New South **Wales** but a stronger interest in these events within South Australia (a number of South Australian horses compete at this meeting) the T.A.B. has transferred investments on the meeting to the South Australian T.A.B. for incorporation in that Board's pools. There is no legislative provision for this action and each year it has been necessary to report the matter as a Variation of Statute. No good reason exists why such action should not continue and accordingly provision has been made in the bill to give legislative authority to this practice.

5.4. At present the Act provides for the making of both regulations and rules under the Act to provide for those matters consistent with the operations of the Board and the regulation and management of offices, branches, etc., of the Board. Advice from the Parliamentary Counsel confirmed an earlier-held view that many of the rules would be more appropriate as regulations and that others where not provided for by regulation could be best dealt with as Board instructions. The opportunity has been taken at this time to give effect to the opinion of the Parliamentary Counsel and accordingly it is proposed that the rule-making powers of the Board be withdrawn.

6. Summary of the Provisions of the Bill

Clause 1 shows the short title.

Clause 2 provides for the commencement of the Act.

Clause 3 refers to the Totalizator (Off-course Betting) Act, **1964**, as the Principal Act.

Clause 4 lists Schedule 1 as amendments to the Principal Act, Schedule 2 as amendments to the Principal Act by way of statute law revision and Schedule 3 as savings and transitional provisions.

Clause 5 provides for amendment to the Totalizator (Off-course Betting) Act in the manner detailed in Schedules 1 and 2.

Clause 6 is a savings clause.

Schedule 1 items 1, 5, 9 (b), 9 (c), 10, 11 and 12 facilitate the removal of reference to the Rules and the Rule making power of the Totalizator Agency Board and provide for Regulations to be made.

Schedule 1 item 2 (a) removes from the Totalizator Agency Board the representative of the New South Wales Trotting Club Limited, and places on the Board in lieu a member of the Trotting Authority of New South Wales.

Schedule 1 item 2 (b) removes reference to the now defunct Wollongong Racing and Trotting Club.

Schedule 1 item 2 (c) reflects the change in name of the Southern Tablelands and South Coast Racing Association to the South East Racing Association.

Schedule 1 item 2 (d) provides for a representative of trotting clubs, including the New South Wales Trotting Club Limited, to sit on the Totalizator Agency Board.

Schedule 1 items 2 (e) and (f) are machinery matters.

Schedule 1 item 2 (g) provides for the removal from the Totalizator Agency Board of members representing the Trotting Authority of New South Wales and the Greyhound Racing Control Board who cease to be members of these statutory authorities.

Schedule 1 item 3 removes reference to the distribution to racing clubs and the Racecourse Development Fund of the annual Totalizator Agency Board surplus. These provisions are re-enacted elsewhere.

Schedule 1 item 4 (a) removes the necessity for the Board to seek the Minister's approval to operate on events held outside Australia.

Schedule 1 items 4 (b), (c) and (d) provide with the approval of the Minister, for the Totalizator Agency Board to operate on events held in New South Wales and transfer investments on such to a Totalizator Agency Board in another State.

Schedule 1 items 6, 7 and 8 provide for the inclusion in the Totalizator Agency Board's scheme of distribution of its annual surplus, the Greyhound Racing Control Board and the Trotting Authority of N.S.W.

Schedule 1 item 9 (a) provides for the Board, subject to the Minister's approval, to establish sub-agencies of the Board in premises used for other purposes in areas within 64 kilometres from the G.P.O., Sydney.

Schedule 1 item 9 (d) provides for the Totalizator Agency Board, subject to such restrictions as the Minister may impose, to advertise its betting services.

Schedule 2 provides for a number of statute law revision matters suggested by the Parliamentary Counsel.

Schedule 3 provides for savings and transitional items.

Debate adjourned on motion by **Mr** Brewer.

CRIMES (SEXUAL ASSAULT) AMENDMENT BILL
CHILD WELFARE (AMENDMENT) BILL

In Committee

Consideration resumed (from 26th March, *vide* page 5302)

The CHAIRMAN: The Committee will resume consideration of the Crimes (Sexual Assault) Amendment Bill.

Clause 3

Mr PETERSEN (Illawarra) [3.55]: At the second reading stage I indicated to the House that in Committee I would move amendments the effects of which would be to legalize homosexual relationships between consenting adults. I shall move those amendments later as a new schedule 2, which I contend is within the order of leave of the bill. If that new schedule is agreed to, some minor consequential amendments will be necessary to clause 3, and I shall move those amendments. I do **not** wish now to move an amendment to clause 3, for I would be required to argue on a machinery clause that has no validity unless schedule 2 is agreed to, and I could not argue on the principles involved. In the event of proposed new schedule 2 being agreed to, I shall ask that the bill be recommitted to effect the relevant machinery amendments to clause 3.

Clause agreed to.

Schedule 1

Page 5

- (4) The fact that a person is married to a person—
- 15 (a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence; or
- (b) upon whom an offence under any of those sections is alleged to have been attempted shall be no bar to the firstmentioned person being convicted of the attempt.
- 20 Sexual assault category 1—**inflicting** grievous bodily **harm with** intent to **have sexual** intercourse.
- 61B. (1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.
- 25 (2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to **penal servitude** for 20 years.

Mr PETERSEN (Illawarra) [3.57]: When speaking to clause 3 I intimated that I would be moving a proposed new schedule 2. If that schedule is agreed to it will be necessary for me to move a number of machinery amendments to schedule 1. As I said in dealing with clause 3, if proposed new schedule 2 is agreed to I shall move for recommitment of the bill to present the relevant machinery amendments to schedule 1. Therefore, I formally advise you, Mr Chairman, that after a vote is taken on schedule 1, I intend to move for the insertion of new schedule 2 in the bill.

Mr DOWD (Lane Cove) [3.58]: As I said at second reading stage, the Opposition is concerned about the definition of the word rape, primarily because if the proposed amendment is carried it will be left as a heading but it will be taken out for the purpose of the definition. The definition is fundamental to the changes that the

Government has proposed. The Opposition is not happy about the way the schedule has been drafted. It takes a mechanistic view of sexual activity between male and male, male and female, and female and female. Proposed new clause 61A (1) (c) introduces a word that is not contained in any dictionary that I have consulted. It is understood partly by a section of the community. I believe the majority of persons do not understand the meaning of the word, though they may understand the activity that is involved.

Mr Petersen: Why be so coy about the word?

Mr DOWD: The problem about using the word is that there is no precise definition of it. The word is cunnilingus. —

[Interruption from gallery]

Mr DOWD: I point out to the gallery and to the Committee that some persons show their immaturity when these matters are dealt with. We should be able to discuss them without causing laughter. The word is not precisely defined and creates serious problems when looked at in relation to section 62 of the Crimes Act, which is to remain as it is. Because section 62 defines carnal knowledge as being penetration of the female vagina, it has a precise meaning. The omission of the words "carnal knowledge" ignores matters that fall short of penetration.

Many sexual acts short of penetration are grossly offensive to many people. We believe that the use of the word cunnilingus covers actions in addition to those matters relating to penetration of the vagina. Unfortunately, the use of one definition to cover two different matters could lead to absurd problems of interpretation. The Government is now seeking to bring in a definition of sexual intercourse that takes on a much wider connotation than sexual intercourse as contemplated by the use of the phrase carnal knowledge, the offence of carnal knowledge and the use of the word penetration in the offence of rape. The bill creates an absurdity in new section 61A, which is inconsistent with the definition of carnal knowledge. The failure to deal with the definition of carnal knowledge to cover activities covered by proposed new section 61A will create serious problems of interpretation and will require to be reconsidered.

One problem of the definition in new section 61A is that it makes certain sexual activities an offence but omits to deal with other activities of a non-contact kind. Many acts **are** more grossly offensive to a woman than normal sexual intercourse. The Opposition believes that the Government has failed to deal with these matters properly. I wish to deal with the amendments that the Opposition proposes to move to new section 61A, in schedule 1. As the Attorney-General and Minister of Justice said at the second reading stage, it is difficult to abolish the common law crime of rape and the consequential matters that flow from it without creating anomalies, especially if the rape is said to have occurred within marriage. The Opposition has made its position abundantly clear. We do not consider that either party to a marriage **has** any right to sexual intercourse without the consent of the other party. That is a matter of common law. No legal process in any court would enforce any such supposed right.

Some people contend that one sexual partner has sexual rights over the other, **but** there is no law to that effect and any such view has been repudiated by our society. As was clear in the second reading debate, this is a matter of education. Women must realize, particularly some women who were not born in this country **and** may not be used to our traditions, that they have a right to say, no. The same **right** applies to a man in relation to sexual activities. Offences involving assault, **assault** occasioning actual bodily harm and assault occasioning grievous bodily harm

can be dealt with by way of summons. Therefore, we do not believe that the creation of the crime of rape within marriage is in the interests of the community and **the** institution of marriage on which our society is based.

Marriage is a frail institution, an imperfect vehicle for the furtherance of society. Nobody has conceived a better system and the Opposition supports that institution. The accumulation of legal rights tacked on to marriage has detracted from the institution of marriage as a free consensual relationship. The Opposition does **not** believe that the institution of legal proceedings will solve all the problems. Certainly any sexual problems in marriage will not be solved by introducing the Crimes Act into the marriage bed. However, that is exactly what the Government's proposed changes involve. The definition in the bill will remove the common law bar to proceedings against the husband. As the law stands, if a reconciliation occurs following an assault, a summons can be withdrawn by consent and there is no problem. However, under **the** bill if a wife or husband acts in haste and complains for malicious or reactive **reasons** but afterwards decides he or she does not wish to proceed, problems will arise because the machinery of the law will have been set in motion. It is all very well to say **that** once a wife gets to the stage of committal proceedings she can decide not to **give** evidence, but the difficulty is that the case must reach committal before that **can** happen. The people concerned will be represented and there are many magistrates who on the basis of admissions would hold that *prima facie* there was a case to be answered even though the couple may have been reconciled.

Though the Opposition agrees with the Attorney-General and Minister of Justice that the community attitude on these matters must be improved by education, the Opposition strongly opposes the creation of the offence of rape in marriage. We hope that the public debate on this matter will enable many women to understand **the** changes that are taking place in our society; they must understand that their rights exist independently. Neither party in a marriage owns the other or is entitled to engage in assault, sexual or otherwise, of the other party. Unfortunately, the public debate has concentrated too much on homosexual issues. The amendments dealing with buggery should be dealt with separately because that argument detracts from **the** significant changes in sexual laws dealt with by the bill.

The Opposition proposes to move an amendment to schedule 1 to provide that the bar to any action against a husband—or indeed against a wife—should remain unless there is an order of a court that the parties to the marriage be separated or that **the** parties are in fact separated. The effect of this amendment under the old matrimonial causes legislation in respect of separation or relating to an injunction brought under the family law legislation, or an order of the Equity Court or the petty sessions jurisdiction, will be that the court will deal with the *de facto* position and will interpret the matter from that standpoint. I hope the courts will be allowed to interpret these matters and that matters of separation will be determined by the court. Under the New South Wales Maintenance Act, **1964**, many cases were decided on whether the parties were in fact separated. That was not more difficult for the courts than most matters that the courts are required to rule upon.

Because of the absence of a definition on the precise meaning of the word *cunnilingus* its use in section 61A (1) (c) would create a problem for counsel when addressing a jury. The courts have difficulty interpreting words that are not defined. It is unfortunate that the draftsman of the new section did not devise a better **formu-**lation of words. This is particularly so when one considers that proposed section **62** must be interpreted in the light of the provisions of proposed section 61. If there has been some penetration of the female body falling short of penetration of the vagina, a judge will have serious problems directing a jury on the law. Those circumstances

are covered by new section 61E, and are of a similar character to other sexual contact as set out in new section 61A. For these reasons I now move the amendment of which I have given notice:

That at page 5, line 12, the word "The" be left out and there be inserted in lieu thereof the words "Unless there is an order of a court that parties to a marriage be separated or the parties are in fact separated, the".

After that amendment is considered by the Committee, I foreshadow that I shall then move two further amendments. Perhaps they should be dealt with together. I propose to move that in schedule 1, page 5, line 14, the word "no" be omitted and the word "a" be inserted in lieu. Also, I propose to move that in schedule 1, page 5, line 17, the word "no" be omitted and the word "a" be inserted instead. The Opposition believes that if the bar is created to an action between parties to a marriage, a qualification should be included that such a bar does not exist if the parties are separated, or if there is in existence an order of the court separating them.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [4.13]: It is clear, despite some of the speeches made at the second reading stage, that the Opposition supports the concept of punishment for rape in marriage. That is clear because the amendment just moved by the honourable member for Lane Cove accepts that rape in marriage is a heinous criminal offence and should be treated as such. The Opposition accepts that, along with murder, it is one of the most serious offences in the criminal calendar. Rape in marriage is an offence that deserves life imprisonment as the maximum penalty. In that respect both the Opposition and the Government are in agreement.

Mr J. A. Clough: Rubbish.

Mr WALKER: It is not rubbish at all. That is the effect of the amendment which received Opposition support at party level. There is a difference between the Government's view and that of the Opposition. The Opposition seeks to give husbands not separated from their wives immunity if they rape their wives. How does one define separation? I do not know whether that means for one minute, ten minutes or six months. A husband and wife may have had an argument and one of them walked out of the room. All honourable members know the difficulties associated with the concept of separation in those circumstances. The Opposition says that the instant those parties separate, if the husband sexually assaults his wife, in accordance with the proposed provisions of this bill he becomes liable to life imprisonment. On the other hand, if no separation occurs, or there is no order of the court, by the proposed amendment no offence would occur. In other words, that husband would have immunity for his actions. That is the situation in South Australia. Though the amendment is not along the lines of the South Australian legislation, it is certainly in the spirit of that State's law.

At the second reading stage I conceded that there would be considerable evidentiary difficulty proving allegations laid under the proposed provisions. However, the Government takes the view—and I reiterate it—that, among other things, this offence is designed to educate the community on the horrific and abominable acts that honourable members heard described at the second reading stage, in order that the gross cases of violence that occur in marriages will not continue to be tolerated. The Government is saying to the male population of this State that it does not condone such behaviour. Though it may often be difficult to prove such a case beyond reasonable doubt to the satisfaction of a jury, nevertheless the Government has this provision on the statute books because of its educative value if nothing else. There will be some convictions. Proceedings brought under similar legislation in South Australia have been successful.

What is the difference between a separated husband and a husband who is living under the same roof and his wife is afraid to leave for fear of his violent behaviour? How many times do members of Parliament and other members of the community hear of a wife who is terrified to move out of a house because of the brutal and violent conduct of her husband? If that wife finds the strength to get out of the home and takes the children into a situation of total poverty and destitution, and she is then raped by her husband she will have the protection of the law. If a woman cannot find the strength—and many a woman cannot for fear of the terrible violence and dominance of the husband—to obtain a court order, or to escape from the house, why must she suffer rape from her husband? The Opposition is saying, in effect, that a husband may rape his wife if he is still married to her and there is no order for separation from her. It is disgusting and totally unacceptable that a husband should then be able to rape his wife brutally and violently. The Government will not accept that amendment; nor will it accept the other two amendments that the honourable member says he proposes to move.

Mr MOORE (Gordon) [4.19]: I support the remarks of the honourable member for Lane Cove concerning the scope of a proposal for the creation of an offence of rape in marriage. The circumstances referred to by the Attorney-General and Minister of Justice, of a wife who is afraid to leave home for fear of physical violence, are along the lines of those that arose in the Violet Roberts case, are alleged to have arisen in the Hill case at Stanwell Park on the South Coast and in the Kroke case in Victoria. The Attorney-General and Minister of Justice is advocating that in those circumstances a rape charge be levelled against a husband by a wife as an artificial means of resolving other serious violent family problems. I do not believe that a rape charge is a serious viable social alternative to be used as a mechanism to deal with those sorts of family problems.

I have three insurmountable reservations to the concept of rape in marriage when the couple are living and acting as husband and wife. The Attorney-General and Minister of Justice raised what he considered to be the evidentiary difficulty of proving that a married couple are separated. That matter has been dealt with quite simply by way of statute and judicial interpretation under the Commonwealth Family Law Act. That Act has dealt successfully with the problems of a married couple living separately and apart under the one roof. If the evidentiary burden can be dealt with rationally and in a humane way, I cannot see any difficulty of proof for the criminal law of the State of New South Wales. The reservations that I have are these: first, as I mentioned, a charge of rape against a husband or wife when the couple are living together might be used as an excuse to remedy other social evils that should be treated in other fashions; second, I support the argument set out in the *Australian Church Record*, which has been circulated to honourable members, dealing with the presumption of the basis of the marriage contract between the parties.

Mr Walker: I ask the honourable member to read the headline.

Mr MOORE: The headline, which the Attorney-General and Minister of Justice considers should be read, states, "Walker legislates against promiscuity". The problem experienced by some people in writing appropriate headlines is evident in this instance. The portion of the article with which I find approval does not congratulate the Attorney-General for his legislation. The third matter about which I have a grave reservation, and which again is insurmountable, causes me to support the honourable member for Lane Cove, namely, that the Government's proposal strikes at the fundamental concept of the family unit in our society. There is a presumption that it will operate against that concept rather than in its favour. For those reasons I support the amendment moved by the honourable member for Lane Cove, and I urge the Committee to do likewise.

Mr HATTON (South Coast) [4.22]: I look at the problems as a layman, not as a person with legal training. Clearly both sides of the House agree that a man or woman has no right to force unwarranted attentions on the marriage partner. Notwithstanding the emotional terms that may be introduced into the debate, clearly both sides of the House agree that violence, brutal behaviour and the use of fear as a weapon by either a man or a woman have no place in a marriage relationship. That is not the point. The Opposition's amendment seeks to recognize the complexities of law enforcement within a marriage relationship. The relationships within marriage are more complex now than they have ever been. That may be regarded as a profound statement by a person who has been married for twenty years. The complexity is attributable to the changing moral standards within society and the tremendous stresses that occur at the normal workplace of a married man or married woman, or in the home, the school and the city in which they live.

If one adds to those stresses in a marriage relationship the influence of drugs and alcohol, a police officer has a most difficult problem to resolve. The Government concedes that there are difficulties. Merely conceding those difficulties does not go far enough. Unless clearer definitions are provided, as the Opposition's amendment seeks to do, the police will have an intolerable burden. What is the policeman on the beat to do when involved in a domestic problem? Police officers endeavour to avoid domestics, as they are called, as much as possible. The police intercede only when it is clear that physical injury will occur in full view of other persons, or where there is a disturbance of the peace. Are the police to be told that in some way they will have to become involved in what is happening in the bedroom of a house or when clearly a neighbourhood is not being disturbed?

I am sure that honourable members on both sides of the House are filled with the milk of human compassion and do not wish to perpetuate the subjecting of a marriage partner to suppressive behaviour. The Committee must recognize that the police and the courts will have a most difficult task. The Committee is considering a criminal offence, for which a person may be sentenced to gaol, and seeking to have interpreted and policed a law in the context of a marriage. Though I agree with the remarks of the Attorney-General and Minister of Justice about violence, brutality and fear, as a matter of practicality I support the Opposition's amendment.

Mr CAMERON (Northcott) [4.26]: I find it incredibly ironic that upon the initiative of this so-called reformist Labor Government there is the ultimate penetration of the door of the matrimonial bedroom. As the Committee is well aware, I make no apologies for having over a broad spread of years resisted the legalizing of homosexuality as a proper course for the defence of community morality and upholding of the family unit. In the course of so resisting, repeatedly I have been lampooned, ridiculed and attacked because of, in effect, going behind the bedroom door—not the matrimonial door but the door, say, of two homosexuals living together. It was said that the bedroom is the ultimate sanctum, the one unit into which the law must not go. Invade it not. That was the classic language of the reformers who sit on the Government benches, yet they are proposing to knock down the bedroom door and invade the sanctum for the express purpose of bringing a prosecution against a husband in respect of what takes place with his wife in the matrimonial bed. That must be the ultimate volte-face—the ultimate somersault.

Although the Attorney-General and Minister of Justice has been quick to deride the author of the statement to which I am about to refer on the ground that he is merely a left-wing academic, I should think that qualification would have elevated this particular academic in the eyes of the Attorney-General. That academic said that a husband should not walk in the shadow of the law of rape in trying to regulate

his sexual relationships with his wife. He attracted the ridicule of the Attorney-General on the basis that he was merely a left-wing academic. That person said also that if a marriage runs into difficulty, the criminal law should not give to either party to the marriage the power to visit on the other more misery than is unavoidable in the nature of things. Again those comments were dismissed by the Attorney-General and Minister of Justice as being merely those of a left-wing academic. Whether he be left-wing, right-wing or centre, he has stated the proposition clearly and boldly and in harmony with what is right in the community. I support strongly that view. Consistent with the statements by the honourable member for South Coast, the honourable member for Lane Cove and the honourable member for Gordon, I submit strongly that the community, its whole moral code, and the whole fabric of this civilization rests upon the marriage unit. It is the business of this Parliament to defend the marriage unit. Historically, immunity to the husband in respect of charges of rape has pertained, and that immunity should be preserved.

It is absolute nonsense for the Attorney-General and Minister of Justice to say that the Opposition approves of violence between a husband and wife. Violence in marriage is already being dealt with by the orthodox processes of the law. Courts of petty sessions deal frequently with charges of assaults by husbands upon their wives. The law does not look tolerantly upon violence offered by a husband to his wife, but it does say, and has said traditionally, that he should have immunity against an allegation of rape. This rests not so much upon violence offered by one person to another but upon a difficult-to-prove state of mind. The key is whether consent was present or absent. As the Attorney-General and Minister of Justice conceded, traditionally the practical view is that there are great evidentiary difficulties in sustaining a prosecution for rape in marriage. Notwithstanding the existence of those evidentiary difficulties, the Minister embarks upon this foolhardy legislative venture. It is doomed to failure. It is just another stage in the procession to trendyism initiated by the former Labor Attorney-General in South Australia—a process that the New South Wales Attorney-General is quick to join, even though, in general, it attracts nothing but ridicule from the community. The Government should hold back from this foolhardy experiment and should sustain the role that the law has traditionally taken in this matter.

There are some aspects of schedule 1 about which I wish to put my personal view as the member for Northcott. I reiterate that I regard the creation of these sorts of graduated offences as regrettable. By doing away with the historic word of rape and substituting four categories of sexual assault, the serious offence of rape is trivialized. parliament is acquiescing, as it were, in the very disharmony upon which the honourable member for Illawarra seeks to rely for his foreshadowed amendments. If the House had not accepted the principle of changing the offence of rape simpliciter to rape in four categories, the disharmony would not exist. It is a totally manufactured situation. It is so extreme that even the women of the rape crisis centre are protesting in effect that rape has been trivialized, that it has been reduced in status from one of the major offences. As I understand the effect of the legislation, it will be more likely that many charges of rape will be dealt with in the District Court, not in the Supreme Court. That is another illustration of how the serious offence of rape is being trivialized.

Crown prosecutors, who late in the day have come to understand what is being built into the legislation, are appalled by it and its implications. The legal profession, as evidenced by the remarks of the president of the Bar Association published in the *Sydney Morning Herald* today, likewise is appalled by it. Those who believe that rape is a serious offence and a denigration of the standing of a woman in the community, would be ill served by acceptance of the reforms proposed by the Attorney-General and Minister of Justice.

Mr J. A. CLOUGH (Eastwood) [4.35]: I support the remarks of the honourable member for Lane Cove, the honourable member for Northcott and the honourable member for Gordon. It is sad that such legislation should be considered necessary. It is a pre-emption, a slur upon marriage and a barrier to marriage. It would be an awful contemplation that when a couple were considering marriage there may be present in their minds the fact that remedies of the sort provided by this legislation were available to them. One should hope that when a couple married their hopes and aspirations would render such legislation unnecessary. Marriage is and has been important to the structure of our community. It is true that standards of social and marital behaviour have declined, and regrettably I must blame the Government for contributing considerably to that decline by introducing this and similar legislation.

I do not condone violence, be it sexual or otherwise, in or out of marriage. The success of marriage depends largely on the good will and co-operation of both parties. If a stage is reached where a wife wishes to indict her husband for rape, that marriage is at risk. It is unnecessary to have legislation like this. The existing common law can deal with sexual violence in marriage. It is a pity that the Government should attempt to ridicule the institution of marriage by this proposal. It may well be the fact that violence occurs in some marriages, but there always have been differences between marriage partners, sometimes of a serious type. Often psychologists and psychiatrists have said that verbal cruelty can be much more serious than physical cruelty, and that its effects are much more lasting. Where sexual violence does occur, its gravity is difficult to determine, but in any event the door to reconciliation must be left open, particularly when children are involved.

Today many services are provided for counselling and attempting to effect reconciliation when marriages appear to have broken down. It may well be that from time to time pressure is brought to bear by one party on another, but surely that ought to be the concern of the parties themselves. The Attorney-General and Minister of Justice referred to this matter, but for a different purpose. He instanced the possibility of women not being able to escape from the family home because they have the burden of children or other responsibilities. I do not consider that this measure will lessen in any way the traumata that arise from time to time in some married people's lives. The family is and should remain the cornerstone of our society.

A wife should not be encouraged to seek immediate indictment of her husband, particularly when she is emotionally upset, for she may wish later to reconsider her position, and once such a move is put in train, it is difficult to have it stopped. No woman should have to tolerate violence, but I do not believe that this type of measure will improve on the remedies available under the common law.

Mr CATERSON (The Hills) [4.42]: I support the amendment moved by the honourable member for Lane Cove, and I support the remarks of the honourable member for Northcott and the honourable member for Eastwood about rape in marriage. This afternoon the Attorney-General and Minister of Justice has misstated again **the** views of the Opposition. He does so regularly and deliberately. For that he should be ashamed, particularly as he describes himself as the first law officer of the State. **Our** view is that violence in marriage is an offence under the Crimes Act and the offender can be brought before a court and charged under that Act.

Mr Walker: With what offence would he be charged?

Mr CATERSON: I am not here to instruct the Attorney-General and Minister of Justice. He is the first law officer. The Opposition's amendment acknowledges that a rape charge by a wife against her husband can succeed only if there is a physical

separation of the couple and the conjugal rights of the parties no longer exist. That again is contrary to what the Attorney-General and Minister of Justice put about the Opposition's arguments. It is about time he put our views sincerely and correctly.

Mr DOWD (Lane Cove) [4.43]: As the honourable member for South Coast has emphasized, it is important to understand that the amendment deals with consequential problems caused by a wife who acts in haste. Perhaps, because of the delicate and intimate emotions engendered in matrimonial relations, she will regret taking action against her husband for sexual assault if he apologizes for his conduct. It is absurd to deal with this matter on the basis of the most violent form of rape. The Opposition opposes such violence, but the common law and the Crimes Act provide the remedy for it. In this definition the Committee is dealing with all forms of sexual intercourse, including the most trivial. It is dealing with a refusal to have sexual intercourse. Every night of people's lives many perfunctory and virtually meaningless acts of intercourse take place. That is not as it should be, but it is a fact of life. Society consists of a wide range of different human animals. It has to be accepted that to some people sex is a relatively trivial and almost irrelevant act. In Nineteen *Eighty-Four*, a novel by George Orwell, one reads that Winston Smith dreaded Saturday night when he had to go through the performance of satisfying his wife as a duty to the State.

It is abundantly clear that the offence of negligent rape occurs when the husband is careless about whether his wife consents to intercourse. It shocks many people that sexual intercourse can occur so meaninglessly. They consider it should always be a special and important act. Standards are lowered when the human animal becomes obsessed with sex, when it should be a normal part of our lives. A redirection in society is needed so that people spend less time contemplating sex. Newspapers and other publications should place less emphasis on jokes about sex. When those things happen, society will be much healthier.

I have already commended the Government on its moves to broaden some aspects of the law on sexual matters so that they can be regarded as a normal part of our life. The weekend edition of the *National Times* is to be commended for a healthy and clear exposition on the dramatic changes that have occurred in society in the past two decades. Our society is rapidly changing its attitude to sexual matters, and I commend the honourable member for South Coast for making that point clear.

The Opposition considers that in many instances a complaint laid by a wife under the proposed law could be malicious. When that becomes apparent, the community will be shocked. People will say, "Imagine a woman doing that". Such things will happen because men and women sometimes act maliciously. Reference to the records of children's courts will show that often a husband reports his wife to the authorities to harm the child's relationship with its mother. Many people in **our** society allow sexual abuse of their children. This is appalling, but it happens. It is much more appalling than a mere act of sexual intercourse without violence where one party does not care one way or the other whether it occurs.

No matter how amusing some Government supporters find this subject, it remains a serious social problem. There is much more interaction between the parties to a marriage than that provided by sexual intercourse. An approach to the debate on this legislation that concentrates, as the Government has done, on the most violent of sexual assaults, would be to betray the public and the Parliament—for the definition section must be related to proposed sections 61B, 61C and 61D. Rape is not just an emotive violent action—although they are the causes of it that are most abhorrent. It is also **an** act of intercourse without consent, however ill-conceived may be the refusal. In no circumstances does the Opposition contend that, by inserting provisions to retain the

offence of rape in marriage, a husband will be entitled to rape his wife by an act of sexual intercourse without her consent. That is not so, no matter how many times the Attorney-General and Minister of Justice says it is.

Members of the Opposition believe that because of the mechanistic nature of the problems of committal proceedings, indictments and the problems of "no bills" when a wife changes her mind after a committal has occurred, even after such an appalling event as rape in marriage, some marriages can be saved. However imperfect the institution of marriage may be, it is far too important to society for it to be endangered. Therefore, the amendments are designed to give the Government the opportunity to realize that one does not educate people in the marriage bed by the use of the Crimes Act. If that were possible, Parliament would be amending section 79 which deals with buggery by a male on a female in marriage. The Attorney-General and Minister of Justice, while seeking to amend this definition, leaves that provision of the Crimes Act unchanged. As I pointed out to the head of the Women's Advisory Committee, it is absolutely absurd, indeed monstrous, to fix a penalty of seven years' imprisonment for non-consenting acts of buggery and provide fourteen years' imprisonment for consenting acts of buggery.

Whatever view honourable members take of the foreshadowed amendments on the homosexual question, they have an obligation here to deal with the problems caused when a wife does not know whether buggery committed on her by her husband is a crime, and even if she knows it is a crime, understands that the law will not be enforced. If the Attorney-General and Minister of Justice were sincere——

Mr Walker: That law is enforced. Let there be no doubt about that.

Mr DOWD: We now know from the Attorney-General and Minister of Justice that the law is enforced. Is it enforced if there is consent?

Mr Walker: Yes.

Mr DOWD: The Attorney-General and Minister of Justice discloses an appalling double standard by which the law on buggery with consent is enforced, with a penalty of fourteen years' imprisonment, and buggery without consent in some cases will carry a maximum penalty of only seven years. There must be some reason for requiring a judge, a jury and the community to accept such a wrong relativity of sentences. Again and again we have heard the nonsense from Government supporters about the maximum penalty. The maximum penalty is not necessarily the penalty imposed. Irrespective of what happens to the amendments foreshadowed by the honourable member for Illawarra, honourable members must accept that the Government is creating the most appalling anomalies, which would make the rape laws and the Crimes Act of this State ridiculous if they were not so tragic. Judges will not be able to determine the intention of the legislature. The honourable member for Northcott pointed out that the Government says, on the one hand, what happens in the privacy of people's homes is not the concern of the State, and on the other hand the State is intruding into what occurs in the marriage bed.

It is just as difficult for a husband to leave his wife when the situation becomes intolerable as it is for a wife to leave her husband in similar circumstances. It is totally unacceptable for the Attorney-General and Minister of Justice to talk about the poor woman who has to leave home with her children. I have acted for many husbands who have had to leave home, with or without their children, because of the violence of the wife. Someone spoke to me today about that very situation. A fine man has had to leave his wife and children because he can no longer tolerate the situation and the harm that is being done to the children. Let there be no more of this nonsensical talk about the poor wife leaving with her children. If the Attorney-General and Minister of Justice

is as honest about eliminating sexism from our society as I suspect he is, he will accept that not all of the blame is to be placed on the husband. There is too much emphasis on the faults of the husband and not enough on the faults of the wife.

Members of the Opposition consider that this measure will do irreparable harm to the institution of marriage, in which we believe. Therefore, we ask that the Committee accept this amendment so that the Government will see the error of its ways. This part of the law should be left as intact as possible. This legislation will create a bar to actions by a husband against a wife. However laughable it may seem to most insecure men—and I am not suggesting there are any in this Chamber—under the new definition of sexual intercourse a husband will be able to bring an action against his wife.

Mr Walker: Only when he has been raped.

Mr DOWD: The Attorney-General and Minister of Justice, who thinks this is funny, says that will happen only when a husband has been raped. If he has looked at some of the "no bill" applications that come before him—which have a curious way of being dealt with—he will know only too well that many allegations of rape come before the courts when a crime has not been committed. That is part of our system of justice. The fact that a complaint is made does not mean that a rape has occurred. Members of the Opposition are of the view that the zeal for reform of the Attorney-General and Minister of Justice has led him into serious error. I do not think he realizes what the situation will be when a woman makes a complaint. I must say incidentally that the police are far too cavalier in dealing with domestic violence. Far too often the police will say to a person who complains: "It is a domestic matter. At this stage we cannot deal with it". In the second reading debate the House was told that the police will be given an instruction on the effect of the new law. The police will have to be instructed to deal more sympathetically with domestic violence. Some police are not too bad in respect, but others need educating in the matter.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [4.57]: The honourable member for Lane Cove and the honourable member for South Coast made serious contributions to the debate. Though I was not impressed by the contributions of other honourable members opposite, I shall deal briefly with all of them. The honourable member for South Coast spoke of problems, which the honourable member for Lane Cove described as mechanistic, when dealing with the offence of sexual assault in marriage. The honourable member for South Coast accepted the statement of the honourable member for Lane Cove at the second reading stage that there are problems about the compellability of wives to give evidence in such situations. A wife cannot be compelled to give evidence against her husband in a rape case. If she decides to change her mind after being reconciled with her husband, she does not have to give evidence, and in my view the case could not succeed, unless there were some other very good evidence available, and that is highly unlikely. Having made that comment, I shall tell the honourable member for South Coast what this clumsy, incompetent amendment is seeking to do.

As I said in the second reading debate, the only immunity of a husband in a case of sexual assault related to the crime of rape. He did not have immunity for the crimes of indecent assault, assault, or assault occasioning grievous bodily harm—a crime involving a sentence of fourteen years' imprisonment or life imprisonment. If the proposed amendment were accepted, a husband would attain an entirely new immunity. He would have immunity against prosecution for indecent assault, assault, and, worst of all, assault occasioning grievous bodily harm, which could involve life imprisonment. The Opposition's clumsy, hopeless amendment would in one fell swoop give the husband a legal right to assault his wife without her having a legal remedy.

Mr Dowd: Nonsense!

Mr WALKER: One has only to look at the wording of the amendment. It does, as the honourable member admits, cover grievous bodily harm. If we were to accept this amendment, a husband would be able to cut his wife with a knife and get away with it. That is what the Opposition will be voting for. The honourable member for Gordon talked of the concept of separation. It was that concept that caused me initially to say that there was a great deal wrong with this amendment. I said that it was clumsy because it did not appreciate what the concept of separation was all about. Under the new family law the legal doctrine of separation is covered by irretrievable breakdown. Previously the separation itself was a ground for the dissolution of a marriage. There is now only one ground. The question one has to consider is when the separation began. A body of law has developed relating to the point of time when irretrievable breakdown occurs in a marriage. That body of law deals with the concept of separation. It deals with factual criteria such as the loss of conjugal rights. Such a concept involves the failure to provide certain services, such as washing, ironing, looking after children and similar matters. Those criteria go to establish separation for the purposes of irretrievable breakdown; indeed, such criteria went to establish separation as a ground under the old law.

A difficult morass faces somebody who has to decide whether a person is guilty of a crime punishable by life imprisonment. One has to consider whether the parties sleep in separate rooms, whether the wife carries out cooking and other duties and all the rest of it. A wife with the internal strength to live in a separate room and to refuse to cook for a husband who may be violent or drunk would probably be protected by the Opposition's amendment. If that wife has the strength of character to tell the husband that he shall not enter her room or that she will not cook for him, she would be protected. In those circumstances if the husband attacked the wife he could go to gaol for life. But if the husband is violent, aggressive and domineering and if the wife is unable to move into a separate room and is unable to refuse her husband because he would knock her about, or would threaten her with a gun or a knife or do violence against her children, under the present law she could be raped at will.

The honourable member for The Hills made a ridiculous comment about conjugal rights. Is the Opposition suggesting that if a husband rapes his wife he is merely exercising his conjugal rights?

Mr Dowd: The Minister knows that is not what we are saying.

Mr WALKER: Surely the Opposition is suggesting such a thing, except in the morass of difficult law that governs the position when a couple have separated. That may involve the appearance of a number of Queen's Counsel to argue the facts and circumstances before one is able to achieve a prosecution for rape. I do not see any merit in the amendment. I regard it as rubbish. The Opposition should seriously consider withdrawing it. I hope it will not seek to introduce it in the other place.

Mr DOWD (Lane Cove) [5.5]: I must reply to the absurd statements by the Attorney-General and Minister of Justice. The Government proposals, to which we wish to introduce a bar, relate to the crimes of grievous bodily harm, actual bodily harm and assault. It is nonsense to propose a qualification involving three specific provisions in relation to the Crimes Act. Any respect I had for the Attorney-General and Minister of Justice has been greatly reduced as a result of his remarks. I cannot believe that they were made seriously.

Mr MOORE (Gordon) [5.6]: The Attorney-General and Minister of Justice spoke of the educative function of his proposals. However, his proposals appear to be aimed at curing other social defects involving physical and familial violence occurring in marriage that are unrelated to sexual activity. I believe that matters relating to a husband's brutality associated with drunkenness or the influence of other forms of intoxicants should not be related to a rape charge. He is suggesting that in cases such as the Violet Roberts case and recent cases in Melbourne and at Stanwell Park, the woman may complain of rape as an excuse to have other violent problems in her marriage dealt with. Such an artificial concept is repugnant to the concept of marriage in our community.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [5.7]: I shall attempt once more to convince the honourable member for Lane Cove of the folly of his amendment. The honourable member seeks to introduce a bar in respect of schedule 1, page 5, line 12. His amendment would remove the words "no bar" and substitute the phrase "a bar". Proposed new section 61B relates to the offence of inflicting grievous bodily harm with intent to have sexual intercourse. If the amendment were accepted, there would be a legal bar to any prosecution against any man who inflicts bodily harm with such intent. Therefore, although the man may have been charged with attacking his wife with a knife, or shooting her, or bashing her insensible, under the Opposition's amendment if he maintains that the intention was merely to sleep with his wife no crime would have been committed—that man would be innocent. Without the Opposition's amendment, that man if convicted would be liable to life imprisonment for what he had done. That is the effect of the Opposition's amendment, and I hope the community realizes it.

Mr DOWD (Lane Cove) [5.9]: Alternative charges could be brought under section 61B for an assault occasioning grievous bodily harm. The first jury trial I handled in court was an assault involving an act of indecency, with an alternative count of assault. The accused was convicted on the alternative count. The bar in the amendment relates only to the offence which has grievous bodily harm as an ingredient of the sexual intercourse. Has not the Attorney-General and Minister of Justice ever heard of alternative counts? Juries often make findings on such counts in order to convict people. It is absurd to suggest that a bar to one charge constitutes a bar to all others.

Question—That the word stand—put.

The Committee divided.

Ayes, 58

Mr Akister	Mr Degen	Mr Knott
Mr Anderson	Mr Durick	Mr McGowan
Mr Bannon	Mr Egan	Mr McIlwaine
Mr Barnier	Mr Einfeld	Mr Maher
Mr Bedford	Mr Face	Mr Mair
Mr Booth	Mr Gabb	Mr Mallam
Mr Brereton	Mr Gordon	Mr Mochalski
Mr Britt	Mr Haigh	Mr Mulock
Mr Cavalier	Mr Hills	Mr Neilly
Mr Cleary	Mr Hunter	Mr O'Connell
Mr R. J. Clough	Mr Jackson	Mr O'Neill
Mr Cox	Mr Jensen	Mr Paciullo
Mr Crabtree	Mr Johnson	Mr Petersen
Mr Curran	Mr Johnstone	Mr Quinn
Mr Day	Mr Keane	Mr Ramsay

Mr Robb
Mr Rogan
Mr Ryan
Mr **Sheahan**
Mr A. G. Stewart

Mr K. J. Stewart
Mr Walker
Mr Webster
Mr Whelan
Mr Wilde

Mr Wran
Tellers,
Mr Flaherty
Mr Wade

Noes, 35

Mr Arblaster
Mr Barraclough
Mr Boyd
Mr Brewer
Mr J. H. Brown
Mr Bruxner
Mr Cameron
Mr J. A. Clough
Mr Dowd
Mr Duncan
Mr Fischer
Mr Fisher

Mrs Foot
Mr Freudenstein
Mr Greiner
Mr **Hatton**
Mr Healey
Mr King
Mr McDonald
Mr Mason
Mr Moore
Mr Murray
Mr Osborne
Mr Park

Mr Pickard
Mr Punch
Mr **Rozzoli**
Mr Schipp
Mr Singleton
Mr Smith
Mr Toms
Mr West
Mr Wotton
Tellers,
Mr **Caterson**
Mr Taylor

Question so resolved in the affirmative.

Amendment negatived.

Mr DOWD (Lane Cove) [5.18]: I move:

That at page 5, line 14, the word "no" be left out and there be inserted in lieu thereof the word "a".

The Opposition seeks a division on this amendment. If it loses the division, it will not force a division on my third proposed amendment, which is: That at page 5, line 17, the word "no" be left out and there be inserted in lieu thereof the word "**a**".

Question—That the word stand—put.

The Committee divided.

Ayes, 58

Mr Akister
Mr Anderson
Mr Bannon
Mr Barnier
Mr Bedford
Mr Booth
Mr Brereton
Mr Britt
Mr Cavalier
Mr Cleary
Mr R. J. Clough
Mr Cox
Mr **Crabtree**
Mr Curran
Mr Day
Mr Degen
Mr Durick
Mr Egan
Mr Einfeld
Mr Face

Mr Gabb
Mr Gordon
Mr Haigh
Mr Hills
Mr Hunter
Mr Jackson
Mr Jensen
Mr Johnson
Mr Johnstone
Mr Keane
Mr Knott
Mr McGowan
Mr **McIlwaine**
Mr Maher
Mr Mair
Mr Mallam
Mr Mochalski
Mr Mulock
Mr Neilly
Mr O'Connell

Mr O'Neill
Mr Paciullo
Mr **Petersen**
Mr Quinn
Mr **Ramsay**
Mr Robb
Mr Rogan
Mr Ryan
Mr **Sheahan**
Mr A. G. Stewart
Mr K. J. Stewart
Mr Walker
Mr Webster
Mr Whelan
Mr Wilde
Mr Wran
Tellers,
Mr Flaherty
Mr Wade

Noes, 35

Mr Arblaster	Mrs Foot	Mr Pickard
Mr Barraclough	Mr Freudenstein	Mr Punch
Mr Boyd	Mr Greiner	Mr Rozzoli
Mr Brewer	Mr Hatton	Mr Schipp
Mr J. H. Brown	Mr Healey	Mr Singleton
Mr Bruxner	Mr King	Mr Smith
Mr Cameron	Mr McDonald	Mr Toms
Mr J. A. Clough	Mr Mason	Mr West
Mr Dowd	Mr Moore	Mr Wotton
Mr Duncan	Mr Murray	<i>l'ellers,</i>
Mr Fischer	Mr Osborne	Mr Catterson
Mr Fisher	Mr Park	Mr Taylor

Question so resolved in the affirmative.

Amendment negatived.

MR DOWD (Lane Cove) [5.22]: I wish to deal now with proposed section 61B. As I have told the Attorney-General and Minister of Justice, there are serious defects in the proposed section as drafted. Having further considered this matter, I have circulated among honourable members amendments which I intend to move to remedy those defects. They take the form of a substitution of a redrafted section 61B. The problems with the proposed section 61B are manifold. The principal defect is that the word maliciously is used in the proposed section. In my view that word is redundant. As drafted it will not mean maliciously in the common law sense **but** in the sense in which it is used in the Crimes Act. If it is so used, in many cases **the** Crown will be put to proof of a higher standard than would be required if the word malicious were not included in the proposed section.

I repeat, the word maliciously has the meaning given to it by section 5 of **the** Crimes Act. That is a higher standard of malice than the Crown ought to have **to** prove for an offence under proposed section 61B. The Crown would be faced **with** the task of rebutting all the defences that could arise through, in effect, the application of section 5 of the Crimes Act, where the word maliciously is defined. There are circumstances in which, if maliciously has the meaning given by the Crimes Act, some offences of sexual assault will be excluded; for instance, where there is infliction of grievous bodily harm falling short of the standard of malicious defined by section 5 of the Crimes Act. If that view is not correct, and if it is not upheld by the courts, the word maliciously is irrelevant because the onus will be on the Crown to prove intent to inflict harm or grievous bodily harm.

The drafting of proposed section 61B has an additional serious fault as **the** person charged with maliciously inflicting grievous bodily harm upon another **person** must be proved to have inflicted that harm with intent to have sexual **intercourse**. The proposed section would exclude offences where sexual intercourse occurs without consent, and ignores cases where there is injury before or after the act of **sexual** intercourse, which is, unfortunately, common in many cases known to those who practise in this branch of the law. Often acts of degradation, assault, grievous bodily harm or actual bodily harm occur after sexual intercourse. It is my view and the view of the Opposition that to link the intention to do grievous bodily harm with the intent to have sexual intercourse makes it a narrow offence indeed. If the Crown fails in its attempts to prove an offence under proposed section 61B, it **will** only have recourse to proposed section 61D as an alternative. I understand the

philosophy of the Government to be to eliminate the sexual aspect of such offences, there being so many cases of assault after or before intercourse rather than during intercourse. This fails to provide a proper means by which the Crown can deal with serious sexual assaults.

The proposed section has also problems in relation to the intention to cause grievous bodily harm, as grievous bodily harm could be caused in the course of non-violent sexual intercourse. The consequence could be an infliction of grievous bodily harm even though that was not the intention of the perpetrator of the sexual intercourse. For instance, there could be bleeding that is not the fault of the perpetrator or that is not predictable by him. The Opposition believes also that a similar situation applies where the threat is directed to a third person who is present. The amendment is as circulated by me, that is, that all words on line 21 to 27 be omitted and there be inserted in lieu thereof the words set out as the new proposed clause 61B in my proposed amendment.

The CHAIRMAN: Order! If the honourable member for Lane Cove intends to move an amendment, he should formally move it in precise terms.

Mr DOWD: Before moving the amendment I should like to emphasize a second matter. At the second reading stage I gave notice that the Opposition would oppose the reduction in the maximum penalty for the section 61B offence to twenty years' imprisonment. Recently Mr Justice Carmichael sentenced an offender to twenty-one years' penal servitude for rape. On appeal that sentence was reduced to eighteen years. In the circumstances of that case there is no way in the world that the Court of Appeal would have recorded an 18-year sentence, which would be two years short of the maximum sentence. Government supporters must realize that although the Opposition accepts the philosophy of graduating offences in order to encourage pleas of guilty, one does not solve the crime of rape by trivializing the penalties.

My proposed amendment has two component parts. In the event of the Opposition's amendment not being accepted by the Government, I shall move separately the amendment foreshadowed by me on the list of amendments, to insert life imprisonment instead of the term of twenty years appearing in the bill. It is not good enough for Government supporters to talk about maximum penalties as though a court can impose the maximum penalty for a serious offence. As a matter of law, the maximum penalty is reserved for only the most heinous crime, the worst possible example of the offence by the worst offender. For Government supporters to say that in 1971 there was a penalty of twenty years for rape is misleading, as that penalty would not be available to the courts under the proposed legislation. Government members who support the reduction of the life imprisonment penalty—and it is known who they are—are supporting the reduction of the seriousness of the offence of rape. Therefore, I move:

That at page 5, all words on lines 21 to 27 be left out and there be inserted in lieu thereof the words

- 61B (1) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts grievous bodily harm upon that other person shall be liable to penal servitude for life.
- (2) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts grievous bodily harm upon a third person who is present or nearby shall be liable to penal servitude for life.

The effect of the amendment would be to continue the pattern established by proposed section 61D. I have drafted the amendment in this way to ensure that there is some relationship between the three relevant provisions of this part of the bill. The Crimes Act has traditionally dealt with acts that take place while other offences are being committed. Such acts include robbery, being in possession of a weapon, indecent assault or an assault accompanied by an act of indecency. Men and women may be subjected to the most appalling assaults, indignities and grievous bodily harm, though not at the time that sexual intercourse takes place. If those offences occurred without the intent to have sexual intercourse, it would be monstrous for the Crown to bring the two charges separately with the result that the complainant was put through the additional trauma of those trials.

I know that the Attorney-General and Minister of Justice wishes to reduce the problems affecting complainants. I ask him to consider seriously the amendment, which would allow a wider class of case to be brought by the Crown. Moreover, it would reduce the onus on the Crown in cases that the people of this State view as most serious offences.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [5.32]: The amendment and the foreshadowed amendment, which is almost identical and deals with the second category, are completely out of sympathy with the aims and spirit of the legislation in two respects. First, the Opposition seeks to bring back the requirement that the Crown prove non-consent to the intercourse. That is outside the scope of the Government's amendment and it is unacceptable in that regard. Second, the Opposition seeks to impose the same penalty for grievous bodily harm as for actual bodily harm—that is, life imprisonment. One may argue whether actual bodily harm deserves life imprisonment. The Government rejects the amendment. The whole purpose of the scheme is to produce a gradation of offences and to encourage pleas of guilty. If the same penalty is applicable for the first two categories, obviously the incentive to plead guilty will not be there. The policy behind the proposed legislation is to indicate to the public the Government's attitude towards the seriousness of these offences. It is hoped that some persons will be deterred from carrying out the terrible excesses that **are** so repugnant. For these reasons the Government will not support this amendment or the next one proposed to be moved. If the honourable member for Lane Cove is concerned about this aspect, he should look at section 5 of the Crimes Act.

Mr DOWD (Lane Cove) [5.34]: The Attorney-General and Minister of Justice made the point that to set a sentence of life imprisonment for category **1** and category 2 offences does not fit in easily with the gradation that the Government proposes. However, the Opposition considers that, with regard to sentences, if there is some sort **of** parity with other crimes the courts can accommodate life imprisonment for the **first** two categories. The Opposition is proposing sentences of fourteen years and twenty **years** respectively for the first two offences in category **3**.

If the arguments of the Attorney-General and Minister of Justice are valid, the Government's intentions would detract from the sentencing policy and commonsense of the judge concerned in each particular case. There are circumstances where grievous bodily harm may be caused and where, in all the circumstances, the judge may take into consideration the character of the accused, the nature of the circumstances or the accused's previous record. It should be borne in mind that when dealing with sentences one has to take into account whether the accused is a first offender and many other matters. The Opposition considers that the courts can cover these aspects. The legislation deals with a gradation of three categories, and within those categories there is a myriad of permutations and combinations of offences. If the Attorney-General and Minister of Justice is correct and if he wishes to create a gradation of offences, are all

sets of offences under section 61B or section 61D to be given the same penalty? If his argument were valid, he would have lesser sentences for attempts to commit an offence. There are circumstances where an attempt can constitute a far worse crime than the actual offence. This is brought about by the complexity of the types of matter we are dealing with.

If the spirit of the Government in this bill is to reduce the necessity to negate consent, I fail to understand how that can be applied to section 61B, 61C and 61D. The Opposition considers that consent is the essence of these offences and that the logic of the Attorney-General and Minister of Justice is wrong. I ask the Committee to consider seriously what is a complicated lawyer's amendment though an important one. Any person could be affected as a result of the Government's philosophy and the narrowness of section 61B. I ask the Committee to support the amendment.

Question—That the words stand—put.

The Committee divided.

Ayes, 57

Mr Akister
Mr Anderson
Mr Bannon
Mr Barnier
Mr Bedford
Mr Booth
Mr Brereton
Mr Britt
Mr Cavalier
Mr Cleary
Mr R. J. Clough
Mr Cox
Mr Crabtree
Mr Curran
Mr Day
Mr Degen
Mr Durick
Mr Egan
Mr Einfeld
Mr Face

Mr Gabb
Mr Gordon
Mr Haigh
Mr Hills
Mr Hunter
Mr Jackson
Mr Jensen
Mr Johnson
Mr Johnstone
Mr Keane
Mr Knott
Mr McGowan
Mr McIlwaine
Mr Maher
Mr Mair
Mr Mallam
Mr Mochalski
Mr Mulock
Mr Neilly
Mr O'Connell

Mr O'Neill
Mr Faciullo
Mr Petersen
Mr Quinn
Mr Ramsay
Mr Robb
Mr Rogan
Mr Ryan
Mr Sheahan
Mr A. G. Stewart
Mr Walker
Mr Webster
Mr Whelan
Mr Wilde
Mr Wran

Tellers,
Mr Flaherty
Mr Wade

Noes, 36

Mr Arblaster
Mr Barraclough
Mr Boyd
Mr Brewer
Mr J. H. Brown
Mr Bruxner
Mr Cameron
Mr J. A. Clough
Mr Dowd
Mr Duncan
Mr Fischer
Mr Fisher
Mrs Foot

Mr Freudenstein
Mr Greiner
Mr Hatton
Mr Healey
Mr King
Mr McDonald
Mr Mason
Mr Moore
Mr Murray
Mr Osborne
Mr Park
Mr Pickard
Mr Punch

Mr Rozzoli
Mr Schipp
Mr Singleton
Mr Smith
Mr Sullivan
Mr Toms
Mr West
Mr Wotton

Tellers,
Mr Caterson
Mr Taylor

Question so resolved in the affirmative.

Amendment negatived.

Mr DOWD (Lane Cove) [5.43]: I do not propose to ask the Committee to divide on this question. However, as there were two components in the last amendment, one dealing with the philosophy of the bill and the other dealing with penalty, I move:

That at page 5, line 23, the words "20 years." be left out there be inserted in lieu thereof the word "life."

The CHAIRMAN: The Committee has already considered the question, That *the* words proposed to be left out stand, as moved by the honourable member for Lane Cove in his previous amendment. As the Committee has already decided that question, it is not now competent for the honourable member for Lane Cove or any other honourable member to move a further amendment to that provision.

Page 5

Page 6

- 30 61c. (1) Any person who—
 (a) maliciously inflicts actual bodily harm upon another person;
 or
 (b) threatens to inflict actual bodily harm upon another person
 by means of an offensive weapon or instrument,
 5 with intent to have sexual intercourse with the other person shall be
 liable to penal servitude for 12 years.
- (2) Any person who—
 (a) maliciously inflicts actual bodily harm upon another person;
 or
 10 (b) threatens to inflict actual bodily harm upon another person,
 with intent to have sexual intercourse with a third person who is
 present or nearby shall be liable to penal servitude for 12 years.
- Sexual assault category 3—sexual intercourse without consent.**
- 15 61d. (1) Any person who has sexual intercourse with another
 person without the consent of the other person and who knows that
 the other person does not consent to the sexual intercourse shall be
 liable to penal servitude for 7 years or, if the other person is under
 the age of 16 years, to penal servitude for 10 years.

Mr DOWD (Lane Cove) [5.44]: I move:

That at page 5, all words on and from line 30 down to and including line 12 on page 6 be left out and there be inserted in lieu thereof the words

- 61c (1) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts actual bodily harm upon that person or threatens to inflict actual bodily harm upon that other person shall be liable to penal servitude for life.

- (2) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts actual bodily harm upon a third person or threatens to inflict actual bodily harm upon that third person who is present or nearby shall be liable to penal servitude for life.

The reasons for this amendment are threefold. First, I have explained the Opposition's view as to the maximum penalty that ought to be imposed. Second, the proposed penalty of twelve years for sexual intercourse involving actual bodily harm will be less than the maximum penalty for an act of buggery under section 79 of the Crimes Act, when the act is done with consent rather than without consent. It is monstrous to leave that provision in the Crimes Act. If the anomaly is not cured by later amendments, it will place sentencing judges in an appalling situation. The third reason is that the second part of the amendment is, as I have suggested before, to bring this provision into line with the third category offence. The fourth reason for the amendment is found in the curious words of proposed new section 61C (1) (b), where a person threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument with intent to have sexual intercourse. As there is a clear legislative intention to deal with a person having an offensive weapon or instrument, it will mean that a person who threatens to strangle another or to hit, punch or bash another person will not be guilty of this offence. I fail to see why a threat involving the use of a weapon or instrument should come within the offence, although a threat of injury **by** hand—such as punching, bashing or strangling—without the use of a weapon or instrument should not be an offence—that is, unless the word instrument is to be given a wider meaning than I should have thought it would have.

My view is that the maximum penalty for an offence involving actual bodily **harm**, is not sufficient and that the provision about the use of a weapon or instrument **is** too restrictive to enable the Crown to obtain a conviction under this proposed new section. The whole structure of this part of the bill relates to an intention **to** have sexual intercourse, and the matter that the Crown must prove in relation to other assaults. If other assaults occur before or after the act of intercourse, they fall outside the proposed section. In that case the Crown would be left with a charge of sexual intercourse as contemplated by category 3. It would then have to bring another charge or an additional charge at the same time. I ask the Committee to accept this amendment. **In** accordance with your ruling, Mr Chairman, I shall not move the separate amendment to substitute "life" for "20 years". I trust that I have made the Opposition's position abundantly clear.

The CHAIRMAN: The question now is, That the words proposed to be left out stand part of the bill. Those in favour say, Aye; to the contrary, No. I think the ayes have it. The ayes have it.

Mr Dowd: The noes have it.

The CHAIRMAN: Order! I had already declared the question. The honourable member for Lane Cove should pay attention to the Chair. It is not the duty of the Chairman to ascertain whether or not the Opposition requires a division. It is for the Opposition to indicate clearly that it requires a division. I have declared the question. The question now is, That the schedule as read stand part of the bill.

Mr DOWD (Lane Cove) [5.49]: I move:

That at page 6, line 17, the figure "7" be left out and there be **inserted** in lieu thereof the figure "14".

I propose to move also: That at page 6, line 18, the figure "10" be left out and **there** be inserted in lieu thereof the figure "20".

With regard to proposed section 61D the maximum penalty for sexual **intercourse** without consent is a period of 7 years. One must remember that a first offender **will** automatically receive some remission of his sentence. If there is a non-parole period for a first offence, it will be most unlikely that a court will impose the maximum sentence, unless the offence is particularly serious. All these matters affect sentence. In my view not enough material is put before the court to enable a proper sentence: to be imposed. Much of the material on which the sentence is based is put during the defence of the accused. The full circumstances of the case, including the effect of the offence on the victim, ought to be put to the court. The Opposition accepts the Government's philosophy of a graduated set of offences. However, I need mention only one case that came before the courts. It involved a girl of 16 years who was picked up by a man who had just been released from prison. That man was joined by two other men. The girl offered no resistance to being raped. That matter did not come within categories 1 or 2. It was rape or sexual intercourse without the girl's consent because the victim—as in so many cases—chose not to offer any resistance. As the Attorney-General and Minister of Justice said during the second reading debate, who knows what a rapist would do if there were resistance?

The Opposition believes that it is monstrous for the Government to provide for a maximum sentence of 7 years in an area of crime which is growing so prevalent in our society. The Opposition accepts the aim of encouraging the reporting of rape. However, if we fix a maximum sentence of only 7 years, it will mean that rapists **will** be out of prison in 18 months or 2 years if they have committed a first offence. There is a tendency for persons convicted of rape not to be convicted again for the same offence. There are glaring cases, such as those involving Leonard Lawson, to **the contrary**, but in the majority of cases rape is a once only offence.

The Opposition believes that in the case of the rape of a person under the age of 16, a period of imprisonment of 10 years as a maximum goes right outside the structure of the Crimes Act. In this instance the Government is failing to impose an adequate sentence. A sentence of 10 years in the case of an offence against a person under the age of 16 represents an appalling indictment of the Government's policy of reduced penalties; indeed, it trivializes the offence. Society is at risk from **this** terrible and prevalent offence. The Opposition asks the Committee to consider what the Premier and Treasurer is proposing. Although the Attorney-General and Minister of Justice is speaking to these amendments, they are the responsibility of the Premier and Treasurer. The Opposition asks the Committee to consider carefully the proposed maximum sentences.

Obviously the range of circumstances surrounding the offence of rape is infinite. The circumstances range from the casual disinclination of a person to have **sexual** intercourse to cases involving terrifying emotional and physical threats. If violence has occurred before the rape or if for some reason the victim sees the possibility of violence occurring and does not resist, the offender may get a sentence of only 7 years. Under section 79 of the Crimes Act, sexual intercourse or carnal knowledge was treated much more seriously. Therefore, the relationship between carnal knowledge with a person under the age of 16 and a sentence of only 7 years makes a mockery of the Government's policy. I ask honourable members to consider the proposed amendment seriously.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [5.55]: I dealt in my second reading speech with the matters raised by the honourable member for Lane Cove. The women's movement universally urged the Government substantially to reduce the penalty for what was described originally as rape *simpliciter*. The reasons were strong and compelling. They ranged from the matter of reporting the rape to the consideration that more offenders would plead guilty and thus save many women from the terrible ordeal of giving evidence at petty sessions and then before a jury. Those arguments were advanced almost universally by the women's organizations, although one or two of them were unconvinced on this aspect. However, even the most conservative of those organizations strongly supported a maximum penalty of 7 years for the less violent forms of sexual attack.

The Government asked the Bureau of Crime Statistics and Research to examine the penalties imposed in rape cases. The bureau discovered that in the period 1972 to 1979 the maximum penalty imposed was twenty years, and the average sentence for rape and attempted rape was 7 years. When one considers that in the most severe case of rape the maximum penalty was 20 years, one realizes on the figures that there must have been many sentences of 3 or 4 years imposed. That was borne out also by the experience of public defenders and members of the legal profession some of whom act in this type of case. The penalty imposed in respect of the first two categories of offence was much greater. We support the women of New South Wales who believe that the Government's proposals will encourage greater reporting of sexual assault and more pleas of guilty. For those reasons the Government finds the Opposition's amendment unacceptable.

Mr DOWD (Lane Cove) [5.58]: On 17th March the Bureau of Crime Statistics and Research produced information relating to the maximum sentences for rape and attempted rape in the period 1972 to 1979. In that 8-year period no life sentences were imposed for such offences. For cases of attempted rape in 1979 the maximum sentence imposed was 9 years; in 1978 it was 13 years; in 1977 the maximum sentence was 12 years; in 1976 it was 11 years and in 1975 it was 7 years. The maximum sentence in 1974 was 12 years; in 1973 it was 12 years and it was also 12 years in 1972. I have a document that sets out the mean custodial sentence for rape and the variations in those 8 years. In 1979 the mean average custodial sentence for rape was 8.36 years—and that covered the most serious forms of rape. However that average related to both minimum and maximum sentences. That figure represented an increase because in 1972 the average was 6.71 years for 49 offences. The figure increased every year between 1972 and 1979. Obviously the judges are being fair and are imposing heavier penalties for the more serious offences. Some of the offences will fall into a category in respect of which the judge cannot impose the maximum sentence. I ask all honourable members to listen to what I am saying because they will be shortly asked to vote on these matters. The Attorney-General and Minister of Justice made these figures available to me. For the period from 1972 to 1979 the average mean sentence for attempted rape was just over five years.

Mr O'Connell: That is not a very mean sentence.

Mr DOWD: The honourable member for Peats considers this a funny issue, when it is a most serious matter. The honourable member should attend a criminal trial and observe what happens to the victims of rape. He would not think that it is funny. I am referring to figures published on sentences delivered by courts. The Government is proposing an amendment to provide for a maximum sentence of 7 years when for the past 7 or 8 years the courts have imposed an average sentence of more than that.

[The Chairman left the chair at 6.1 p.m. The Committee resumed at 7.30 p.m.]

Mr DOWD: In view of the Government's refusal to accept amendments to proposed section 61B and section 61C to widen the offences, a larger number of offences will fall within category three. I notice that the honourable member for Peats has not burdened the Committee with his presence since dinner. The honourable member, and the Attorney-General and Minister of Justice on occasions, appeared to find the offence of rape amusing. I suspect that neither the honourable member nor the Attorney-General and Minister of Justice has had sufficient experience, particularly the Attorney-General, to understand the seriousness of the offence, or the dramatic effects of rape upon the victims. If the honourable member for Illawarra fails in his attempt to have included in the bill additional matters and a new schedule, the failure to amend section 79, section 80 and section 81 will create a serious anomaly so far as the maximum penalty is concerned. If the amendments proposed by the honourable member for Illawarra are accepted, some of the anomalies will be reduced.

The Opposition is most concerned about the anomalies that will be created in relation to homosexuality. The Government stands condemned for allowing to pass through the Parliament a bill that creates those anomalies. The honourable member for Illawarra stated at the second reading stage that he wished to prevent criminal sanctions being imposed upon homosexual males whose activities were carried out in private. The Country Party has made its position clear. It will oppose the amendments that the honourable member for Illawarra has foreshadowed he will move. Members of the Liberal Party are in a more difficult position in that they are divided on the question of their attitude towards adult homosexual acts. I make it clear that Liberal Party supporters will have a free vote on the matter. Country Party members will oppose the amendments to be proposed by the honourable member for Illawarra.

Although members of the Liberal Party will have a free vote on the matter, they will oppose the amendments proposed by the honourable member for Illawarra for two reasons. First, the proposal includes as being legal homosexual acts between males aged sixteen to eighteen years. Whatever one's philosophical view may be on this subject and on whether males and females between the age of sixteen and eighteen years should be treated equally, both the Liberal Party and the Country Party have a joint concern arising from the Victorian experience. In that State someone succeeded in having made available material for teaching homosexuality as an alternative way of life. The Opposition opposes the propagation by the education system of views on sexual attitudes, but not on the mechanics of sex, biological matters and so on. The Opposition is of the view that society has a duty to protect young people of the important years of sixteen and seventeen. Although I commend the sincerity of the honourable member for Illawarra—and not all of my party share that view—for his endeavour to provide for adult males, as it is implicit that those between the ages of sixteen and eighteen are included, the Opposition will oppose the amendments to be moved by the honourable member for Illawarra.

The Opposition is opposed also to the proposal to omit section 81B from the principal Act. As a result of the Government's changes to the Summary Offences Act, soliciting is completely out of hand. I have already given notice that at the appropriate time I shall move urgency and seek to introduce a private member's bill. I know that the honourable member for Gosford will support my seeking a debate so that he may have the opportunity of placing on record his views on soliciting. Whatever one's views on prostitution may be, the city of Sydney has not been improved in any way by the information that the Minister for Police and Minister for Services gave with pride this morning that some 1500-odd young people had been talked to by the police.

Mr McGowan: Under the present Act.

Mr DOWD: Yes. The police talked to child prostitutes. In my day the police looked after their morality and their care. Now the Minister asserts **with** pride that policemen talked to them and interviewed them.

Mr Walker: When was the honourable member's day?

Mr DOWD: My day is yet to come. The Attorney-General and Minister of Justice has had his day. My day will be a lot sooner than the Minister may think, as will the Opposition's day. It will be when the public of New South Wales understand the cynical way in which the Government is dealing with this important matter. Whatever one's views may be on homosexual offences, the section of the community that comprises the male homosexuals has been treated contemptuously and cynically by the Government.

The CHAIRMAN: Order! The question before the Committee is, That the figure "7" proposed to be left out stand. The question has nothing to do with homosexuality. The honourable member for Lane Cove must return to that question.

Mr DOWD: I thank you, Mr Chairman, for reminding me of my obligation to be relevant to the question before the Committee. If the Government's proposal is accepted, the penalties provided for offences under section 79, which deals with buggery on male and female, will be totally out of line when consent is involved. That is to the Government's shame. The Opposition knows that it is the proposal of the Premier and Treasurer and that the Attorney-General and Minister of Justice would want to bring some of these penalties more into line. The Opposition knows that the Attorney-General is concerned about the law and that the Premier and Treasurer could not care less about it, as long as he attracts the newspaper headlines about his big reforms. I remind the Committee of the problems that will be created by the imposition of a maximum penalty of seven years' imprisonment and a ten-year maximum penalty where a child, whether male or female, under the age of sixteen years is involved. That is the same penalty as for carnal knowledge, whether by consent or not. At least the Government is obtaining some relativity as the same penalty applies whether it is by consent or not.

It is scandalous that the criminal law of New South Wales should be treated in this cynical fashion. Unless my amendment is accepted, a maximum term of imprisonment of seven years will apply. Previously I gave the Committee the average term of imprisonment for the offences of rape and attempted rape. Those averages included those who received a bond. It is an absolute scandal that the Parliament should be asked to treat rape so contemptuously. I contend that the glaring anomalies that have been revealed have prompted the honourable member for Illawarra to raise, quite properly, amendments in an endeavour to cure some of those anomalies. Those who protested today outside the House, and those in the gallery of the House now, ought to know how cynically they have been dealt with by the Government, which has introduced legislation that will create glaring anomalies between this section and other sections of the Crimes Act. I have moved the amendment separately in order to underline the seriousness of the offence of rape.

At last the amendment I have moved will give some relativity of this offence to other offences under the Crimes Act. Of course, it will not take into account scandalous lack of relativity between offences related to the homosexual acts of consenting and non-consenting parties, upon which matter I know the honourable member for Illawarra shares my view that this is a cynical exercise by the Government. Of course, the Government will seek to defer the matter until after the State elections, that is if it

wins government. I hope that the public will be aware of the cynicism of the Government's action in doing so. The Government will not support the amendments but will seek to suggest they are outside the order of the leave of the bill. This is cynical.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [7.42]: I should like to give the lie to an Opposition tactic that seeks to suggest that the penalty for rape is being reduced from life imprisonment to seven years' imprisonment. That suggestion is wrong. It is a falsehood and is totally unacceptable to me. I know that some members of the Opposition will make that assertion in the community anyway, as they are not concerned with the truth but with their own self-interest. The maximum penalty for sexual assault is twenty years' imprisonment. There is a third category in a graduated series of offences designed to achieve laudable social objectives. The first objective is to achieve a higher proportion of reporting of rapes. It was generally agreed at the second reading stage that rape is the most unreported crime. It is estimated by even the most conservative critics that the bill will double the number of rapes reported. It will bring justice to twice the number of offenders. All honourable members would agree that is a laudable objective. That is what the graduated series of offences is designed to achieve.

The second objective, with which all honourable members would agree, is to avoid where possible the misery, degradation and humiliation that a woman may have to suffer when cross-examined first in a magistrate's court at preliminary hearings and later before a judge and jury of the Supreme Court. In the latter court the whole unfortunate incident is gone over again in detail, and the complainant often spends many days and sometimes weeks in the witness box being cross-examined. One could even have the result of the Old Bar Beach case where a woman who was savagely raped and suffered dearly was admitted to a mental home because of the effects of cross-examination of her in various preliminary hearings and trials. The Government is trying to avoid such traumatic court experiences. For that reason it has devised a system of four offences, which are designed to encourage offenders to plead guilty.

At present, no legal adviser worth his salt would advise an offender to plead guilty to a charge of rape. The advice given is always to deny such a charge. That has resulted in rape having the smallest number of pleas of guilty of any offence, except a charge of murder where, of course, it is compulsory to plead not guilty. The Government hopes that this intelligent and humane system of graduated offences will achieve its aims. It is wrong for Opposition members to select the third category of sexual assault and say because it provides a penalty of seven years, that is the maximum penalty for rape. Such an assertion is wrong. I repeat, the statistics reveal that that is the maximum penalty being imposed for these sorts of offences anyway. The Government's measure is realistic. It has the support of various women's organizations throughout New South Wales, conservative as well as radical. For those very good reasons the Government is supporting this particular measure and will reject the Opposition's amendment.

Mr DOWD (Lane Cove) [7.47]: The Attorney-General and Minister of Justice has merely compounded the problem. If the amendment is passed, and if two males are charged with committing an offence covered by the sexual intercourse definition in the first part of the bill, it will be prudent for one of them to allege that the act was committed without consent in order that the maximum penalty that can be imposed will be seven years. If they were to state that the act was done by consent, the maximum penalty would be fourteen years. Any member of the Liberal Party would support the amendment moved by the honourable member for Illawarra if it could cure that glaring anomaly, as it is the policy of the New South Wales Liberal Party that

the law for adult males should be the same as for adult females. The proposed measure will create a situation where offenders will have to lie to seek the opportunity to receive a lesser penalty. Where an accused person is before the court, that is what he will have to do. It is a cynical exercise by the Government to create an alarming disparity between offences. I warn the Attorney-General and Minister of Justice that when the public realizes what the Government has done, there will be an outcry. The Government may find that the people of New South Wales may take an adverse view of its cynical promise made to certain persons in the community—which it will put into effect after the State elections.

Question—That the figure stand—put.

The Committee divided.

Ayes, 54

Mr Akister	Mr Gordon	Mr O'Neill
Mr Anderson	Mr Haigh	Mr Paciulio
Mr Bannon	Mr Hills	Mr Petersen
Mr Barnier	Mr Hunter	Mr Quinn
Mr Bedford	Mr Jackson	Mr Ramsay
Mr Booth	Mr Jensen	Mr Robb
Mr Brereton	Mr Johnson	Mr Rogan
Mr Britt	Mr Johnstone	Mr Ryan
Mr Cavalier	Mr Keane	Mr Sheahan
Mr Cleary	Mr Knott	Mr A. G. Stewart
Mr R. J. Clough	Mr McGowan	Mr Walker
Mr Crabtree	Mr McIlwaine	Mr Webster
Mr Curran	Mr Maher	Mr Wilde
Mr Day	Mr Mair	Mr Wran
Mr Degen	Mr Mallam	
Mr Durick	Mr Mochalski	
Mr Egan	Mr Mulock	<i>Tellers,</i>
Mr Einfeld	Mr Neilly	Mr Flaherty
Mr Gabb	Mr O'Connell	<i>Mr Wade</i>

Noes, 35

Mr Arblaster	Mrs Foot	Mr Punch
Mr Barraclough	Mr Greiner	Mr Rozzoli
Mr Boyd	Mr Hatton	Mr Schipp
Mr Brewer	Mr Healey	Mr Singleton
Mr J. H. Brown	Mr King	Mr Smith
Mr Bruxner	Mr McDonald	Mr Sullivan
Mr Cameron	Mr Mason	Mr Toms
Mr J. A. Clough	Mr Moore	Mr West
Mr Dowd	Mr Murray	Mr Wotton
Mr Duncan	Mr Osborne	<i>Tellers,</i>
Mr Fischer	Mr Park	Mr Caterson
Mr Fisher	Mr Pickard	Mr Taylor

Question so resolved in the affirmative.

Amendment negatived.

Mr DOWD (Lane Cove), [7.55]: I move:

That at page 6, line 18, the figure "10 be left out and there be inserted in lieu thereof the figure "20".

I have already given the reason for the amendment. It is to show the Opposition's **abhorrence** at **interference** with a child under 16 years of age. It is a scandal that the maximum penalty for interfering with a child under 16 should be 10 years. Doubtless the maximum penalty will not be imposed, except in the most appalling circumstances. The sentences imposed will be much lower because the courts will construe **maximum** penalties in the same way as they construe penalties for other crimes.

Question—That the figure stand—put.

The Committee divided.

Ayes, 55

Mr Akister
Mr Anderson
Mr Bannon
Mr Barnier
Mr Bedford
Mr Booth
Mr Brereton
Mr Britt
Mr Cavalier
Mr Cleary
Mr R. J. Clough
Mr Crabtree
Mr Curran
Mr Day
Mr Degen
Mr Durick
Mr Egan
Mr Einfeld
Mr Gabb

Mr Gordon
Mr Haigh
Mr Hills
Mr Hunter
Mr Jackson
Mr Jensen
Mr Johnson
Mr Johnstone
Mr Keane
Mr Knott
Mr McGowan
Mr McIlwaine
Mr Maher
Mr Mair
Mr Mallam
Mr Mochalski
Mr Mulock
Mr Neilly
Mr O'Connell

Mr O'Neill
Mr Paciullo
Mr Petersen
Mr Quinn
Mr Ramsay
Mr Robb
Mr Rogan
Mr Ryan
Mr Sheahan
Mr A. G. Stewart
Mr Walker
Mr Webster
Mr Whelan
Mr Wilde
Mr Wran

Tellers,
Mr Flaherty
Mr Wade

Noes, 36

Mr Arblaster
Mr Barraclough
Mr Boyd
Mr Brewer
Mr J. H. Brown
Mr Bruxner
Mr Cameron
Mr J. A. Clough
Mr Dowd
Mr Duncan
Mr Fischer
Mr Fisher
Mrs Foot

Mr Freudenstein
Mr Greiner
Mr Hatton
Mr Healey
Mr King
Mr McDonald
Mr Mason
Mr Moore
Mr Murray
Mr Osborne
Mr Park
Mr Pickard
Mr Punck

Mr Rozzoli
Mr Schipp
Mr Singleton
Mr Smith
Mr Sullivan
Mr Toms
Mr West
Mr Wotton

Tellers,
Mr Caterson
Mr Taylor

Question so resolved in the affirmative.

Amendment negated.

Mr DOWD (Lane Cove) [8.3]: It **should** be noted how many supporters of the Labor **Party** saw fit to exempt themselves from voting on this matter. The Opposition **knows** of the problems going on within that **party**. Honourable members have heard of amendments to be moved by the honourable member for **Illawarra**, despite **the**

earnest attempts of the Premier and Treasurer to play down the matter because it is politically embarrassing. The Premier and Treasurer could not care less about how the amendments of the honourable member for Illawarra will affect the people in the community.

The Opposition is aware of the Government's policy of perpetuating the penalty structure imposed by sections 76 and 76A of the Crimes Act. The penalties are inadequate and the Opposition asks the Attorney-General and Minister of Justice to review them.

[Interruption]

The CHAIRMAN: Order! There is far too much conversation in the Chamber. Any members desirous of continuing their conversations should leave immediately.

Mr DOWD: In particular, the Premier and Treasurer should leave because it is a bit difficult for him. The Opposition asks the Attorney-General and Minister of Justice to look at the sentencing pattern that will emerge after the amendments have been carried. The difficulty under the present administration is that it could be two years before some cases come to trial, because of the delays in committal and indictment proceedings in this State. The Attorney-General and Minister of Justice cannot even get the *Sergi* case to come on in a reasonable time.

I have mentioned already in the Committee debate the parity of sentences for attempts to commit offences and for the actual offences. Though I can conceive of instances where the attempt can have as serious an effect from the victim's point of view as the offence itself, the Opposition agrees with the philosophy of the Attorney-General and Minister of Justice, on behalf of the Government, that there should be graded penalties. There should be graded penalties for attempts to commit a crime. The Premier and Treasurer is not bothering about this aspect because no more votes are to be won on the issue.

Attempts to commit offences should *carry* a lesser sentence than the sentence for the commission of an offence. As the Attorney-General and Minister of Justice said, this is to encourage defendants to plead guilty to lesser charges when there is doubt whether a charge of committing an offence will be successfully prosecuted.

With regard to alternative verdicts, the Opposition agreed at the second reading stage with the structure proposed in the bill. I turn next to the provisions for the hearing of proceedings in camera. Some supporters of the Government seem to think sexual assaults are amusing. Those who are amused should spend some time in the courts and talk to the victims of crimes and their parents. The judges of the State are eminently competent to make decisions on hearings in camera. The Opposition supports the Government on that aspect. At the second reading stage I said that the Opposition supports the balance to be achieved with regard to the complaint; that is, to leave the matter of complaint in issue, but to allow directions to be given to a jury by experienced judges of this State. New South Wales judges are of a much higher quality than those in most other States and countries. The standard of our judiciary also allows for proper directions to be given in appropriate circumstances. The issue of complaint should be reviewed in the light of the workings of this bill when it becomes an Act. I am concerned that the balance that has been struck needs to be weighed seriously in regard to how judges deal with directions to juries.

I make particular reference to proposed section 405C, which deals with the difficulties of convicting persons when there is lack of corroboration. If honourable members are concerned with protecting young people in the community, they should

pay particular attention to this aspect. It is difficult to get convictions where molestation or sexual interference has occurred to a small child. This is because of the problems of taking evidence and having it admitted. Many criminals are allowed free at the prima facie stage of the case for the prosecution because such evidence is not admitted.

The Attorney-General and Minister of Justice is responsible for the Evidence Act and I ask him to examine its workings. It has not been reviewed recently except for the scandalous assumption of power by the Attorney-General and Minister of Justice to take evidence away from the court when he deems it politically expedient—to make the Government above the courts of this State. I ask him to review the Evidence Act and examine the balance to be achieved in the admissibility of evidence. My view is that a child's evidence should be admitted, whether sworn or unsworn, and proper directions as to its weight given to a jury by a judge. A magistrate may make his own decision on that matter. The Attorney-General and Minister of Justice, in the short time before this Government is thrown out of office, has an obligation to look at the hearsay rule to see whether it is serving the interests of the community.

Mr Walker: I look at it every day.

Mr DOWD: The Attorney-General and Minister of Justice is counting every day. He should. He has not many days left in office. There will be problems concerning depositions in previously connected proceedings, where there has been a multiple offence. The power under proposed section 409A (3), to enable a justice to grant leave to an accused to ask a question substantially the same as in a deposition, ought to be watched extremely closely. As the provision has been drafted, it will be difficult for a justice not to allow a question to be put although a similar question has been asked in the previous deposition. Surely the ingenuity of counsel can circumvent the restrictions imposed by the fact that one of several offenders has had his counsel cross-examine a victim on an earlier occasion. This is part of the philosophy of protecting victims of rape and sexual assault with which we agree. It is hoped to encourage people to report such matters and not be scared of vilification, as now occurs. As the honourable member for Nepean said, our society tries the victim rather than the accused.

The New South Wales Bar Association has had certain things to say about the workings of this law. With all due respect to that association, of which I am still a member, the association forgets its obligations. Obligations of lawyers are not only to accused persons but also to society. The president of the association, an eminently respected and able counsel, has expressed the view that in a trial situation we have to watch the interests of the accused. The Government is correct in trying to remedy one matter and achieve a different situation. The Government is not correct in many things it does, but in encouraging more reporting of such offences it is acting properly.

The Opposition supports the Government's proposal in proposed section 409B to eliminate cross-examination about sexual experience. Our concern is that sexual reputation, as against sexual experience, has been excluded. Many people have put it to me quite cogently that sexual reputation is relevant. Despite that, the Opposition does not believe that anyone, regardless of sexual reputation, should suffer sexual assault or any assault simply because of that reputation. In our society a prostitute is entitled not to be raped, and is entitled to have a defence against rape. I have acted for prostitutes in cases of attack on them and in bribery matters involving the police. Whatever their situations in life, they are entitled under our law to the same protection as anyone else. But it has been put to me by some learned members of

the legal profession that reputation ought to be a relevant matter. The Opposition believes this legislation is important and will ensure that people register complaints. To see how it works, we are prepared to support that provision.

The last matter about which I wish to speak at this Committee stage concerns the dock statement. I have long supported the institution of the dock statement because often it allows the only opportunity the accused has to put his case! without subjecting himself to cross-examination. I believe judges fail, in many cases in this State, to protect witnesses, and some witnesses may be intimidated. I commend strongly the Attorney-General and Minister of Justice for this measure. He has restricted the use of the dock statement which, I know, has worried many members of the Opposition. Sometimes dock statements are used to vilify a victim who has had to suffer the offence itself and should not have to **suffer** at the committal and the trial proceedings. This measure is probably a practical means to preserve the dock statement but, at the same time, to allow the accused to give his version of the offence without subjecting himself to cross-examination. That applies particularly to a person whose first language is not English, to a person who is not particularly intelligent and may not handle cross-examination at all well, and particularly to those intimidated by the whole court process. We should look at ways of reducing some of the intimidation by people dealing with the court process. We believe the courts of this land, within their obligations to the citizen and society, perform an efficient and capable job. The judiciary and the police try to carry out the law, though under this Government police face serious **difficulties** in their work because they do not have the support of the Attorney-General and Minister of Justice in trying to **carry** out their duty.

The Opposition believes that the Government is to be commended for trying to reduce the unfortunate lot of the victim. We therefore support these amendments in part, and are prepared to allow them in **part**, without opposition, in the hope they will reduce the serious problem of rape. We know the Government, because of the introduction of this measure, has treated this matter seriously. It is hoped, in the conduct of trials and with the introduction of the proposed gradated offences, allowed at this Committee stage, that in future some offenders will be induced to plead guilty and that the victim will not be put through a trial. It is hoped to encourage more reporting of offences so that the rapist, one of the most vile animals in our society, will be more readily brought to justice.

Schedule agreed to.

New Schedule 2

Mr PETERSEN (Illawarra) [8.16]: It is my intention, as honourable members know, to move amendments dealing with homosexuality, as I foreshadowed in my second reading speech. Before doing so, I should like to say a few words about the amendments. It is most unfortunate that the policy of the Australian Labor Party, which I have represented in this Parliament for fifteen years, discourages homosexual law reform——

The CHAIRMAN: Order! It is not in order for the honourable member for Illawarra to speak to the measure as he is doing. I understand the **honourable** member wishes to move an amendment to the principal bill, by the addition of schedule 2. If the honourable member moves that, it is in order for him to debate it.

Mr PETERSEN: I seek your ruling, Mr Chairman. **Am** I required to read my amendment in full or may I submit it as tabled?

The CHAIRMAN: It has been the practice to require honourable members to submit amendments in writing. Because of the length of the proposed amendment and because it has been widely circulated and discussed, on this occasion I am willing to accept it as circulated.

Mr Dowd: On a point of order. These amendments, leaving aside the principal matter with which I know the honourable member for Illawarra is concerned, relate to a schedule 2 in which it is proposed to deal with several different questions. So far as they deal with incest, carnal knowledge and so on, they should be dealt with separately from the amendments dealing with homosexuality. I appreciate the difficulties of moving individual amendments and debating them in a totality, but to allow the honourable member for Illawarra to debate all of the matters raised in the amendments is extending, beyond what is reasonable, the proper forms of this Parliament.

Mr Petersen: On the point of order——

The CHAIRMAN: Order! As exception has been taken by an honourable member to my decision to permit the honourable member for Illawarra to take his amendments as read, I must now ask him to read the amendments.

Mr PETERSEN: I move:

That the following Schedule be inserted:

SCHEDULE 2 (Sec. 3.)

FURTHER AMENDMENTS TO THE CRIMES ACT, 1900

(1) (a) Section 1, matter relating to Part III, Omit "Unnatural offences.—ss. 79–81B", insert instead "Bestiality.—ss. 79, 80".

(b) Section 1, matter relating to Part XVI, Omit "579", insert instead "580".

(2) Sections 67, 68, Omit the sections, insert instead, Sexual intercourse with person under 10.

67. Any person who has sexual intercourse with another person under the age of 10 years shall be liable to penal servitude for life.

Attempts or assaults with intent to have sexual intercourse with person under 10.

68. Any person who attempts to have sexual intercourse with another person under the age of 10 years, or assaults another person under the age of 10 years with intent to have sexual intercourse with the other person, shall be liable to penal servitude for 14 years.

(3) (a) Section 69, after "69.", insert, (1) Where on the trial of a person for having sexual intercourse with another person under the age of 10 years the jury are satisfied that the other person was of or above that age, but under the age of 16 years, and that the accused had sexual intercourse with the other person, they may find the accused not guilty of the offence charged but guilty of an offence under section 71, and the accused shall be liable to punishment accordingly.

(b) Section 69; Before "Where", insert "(2)".

(c) Section 69; After "trial", insert "for an offence under section 67 as in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981".

(d) Section 69; After section "71", insert "as so in force".

(4) (a) Section 70; After "70.", insert; (1) Where on the trial of a person for having sexual intercourse with another person under the age of 10 years the jury are satisfied that the other person was of or above that age, but under the age of 16 years, but are not satisfied that the accused had sexual intercourse with the other person, and are satisfied that the accused is guilty of an offence under section 72, they may find the accused not **guilty** of the offence charged but guilty of an offence under section 72, and the accused shall be liable to punishment accordingly.

(b) Section 70; Before "Where", insert "(2)".

(c) Section 70; After "trial", insert "for an offence under section 67 as in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981,".

(d) Section 70; After "72", insert "as so in force".

(5) Sections 71–75; Omit the sections, insert instead; Sexual intercourse with person between 10 and 16.

71. Any person who unlawfully has sexual intercourse with another person of or above the age of 10 years and under the age of 16 years shall be liable to penal servitude for 10 years.

Attempts or assaults with intent to have sexual intercourse with person between 10 and 16.

72. Any person who attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years and under the age of 16 years, or assaults any other such person with intent unlawfully to have sexual intercourse with the other person, shall be liable to penal servitude for 5 years.

Sexual intercourse with idiot or imbecile.

72A. Any person who has or attempts to have unlawful sexual intercourse with another person and who knows that the other person is an idiot or imbecile shall be liable to penal servitude for 5 years.

Sexual intercourse by teacher, &c.

73. (1) Any person who, being a schoolmaster, schoolmistress or other teacher, unlawfully has sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a pupil of the person, shall be liable to penal servitude for 14 years.

(2) Any person who unlawfully has sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a child or step-child of the person, shall be liable to penal servitude for 14 years.

Attempts or assaults by teacher, &c.

74. (1) Any person who, being a schoolmaster, schoolmistress or other teacher, attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a pupil of the person, or assaults any other such person with intent unlawfully to have sexual intercourse with the other person, shall be liable to penal servitude for 7 years.

Mr Petersen]

(2) Any person who attempts unlawfully to have sexual intercourse with another person of or above the age of 10 years and under the age of 17 years, being a child or step-child of the person, or assaults any other such person with intent unlawfully to have sexual intercourse with the other person, shall be liable to penal servitude for 7 years.

Alternative charges—teachers, &c.

75. Nothing in section 73 or 74 prevents a person from being prosecuted under section 71 or 72.

(6) Section 77—Omit the section, insert instead: Consent no defence except in certain cases.

77. (1) Except as provided in subsection (2), the consent of

- (a) the person upon whom an offence under section 61E (2), 67, 68, 71, 72, 72A, 73 or 74 is alleged to have been committed; or
 - (b) a person under the age of 16 years upon whom an offence under section 61E (1) is alleged to have been committed
- shall be no defence to a charge under any of those provisions.

(2) It shall be a sufficient defence to any charge which renders a person liable to be found guilty of an offence under section 61E, 71 or 72 alleged to have been committed upon another person under the age of 16 years if it is made to appear to the court or jury before which the charge is brought—

- (a) that the other person consented to the commission of the act constituting the offence;
- (b) that, at the time of the commission of the alleged offence, the other person was over the age of 14 years; and
- (c) that the person charged with the offence had, at the time of the commission of the alleged offence, reasonable cause to believe, and did in fact believe, that the other person was of or above the age of 16 years.

(3) Subsections (1) and (2) have effect—

- (a) in relation to a charge under section 76 as in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981, in the same way as they have effect in relation to a charge under section 61E (1); and
- (b) in relation to a charge under section 76A as in force at any time before that commencement, in the same way as they have effect in relation to a charge under section 61E (2).

(7) Heading before section 79; Omit "Unnatural offences", insert instead "Bestiality".

(8) Sections 79–81B; Omit the sections, insert instead:

Bestiality.

79. Any person who commits an act of bestiality with any animal shall be liable to penal servitude for 14 years.

Attempt to commit bestiality.

80. A person who attempts to commit an act of bestiality with any animal shall be liable to penal servitude for 5 years.

(9) (a) Section 418 (1)—After "inclusive", insert "as respectively in force at any time".

(b) Section 418 (1)—After “81B”, insert “as respectively in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981”.

(10) (a) Section 476 (6) (c); After “81”, insert “as in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981”.

(b) Section 476 (6) (d); After “81A”, insert “as in force at any time before the commencement of Schedule 2 to the Crimes (Sexual Assault) Amendment Act, 1981”.

(c) Section 476 (6) (d); After “81B”, insert “as so in force”.

(11) Section 580; After section 579, insert; Certain charges not to be brought at common law.

580. A male person may not be charged with any common law offence in respect of any act committed upon or in relation to another male person, being an act which could, but for the repeal of sections 79, 80, 81, 81A and 81B by the Crimes (Sexual Assault) Amendment Act, 1981, have been the subject of a charge for an offence under any of those sections.

Having moved the amendment, I wish to say a few words about the principles involved. The policy of the Australian Labor Party is that homosexual law reform is a matter for the individual conscience. At conferences of the Australian Labor Party I have argued——

The CHAIRMAN: Order! I have listened intently to the amendment moved by the honourable member for Illawarra and, because he was good enough to circulate it, I have had an opportunity to study it. I have come to the conclusion that the proposed amendment would have the effect of abolishing the offence of buggery contained in sections 79 and 80 of the Crimes Act and decriminalizing homosexual acts by persons over the age of 16 years in sections 81, 81A and 81B of that Act. None of those sections is mentioned or dealt with in this amending bill. It has been ruled on many occasions—as far back as 1908 and more recently by me—that amendments may be proposed only to those sections of the principal Act included in the bill.

If it were permissible to amend sections other than those included in the amending bill, it would be possible to propose amendments to every section in the principal Act. Amending bills do not provide this opportunity. Other forms of the House are available to the honourable member for Illawarra. The standing orders do not prevent the introduction of a public bill by a private member such as the honourable member for Illawarra to amend the Crimes Act in the manner set out in the proposed amendment. Though the amendment may give the appearance of being within the order of leave, it is definitely outside the scope of the bill. I therefore rule it out of order.

Mr PETERSEN: Mr Chairman, I ask you to reconsider your ruling——

The CHAIRMAN: Order! I have given my ruling. The forms of the House provide certain action for the honourable member, if he desires to adopt them.

Mr PETERSEN: The difficulty is that I shall be expelled from the Australian Labor Party if I do that.

Mr Bruxner: There goes the free vote.

The CHAIRMAN: Order!

Mr Dowd: We do not get expelled for expressing our views.

The CHAIRMAN: Order! The Committee will deal now with the Child Welfare (Amendment) Bill.

Schedule 1

Page 4

(2A) Where, in the circumstances referred to in subsection (2)
 5 (b), a court commits a child or young person to take his trial according to law, the court shall forthwith submit to the Attorney General and the Minister a statement of the reasons for its decision to do so.

Mrs FOOT (Vaucluse) [8.31]: I move:

That at page 4, line 5, the words "submit to" be left out and there be inserted in lieu thereof the words "furnish the child or young person,".

At the second reading stage I invited the Government's attention to the serious omission in the drafting, which this amendment and the following one that I **shall** move shortly, will correct. The effect of this and the following amendment will be to ensure that where a child or young person is charged with an indictable offence and the evidence at the close of the prosecution's case persuades the court that a prima facie case has been made out and that a charge cannot be disposed of in a summary manner, the reasons for the court's decision must be given to the child or young person as well as to the Attorney-General and Minister of Justice and the Minister for Youth and Community Services. As I said, the Government's proposal completely ignored the rights of a child or young person in such circumstances. These amendments would entrench in the legislation the right of children and young persons to know why the court requires them to be dealt with as adults.

Mr DOWD (Lane Cove) [8.32]: The Government has recognized the wisdom of the amendment proposed by the honourable member for Vaucluse, which she foreshadowed at the second reading stage. I commend the Government for intimating that it will accept the amendment and for its assistance in that regard. It is a pity that the Minister for Youth and Community Services was not a little more sensitive to the problem. I strongly support the amendment.

Mr WALKER (Georges River), Attorney-General and Minister of Justice [8.33]: Earlier I indicated to the honourable member for Vaucluse and the honourable member for Lane Cove that the Government finds the amendment acceptable. However, at this stage there is a technical difficulty as a result of an industrial dispute. If the Government were to accept the amendment, the bill would not be reprinted and would not immediately get to the upper House, which has no business before it at the moment. That being the case, the Government proposes to refuse the amendment at this stage. However, it will facilitate the amendment's being made in the Legislative Council to ensure that it goes into the Act. The only reason for taking this course is the technical problem that exists at the moment, of which I was advised quite recently. I had every intention of accepting the amendment. I commend the honourable member for Vaucluse for her perspicacity. Her amendments will have effect in this area and I understand that the principle involved will carry through to another area. If that is the case, a great deal of good will be done by her efforts and her thoughts.

Mr DOWD (Lane Cove) [8.34]: The Attorney-General and Minister of Justice extended to the Opposition the courtesy of indicating that he would accept the amendment. Then he found, as is inevitable with this Government, that because of an industrial dispute the bill cannot be reprinted. It is appalling that Government supporters feel that the Opposition should not comment on the existence of industrial disputes in this State. Even in this building we cannot get plumbing done because of an industrial dispute. The persons responsible decided that the floor occupied by the Liberal Party should be the subject of a black ban. We could not even ask a question in this House or raise the matter here. As the Attorney-General and Minister of Justice has undertaken to arrange to have the amendment moved in another place, the Opposition accepts the situation. I hope the people of New South Wales realize what happens under a Labor government.

Amendment negatived.

Mrs FOOT (Vaucluse) [8.35]: I thank the Attorney-General and Minister of Justice for his assurance that the amendment will be moved in another place. I move:

That at page 4, line 6, after the word "Minister" there be inserted the word "with".

This is a consequential amendment to the previous amendment and I hope that it also will be accepted in the other place.

Amendment negatived.

Schedule agreed to.

Adoption of Report

Bills reported from Committee without amendment, and report adopted on motion by Mr Walker on behalf of Mr Wran.

Third Reading

Bills read a third time, on motion by Mr Walker.

BILLS RETURNED

The following bills were returned from the Legislative Council without amendment:

Closer Settlement (Land Aggregation Tax) Amendment Bill
 Crown Lands (Land Aggregation Tax) Amendment Bill
 Land Aggregation Tax Management (Amendment) Bill
 Motor Vehicles (Third Party Insurance) Amendment Bill
 Returned Soldiers Settlement (Land Aggregation Tax) Amendment Bill
 Totalizator (Amendment) Bill

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE
PROVISIONS) BILL

SECURITIES INDUSTRY (APPLICATION OF LAWS) BILL

COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS
PROVISIONS) (APPLICATION OF LAWS) BILL

CORPORATE AFFAIRS COMMISSION BILL

CRIMES (SECURITIES INDUSTRY) AMENDMENT BILL

Second Reading

Debate resumed (from 18th March, *vide* page 4813) on motion by Mr Walker:

That these bills be now read a second time.

Mr DOWD (Lane Cove) [8.39]: At the second reading stage the Attorney-General and Minister of Justice dealt in some detail with the structure of these bills and provided explanatory notes, for which honourable members are grateful. The Opposition supports the bills, being conscious of the fact that the business community has pressed for the uniform scheme that has been agreed on. This great federation of Australia is perhaps the greatest in the world. It is commendable that the States and the Commonwealth have come together on this issue. However, I am concerned that these matters have not been thought through. Those who worship at the altar of uniformity—and I am not such a person—think that provided everything is uniform it will be all right.

The business community is sadly mistaken if it thinks that these bills will solve all its problems. The practice of lodging similar documents in all registries has financial benefits and is convenient to everyone. However, this scheme constitutes an ossification of company legislation and a company structure that was evolved in the latter part of the last century and the first part of this century. Once the scheme is under way and it gets some semblance of uniformity, I believe that it will be difficult to amend, particularly as, in the fullness of time, people will realize that it needs to be changed. Some parts of the structure, such as unlimited companies and limited partnerships, are **not** used enough to suit the changing commercial circumstances of the community and our society. I am concerned at the fact that one enterprising State, for reasons best known to itself, intends to opt out of the scheme by using the mechanisms provided. That State will then try to score an advantage by again attracting **company** business. On other occasions I have spoken of a Delaware-type ordinance which could be introduced. However, the States of Australia are still sovereign States and they will make their own decisions on these matters.

I commend the officers who have served this Government and former governments on their diligence in carrying out the collective legislative wishes of respective administrations. Although I regard it as a mistake to entrench a uniform system such as the one proposed, I understand the rationale involved and appreciate the views of the business community. The Opposition does not oppose these bills and it does not believe that all wisdom comes out of Canberra. Neither does it believe in the surrender of powers willy-nilly to Canberra. The Opposition considers that many of those powers have not been handled as responsibly as they could have been. However, **an** incredible amount of work has been undertaken by many dedicated officers to bring about this structure.

Mr Walker: And by Ministers, too.

Mr DOWD: The Attorney-General and Minister of Justice obviously has had a bad time after so disgracefully letting down his colleague the honourable member for Illawarra over the Crimes (Sexual Assault) Amendment Bill. I agree that in respect of this legislation the responsible Ministers deserve to be commended. The present Attorney-General and Minister of Justice and his more illustrious predecessor have carried out a great deal of work in producing this legislation. When the business community discovers that once these provisions are enacted they will be hard to change, I hope it will not whinge and allege that it has not had the opportunity to express its views. These bills are the result of a spirit of commendable compromise. I am glad that the Government lost out on most of the issues.

Mr Walker: I shall live to fight another day.

Mr DOWD: If the Minister thinks he will be able to effect changes to the legislation he is a better man than most, but there is not much evidence to support that view. I am concerned that the Government has still not dealt with the problem of the manipulation of the share market for fraudulent purposes. Indeed, the Mintaro Slate and Flagstone Company exercise, which involved a fraudulent scheme with Energy Recycling Corporation Pty Limited, underlines the difficulties of investigating corporate fraud and enforcing the law in this respect. The Government must be conscious of the problems that face the South Australian Corporate Affairs Commission in investigating those matters. Following the spirit of compromise displayed by the Government, the Opposition accepts the legislative structure proposed in the National Companies and Securities Commission. The Opposition does not wish to be mealy-mouthed; it believes that the business community and the Government should take the opportunity to set up this structure in order to see whether it will work.

The Opposition believes that the formula regarding the acquisition of shares in other companies is too rigid. The balance does not appear to be right. I hope that, in the spirit in which these bills have been produced, changes will be brought about where appropriate by consensus and by agreement. If this scheme works, it will do so because of the dedication of the officers who have produced it. In particular, I wish to commend the Commissioner for Corporate Affairs and his predecessors on their dedication. Following the adequate explanation given by the Attorney-General and Minister of Justice in the second reading debate, I do not intend to examine the structure of the commission. It is now up to the business community. At least it has had its chance to make its comments on the proposed legislation. If the scheme does not work, I hope that the business community will not claim that it has not been heard.

Mr MALLAM (Campbelltown) [8.47]: I am pleased to support these bills although I have some reservations about them. Some persons consider that they do not go far enough. I appreciate that the Attorney-General and Minister of Justice has had to obtain the agreement of other States, and there have been some difficulties in this respect. Some overseas organizations wish to trade in Australia but they find that they have to deal with seven States, all of which have different company laws. Obviously there are difficulties when States do not have uniform company laws. Although many attempts have been made to obtain uniformity, it has never been achieved in totality: there have always been objections by some members in the other place or from persons in the other States. At one time I thought that uniformity would be reached under a previous Attorney-General but he lined himself up with his counterparts in Queensland and Victoria and the desired result was not achieved. At least the present Attorney-General and Minister of Justice appears to have been much more successful in that aim. I do not quibble on that score and indeed commend him on his efforts. The whole area of company prospectuses is fraught with difficulty. It is possible to have guinea-pig directors who do not know what is going on in their

company. Some companies put out a prospectus that contains information that is unverified. That sort of thing has been going on ever since I came into this Parliament and indeed before it. A Dr Solomons, who made a report about the Negri River Company and was concerned with Halls Peak, tried to win the seat of North Sydney in the federal Parliament. There was a time when I wished to see the phrase "full, fair and true" in every set of audited accounts. However, I was told that that phrase could not be included because it would be difficult for a business to tell the whole truth. However, eventually the phrase "fair but not full" was allowed, but it still does not mean a thing.

Newspapers report the fact that the sum of \$23,900 million in savings is deposited in the banks. People are unwilling to invest their savings with confidence when the company laws are not uniform. Every day we have almost a South Sea bubble situation in Australia. This is the result of our unsatisfactory company laws. The Attorney-General and Minister of Justice has taken a giant step forward by introducing this proposed legislation. Unless we have uniform company laws, we will have more floats like that of the Negri River company. When the prospectus was issued for that company stockbrokers were sent overseas to attempt to sell its shares.

This type of thing has been going on ever since I have been a member of Parliament. If a person invests in a Canadian mining company, he is told where the money will be spent. One can now invest with confidence in England and Ireland. We do not want another situation like the one involving the Desert Flame of Andamooka, which was put forward as being a priceless opal, but turned out to be a big piece of glass. The honourable member for Northcott seems to think this is funny. The Attorney-General and Minister of Justice at that time was connected with McCaw Johnson and Company. The Halls Peak company was another example of what went on at that time.

Mr Dowd: On a point of order. Mr Acting-Speaker, I submit that it is not competent for the honourable member for Campbelltown to trot out his hoary old chestnuts. Honourable members have heard the same stories ever since he has been a member of this House. The proposed legislation deals with specific issues. Though it is entertaining to hear the honourable member for Campbelltown advance his old arguments again, he is not entitled to attack individuals who do not have the opportunity to defend themselves. For those reasons, I ask you to rule him out of order.

Mr Mallam: On the point of order. Mr Acting Speaker, I am dealing with prospectuses and the fact that they can mislead the investing public. The bills represent the first attempt to achieve uniformity in company law, and I support them. I am merely giving some examples of the things that happen when some persons decide to float new companies. The honourable member for Lane Cove, being a lawyer, should be the last person to attempt to defend criminals and say anything in defence of misleading prospectuses. In the past, honourable members have heard about many company crashes, some of which have represented major scandals, and have robbed small investors of their hard-earned savings. I have doubts whether the proposed legislation will correct that situation. However, I commend that Attorney-General and Minister of Justice for taking this step. For those reasons I submit that I am in order in giving the examples referred to earlier.

Mr ACTING-SPEAKER (Mr O'Connell): Order! So far the honourable member for Campbelltown is in order, though at times he has sailed fairly close to the wind. I trust that the honourable member will ensure that he keeps within the terms of the bills.

Mr MALLAM: Thank you, Mr Acting-Speaker. I was saying that many people in this country cannot invest in companies for they know that they will be robbed. That is the most important aspect of company law at which we should be looking. I hope one of the first things with which the Attorney-General and Minister of Justice will deal is the easy way in which persons are able to issue prospectuses, which is where much of this robbery starts. People who put themselves forward as directors of companies are not required to have any special qualifications. Any person—particularly if he has a title, or is a knight—can be made a director of a company. When a prospectus is issued it need not show the qualifications of any director or whether he may have conflicting interests in any other organization. That aspect ought to concern the honourable member for Lane Cove. The company laws will eventually be tightened up so that we will not have any of these guinea-pig directors. This sort of thing has been continuing for a long time and it has cost a lot of the people of this State their hard-earned savings. Moreover, it has resulted in many organizations taking their business away from Australia and discouraging a great number of persons from investing their money in companies in which they have no confidence.

Every member of Parliament in this country should be concerned about doing away with nominee shareholdings. There should be no such thing as nominee shareholders. Investors should be compelled to declare their shareholdings. The problem is that seven sets of company law operate throughout Australia. At least these bills will start the ball rolling. The Attorney-General and Minister of Justice would not claim that the legislation is perfect and that it will achieve everything that he would like it to do. We have now a huge Corporate Affairs Commission that employs 400 or 500 persons but which launches few prosecutions. In part, that is due to the fact that all the States have different company laws.

Sometimes I think that it was better when the fraud squad dealt with these matters. The Corporate Affairs Commission was set up by an Attorney-General in a former government. All that commission seems to achieve is to get itself tied up with the legal eagles. The fraud squad dealt with the H. G. Palmer scandal. I have said in this House before that on one occasion when I stood behind the Speaker's chair I was told by Speaker Ellis not to go on with that matter because Mr Kirby was involved in the scandal. The H. G. Palmer scandal was one of the greatest frauds in Australia and it ruined many persons; it almost ruined the Mutual Life and Citizens' Assurance Company Limited. Surely it is right for me to debate these matters when we are dealing with uniform company law. I agree that these measures will not prevent the sort of thing about which I have been dealing, but at least it is a move in the right direction.

These bills will not alter the method of issuing prospectuses, nor will it impose an obligation on accountants and auditors to certify to the accuracy of a prospectus. The honourable member for Lane Cove seems to know all the legal angles about a number of things, but I wonder whether he could tell me the difference between fair and true and full, fair and true. For his information, I refer him to a part of the report of the Royal commission upon some company crashes in Britain in the 1930's. One of the things brought out in that report was that fair and true did not mean a thing. For instance, a prospectus could be issued stating that a company intended to develop a copper mine in the Northern Territory. However, it need not state that the proposed mine was in the middle of a swamp and that it would be impossible to extract copper there. Our laws dealing with prospectuses are wide open to all sorts of wickedness. One person concerned with the H. G. Palmer scandal committed suicide. So far as I am aware the only person to get his money back at that time was Clive Evatt: he took on the company and it paid him back his money. At that time a number of persons evaded their responsibilities. The Mutual Life and Citizens Assurance Company Limited allowed prospectuses to be issued with photographs of —

Mr Dowd: On a point of order. Though I share the concern expressed by the honourable member for Campbelltown about the matters he has raised, I submit that he is wandering far from the order of leave of the bills, which have the object of setting up an Australia-wide system of company law. I share the honourable member's concern about auditors; that is why I raised that matter and some other issues in the first place. However, I submit that the honourable member is wandering far from the bills under consideration, which have nothing to do with the issue of prospectuses.

Mr ACTING-SPEAKER (Mr O'Connell): There are five bills cognate with the National Companies and Securities Commission Bill. I have now had sufficient time to examine the purport of those bills. The honourable member for Campbelltown is in order, particularly as the House is dealing with the provisions of the Crimes (Security Industry) Amendment Bill.

Mr MALLAM: I can understand the honourable member for Lane Cove being touchy about this matter. A lot of the honourable member's friends on the Opposition benches and a lot of Askin's knights were tangled up in nearly all the company scandals that have been revealed over the years. Anyone with an interest in company laws in New South Wales knows about them. When the proposed legislation becomes uniform throughout the nation I hope that the best minds in the country will be prompted to do something for Australians by giving them confidence to invest in our companies. One must get away from the idea of nominee shareholders. Eventually auditors will have to issue, as they do in Canada but not in Canberra when a mining company is being floated, a full, fair and true report. I refer the House to the Halls Creek scandal and to the comments in the *Daily Telegraph* about it. It was asserted that more gold had been found in the Moonbi Ranges than had been found anywhere else in the world. That newspaper described it as the greatest El Dorado of all time. When I checked it out all that the company had was an option for the mining licence of a miner whose widow, who lived at Port Macquarie, had been paid £4,000 for it. Halls Creek was floated on that basis. Millions of dollars were sucked from the public. Dr Solomons, a prominent member of the Liberal Party, and according to that prospectus a competent geologist, was the geologist for Halls Creek. Recently he was the geologist for Negri, whose directors ought to be charged.

Mr Dowd: On a point of order. However relevant particular cases may be to illustrate problems, I submit that the honourable member should not be permitted to mention specific cases involving people who have no opportunity to defend themselves in this House. Over many years the honourable member for Campbelltown has had opportunities to move substantive motions relating to these people, in which case the House would deal with the matters in the appropriate way. It is an abuse of the forms and procedures of this House for the honourable member to vilify people in this way.

Mr Ryan: On the point of order. One specific matter in the legislation is the requirement that when a prospectus is issued it should contain an expert opinion as to the probability of success. The honourable member for Campbelltown is referring to the Negri case in which a report by Dr Solomons was excluded, thus depriving the public of an opportunity to consider it. The honourable member for Campbelltown is making the point that in future that type of omission will not occur. The honourable member's comments are relevant to the measures before the House.

Mr Cameron: Further on the point of order. The comments of the honourable member for Campbelltown open up a glorious vista and if you, Mr Acting-Speaker, rule in his favour the Opposition will avail itself of the same opportunity. The honourable member for Campbelltown has but two subjects on which he speaks: The Desert Flame of Andamooka and the MLC case. The Opposition is waiting to include in the debate

the Energy Recycling Corporation case which I submit is as relevant to the present debate as the Desert Flame of Andamooka, the MLC case and the Moonbi Ranges. If you, Mr Acting-Speaker, rule in favour of the honourable member for Campbelltown the Opposition is waiting to leap into a full-blooded debate on the Energy Recycling Corporation.

Mr ACTING-SPEAKER (Mr O'Connell): I accordance with my previous ruling, the honourable member for Campbelltown is not out of order. However, I ask him to confine his remarks to the bills rather than to citing examples of conspiracies and attempts to defraud which, though probably relevant to some provisions of the cognate bills, may not be relevant to the general debate.

Mr MALLAM: I am citing examples to explain the reason the Government has introduced the bills. If the honourable member for Northcott were doing the right thing, instead of attempting to defend his friends on the stock exchange, he would ask the stock exchange to delist Negri. That company should not have been allowed to float. After the provisions of the bills come into operation, many amendments will be required. I have suggested, for instance, uniform company laws. This is the first time I have witnessed any real agreement on that subject. I remind the honourable member for Northcott that previously I have contended that prospectuses should explain qualifications to shareholders, with which a former Attorney-General agreed. That Attorney-General said that an appropriate amendment would be made in the upper House. When the legislation came before that House in the early hours of the morning Sir Edward Warren suggested that I was seeking that people should have a pedigree like a champion dog entered in the Royal Easter Show. Though the former Government agreed with the proposal, it could not persuade the upper House to agree to it.

The honourable member for Northcott and the honourable member for Lane Cove, who have had their briefs for years, are fearful that the Attorney-General and Minister of Justice has been able to obtain some uniformity with company law. Unless I give the House some illustrations honourable members will not be aware of the need for the proposed legislation. I know of a gentleman who lived in the electorate of the honourable member for Northcott and committed suicide as a result of losing all his savings following the publishing by MLC of a false and misleading prospectus. Many Liberal Party supporters commended me for proposing the alteration to the law relating to prospectuses. I doubt whether many of the proposals will be of any use. Nevertheless, they will promote thought among people. I know that the powers that be in Canberra and in the other States will allow the legislation to go to a certain stage but no further. At least the Attorney-General and Minister of Justice in New South Wales has broken the ice. Unfortunately, the provisions that I would wish to see embodied in the legislation will not be accepted.

For the benefit of the honourable member for Northcott, who asserts that he knows everything about everything, but at times knows nothing, I refer to a Royal commission held in London in the 1930's after Lord Kylant committed suicide and Richard Whitney, chairman of the New York Stock Exchange, was led off to gaol in handcuffs. That Royal commission recommended the provisions that are contained in the measures before the House. Honourable members opposite contend that an auditor's report could not have the full, fair and true requirement and that the nominee provision could not be excluded. I submit that these things can be done. Company law is too complex and difficult; it should be simplified.

I shall provide a copy of my proposals to the honourable member for Northcott and the honourable member for Lane Cove when I have a clear copy prepared, as I have scribbled all over this one. That will explain to them what I think should be

done to amend Australia's company law. I have given a copy of this document to the Attorney-General and I gave a copy also to the former Attorney-General, Sir Kenneth McCaw and to honourable members in the other place. All of them said my proposal was wonderful, but no one did anything.

Mr Dowd: I might surprise the honourable member.

Mr MALLAM: I do not think the honourable member would, for his masters would not allow that to happen. The Attorney-General and Minister of Justice has done a marvellous job to try to achieve uniformity. However, when he goes to Canberra he will find that he is deep in the mire. Once uniformity on company law is obtained it should be achieved in other spheres. The Attorney-General and Minister of Justice will have the same problem that I have had in the past twenty years in trying to have the word full inserted into the legislation. I was successful in having the word fair added but apparently it was too difficult to include the word full. The Attorney-General and Minister of Justice will have difficulty also in legislating to require company directors to declare in the prospectus their interests in a principal company and in subsidiary companies.

I am sure most honourable members would agree that directors should declare in the prospectus their interest in a company and in associated companies so that there will not be any scandals similar to that which occurred with the Gale brothers. The honourable member for Northcott would not agree with that proposal. He would never seek to do away with nominee shareholders. He would never agree that there should be full disclosure when company takeovers are proposed. If nominee shareholders were not permitted, takeovers could never occur. Everyone would know who was buying the shares and who was trading in them. It would be almost impossible to remove that provision. The honourable member for Northcott probably will speak at length in this debate but will not give any positive examples to suggest what should be done.

I have given the House several proposals. My suggestion about the prospectus would ensure that New South Wales did not have any more of the scandals that it has had over the past twenty years, if auditors had to sign a certificate that said that the prospectus was full, fair and true. That would do away with the provision that allows nominee shareholders to be appointed, and would lead to the establishment of truly public companies. The public foolishly hands over its money to the directors of companies who can treat that money as their own private preserve and do what they like with it. They run their own affairs and may issue any sort of report. The ordinary shareholders are given a minimum amount of knowledge in annual reports. That anomaly should be corrected. These amendments can achieve that, and I hope they do.

In the short time left to me I should give the House some examples of the skulduggery that has occurred over the years. Companies have been formed openly, designed deliberately to rip off the public. I cannot understand why anyone would buy shares in so-called public companies, for they are not truly public. They make up a private preserve where directors may do as they please. Until legislation is enacted that will make companies public, Australians will not invest in their own companies in their own country, as Canadians do in their country. Honourable members will recall what happened with the Desert Flame of Andamooka company. The money invested in that company was used to rent office buildings in Australia Square and to buy Mercedes motor cars. None of it was used in exploration for opal mining sites, and it was the same with the Negri River diamond mining project—it went into the pockets of the directors who sold the shares. They should be ashamed of themselves. Not one member of the Opposition said a word about that; the directors were their mates. The honourable member for Lane Cove did not say anything about it.

Mr Dowd: The honourable member for Campbelltown should not accuse me. I will say things when I am good and ready to do so.

Mr MALLAM: The honourable member for Lane Cove will hide that incident because it is too close to him. I have never heard any member of the Opposition attack company laws in the twenty years that I have been a member of the House. Not once has a member of the Opposition moved a resolution that the Government should attack the stock exchange. Honourable members will remember what happened with Patrick and Partners when the Minister for Mineral Resources and Minister for Technology was castigated by the former Liberal Party-Country Party Government.

Mr Dowd: I raised the issue of the Nugan Hand bank.

Mr MALLAM: The Deputy Leader of the Opposition becomes quiet every time one mentions the Nugan Hand bank. I do not want to tell honourable members why, but I might be compelled to do so one of these days. It will not be long before the public will want to know.

Mr Cameron: The honourable member has taken a long time.

Mr MALLAM: If I tried to tell the House the reason for it, Opposition members would say that it has nothing to do with the measure before the House. Before long I may get the opportunity to mention the Nugan Hand bank business. The Attorney-General and Minister of Justice has gone some way towards bringing about uniformity in company legislation. I do not think the measure will tighten the legislation sufficiently, but it will cause people to give the matter some thought, especially those who are interested in developing the potential of this country, those who want to invest in mining companies and in the growth centres of Australia. Ordinary shareholders will be able to invest and be assured of getting a fair crack of the whip, if the laws become uniform. They will realize that some people have the courage to ask for things to be done.

For too long company law has been sacrosanct. One was not allowed to say anything about that subject or about the stock exchange, which is the most notorious gambling den in Australia. The honourable member for Northcott knows that **the** stock exchange is Australia's largest casino and gambling den. It makes its own rules. Stockbrokers should not be allowed to invest in companies. They should operate for one person only and should not be allowed to be buyers as well as sellers. I am sure the honourable member for Northcott would want them to act in both capacities. That sort of thing should not be permitted. Once the legislation becomes uniform and is talked about, those things will disappear. The Attorney-General and Minister of Justice has ploughed some of the ground.

Mr ACTING SPEAKER (Mr O'Connell): Order! **The** honourable member has exhausted his time.

Mr CAMERON (Northcott) [9.17]: The House is dealing with an exercise in moderate realism. I commend those who have been associated with the exercise, in particular those who were associated with it at the level of the federal Liberal Party-Country Party Government in Canberra and the various other State Attorneys-General who to a lesser extent have been associated with it likewise. At all times the object has been to achieve uniform companies and securities law and administration. The word uniform has no special magic for me, and in that regard I am like the honourable member for Lane Cove. I am not a worshipper at the throne of uniformity. Nevertheless there has been a great commercial and community demand for an attempt of this kind to be made. To trace that demand to its real origin one must go back to the Senate Select Committee on Securities and Exchange of 1974

which was known as the Rae committee because of the leadership of Senator Peter Rae, a Liberal senator. I am the first to pay tribute to Senator Rae's energy, industry and towering expertise on securities and company law and to the positive work that was done by the committee. Nonetheless, I have never identified personally with the approach of the committee. Overwhelmingly the report of the committee sought centralist solutions to the sort of problem that is involved. At all times I look for federalist solutions to the problems involved. The report was the origin, the heart and the beginning of everything that has occurred subsequently in that field.

Very much as we had all expected—and it did happen—the Whitlam Labor administration took up the cause enunciated in the Rae committee report in exactly the wrong way and came, as always, to inevitable disaster. It introduced its legislation, the Corporations and Securities Industry Bill of 1974, and that, predictably, foundered on the rocks. It was a totally centralist solution. As everyone knows, that was an attempt by the Whitlam Labor Government to follow the Rae committee's recommendations. But at what cost? It deprived the States of their traditional responsibilities in that matter.

It was the double dissolution of 1975 and the election of the Fraser Liberal Party-Country Party Government which put a stop to that. Thereafter we had the realistic efforts of the Fraser administration, which has achieved something. Here we have the socialist Attorney-General and Minister of Justice of the Labor administration in New South Wales joining enthusiastically in what is coming out of the resultant realism. We have in this kind of approach something credible, something realistic—not utopian by any means, but nonetheless credible and realistic—something which by federalist processes can be achieved rather than founder uselessly on the rocks. The legislation provides, as has been expounded by the Attorney-General and Minister of Justice, a simple solution. I cannot do much better than to use the words he used in this House on 18th March, 1981, to explain the core of the practical solution. The Attorney-General said, talking about the agreement that had been reached between the States and the Commonwealth:

In accordance with the agreement the national commission will delegate the greater proportion of its powers and functions, and in particular day to day functions, to the existing State administrations.

The corporation that emerged, in effect, is the National Companies and Securities Commission. The Attorney-General continued:

The relevant State administration in this State is the Corporate Affairs Commission and that commission will continue to exercise much the same functions as it does at present. Third, there will be a uniform system of laws relating to companies and the regulation of the securities industry. This uniformity will be achieved without any referral of powers by the States to the Commonwealth.

The legislative device used to achieve this result involves: first, the passing of the substantive laws by the Commonwealth for the purpose of their application to the Australian Capital Territory; second, the adoption of these laws in each State by means of Acts called Application of Laws Acts. These State Acts will provide that the Commonwealth Acts apply in New South Wales with certain minor amendments that are necessary in order to translate the Commonwealth provisions for the purpose of their application to New South Wales.

That is a practical solution. I commend all those persons who have been involved in preparing the legislation. A half loaf is always better than no bread, and the centralist policy of the Whitlam Labor Government produced exactly that result—no bread at all. I am content and happy that we should have the half loaf provided by the legislation. I believe it will be a nutritive and useful half loaf. I was, nonetheless, intrigued by some remarks made by the Attorney-General and Minister of Justice during the course of the same speech to which I have just referred, but with which I cannot agree. Referring to his own pathetic record in this area, he said:

When this Government came to power it acted swiftly. It greatly expanded the investigation and legal staff of the Corporate Affairs Commission to allow for more effective investigation and to ensure that any subsequent proceedings were more expeditiously conducted. This infusion of resources resulted in a substantial increase in the number of major investigations and prosecutions, with the result that corporate criminals discovered that corporate crime could no longer be conducted with impunity in New South Wales.

I regard that as nonsense. Corporate criminals in New South Wales continue to run absolutely unfettered. There could be no more eloquent advocate of that than the honourable member for Campbelltown, who has just spoken. He made it absolutely clear that everything the Attorney-General and Minister of Justice has done in the five years he has held that portfolio has been absolutely ineffective in dealing with the major corporate criminals, who are today as free of the leash as they have ever been. Many efforts of the Attorney-General, the pretending law reformer, have come to absolutely nothing. In this kind of matter, through moderate, realistic federalism, solutions have been found. I pay special tribute to the federal Treasurer, the Hon. J. W. Howard, for his effective initiatives. Nonetheless it is true, as the honourable member for Lane Cove rightly observes, that though much has been achieved, it may not result in the perfect satisfaction that all worshippers of total uniformity and total centralization would look for.

It may well be that some States will not tie the various knots as tightly as the centralists would have preferred. As has been intimated, a Delaware situation may arise whereby some States may have loose arrangements. If that happens, enterprise will flood to that particular State, with its attendant prosperity. I strongly believe that one can have an excess of regulation, an excess of control. I believe that freedom for the entrepreneur is the first basic guarantee of prosperity for the community involved. I am fascinated by some of the rhetoric that one hears coming, not from parliamentarians but from bureaucrats. I look at some remarks made by Mr Leigh Masel, chairman of the National Companies and Securities Commission, where in an address to the Institute of Directors, he spoke in what some would regard as beautiful jargon:

There may be different weights attributed to the policy antinomies of investor security on the one hand and entrepreneurial freedom on the other hand.

Certainly there is that situation of different weights being attributed to those conflicting policies, and in that area I have no hesitation whatever in saying that the primary weighting that I give is to entrepreneurial freedom. It is from entrepreneurial freedom that comes progress, high living standards for the community and all that variety and diversity which is the true staff of real progress. If it happens along those directions I shall not be one of those shedding tears. But at this stage we ought to be giving a fair trial to this realistic and moderate solution that has been found by the Government at the national level—a solution capable of getting results—rather than simply devising utopian schemes that inevitably founder on the rocks.

Mr RYAN (Hurstville) [9.29]: Tonight we have heard the honourable member for Northcott speak with more than his usual forked tongue. On the one hand he is bringing forward the old federalism chariot, the checks and balances chariot. He asserts that there must be checks and balances in this life and that one cannot allow too much power to such persons as the Hon. E. G. Whitlam, who sought to see justice done. On the other hand the honourable member for Northcott told us about the terrible company frauds that took place during the administration of the Askin Government. We are beginning to reap the fruits of the Askin period. The truth is revealed when thieves fall out. Recently we have heard Mr Gruzman telling about channels used by well known white knights, knighted by Sir Robert Askin, who used secret channels to forward money to Switzerland.

On the one hand the honourable member for Northcott said that the moderate-ness of the federal system is needed but then, from his own mouth, he revealed that corrupt, corporate manipulation was going on during the period in office of the Askin Government. This Government has to face up to the mess and bring law and order into it. One must be thankful for small mercies in federalism. I say that with great respect to the Attorney-General and Minister of Justice because, without his leadership, uniform legislation would never have come about. The Attorney-General and Minister of Justice realizes that this measure is the best that can be achieved in the circumstances. He wanted more. He wanted the real thing, which was recommended not by a Labor government, but by Senator Peter Rae for a national companies scheme.

I used to have great respect for Senator Rae. He revealed some of the company frauds that had occurred up until 1974 and said that there must be a joint Companies Act and joint securities and industries legislation. He did many wonderful things, but I have my doubts about him now for he is recommending that TAA, that great public company, be sold for, in effect, thirty pieces of silver. That is about **all** that \$30 million is worth these days. At least he was honest in 1974 when he said that Australia needed a national Companies Act. What did the Whitlam Government do? It introduced a national Companies Act. It may be said that the decision in the Rocla concrete pipes case in 1971 did not lay the matter completely to rest in respect of constitutional powers for the Australian Government to bring in a national Companies Act. That view may be correct. Professor Lane and others still espouse the view that even with trade and commerce placitum (xx) of section 51 does not give sufficient power for that purpose. Had a national Companies Act then been enacted and it were found wanting, the problems could have been rectified. That would have substantially brought to a halt some of the temble manipulation and exploitation of small shareholders that has been revealed from time to time by the honourable member for Campbelltown.

I do not want to be carping and honourable members must face realities. The Attorney-General and Minister of Justice did that. He went to Canberra and said that he would hand over all the State powers that would be needed to achieve the goal. But this was the voice of one crying in the wilderness. His proposal was useless unless the other States followed suit. Mean, dirty, vested interests represented by people like Bjelke-Petersen and Court—I shall not put a gong in front of his **name**—are the meanest, most parochial groups in Australia. For years they fed off the wealthy states but now they have the resources boom to feast off. They would not co-operate. The New South Wales Attorney-General and Minister of Justice was left to do the best he could. He led the fight and came up with this uniform legislation. I suppose that it is the best that can be done in the circumstances. It is a tribute to those in New South Wales and in other States, both the public servants and the elected representatives of the people, who generously co-operated in a bona fide fashion to achieve the result that has been obtained.

What has been achieved? A national body, the ministerial council, will be established, composed of the various Attorneys-General, or their representatives in some situations. That is the body to which the National Companies and Securities Commission will be answerable. The first problem is responsibility. One of the hallmarks of the Westminster system is that it involves a responsible form of government. If someone is not doing the job, the Minister with the relevant portfolio will have to answer first to the Parliament and, ultimately, to the people. That cannot happen with a national body. I say that with the greatest respect to the present members of it. That will be the position until the Labor Party gains the twelve seats it needs to win federal office. It could do it with fewer than 1 000 more votes from a population of 14 million people. A Labor government would produce an appropriate remedy, but in the meantime we have to do the best we can when something untoward is occurring. There is no immediate way to rectify the problem.

If some of the Attorneys-General or their representatives want to be recalcitrant or unco-operative, they can be, and nothing can be done about it. The body is not responsible and may become unresponsive—I do not say irresponsible. I am referring to the other States. Doubtless the representation from New South Wales will be completely responsible and responsive, but for amendments to be made, New South Wales will have to depend on the majority of other States, the representation from which will vary from time to time. An amendment will have to go through the national body, the ministerial council. The council has first to be convinced that a need exists for an amendment and then a vote must be taken in order to arrive at a decision from the majority of the members. Those who do not concur might go their separate ways, even assuming that the amendment is passed. If it is not passed, States may act unilaterally. So much for uniformity.

The next problem is that the charter, the responsibility and powers of the national body have to be delegated. No problem exists in New South Wales where there is the Corporate Affairs Commission that will get its teeth into the problem and work effectively to bring rogues and villains before the courts. But, what of companies incorporated in New South Wales and registered elsewhere? What of companies that operate in South Australia, for instance? Reliance would have to be placed on the Corporate Affairs Commission of South Australia. The poor, minority shareholders in New South Wales would have to rely on that State instrumentality. The Elder Smith Goldsbrough Mort fiasco occurred in Adelaide. The big operators are the only people who can really manipulate the market.

Mr Dowd: Mintaro Slate and Flagstone manipulated the market.

Mr RYAN: It is to the credit of the spokesman on corporate matters for the Opposition that he said that. By the legislation the Bell group will still be able to buy 19.9 per cent of the shares in a company. Someone else could buy 19.9 per cent of the shares. Those who are known as the white knights, and are probably of about the same sort of calibre as the white knights of the Hon. Sir Robert Askin, can do that. One does not know whether it is done in collusion or not. Situations have occurred where a buyer becomes a seller within three weeks. Mr Holmes a Court is a decent fellow for he was going to support a Labor government in Western Australia, but he realized that the system was open to exploitation. Why should he not do so? The time of Sir Charles Court might be running out. Mr Holmes a Court bought parcels of shares at \$2, sold at \$5 and made \$16 million tax free in three weeks. Imagine how that goes down with the people who are battling before commissioners of the Commonwealth Conciliation and Arbitration Commission for an additional \$5 to \$10 a week. I remind honourable members of the case that was dealt with by Mr Justice Staples.

What I have said deals with only half the problem. The main problem is that something like 50 per cent of shareholders were left withering on the vine. The stock exchange suspended trading, but that did not do the small shareholders any good. The worst is over, but prophylactic action has to be taken. Therapeutic treatment is of no value; it comes too late. The New South Wales Attorney-General and Minister of Justice wanted the London system of a panel of people conducting an ongoing review. Such a panel of experts would have looked at the situation in South Australia and said, "There is something amiss here, so we will do something about it." Unfortunately, the National Companies and Securities Commission does not have that necessary power to correct anomalies. It has certain powers under clause 60 of the code, but in respect of acceptable conduct.

Whether these powers will be used flexibly remains to be seen. If the body were a national body, and not subject to six masters, it could perhaps act effectively. For once I agree with the honourable member for Northcott: that there must be a free interflow of funds between lenders and borrowers—a free interflow of funds between savers and entrepreneurs. There is no doubt that that is acceptable. However, a charter cannot be given to rogues. If some developers seek to exploit the little fellow, a means of countering the exploiter, by taking corrective action, must be devised. That is where the honourable member for Northcott and I part company.

The honourable member for Northcott talked about the *laissez-faire* principle of allowing the market to go free. He would attempt to equate that with the new federalism. Federalism here has never been effective, and it never will be until government is effective and the sharks, rogues and corporate crooks are prevented from exploiting it. The honourable member for Northcott would have us believe that these aims can be achieved under the new federalism. That prospect flew right out the window following the introduction of Mr Fraser's so-called new federalism, which economically has almost brought this country to its knees. As well, it has created divisiveness in the community and among the States. Every now and again Sir Charles Court and Mr Bjelke-Petersen have talked about their States seceding, of appointing their own Queen and of forming their own nation. For every dollar they have paid into the tax pool over the past few years, they have received back \$3 or \$4. Now they would pull the rug out from under everyone else in the nation.

Mr Dowd: They did it under the Whitlam Government.

Mr RYAN: That is the point. In Queensland Mr Bjelke-Petersen manages to convey the image of being the champion of the people. He says, "I am against them"—"they" being anyone allegedly south of the border, in particular in Canberra, who are not Queenslanders. He is a rabid anti-Labor man and an exploiter of resources and people. This is the type of person who has to be coped with in the national context. For this reason federalism is now on trial.

Even if the so-called new federalism has any worth, it is now on trial. This legislation depends almost entirely upon co-operation among the States, on goodwill and a bona fide approach by all of them at a given time. If worthwhile control of corporate dealings in Australia is to be achieved, it can be done only by full co-operation from now on. That is why I say federalism is on trial. In the brief time left to me I want to speak about the legislation concerning the acquisition of shares. The emphasis is on the acquisition of shares, not on offers or on situations that might have arisen. The legislation deals with concrete situations. A threshold will be reached when 20 per cent of the shareholding has been obtained. After that point the legislation takes effect and further acquisition of shares can be achieved in only one of three ways, first by a creeping takeover of the shareholding by acquiring 3 per cent of shares in any period of six months. The rationale is that there will be no need for any control

because at that rate of progress everyone is put on notice. People who follow the markets and read such newspapers as the Australian *Financial Review* will know what is going on in a particular company.

The second way to achieve further shareholding is to make a written offer after the 20 per cent shareholding has been acquired. That figure of 20 per cent is rather arbitrary; some say that 20 per cent shareholding is too low and others say it is too high. Perhaps in this context it is reasonable. In a part A statement company where shareholding is scattered 20 per cent is perhaps too high but where shareholdings are more concentrated it is perhaps practical to permit something like 40 per cent. A mean average must be struck. A figure of 20 per cent has been selected. After a written offer has been made the purchaser will pay the highest price that has been paid in the past four months should anyone come forward to sell them. The third method to increase shareholding control is to purchase by on-market operation after a takeover announcement is made and a part C statement. Broadly, the same sorts of conditions hold in regard to share purchases.

As I have mentioned already with the Elder Smith Goldsbrough Mort events, they will be extremely hard to police. We must rely on the efficiency, integrity and competence of our Corporate Affairs Commission. In New South Wales we are blessed in having an effective body. If our minority shareholders are left dangling because the stock exchange of another State is connected with the way a particular company is operating, gauging by what has happened so far in South Australia, little protection will be afforded the New South Wales shareholders. It is hoped the Corporate Affairs Commission of South Australia will act quickly to determine whether there was collusion between Bell and the so-called white knights. If there were no collusion, I should like to hear them say they cannot do anything under their existing legislation, that the conduct was unacceptable and that in future it is hoped not to see a recurrence of such conduct and that will give some hope for flexible use of section 60 in future.

In the absence of goodwill, we are left with the power of the commission itself to delegate its powers effectively. Whether it will delegate those powers under clause 60 of the code remains to be seen. The only really effective action is to declare certain conduct to be unacceptable. It will be interesting to see whether the national body will delegate any power to the new State Corporate Affairs Commission in that respect. I do not want to carp. This legislation is the best that is possible in the circumstances. I commend the Attorney-General and Minister of Justice, his hard-working staff and people in other States who wanted to co-operate and achieve something worthwhile. I wish the legislation well, I hope the amendments which, from time to time, will be seen to be needed by the review body, will be effectively received by the ministerial council and brought into effect. It is also to be hoped that in the future some control will be exercised over corporate bodies and we shall not again see corporate manipulations of the degree evident in the share purchases of Minsec, Negri, Tasminex, and now Elder Smith Goldsbrough Mort Limited. I wish the legislation well but federalism or new federalism is now on trial.

Mr J. A. CLOUGH (Eastwood) [9.50]: I do not wish to dwell particularly on the legal aspects of the measure. I shall make only a few general comments. I favour federalism and the rights of the States. Whether the corporation laws are best administered by the States or the Commonwealth is a complex and vexed question. I personally favour the retention by the States of a good deal of their autonomy. At the outset I compliment the New South Wales Corporate Affairs Commission on its excellent administration and its co-operation with commerce and industry. The commission has a difficult task. Since formation of the commission by the former Liberal Party—Country Party Government, of which I was a member, it has changed its

format. That has probably been an advantage. I compliment Mr Frank Ryan and other senior officers of the commission on the excellent work they did during its formative years. The present staff of the various divisions of the commission is a fine body of people.

Corporation law has always been difficult and complicated but interesting. Over the years most practising accountants and lawyers have found some particular area of that law to be to their advantage or to cause them difficulty. Generally the corporation laws of this State are good and well administered. I trust that this State will retain autonomy in this area. That does not mean I do not favour the handing over to the Commonwealth of some of the State's present powers so that some degree of uniformity among the States may be achieved.

One matter of concern to me is the scant information available from the Corporate Affairs Commission about foreign companies registered in New South Wales. Towards the end of last year I sought information from the commission about a New Zealand company, with which I was having dealings. I had become suspicious of the company because of its small paid up capital and the magnitude of its liabilities. I could not see how the company could meet its obligations if it were called upon to do so. I know this situation can arise with family or proprietary companies, where the creditors may be the owners of the company and they are the persons who will suffer loss if the company fails. However, the company to which I refer was a public company and as I did not like its attitude I initiated some inquiries at the Corporate Affairs Commission. The only information I could get was the Sydney address of the company and the name of its representative in Australia.

The honourable member for Campbelltown mentioned audit procedures. Though I do not profess to be an expert in that field, I have a nodding acquaintance with it. The honourable member placed much emphasis on the word full. He said that he was able to obtain at least the concession that disclosure must be a true and fair view. It is difficult, and indeed it would be unfair, to pin down auditors to the word full. An audit is, in the first place, a confirmation that the entries in the books are correct in accordance with the available information. In my view auditors cannot be held responsible, at first sight, for an omission from the accounts or an omission of some other information that is not always available to make full disclosure possible.

One must bear in mind that a prospectus is something on which intending investors rely and take into consideration, but at best it can be only an assessment of a situation. Though one hopes that a prospectus gives a fair, true and full disclosure, it is only an assessment of what the situation is likely to be. It would be a poor businessman who would swallow a prospectus hook, line and sinker. I should not like it to be thought that I support any non-disclosure or any unlawful act; I simply point out that a prospectus is an assessment of what the situation might be if certain things turn out well. By way of analogy, a farmer who plants a crop can expect to harvest it only if rain falls at the right time, if the crop does not become infested with rust, if the birds do not eat it or if a plague of grasshoppers does not destroy it. I repeat, a prospectus is only an assessment and ought not to be taken literally. It ought to be read with caution. Even the most expert and informed businessmen can give only an estimation of what is likely to occur. It is a matter of honest judgment and assessment. The honourable member for Campbelltown mentioned also nominee shareholders. I have no objection to nominee shareholders——

Mr Mallam: Why not?

Mr SPEAKER: Order!

Mr J. A. CLOUGH: Nominee shareholders are quite legitimate and they have a role to play in the business and commercial world. There are safeguards and other checks and balances that regulate their activities. I am sure the Corporate Affairs Commission is aware of them. I regard centralized corporate law as bad because in the long term it assists nationalization and socialization. Nationalization and socialization have been part of Labor Party policy since at least 1921. If the Labor Party wishes to support that concept, that is its right, but I should not like it to occur. Centralized control would bog down administration and delay decisions. It would weaken the State, reduce its revenue and stultify competition. Australia is a big country. If only we could obtain more water, more people would be attracted to Australia. We could then go in for full federalism with diversified States. That system works well in the United States of America, where there is a good competitive system and benefits are achieved without nationalization or socialization.

Mr Mallam: Many federal laws affect companies in the United States of America.

Mr J. A. CLOUGH: That is true, but the States are strong units. I do not believe that share manipulation will be lessened by uniform companies legislation. Today there is a new type of approach to business in the form of computerization, advanced financial and management control, oversea satellite services, the short money market and merchant banks, which all tend to counter and defeat national uniform legislation. In other words, diversification through States acts as a safety valve. I would not like to see the centralization of our corporate affairs in Canberra.

The honourable member for Campbelltown and the honourable member for Hurstville mentioned takeover legislation—one area in which perhaps a greater degree of uniformity would be productive. Perhaps in that area national company legislation could serve business and commerce. Takeovers usually involve the aggregation of capital funds and often the introduction of foreign capital. For those reasons a degree of uniformity in takeover legislation could be of advantage, but complete uniformity would not be in the best interests of our country.

Mr Fisher: It would destroy private enterprise.

Mr J. A. CLOUGH: I agree that it could ultimately destroy private enterprise since it would assist the nationalization and socialization of the means of production, distribution and exchange. The present Labor Government in New South Wales wishes to see a centralized government in Australia, with certain regional governments. Indeed, the Premier and Treasurer would like to see all trade unions under federal control: that is the platform of the Labor Party. No doubt in the fullness of time the Labor Party would get rid of the upper House. Strangely enough, on the one occasion when the Labor Party had an opportunity to do so, it voted against abolition. It is indeed a strange world in which we live. I do not wish to be repetitive or canvass matters that have already been mentioned. In my view, a certain degree of uniformity would be helpful but the State should never give away all its corporate powers. I believe that New South Wales has the best Corporate Affairs Commission in Australia.

Mr Mallam: The public is still robbed.

Mr J. A. CLOUGH: The Corporate Affairs Commission does its best to control these matters. I believe that a national companies and securities commission in Canberra would be no more remedial than would the Corporate Affairs Commission of New South Wales.

Mr GREINER (Ku-ring-gai) [10.5]: In deference to the hour and the health and well-being of the Attorney-General and Minister of Justice and, for that matter, the shadow attorney-general, who have had a trying day, I shall restrict my remarks as severely as I can. I shall make a few **general** remarks, a few remarks about the administration of the scheme, and some slightly longer remarks about the takeover sections. I am in total agreement—differing from some members on this side of **the** House—with the uniform aspects of the legislation, both on the forthcoming amendments to the Companies Act and the matters before the House today. I am satisfied that a uniform system is desirable. The way this aim has been achieved is a second or third best. I should have preferred to have the best uniform national scheme. Given that it is not to be, I state my pleasure at the fact that we have gone so far as we have.

One must take into account the corporate background in Australia. We have the absurd situation of multiple exchanges, with six exchanges in Australia compared with three in the United States of America. That is an absurdity with which we are stuck. We have the problem of a small market and the domination of the market increasingly by institutions. That is a problem to which I am pleased to see the federal Government addressing some attention. We have the problem of imperfect information within the existing market. If honourable members look at all the bills, they will see that no new law of any substance is created; there is little substantive change. That is one of the reasons why the legislation is not controversial. I hope that when the bill to amend the Companies Act is introduced after a long gestation, substantial new law will be created.

The matter to which I refer now was mentioned by the shadow attorney-general when leading for the Opposition. I have some concern about the longevity of the agreement. I envisage a situation where the Commonwealth Government, the New South Wales Government and the Victorian Government could be outvoted by the smaller States. It is not beyond the bounds of possibility that such a situation would arise. It is on the cards that a breakdown in the agreement will occur, which could be exacerbated with a hostile Senate in Canberra, as there will be in six months' time, with a chance of individual State legislation not receiving approval of a majority of the ministerial council. That is a serious likelihood, though I do not canvass it in detail.

I wish to make three quick points on the administrative aspects of the **bills**. The ministerial council is a peculiar institution. I do not claim to have any particular legal qualification, but the concept of having a ministerial council answerable to **no** one, that is, independent of any parliament or any individual Minister, is peculiar, placing special responsibilities on the members of that ministerial council, at whatever point of time it may be.

In referring to the site, the views I express are my own. The **compromise** eventually reached was pointless. On any rational evaluation, the site of the National Companies and Securities Commission should have been in Sydney. Given that the site in Sydney was lost for political or other reasons, the compromise is not meaningful. If the operating guts were not to be in Sydney, the whole lot should be in Melbourne. The compromise does not save face for the Government and is pointless. Having lost the fight, we would be better off if the whole operation were located in Melbourne.

I refer now to the overlap between the Corporate Affairs Commission and the National Companies and Securities Commission. I am concerned how this will work in practice. I wonder whether in time there will be a Sydney branch office of the National Companies and Securities Commission with its investigators working with ours.

Mr Walker: We have already.

Mr GREINER: In that case, I wonder how long the **staff** ceiling will exist of forty persons mooted as being the employee establishment of the National Companies and Securities Commission, or the one hundred persons referred to in the federal Parliament. I suspect the answer will be, not long.

It is obviously desirable that State Ministers should retain their power to initiate investigations. On the **other** hand, clearly that power can be abused, and of course it has been abused by the Attorney-General and Minister of Justice, and the Government during its term of office. I contend that the provisions for ex-post approval will be a good form of discipline for the Attorney-General and Minister of Justice. I suggest that he take it upon himself, as a matter of self-discipline—at which he would be good—to seek ex-post approval when he initiates investigations in the future. If he is unable to persuade the majority of the ministerial council to sanction his individually initiated investigations, he should drop the idea, which would be good discipline for him.

I turn to the matter of takeovers. I shall deal with them in slightly more detail **than** have other honourable members who have contributed to the debate. There is no disagreement about the principles on which the takeover legislation is based. It is based on four principles laid down some years ago by Mr Justice Eggleton and the company law advisory committee, and encompassed in section 59 of the takeover code. I do not consider that there is any disagreement about the principles involved. In the interests of brevity, I shall not read them to the House. The question is, how does one achieve those principles with a minimum of inhibiting the free and effective operation of the market? It is here that I part company substantially with the conclusions and compromise reached. The original approach by the legislation was to seek to regulate each and every eventuality that might arise in a takeover situation. By definition a takeover situation is the ultimate in fluidity and flexibility. Yet the legislation and the code attempted—and they still attempt—to regulate each and every instance that may arise.

During the various public exposure periods, practitioners in the field of takeovers pointed out that the measures simply would not work. By way of compromise and in an endeavour to get the thing working, discretionary powers were embodied in section 57, section 58 and section 59 of the code. Finally, in section 60 the commission has the power to declare certain acts unacceptable. Those sections taken in *toto*, and the power of a court to review any action declared unacceptable, simply create an unworkable combination. I have no doubt that sooner or later, and probably sooner, my assertions will be borne out. As the honourable member for Hurstville mentioned, the Elder Smith matter in South Australia is an illustration—and before the legislation has passed through each of the State Parliaments—of how ineffective the takeover code will be.

I forecast that the takeover law or takeover control in Australia will be analogous to the federal Income Tax Act. There will be a tax Act syndrome with a continual patching. In other words, after a loophole is found there will be an attempt to close it. I should hope that there will be sufficient good taste to not make the legislation retrospective. Similar to the income tax laws, there will be ex-post attempts by the ministerial council of the National Companies and Securities Commission to control things that have happened already. Many highly-paid people will be busy, and I suspect most effective, at finding new loopholes. Sooner or later the entire takeover code will have to be scrapped and a far more flexible and time-sensitive mechanism found. This mechanism will have to be independent of the legal constraining of every supposedly alternative means. It will not work in practice. If takeover action continues at the present level the whole tenor of the takeover code is most unlikely to be satisfactory.

I shall give the House some further examples of areas where I do not believe overregulation of takeovers will work. Under section 37 and section 38 profit forecasts and assets valuations have to be approved by the National Companies and Securities Commission. That is totally superfluous when one considers that section 44 provides civil and criminal sanctions for false and misleading statements. Effectively the Government is saying that the market is too stupid to look after itself. Its view is that if a target company makes a totally absurd estimate of its profits or assets, the market will be unable to work that out for itself. Those statements will have been made even though civil and criminal sanctions are available if the statements are proved to be false or misleading. Clearly that is an example of the sort of massive overregulation inherent in the takeover code. The only innovation I can find in the takeover code is in the on-market or part C offers.

The point I seek to make is that I agree with the principle as it has been set up, but it will establish virtually a closed shop for stockbrokers. Stockbroking is a closed profession. It restricts its membership and charges fixed commissions. The stockbroking profession is being given a monopoly on part C offers. There are three possible ways round that provision, only one of which I find attractive. The first is to create alternative means of standing in the market. The second is to make it easier for institutions and individuals to enter the stockbroking profession. The third method is the one that I find most attractive. It is that one can make sure that the industry has negotiated commissions rather than fixed commissions. A move toward negotiated commissions for stockbrokers is appropriate for part C offers and probably in general terms. The bills are useful and will be a step forward, albeit the second best step forward. I repeat that I do not think the takeover code will work and that the responsibility will be on the ministerial council to be willing to admit that the code is not working as soon as that becomes evident. That is a real responsibility and one that I hope the council will not shirk.

Motion agreed to.

Bills read a second time.

Third Reading

By leave, bills read a third time, on motion by Mr Walker.

ADJOURNMENT

Hunter Valley Development—West Ryde School

Mr WALKER (Georges River), Attorney-General and Minister of Justice [10.20]: I move:

That this House do now adjourn.

Mr FISHER (Upper Hunter) (10.201: The Government's failure to plan for the development of the Upper Hunter region is a matter of serious concern. It is incredible that so much is happening in the Hunter Valley when there is an extraordinary lack of planning for the needs of the population in the district. The number of power stations, mines and other developments in the Hunter Valley has increased dramatically without provision having been made to improve the water supply and to provide for the basic needs of local residents. It is disastrous to think of what will happen if those requirements are not met. In particular, I refer to the water supply.

The Glenbawn Dam is down to 9 per cent of its capacity. The development of the Hunter Valley depends upon the supply of water from one source for the requirements of the valley's power stations, towns and coalmines. The Government has made no provision for the construction of dams ahead of that development. Admittedly Glenbawn Dam has performed an excellent service in providing water for the valley for almost twenty-five years. The Government planned to provide further power stations, mainly to meet the needs of the aluminium smelting industry. Glennies Creek Dam has been constructed, but it will be three years before water of any consequence will be available from that source. Liddell power station is desperately short of water. Bayswater power station is in an advanced stage of construction. Coalmines such as the one at Mount Arthur North, the Warkworth Mining Company mine, the one at Warkworth operated by R. W. Miller and Company, and the BHP Saxonvale mine will be coming on stream. Those mines will use something like 17 megalitres of water a day. Although huge pumping plants are being put on the river to provide water for the washing of coal and for dust suppression, the Government has not made proper provision for the supply of water to the mines, and especially to the towns and power stations in the Hunter Valley.

I emphasize the serious situation caused by the Government's lack of planning for the development of the Hunter Valley which has resulted from its failure to appreciate the need to provide adequate water storage before that development commenced. Liddell power station provides about 34 per cent of the State's power requirements. In a few weeks that power station will be required to lower the main cooling pumps. The Government knows that there is no available water to be pumped into the Liddell cooling pond from the Hunter River. That power station requires all of its water to be pumped from the river. If the pumps need to be lowered—as they will in a few weeks—the State will lose at least 38 per cent of its generating capacity from the Liddell power station.

The loss of 38 per cent of that major base load supply would mean almost certainly that New South Wales would face power blackouts this coming winter. That is typical of the disastrous effects that will result through lack of planning by the Government for the Hunter Valley. Someone suggested that there has been no planning. That assertion is justified. I shall go further and say that because of the failure of the Government to provide adequate water storage for the whole of the Hunter region, not only is the continued supply of power for New South Wales put at risk, but also put at risk are the established agricultural centres and the enormous residential developments taking place in such towns as Singleton, Muswellbrook, Scone and Aberdeen. It will be two or three years before additional water will be available to those towns. I see a disastrous situation occurring through lack of planning in respect of water alone.

I shall speak further on the lack of Government planning for residential development in the Hunter region. The construction of Bayswater power station and Mount Arthur North mine will bring approximately 1 600 more people into the area. Because of the Government's approval for the development of major mines in the Warkworth area—the Warkworth mine and the BHP Saxonvale mine—more homes will be required in Singleton and Muswellbrook. Yet, the Government has completely failed to plan ahead for residential development in this area. Both those towns will require at least 500 building blocks extra each year for the next five years. In total, about 5 000 building blocks will have to be provided.

The Government has done nothing at all other than to say it will resume some land. However, by the time the Government resumes land, rezones it, prepares building sites and builds homes, a two or three year delay will occur. The result will be that the

huge number of people who will come to the area will have to be accommodated in caravan parks. Caravan parks have not been planned. Caravan sites will have to be provided with water, sewerage and other normal services. This problem will arise because the Government has failed to plan ahead. It has undertaken to supply major smelters in the lower Hunter region with large blocks of power and to do so it has had to construct Bayswater and Eraring power stations.

The Government has failed to grasp that, before bringing these power stations into operation, land must be provided so that people can build houses in which to live. Water and sewerage and other basic needs must be made available to these people. The Government stands censured for its failure to undertake preliminary planning for the basic needs of the community prior to giving approval for bulk blocks of power to be supplied to aluminium smelters.

Mr Fischer: The Government cannot even work out what to do with the coal loaders.

Mr FISHER: That is another matter, which I raised in the House the week before last. The Minister for Planning and Environment is aware that that matter has been going on like a weeping sore for year after year. The Government has failed to grasp the nettle and bring coal to the ports and provide the means of transport to get out of the ports.

Mr SPEAKER: Order! The honourable member has exhausted his time.

Mr MCILWAINE (Yaralla) [10.30]: I raise a matter of vital importance to the community of West Ryde and, in particular, to the West Ryde school. I am pleased that last year the Minister for Education visited the school to inspect the school and its grounds and see the inevitable difficulties that occur there. I stress that the matter is of concern to the community. Many groups use that school. Greek dancing classes are held in the school; local scouts attend for paper collecting; a non-denominational religious group meets in the hall; and progress associations and family support service hold meetings in the school buildings.

At the school a well established, efficient children's centre takes care of children before and after school. When I first entered this Parliament I raised the issue of the need to upgrade the present administrative facilities at the school. As early as 21st November, 1978, the Minister informed me that the Department of Public Works had submitted an estimate that it would cost \$110,618 to upgrade the school. Unfortunately, there was a fire at the infants' department and it became necessary to reorganize the works programme for the school. In the short time available to me I shall emphasize the need to commence as soon as possible on a conversion programme for the modernizing of the primary school. Ceiling fans are needed urgently in twenty rooms, and for safety reasons some stairs must be resurfaced. Other proposals include provision for direct access via a verandah to the playground from the classrooms. In planning the required improvements I ask the Minister to heed the wishes of the various community groups. I should like to have community involvement in the design programme.

Many of the pupils attending the school are the children of people who migrated to Australia from overseas. In March 1978 a survey revealed that 200 of the 430 pupils attending the school had both parents working and 25 per cent of them live in flats or home units with little playing space. Subsequently, the children's

play centre was established. In some of the homes of the students more than one language is spoken. I seek leave to have incorporated in *Hansard* a table of languages spoken or heard in the home.

Leave granted. [See *Addendum*.]

Addendum

Languages Spoken Or Heard At Home

Turkish	18	Danish	1
Yugoslav	11	Vietnamese	2
Italian	22	Iran, Persia—Persian	1
Greek	25	Russian	3
Arabic—Jordan	2	Thai	2
Malay	4	Latvian	2
Laotian	3	South African	2
Chinese	10	Fijian	2
New Guinea	2	Spanish	2
Lebanon—Arabic	8	Irish Gaelic	2
French	3	Serbian	1
Chilean—Spanish	1	Philipino	1
Algerian—Arabic	1	German	4
Ugandans—Luganda	1	Arabs—Arabic	4
Indonesian	2	Armenian	3
Iraq—Arabic	1	New Zealand (Maori)	1
Maltese	2		

Mr **McILWAINE**: The table shows that thirty-four different languages are spoken, or heard, in the homes of the children attending the school and it establishes the need to involve the parents of those children in parents and citizens' activities. Unfortunately, many of the parents do not have fluency even in their native tongue. The table shows the wide range of languages and the number of each of them. For example, the figures reveal that the largest group consists of twenty-five homes out of a total of 149 children of migrant parents attending this school of 430 pupils where Greek is spoken. I urge the Minister to give serious consideration to the urgent needs of this school in the form of its physical requirements and the provision of assistance for parents of children who have come from other countries. They need to have a better understanding of how our education system works and of the wisdom of having a personal involvement in it.

Motion agreed to.

House adjourned at 10.35 p.m.

QUESTIONS UPON NOTICE

The following questions upon notice and answers were circulated in *Questions and Answers* this day.

GOVERNMENT OPINION POLL

Mr MOORE asked the Minister for Industrial Relations and Minister for Energy—

(1) How many Opinion Polls or Surveys have been commissioned or carried out by his Department or any instrumentalities or statutory corporations under his control during:

- (a) 1977;
- (b) 1978; and
- (c) 1979?

(2) For each of the Opinion Polls or Surveys:

- (a) which companies or private individuals were commissioned;
- (b) what was the subject matter and the purpose; and
- (c) what was the cost in each case?

Answer—

Details from my administration are *as follows*:

Department of Industrial Relations

- (1) None.
- (2) Not applicable.

New South Wales Superannuation Office

In so far as the above office and the various superannuation boards the answer is:

- (1) None.
- (2) Not applicable.

Electricity Commission of New South Wales

- (1) None.
- (2) Not applicable.

Energy Authority of New South Wales

(1) The Energy Authority of New South Wales was not directly responsible for carrying out or commissioning any opinion polls or surveys in the years 1977, 1978 and 1979.

However, surveys were commissioned by bodies with which the Energy Authority has links and relevant details are in (2) below.

(2) In November 1978 the National Energy Study Team (NEST), a consortium of Eric White Associates (EWA), Australian National Opinion Polls (ANOP), Clemenger Australia, Pickering Productions and W. D. Scott and Co., was commissioned by the Australian Minerals and Energy Council (AMEC) to:

- (i) Make a national attitude benchmark study on the public's attitude to energy and conservation.

- (ii) Outline a framework and strategy for a publicity campaign on energy conservation.
- (iii) Make a campaign expenditure estimate.

The study was completed in January **1979** and provided the raw material on which the petrol conservation advertising campaign was planned and which commenced in mid-October **1979**.

The total cost of the research undertaken was **\$50,000** and this was financed by the Commonwealth Government.

In December **1979** the National Energy conservation Programme--a joint venture of all Australian governments, except Queensland, invited public tenders to design and implement a research monitoring study of community attitudes towards the petrol conservation campaign.

The research study was undertaken by Australian National Opinion Polls (ANOP). The study was designed to provide some preliminary indications of the impact and effectiveness of the campaign in **1979**.

The study report was delivered in February **1980**. The study cost **\$12,000** and was funded from the Trust Fund established for the funds contributed to the National Energy Conservation Programme.

The New South Wales "share" of the cost would have been **\$2,538** based on the funding formula of the National Energy Conservation Programme.

GOVERNMENT REGULATIONS

Mr MASON asked the Minister for Industrial Relations and Minister for Energy—

How many regulations were administered by his departments and statutory authorities under his current ministerial control as at:

June **30, 1976**;
 June **30, 1977**;
 June **30, 1978**;
 June **30, 1979**; and
 June **30, 1980**

Answer—

The information required to answer this question in the detail sought would require considerable time by staff from the various areas of my administration.

In the circumstances, I believe it would be unjustifiable to answer in view of the time and expense involved.

REPORTS OF STATUTORY AUTHORITIES

Mr MASON asked the Minister for Industrial Relations and Minister for Energy—

- (1) What outstanding annual reports of statutory authorities under his current ministerial control have not been tabled in Parliament in the past 14 months?
- (2) When will he table these reports?

Answer—

- (1) There are no outstanding annual reports from statutory authorities under my control.
- (2) Not applicable.

SOUTH EASTERN QUEENSLAND ELECTRICITY BOARD

Mr BOYD asked the Minister for Industrial Relations and Minister for Energy—

- (1) Did he state that the transfer of the South Eastern Queensland Electricity Board franchise to Northern Rivers County Council will effect savings of \$450,000 per annum to residents of Tweed Shire?
- (2) Are SEQEB assets in Tweed Shire in the order of \$5 million?
- (3) If so, (a) will interest and redemption on this figure be in the order of \$500,000 per annum; and, if so (b) from what source(s) will the cost of transfer involving annual costs in the order of \$950,000 be financed?
- (4) Has a detailed study been undertaken to establish the cost of providing a main bulk supply line from Lismore to Terranora?
- (5) If so (a) what is the cost; and (b) how will it be financed?

Answer—

- (1) It was estimated in June 1979 that if Northern Rivers County Council's 1979 tariffs were applied to the estimated electricity consumption of consumers in Tweed Shire for the calendar year 1979, total tariff savings to these consumers would amount to approximately \$450,000. A subsequent estimate based on 1980 tariffs and estimated 1980 electricity consumptions, revealed that savings would be increased to approximately \$500,000. (The variation in the amount of savings is due to the growth in kilowatt-hour sales in Tweed Shire and the different tariff increases applied by SEQEB and Northern Rivers County Council in the intervening period.)
- (2) The last official statement of assets of the Tweed electricity undertaking was quoted at \$6.25 million as at 30 June, 1980.
- (3) (a) For a loan of \$6.25 million with current interest rate of 13.4 per cent per annum, and repayment over 20 years, \$900,000 per annum would be the order of interest and redemption.
(b) The costs will be financed from revenue from sales of electricity.
- (4) and (5) A detailed study has not been undertaken to establish the cost of providing a main bulk supply line from Lismore to Terranora, as it is proposed that, for a period of some years, electricity will continue to be supplied to the Tweed Shire by means of existing facilities connected to the Queensland system. Under the proposed arrangements, the Electricity Commission of New South Wales will assume responsibility for providing the electricity required in the Tweed Shire by arranging its bulk purchase from the appropriate Queensland electricity authority, and, in turn, its bulk supply to the Northern Rivers County Council.

GOVERNMENT PUBLICATIONS

Mr SCHIPP asked the Minister for Industrial Relations and Minister for **Energy**—

- (1) What publications or posters have been printed since 1 July, 1976, relating to departments or authorities within his (or his predecessor(s)) administration?
- (2) In respect of each of the publications or posters what was the:
 - (a) frequency of publication
 - (b) quantity produced
 - (c) cost of publication
 - (d) date of printing and
 - (e) frequency of use of his and/or the Premier's photograph?

Answer—

The information sought is not readily available and, in view of the detail required, its collation would require extensive research and be time-consuming.

In the circumstances, the cost and man-power that would be required to secure information to frame a comprehensive reply would make such an exercise unjustified.

DISABLED PERSONS IN THE PUBLIC SERVICE

Mrs FOOT asked the Minister for Planning and Environment—

- (a) How many disabled persons are employed and (b) what has he done to improve their level of employment, in his department or statutory instrumentalities under his control?

Answer—

Department of Environment and Planning

- (a) There are four disabled persons employed in the Department.
- (b) Three of these have selected careers in an area where there is limited opportunity for progression and in each case advancement has been largely in accordance with that situation. The fourth disabled person is a very senior officer who has been promoted on one occasion since commencing employment.

Two of the disabled persons are permanently employed and two have a temporary status. The Department has continued to pursue the question of permanent employment for the latter two, but difficulties with the Superannuation Board and the New South Wales Health Commission make it a lengthy process.

State Pollution Control Commission

- (a) The State Pollution Control Commission employs three disabled officers.
- (b) Two of these are actively engaged in duties for which they were recruited. One officer has recently been promoted and the other has recently been allocated to a higher level task. Account has been taken of their disabilities and efforts made to avoid any prejudice to their work performance or career prospects by allocating them duties in the normal work situation.

The third officer **suffered** a severe stroke whilst employed as a professional officer and has not been able to perform duties anywhere near his former capacity. It is unlikely that he will ever be able to do so because of severe verbal communication difficulty. With Public Service Board approval, a special job has been created for **this** officer and he has been granted special study time to learning new skills.

National Parks and Wildlife Service

At the present time there are no disabled persons employed by the National Parks and Wildlife Service in a permanent capacity.

The Service did employ a university graduate who lacked the full use of his right arm, as a Seasonal Ranger during his university vacation in August, **1980**.

His services were completely satisfactory and the Service intends to employ him during the Christmas holiday period again as a Seasonal Ranger.

PARRAMATTA RIVER DREDGING

Mr **McILWAINE** asked the Minister for Industrial Development and Minister for Decentralisation—

Has the Department of Defence or the Australian Navy approached the Department of Fisheries for advice on environmental factors concerning any dredging work to be undertaken in the Parramatta River, adjacent to the former Halvorsen shipyard site?

Answer—

No.

PUBLIC SERVICE APPOINTMENTS

Mr **MOORE** asked the Minister for Local Government and Minister for Roads—

(1) What appointments have been made to the staff of statutory corporations, Government instrumentalities, Departments or Authorities under his control, including his personal staff, from former officers (either permanent or temporary) of the South Australian Public Service, since the defeat of the Corcoran Government?

(2) What is (a) the name of each such officer, (b) the position occupied, (c) the salary scale paid and (d) the qualifications for the position?

(3) What position was occupied by each such officer in South Australia, together with the comparable details of salary scale?

Answer—

There have been no appointments to the Department of Local Government of former officers of the South Australian Public Service since the defeat of the Corcoran Government.

HAZARDS IN THE WORKPLACE

Mr ROBB asked the Minister for Industrial Relations and Minister for Energy—

- (1) Will statutory powers be conferred upon stewards of factory committees, to protect workers against health hazards in the workplace?
- (2) If so, will such stewards and committees be elected by the employees?

Answer—

(1) and (2) I am advised that the election by employees of worker representatives as members of safety committees was suggested in some of the submissions to the Inquiry into Occupational Health and Safety, which was established by this Government in 1980. I expect that the forthcoming report of the Inquiry may contain recommendations for Government action on this subject, including election of and conferring of power on worker representatives.

TENOSYNOVITIS

Mr ROBB asked the Minister for Industrial Relations and Minister for Energy—

- (1) Are an increasing number of industrial workers, particularly process workers, suffering from tenosynovitis, a condition affecting the hands?
- (2) Do women and migrant workers suffer from tenosynovitis because they tend to do repetitive work, such as component work and continuous process work?
- (3) Are people employed as printers and typists also exposed to this condition because of repetitive work?
- (4) Would rotation of jobs and rest periods prevent this problem?

Answer—

(1) Although the condition of tenosynovitis is not specifically notifiable as an accident disease under the Factories, Shops and Industries Act, some cases do come to the notice of the Department of Industrial Relations. There does not appear to be any increase in the number that are notified.

(2) The Health Commission has advised that any repetitive work may result in tenosynovitis, so persons employed in this type of activity are more vulnerable to the condition.

(3) Some instances of the condition have been found in typists working in incorrect seating positions.

(4) Rotation of jobs may alleviate tenosynovitis if the change involves a completely different hand or arm operation. Rest periods do not prevent the condition but merely delay its onset.

A revision of the requirements for notification of industrial accidents is at present under way and consideration is being given to inclusion of a provision for the notification to the Department of Industrial Relations of all cases of tenosynovitis occurring in industry. The information thus obtained would indicate what further action is necessary to reduce the problem.

BOAT MOORINGS IN YARALLA ELECTORATE

Mr McILWAINE asked the Deputy Premier, Minister for Public Works and Minister for Ports—

(1) How many boat moorings are there in each part of the Parramatta River and adjacent bays, within the Yaralla electorate?

(2) How many boat owners are waiting for moorings in each location?

Answer—

(1) Within the Yaralla Electorate there are 73 private moorings covered by occupation licenses issued by the Maritime Services Board. They are located as follows:

Majors Bay—4.

Brays Bay—24.

Uhrs Point—11.

Meadowbank—34.

There are no commercial occupation licenses (boatsheds) issued within these areas.

(2) The waiting list is as follows:

Majors Bay—1.

Brays Bay—6.

Uhrs Point—5.

Meadowbank—8.
