

## Legislative Assembly

Thursday, 30 April, 1981

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Petitions—Questions without Notice—Commonwealth Health and Hospital Funding (Urgency)—Bills Returned—Petroleum (Submerged Lands) Bill (Int., second reading)—Consumer Credit Bill and Cognate Bills (Int., second reading)—Special Adjournment—Constitution (Disclosures by Members) Amendment Bill (second reading)—Printing Committee (fourteenth Report)—Adjournment (Distributors of Advertising Material)—Questions upon Notice.

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Mr Speaker (The Hon. Lawrence Borthwick Kelly) took the chair at 10.30 a.m.

Mr Speaker offered the Prayer.

### PETITIONS

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

#### 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.

#### Public Funding of Election Campaigns

The Petition of landholders and residents of electorates in New South Wales respectfully sheweth:

That we protest most strongly against any requirement for the disbursement of public funds in support of election campaigns.

Your Petitioners therefore humbly pray that members of the Legislative Assembly reject any bills introduced into Parliament to give effect to such **funding**.

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

Petitions, lodged by Mr Barraclough, Mr Pickard and Mr Smith, 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 standards 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, et cetera.

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

Petitions, lodged by Mr Barraclough and Mr Mason, received.

#### 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 restore 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.

#### Smoking in Taxicabs

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

That we support your efforts to ensure the safety and health **of** all employees in the course of their employment.

Your Petitioners therefore humbly pray that your honourable House will:

Enact laws and regulations to prevent the wilful pollution of the **working** environment of the taxi drivers who are compelled to endure contamination and **suffer** potential health damage from the chemicals contained in tobacco smoke against their will and without redress or compensation.

Eliminate the prosecution of taxi drivers by the Department of Motor Transport when drivers seek to protect their health and working conditions by banning **smoking** by passengers in their cabs.

Recognize and proclaim that the right to breathe air unpolluted by tobacco smoke supersedes the right of individuals to smoke in any working environment where the health and comfort of employees must be considered of paramount importance.

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

Petition, lodged by Mr Moore, received.

#### Shoalhaven Hospital

The Petition of the citizens of **Shoalhaven** respectfully **sheweth**:

That the Health Commission of New South Wales has announced **termination** of the practice of employing visiting medical officers to service the casualty department of the Shoalhaven District Memorial Hospital notwithstanding that such a service has been in operation for many years and has provided a most satisfactory and necessary facility.

Your Petitioners therefore humbly pray that your honourable House request the Minister for Health to reverse the decision of the Health Commission and continue the appointment of a full-time medical officer to the casualty department of the **Shoalhaven** District Memorial Hospital.

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

Petition, lodged by Mr Hatton, received.

#### *[Tabling of Papers]*

Mr McDonald: As requested last night, I seek the leave of the House to table the report of the Burns **inquiry**—

Mr SPEAKER: Order! It is not competent for a private member to table papers. **If** the Deputy Leader of the Opposition wants to circulate the report or otherwise make it available to honourable members, he may do that at his pleasure. However, there is no way in which he may be permitted to table papers.

### QUESTIONS WITHOUT NOTICE

#### GLENN INNES FREIGHT CENTRE

Mr COX: On 25th February the honourable member for **Tenterfield** asked me a question without notice about the operation of the Glen Innes freight centre. **I am** now in a position to reply to him. The basis for assessing freight charges for the conveyance of general goods traffic has not been changed since the introduction of freight centres at various locations throughout the State, simply because of the complexities that would arise if an attempt were made to use both rail and road movements as a

basis for determining the actual distance involved. For instance, the distance by rail from Darling Harbour to Inverell is greater **than** the combined rail and road journeys via Glen Innes freight centre, but there are many other instances, particularly when goods are conveyed by rail to freight centres situated beyond the actual destination station, following which they are returned by road at no extra charge to the customer. In such instances, the charge is based on the distance by rail between the point of dispatch and the station to which the goods are to be finally delivered.

It will be appreciated that there are factors other than distance that impact on the carriage of goods. Freight centres were largely established for the purpose of reducing operational costs and, where practicable, providing an improved and more frequent service for rail customers. So far as the movement **of** general goods **traffic** between Darling Harbour and Inverell is concerned, a tri-weekly service was provided prior to the opening of the Glen Innes freight centre, whereas the service to Inverell is now daily. In essence, rail customers in the Inverell area have not been disadvantaged as a result of goods being directed through the Glen Innes freight centre and, in fact, have benefited by now receiving a more frequent service than was previously provided. Though a delivery charge of \$6.50 per tonne is applied to goods delivered to the customer's door, this charge is not related to the actual journey from Glen Innes to Inverell by road, but is a charge that would apply even if the goods were delivered from Inverell station to the customer's premises in the town area.

#### PRIVATE HOSPITAL FIRE AT SYLVANIA

Mr MASON: I address a question without notice to the Minister for Health and refer to the terrible tragedy in the nursing home in Sylvania last night, which I am sure shocked all members. Did the Minister last year receive a confidential report indicating serious concern about fire in private hospitals and branding many hospitals as fire risks? Does he recall that the chairman of the New South Wales Private Hospitals and Nursing Homes Association, Mr Doug Moran, stated at that time that he believed more than a third of the 477 nursing homes and the **107** private hospitals in New South Wales were a serious fire risk? Does the Minister recall that I called on him at that time to take urgent action before a tragedy occurred? Will he say whether he **took** any action and, if he did, what that action was? If the Minister failed in his responsibility last year, in the light of the terrible Sylvania tragedy, will he now take immediate action to ensure that the **32 500** patients in nursing homes and private hospitals in New South Wales are **afforded** every possible protection from the hazard of fire?

**Mr K. J. STEWART:** I do not recall that I received any confidential document about fire hazards.

Mr Mason: The Minister's memory is poor.

**Mr K. J. STEWART:** My memory is very good. It is the memory of the Leader of the Opposition that is bad.

Mr Mason: What about the report that I have here?

**Mr K. J. STEWART:** I shall tell the honourable member about that in a moment. The inquiry was not **confidential**. I commissioned it. How confidential is it when the report is in the newspapers and all the nursing homes mentioned in the report were visited? There was a disastrous fire in a residential at Kings Cross and tragedies have occurred overseas. These things alert us all the time, as they would alert any responsible citizen in New South Wales. The State faces also the prospect of a severe **bushfire** season, especially in the Blue Mountains.

I think it was about October or November last year that I asked the Health Commission of New South Wales to conduct an inquiry by the regional directors in the thirteen health regions in the State into whether the nursing homes and institutions harbouring frail aged persons had complied with the edicts of the Board of Fire Commissioners. That inquiry was held, and that is the report I received. I **am** not **responsible** for the actions of subeditors or editors of newspapers for their subtitles or headlines. **As** a result of the action taken a list was compiled of nursing homes that were regarded as having some fire risk, especially those in the **bushfire** belt. The Health Commission followed that up by issuing at least two circulars to the regional directors directing them to maintain surveillance and supervision of the homes and to make sure that they were all brought up to the necessary standards as insisted upon by the Board of Fire Commissioners. The latest circular went out in about February or March this year. The matter is under the constant attention of my department.

Strict regulations under the Private Hospitals Act govern the conduct of private nursing homes. Last **nights'** tragic fire was most unfortunate. **All** honourable members would join me in offering sincere condolence to the relatives of the persons who died in the fire. I do not wish to say any more about last night's fire, for as the House would be aware the police scientific squad is conducting an inquiry at the moment. The Board of Fire Commissioners has a statutory responsibility in the matter. A full **coronial** inquiry will be conducted into the tragedy. I am sure any recommendations or findings of that inquiry will be acted upon by the Government. For the information of the Leader of the Opposition and the House, **the** nursing home at **Sylvania** was inspected last year by officers of the Health Commission. Suggestions were made by the Health Commission with regard to fire safety. Those suggestions were complied with by the proprietor.

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## COMMONWEALTH HEALTH AND HOSPITAL FUNDING

### Urgency

Mr WHELAN (Ashfield) [10.39]: I move:

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

That this House condemns the announcements by the federal Government concerning reduced funding for hospital and health services in New South Wales and calls upon that Government to restore adequate funding to ensure current levels of **services** and high quality patient care are maintained.

I **am** grateful to the Leader of the Opposition for the question he asked this morning. If any incident would indicate to members of this House the importance of increasing and not decreasing funds to the Health Commission of New South Wales, it is the tragedy that occurred last evening. Late yesterday honourable members witnessed the cynical disregard that the present federal Minister for Health has towards health care throughout the nation. A great penalty will be imposed on the health system of New South Wales. The federal Minister for Health has reneged on promises that he has made to his own colleagues, by his own publicity and by the representations that he made to the Ministers for Health of the six States at the recent conference in **Perth**. Also he has treated his own party affiliates, who are members of his party

organizations, with the contempt that we are now coming to accept as ordinary play by federal Ministers. It is urgent that the House should consider where the additional \$87 million to \$90 million will come from to maintain the health services of this State.

I have deep sympathy for people on low incomes and people with young families who are endeavouring to survive the present inflationary fiscal policies of the federal Government. Once again they will be severely penalized. At least \$10 a week will come out of their pay packets to cover the cost of health care for the average family, not the \$5 to \$6 that the Hon. M. J. R. MacKellar wishes all Australians to believe. In fact it will exceed the \$10 that I have just mentioned. The federal Government will compel the State health system to establish a means test programme. It will be an administrative nightmare for the people who have to go to hospital. Once again the disadvantaged will be penalized by the parsimonious attitude of the Fraser Government. This action of the federal Government is a severe blow to the public health system of this State. It is a classic example of the federal Government's undermining of the public health system throughout the nation. This action will underpin the avarice of doctors who own private hospitals. Those doctors will be the beneficiaries of it. The people who suffer will be the citizens of New South Wales who are unable to afford health costs.

Prior to Medibank, 10 per cent of people were uninsured. I suggest that the same proportion applies today. About 1½ million people will not be able to afford \$10 a week for health insurance. Those people will be penalized, for they will be afraid to go to a hospital for treatment. This action of the federal Government will result in the ruination of the general programme of complete health cover for every Australian. It has just been abandoned with one stroke of the pen of the Hon. M. J. R. MacKellar.

The matter is urgent because today Sir Phillip Lynch's committee known as the Razor Gang will announce further federal Government cutbacks. It is an absolute and total disgrace. It is a blind. Last night the federal Government attacked people with health cuts and reduced general health care. What will happen to school dental services? That programme, conducted by people wishing to reduce the incidence of dental caries in children, has brought great benefits to this State in the past decade. The object of the Government should be to expand the programme, but the cutbacks announced by the federal Government will most likely result in the withdrawal of that programme.

Another aspect of health care that will be adversely affected is community health services. How will community nurses be financed? The Government will have to find \$90 million to make up for the federal Government cutbacks. Unlike the federal Government, this Government of which I am a member does not abdicate its responsibilities. The federal Government has given *carte blanche* for inefficiency by doctors to be prevalent in hospitals. The federal Government's cutbacks will put in jeopardy the additional 3 600 hospital beds that are due to come on line in the next two years. They will impose great personal pain and stress on the 4 700 people who will be affected if the Health Commission is compelled to make economies of scale to the extent of \$90 million. This Government will have to obtain that money from somewhere.

The federal Government's action will cause great hardship. It will adversely affect the people of Shellharbour, Nepean, Mt Druitt and Westmead, all working-class areas that have been continually neglected by a succession of federal governments. The Westmead centre came on line a couple of years ago. It will be greatly disadvantaged if there are no funds to continue the programme to establish that

hospital as the focal point of health care in this State. There are a thousand reasons why the House should consider this urgency motion today. I look forward to receiving the support of the House and trust that the **Government** will agree to urgency.

Mr **WRAN** (Bass Hill), Premier and Treasurer [10.47]: There can be no doubt of the importance of the subject-matter of the motion that the honourable member for **Ashfield** seeks to have debated as a matter of urgent necessity. The people of Australia have been dismayed at the nature and extent of the latest federal Government assault upon the hospital and health services of this country and the great financial burden that **will** now fall upon each and every citizen, but most of all upon the middle and lower income earners of Australia, and New South Wales in particular. In view of the importance of the matter and the great public concern that has been generated by the determination of the federal Government last night, the Government has no hesitation in acceding to the request to grant urgency. I trust that in a spirit of bipartisanship this debate can be conducted on a level that takes into account something which seemed to escape the attention of the federal Minister for Health and the federal Treasurer last night in the federal Parliament, namely, the effect of the federal Government's decisions upon the health care of individuals in New South Wales and Australia.

Motion of urgency agreed to.

#### Suspension of Standing Orders

Suspension of so much of the standing orders as would preclude consideration of **the** motion forthwith agreed to on motion by **Mr Whelan**.

#### Motion

Mr **WHELAN** (Ashfield) [10.50]: I move:

That this House condemns the announcements by the federal Government concerning reduced funding for hospital and health services in New South Wales and calls upon that Government to restore adequate funding to ensure current levels of services and high quality patient care are maintained.

I must point out at the outset that the shadow minister for health is not even present in the Chamber. I regard that as a disgrace. If that honourable member has that capacity in the shadow cabinet, and in view of the tragedy that occurred at Sylvania yesterday, he should be here in the House, stressing, as did the Leader of the Opposition, the grave need to increase funds, especially in the nursing home area. I am sure the Leader of the Opposition agrees that the cut of \$90 million in federal funding will place even greater hardship on State health services. I wish to point to the cynical endeavours of the federal Minister for Health and remind the House of some of the details. The Minister agreed with his colleagues at a conference of Health Ministers held in Perth on 11th, 12th and 13th March, 1981, that in view of the strong views **held** by States there should be another meeting in the near future before Cabinet made a final decision.

The federal Government certainly made a decision. Let me acquaint the House with the views of Mr Brian Austin, the Queensland Minister for Health. What Mr Austin said yesterday points to the amount of consultation achieved by the **Queensland** Minister for Health *vis-à-vis* his parliamentary **affiliate** in Canberra:

The Federal Government had brutally and deliberately set about wrecking the public hospital system, Queensland Health Minister Brian Austin said tonight.

"They aim to do this by applying the guillotine to Federal funding for the State's hospitals and forcing people to pay for their care in public hospitals.

"They have played the role of the great executioner," Mr Austin said.

The Queensland Government was now faced with its greatest crisis in health care since federation, he said in a Brisbane news release.

Mr Austin said, "The Federal Government is attempting to sacrifice the Queensland hospital system, which was recognized as Australia's most efficient, to subsidise the inefficiency of other States."

He said that the Federal Government had selected the **Jamison** Committee's recommendations which would help it justify its new policy and ignored those recommendations which would have assisted Queensland.

Mr Austin said the first time he had any consultation on the matter occurred yesterday evening when he heard a Senator in the federal Parliament announce the details of Mr **MacKellar's** speech. That was the kind of consultation given to the people of Queensland. The Minister for Health for New South **Wales**—a State which receives **38** per cent of the health **pool** payments—was not consulted. Then we have the view of Mr **Borthwick**, the Victorian Health Minister:

Mr **Borthwick** also condemned the latest changes to health funding and health insurance. He accused the Federal Government of opting out, for political reasons, of the day to day operation of the nation's health care system while at the same time keeping control of the purse strings. As a result the States will have to face all the tough and unpopular decisions regarding health.

What was the view of the doyen of Ministers, Sir Charles Court? He ". . . expressed suspicion of the new arrangement especially on relativities and wanted to see the **fine** print. He said that he was not being cynical but was speaking from past experience of dealings with the Fraser Government". Therefore, even Sir Charles Court does not trust the Prime Minister. I shall be interested to see how Opposition members vote on this motion. We shall see its attitude to the eroding of values dollar for dollar and of health benefits in general to the nation. That was the view of Sir Charles Court.

Mrs Foot: It is a selective quote.

Mr **WHELAN**: It is not a selective quote; it is accurate. I am dealing with the amount of consultation given to these matters by the federal Government in relation to the State governments. It is surprising that even Sir Charles Court should make such a statement. One knows that Sir Charles and Mr **Bjelke-Petersen** do not look to the health care interests of the people in their States in the same way **as** is done by the New South Wales Government.

It is beyond comprehension for one to know how the federal Government expects New South Wales to find \$87 million for hospital and health care from other sources. It is impossible to believe that the federal Government expects the New South Wales Government to be responsible for such a sum, when in the past two years a federal nil growth policy has reduced the effective amount of funds available to the States. The sum of **\$87** million would lead to the completion of proposed works in the health services. I refer to work at Shellharbour, Westmead, Mount **Druitt** and other areas of greatest need and certainly work in country hospitals. It ill behoves anybody to suggest that the New South Wales Government can find almost \$90 million, which is urgently required to maintain the commitment to the health care and welfare of the people of this State.

It was undoubtedly the advent of the **Jamison** report that caused the federal Minister for Health to make his pronouncement yesterday. That report has been in the Minister's hands for the past three months. It is a voluminous report and contains much detail, and I shall acquaint the House with some of its recommendations. The **first** recommendation of the report was that the Commonwealth should set out its health objectives and show clearly what it intends to do and on what conditions. **The** Commonwealth has indeed shown its intention, and its objectives are clear. The federal Government intends to abdicate its responsibility for health care and abolish once and for all any prospect of a national health care system for all Australians. The recommendation also says States must set their own objectives. This State is at a loss to implement that recommendation because New South Wales does not know what objectives the Commonwealth Government has set itself, **except** to abdicate responsibility for health care.

The **Jamison** committee report had some wonderful things to say about Aboriginal health care. It said: "Where appropriate every effort should be made to provide Aboriginal interpreters in hospitals". I read the speech of the federal Minister for Health to federal Parliament yesterday and it contains no mention of Aborigines. Nor is there any mention in that speech, to the great discredit of Mr **MacKellar**, of private care to the individual. He did not once refer to the sick patient, the chronically ill, Aborigines or aged people in the community who require health care. The **Jamison** committee report referred to ". . . further education to provide Aboriginal people to take up skilled positions in the health service". That is a good recommendation, but New South Wales faces the prospect of trying to obtain the funds to provide enough jobs. The health system is already under severe threat in retaining the jobs it has. There is a reference to the aged. The committee said:

The State should establish as soon as possible special geriatric assessment wards with about twenty beds at selected hospitals. Teaching hospitals should provide a consultative clinic service promoting greater co-operation between hospitals generally and community-oriented services for the care of the aged. The units should be used to carry out research and undertake the training of health professionals in age care.

Everybody knows that the aged require health care. I assure the honourable member for The Hills that I should be happy to help him into an aged persons' hospital.

Mr CATERSON: You will need it before I do; do not worry about me.

Mr WHELAN: The State Government is not receiving the co-operation of the federal Government. We want the federal Government to state in which way it is willing to co-operate with us. All that the federal Government has said is: "You have just lost **\$90** million. If you want to continue to provide the same services you will have to find that amount". Some two years ago the State Government in consultation with the Commonwealth Government agreed to a no-growth policy. A reduction of some **\$90** million would mean that we would have been prejudiced for the two years that the nil growth policy operated. By way of example, if one assumes that inflation was running at **10** per cent, New South Wales would miss out on an additional **20** per cent of the total grant from the Commonwealth Government of **\$1,260** million, which is more than **\$250** million. When one has regard to the loss of **\$90** million and the nil growth policy, the cost to New South Wales for health care has been something in the order of quarter of a billion dollars.

The electorate of **Ashfield** has a large nursing home population of aged people. Surely it is in the interests of everybody to ensure that aged people do not go into nursing homes. The more people who are in nursing homes the higher the cost that

has to be met from the Commonwealth purse by way of direct payments to the nursing homes. For that reason it is in the best interests of the Commonwealth, the State and the community generally that large numbers of people do not enter those nursing homes. The federal Government's proposals will force people out of the public hospitals into the nursing homes.

Mr Petersen: And out of community health services.

Mr WHELAN: That is correct. Aged people, particularly those in country areas which have no nursing home facilities and they are patients in country hospitals where they require only nursing care, will be priced out of the public hospital system and into a nursing home and thus place additional demands upon the resources that are available from the Commonwealth for care of the aged. Many elderly persons find the experience of being committed to a nursing home most harrowing. Those elderly persons who have given a lifetime of service, paid their taxes and whose family are **concerned** for their health care are to be told by the cynical federal Government, "You will have to get out of the hospital in which you are and go to a nursing home".

Mr Greiner: Why are they better off in public hospitals than in nursing homes?

Mr WHELAN: Nursing homes receive the maximum amount of hospital funding from the Commonwealth Government. If there is an increase in the number of people entering nursing homes, there will be an increased amount of federal money taken from the general health system to pay to nursing homes. In turn that will mean less money for the States. That Government should have further considered this aspect before announcing its policy last night.

Mr King: That is nonsense.

Mr WHELAN: It is not nonsense; it is factual. I have a large number of nursing homes in my electorate. The views that I have expressed are the views also of the matrons and the patients.

Mr K. J. Stewart: The **Jamison** report included recommendations regarding the care of the aged, and those recommendations have been ignored.

Mr WHELAN: Yes, that was one of the recommendations. As I said, last night the federal Minister for Health made no mention about Aborigines or the aged, or about co-operating with the States to solve health care problems of aged persons. Further, no mention was made last night by the federal Minister about the problem with which I am confronted in the **Ashfield** electorate of a large number of psychiatric patients who are discharged from psychiatric institutions and placed in boarding houses and nursing homes. Who pays for that? All honourable members know that schedule 5 hospitals are paid for by the State Government. There was no mention among the great pronouncements made last night on behalf of the Fraser Government of people suffering from psychiatric or mental illnesses.

Mr King: What has the honourable member done for them?

Mr WHELAN: The honourable member may not care about the people of his electorate, but I am sure that his successor will. I am concerned about the effect on young people and low-income earners of their having to find an additional sum of \$10 a week out of their meagre pay packets. I refer to young couples who are paying off a home, raising a family and educating their children. It is beyond the comprehension of any honourable member how they can be expected to find an additional \$10 a week. Those persons will choose to take a risk by not having health insurance.

Should they suffer some serious illness—and no one has a guarantee of continued **good** health—they will run a risk of having to meet mammoth hospital bills. Good health is one of the most important ingredients in life but these people will put that at risk. The impoverished and those who can least afford to be disadvantaged **will** be severely penalized by the federal Government's proposals. The federal Minister for Health used the word disadvantaged. He did not explain to the federal Parliament what he meant by the disadvantaged in the community. If that Government runs true to form it will apply the lowest criteria possible so that few will fall within the definition of disadvantaged. Young couples purchasing a home and educating their children will be the ones gravely at risk. They are the ones who will yield to temptation and not insure. It will be incumbent upon the State Government to make sure that those people are looked after.

It is beyond my comprehension how the federal Government's proposal can embody a means test for all. It will be an administrative nightmare. I instance a person injuring his head in his home and as a result **suffers** from amnesia. Late at night he may be taken to the Western Suburbs Hospital casualty section. As they are bound to do, the hospital doctors **will** provide treatment. The next day they will learn that the injured person is not insured. He will receive a whacking big account from the hospital. How will the staff of the hospital obtain information from the patient? What infringements of privacy will occur when a clerk in the hospital asks how much the patient earns, whether his wife works, and if so her earnings, how many **adults** in the family contribute to the household expenses, whether he maintains another child residing with the family or with some other family, and so on?

The imposition of a means test in relation to health services represents a gross invasion of privacy. It will be an administrative nightmare. It has the sort of bureaucratic ring of destruction that the Fraser Government perpetuates. That Government wants to generate more and more paper work. I live in fear of the potential paper war that will occur following the proposed changes.

Mr Greiner: The New South Wales Labor Government is expert on the regulation of hospitals and on paper work.

Mr WHELAN: Public health in New South Wales will be undermined. Doctors who service private hospitals and perform elective surgery will have a field day. Excessive provision of their services will be a residual problem of the Commonwealth Minister's proposal. Just a few years ago that Minister pleaded with the States to make their hospital services more efficient. The New South Wales Minister for Health pointed out to the people of New South Wales the disadvantages of rationalization of health services, but the Government carried on with its programme, and is continuing to do so.

Mr Greiner: Gross inefficiency existed.

Mr SPEAKER: Order! I call the honourable member for Ku-ring-gai to order.

Mr WHELAN: The New South Wales Health Minister introduced a rationalization programme that forced the federal Government to back off. The philosophy of no growth in health services adopted and accepted by the federal Government will penalize the States and the efficiency of State health services. The proposal will put the final nail in the **coffin** of the national health scheme. No guarantee is given that the costs of health care and hospitalization will be met by the States. A person covered by a New South Wales hospital fund may not be covered for health costs incurred in Victoria. What an anomalous situation. There will be no national health coverage. Surely the States have a bounden duty to remove that anomaly. If hospital costs vary in different States, a person hospitalized in any State could be faced with

considerable expense. That is a ridiculous situation, and the anomaly should be removed. It concerns me that a number of psychiatric patients in nursing homes and boarding houses in my electorate will not be given financial or other assistance. **They** will have no opportunity to improve their lot in the community.

The proposal by the federal Treasurer is nothing more than an exercise in a massive tax fiddle to get away with tax indexation. During his speech the federal Minister for Health did not mention patient care. He showed his insensitivity to the needs of patients. He revealed his callousness and the callousness of the Government he represents. The proposal is an attempt to compel States to raise bed day charges, and that would lead to chaos. No longer can persons be secure in the knowledge that their health insurance will cover charges made by hospitals in other States. The States will be forced to reduce services or to try to raise extra money to maintain those services. Probably, as a result of the proposal, some hospitals will have to close—most likely some small country hospitals. Great strain will be placed on this and future State Governments to provide hospital care to people in outlying and isolated hospitals. The national health scheme should be preserved. Because of the reduction in funding, there will be a great strain on the financial resources of New South Wales. People in the western districts of Sydney, where the majority of the Sydney population lives, will be severely prejudiced. Attempts to obtain hospital care in Westmead, Mount **Druitt** and areas to the west of Sydney will be severely restricted. How people who rely on community health services could be expected to survive is beyond me.

I should like to turn my attention now to another health service that will be cut back. I refer to community health. In the past four years the federal contribution to this service has been reduced from 90 per cent to 50 per cent, or from \$28 million to \$24 million. For school dental health services there is a similar reduction from 90 per cent to 50 per cent, or from \$5.7 million to **\$4.8** million. Staff for community nursing, mobile nursing, baby health centres, general nursing, school visits, ante-natal classes, education promotion and mental health programmes may be reduced. Social workers and community health workers generally will be severely prejudiced.

Mr K. J. Stewart: As well as alcoholism services.

Mr WHELAN: That is correct. The proposal is almost a reversal of the world-wide community view that people who live in psychiatric institutions should be familiarized with the general community and should move among members of that community. The new scheme will place a heavy strain on care for the psychiatrically disturbed who wish to remain in institutions, away from the community. Services provided for the aged will be severely cut. So also will school dental services, which have been provided for many years. Honourable members would know that dental health is determined at a very early age in children. The resultant pressure on the dental health system and its resources will mean that the New South Wales Government will have **no** money to extend dental health coverage to senior primary schoolchildren and secondary schoolchildren. The Government will have grave difficulty in continuing treatment of primary schoolchildren, thus placing the general dental health scheme and general health care programme of young people at risk.

It might interest honourable members to know that some years ago, before the school dental health programme was introduced, a survey of dental patients was conducted. I still recall the staggering statistics that more than 50 per cent of people aged 65 years and over had no natural teeth. That was one reason for the implementation of that programme, and now it will be jeopardized by the new proposal. The jobs of those providing school dental services and dental therapy—services encouraged by the New South Wales Labor Government—will be put at risk.

Mr Greiner: What nonsense.

Mr King: Absolute rubbish.

Mr WHELAN: That is the absolute truth. The honourable member will have his opportunity to speak in the debate at a later stage.

Mr Greiner: I will not, and that is typical of the Government. It has **the** attitude of two for me and one for you.

Mr Cameron: The Government is too gag-prone; that is its trouble.

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

Mr WHELAN: The number of new beds scheduled to go on line at Campbelltown is 180; 200 are scheduled for Mount Druitt. I have already mentioned the Nepean Hospital and the Shellharbour Hospital. It is clear that those hospitals cannot be opened unless the New South Wales Government cuts services or acquires money from other sources. In 1976 a former Premier and Leader of the Opposition, **Sir Eric Willis**, was a proponent of the implementation of the policy of the former Liberal Party-Country Party Government of a second income tax. He was the greatest proponent of Fraser federalism ever to be seen. On 1st May, 1976—the **fifth** anniversary of which is tomorrow—the people of New South Wales threw his Government out of office. They gave an indication to the Government of the day, and to politicians generally, of what they felt about double income tax or a second tax being applied in New South Wales.

If one single issue cost the Liberal Party-Country Party coalition the opportunity to be re-elected in 1976 it was its double income tax policy. That policy is still part of the Opposition's platform. It is a proponent of double tax. The Opposition might say that the figure of \$87 million lost to the New South Wales Government is a million or two out. The Opposition may say what it likes, but today it has to answer in this House where it could acquire the money to replace the deficit of \$87 million left to New South Wales by the federal Government.

Mr King: The Government could sell its shares in the coal loader. That is the simple answer.

Mr WHELAN: This morning I listened to the radio programme "AM." and heard the Deputy Leader of the Opposition talk about \$1,000 million capital expenditure on coal loaders and other industries that he said should be available only to private investment.

Mr McDonald: At least the honourable member got the message.

Mr WHELAN: The Deputy Leader of the Opposition is a typical each way bettor. I heard him say also that New South Wales was not getting a fair share of the cake. I expect him to support this motion as he knows quite plainly that New South Wales is not getting a fair share of the federal cake. On that radio programme the Leader of the Opposition admitted his total agreement with the Premier and Treasurer on this issue. He successfully avoided positively answering where the money was to come from. All he said was that the New South Wales Government should stop spending. The Opposition is really proposing to the people of New South Wales the implementation of double income tax. I assure honourable members that as far as this Labor Government is concerned, that is not on. Under the federal Government's proposed health scheme, procedural surgeons will be the real beneficiaries. I can imagine medical practitioners adopting taxation avoidance schemes by growing macadamia nuts and engaging in other and similar schemes. Maybe they could invest in the film industry and in that way gain taxation concessions. Some most informative

films have been the subject of claims to the federal authorities seeking taxation concessions. Opposition members are very quiet about such concessions. Obviously they would be keenly interested in such schemes.

Mr King: The Opposition is waiting to hear something interesting. So far the honour member's comments have been merely meaningless, blustering nothings.

Mr SPEAKER: Order! The honourable member for Ashfield has the call.

Mr WHELAN: Last night the federal Minister for Health said that **the** fundamental goal of the federal Government was to ensure that all Australians have proper access to health care services of high quality. If there are to be financial restrictions and cutbacks, there is no possibility that the federal Minister for Health could have been serious in his suggestion that health care services can be retained at the previous high level.

Mr Ryan: He has been bullied by Mr Fraser.

Mr WHELAN: Not only that; he has been told what to do. Those who will suffer most because of the federal Government's policy will be the aged, Aborigines and the disadvantaged. We have not been told who the disadvantaged are. The federal Minister did not define what he meant by disadvantaged. The young family unit will be put under great personal stress. The States and the Northern Territory have suffered a shortfall of \$200 million. The State housing budget has been effectively cut, so that it is now equivalent to about one-eighth of the amount received from the federal Government about six years ago. Many families already have much difficulty in paying for a proper education for their children. They have the greatest difficulty in meeting high interest repayments on home loans—if they are lucky enough to be able to afford a deposit. Now they will be faced with the imposition of at least \$10 a week to ensure they have adequate health care.

I have no doubt that the Opposition will see fit to support this motion. The federal Government deserves the harshest condemnation for its failure to adopt a national health policy. It has abrogated its responsibility in health matters and has failed to provide sufficient funding to enable New South Wales to continue adequate health care for its citizens.

Mr McDONALD (Kinibilli), Deputy Leader of the Opposition [11.28]: I speak for all members of the Opposition when I say that we have listened to the debate in stunned silence and disbelief. The honourable member for Ashfield has made a pathetic contribution. The issue clearly should be debated in this House today. The Opposition does not argue against that and that is why it is willing to accept the matter as being urgent. Since my election to this Parliament—which was in 1976, the same time as the honourable member for Ashfield was elected—I have never heard a more pathetic, boring, tedious, and repetitious input to an urgency motion. At one stage the Opposition considered that the honourable member for Ashfield may have been one of the rising stars of the Labor Party. Today it is clear that any ministerial appointment will not include the honourable member for Ashfield, but rather the honourable member for Coogee or perhaps the honourable member for Heffron. Quite frankly, the honourable member's contribution was absolutely terrible. Obviously the Minister for Health has all the information available to debate the matter, but the only backbencher he could find willing to take the brief on the urgency motion today was the poor member for Ashfield. The honourable member made not one single constructive comment. One of the Opposition members said, "Clearly, the honourable member for Ashfield was in deep labour". That probably sums up his contribution.

*[Interruption]*

Mr SPEAKER: Order!

Mr McDONALD: The motion seeks to condemn the federal Government for announcing reduced funding for hospitals. The truth is that a close examination of comments made this morning indicates an acceptance that at least the federal Government has acknowledged its proper responsibility in regard to health and hospital matters. The federal Government has agreed to look at the whole question seriously, following presentation of the Jamison report. It must be commended for its willingness to implement the fundamental tenet of its federalism policy, the basic principles of which the Opposition totally supports. We are left with a full acceptance and acknowledgment of the fact that there should be a devolution of responsibility from the central government to the State governments, where it belongs in the field of health care. There should be proper accountability at the State level. Since this Government came to power, Ministers—particularly the Minister for Health, the Minister for Youth and Community Services, the Minister for Education and to a lesser extent the Minister for Transport—have tried to rely on kicking the federal Government for their own ineffectiveness and lack of efficiency.

This motion is a reluctant condemnation by the Government. The honourable member who moved the motion obviously did not have his heart in it. If he had had his heart in the whole question of health he would have expressed concern for the Western Suburbs Hospital in his electorate, where most of the buildings are eighty-eight years old. He has never called for action in respect of that hospital, which is a matter of great concern to his constituents. This is the first time that the honourable member for Ashfield has made any reference to health. He certainly was not prepared to make any reference to the problems of hospitals within his electorate.

Members of the Opposition are left with the sure and certain knowledge that the bleating Minister for Health will claim in this debate that he has been wronged and treated badly by the Commonwealth Government. He presides over the most ineffective and most inefficient of all the Government's departments. He stands condemned for the fact that at the end of the first half of this financial year, to 31st December, all other government departments had expended—within a minor percentage up or down—50 per cent of the moneys that were appropriated for them, but the Health Commission was \$44 million in deficit. The Minister for Health has claimed that the deficit will be reduced to \$14 million by the end of the financial year. He went to the Commonwealth Government and said: "We need an extra \$10 million. I have been to the Premier and Treasurer and he will find \$5 million if you, the federal Minister for Health, will find the other \$5 million. That will give us \$10 million. We will put in the remainder". He has never disclosed why the commission was \$44 million overspent at the end of the first half year. Members of the Opposition will be interested to see what the position was at the end of March, when we were nine months into the financial year. Probably there will be even more fiddling at the end of the financial year.

The Minister for Health has received national publicity for his claim that New South Wales hospitals are facing a cash crisis. He should acknowledge that the State has the power to correct many of the problems for which he continues to blame the Commonwealth Government. He has claimed that the policy of the Commonwealth Government has resulted in a reduction in the quality and level of services provided by public hospitals. This statement has received considerable publicity throughout Australia and should be countered. The arguments used in support of the Minister's claims suggest that there has been a reduction in bed numbers as a result

*Mr McDonald]*

of the Government's public hospital rationalization programme, which he says was forced on the State. He claims that there have been increases in the cost to public hospitals of items such as drugs and fuel oil. He claims also that there has been increased use of public hospital outpatient services.

It is difficult to understand the criticism from the Minister for Health. On several occasions last year he said that his programme had not endangered the health services of the people of New South Wales. In fact he said that the health services in existence at 30th June, 1980, were far better and more efficient than those which existed in July 1979. Perhaps he is seeking to alter his position in the run-up to a State election. That is probably what is in his mind and in the minds of Government supporters. That is why they have adopted the position that they have in the House today. Considerable misinformation has been disseminated in relation to the increased demand for outpatient services. The Minister has claimed that this increase is probably due to the change in health insurance arrangements in 1979. He has argued that the Commonwealth does not allow for increased usage when calculating its funding for public hospitals. Both of these claims are incorrect. A recently reported survey by officials from a major Sydney hospital—the Prince of Wales Hospital—confirmed that health insurance status was not the principal factor involved in determining whether a person attended an outpatient clinic. On the question of usage, the Commonwealth will give full consideration to cost sharing expenditure said to have been incurred as a result of increased demand for public hospital services, if the States document and substantiate their claim.

If the Minister is really concerned about the effects of increased demand for outpatient services and public hospital services generally, he has the capacity and the ability, we hope, to take the appropriate remedial action. In 1979 he sought and obtained the agreement of the Commonwealth to introduce outpatient charges for insured patients, but he has yet to impose the charges and claims that this is because it is difficult to devise appropriate administrative procedures. If such a charge were raised, the effect would be to increase the resources available to all public hospitals in the State. That was reported in an editorial in the *Sydney Morning Herald* of 9th March, 1981, which I assume the Minister has read. The editorial concluded by **saying:**

There is no good reason why the State should persist in supplying a service which in many cases is unnecessary and therefore wasteful.

I come now to the Minister's call for additional funds, which is central to this argument and the motion before the House. He said he wants this \$10 million. He will need it, for I have said that the department was \$44 million overspent for the first half of this financial year. The Commonwealth's appropriations in each State are paid on a monthly basis. Up to March this year, monthly cash flow requests from New South Wales have been fully met. More important, these requests have been less than the approved budget for the New South Wales public hospitals. At the end of February these monthly requests were, on an annualized basis, according to the federal Minister for Health, about \$17 million less than the approved budget. At the end of March New South Wales was still underdrawn by about \$5 million. As this amount would appear to cover the additional moneys being sought by the Minister, one could be forgiven for believing that there was an ulterior motive behind the claim of the Minister. The existence of a number of inefficiencies in the public hospital system in New South Wales was highlighted by the inquiry, but it should be noted that the power to remove the inefficiencies rests solely in the hands of the State. Regrettably, the States have for too long failed to effect necessary economies in their public hospital systems. If the Commonwealth were to bail the States out at this point, they would continue to operate the inefficient public hospital system.

Reference has been made in this debate to the **Jamison** report. It is appropriate that reference should be made to it. For the benefit of honourable members who have not read the report, I suggest they look at volume 1, which summarizes the recommendations. Included among them is one emphasizing that the provision of efficient health services must be the responsibility of the States. The States must take steps to ensure that the hospitals and institutions under their control are cost effective and at the same time maintain care of a high quality. The States thus have the prime responsibility for conserving and using effectively the money of the taxpayers. The procedures for providing funds from the Commonwealth to the States and from the States to the hospitals, institutions and services must be changed to ensure that funds are spent according to need. That is central to the recommendations that the federal Minister for Health made to the Commonwealth Parliament yesterday. The honourable member for **Ashfield** made reference to the subject of objectives and policies of the Commonwealth. The Commonwealth's objectives were laid out in the Minister's speech to the federal Parliament yesterday. The **Jamison** report said that the States, knowing the objectives of the Commonwealth, must set their own objectives. It is clear that the objectives were determined by the Minister for Health, who said:

The States must fully accept their constitutional responsibility for health services and determine their own priorities as to how funds are to be allocated to the different parts of the health system. All Australians should become far more responsible for their own health care needs and life style, and more aware of the full cost of the health services available to them. Special assistance schemes designed to cover people's hospital and medical bills are only available to those in genuine need, namely eligible pensioners and the disadvantaged.

I have the assurance of the federal Minister that, despite the rantings of New South Wales Ministers and the honourable member for **Ashfield**, that will be so. Mr **Mackellar** continued:

Those people in the community who can pay their own way should be required to contribute to the costs of the health services they receive—either by personal payment or through health insurance. Health insurance should be available to all at a reasonable cost and should have wide coverage in order to support the community rating principle.

The *Daily Telegraph* in an editorial today comments:

The New South Wales Government will have to get its act together to make the new system work. But it can forget immediately any idea of trying to impose a special income tax. If higher hospital charges are inevitable, that will have to be accepted. But only after the waste has been trimmed and the hospital system is shown to be working at maximum efficiency.

The *Sydney Morning Herald's* editorial comments:

There are two elements in the changed funding of State public hospitals. The Commonwealth has abandoned the unsatisfactory hospital deficit-sharing arrangement and has absorbed its contribution towards hospital running costs into the States' general revenue grant . . . . Mr **MacKellar** is right in saying that the State hospital systems are wasteful and inefficient, and the Commonwealth is right to seek funding arrangements which put the responsibility of reform squarely back on the shoulders of the State politicians who have presided over the worsening mess.

Mr **McDonald**]

I indict the Minister for Health directly on that charge. He has had the responsibility for health care and the maintenance of hospitals in this State in the past five years. It seems inevitable that the State will have to raise its hospital charges. On the other hand, as the *Sydney Morning Herald* rightly points out, there are three offsetting factors which suggest "that the increase need not be, and probably will not be, very onerous for the individual contributor". The editorial continues:

The first is the partial reinstatement of tax deductibility for health insurance premiums. The second is that medical benefits will rise from the present 75 per cent to 85 per cent of the schedule fee levels.

The editorial then comes to the third factor, which is most important:

The third is that in future there will be a powerful disincentive to remain uninsured.

There are young and healthy people in this State and in other States who have remained uninsured and have made use of outpatient departments in hospitals. The Commonwealth proposals will ensure a more equitable contribution by those who can afford to pay and will enable the Commonwealth to provide for the disadvantaged. The Minister for Health in his broadcast this morning suggested that the Commonwealth is trying to sock the sick. What nonsense. It is typical of the Minister's rantings in his emotional outbursts when interviewed on these matters. Perhaps if he replies to this debate a little later he will make a more positive contribution. The Opposition has made its position clear. We do not accept the motion. Therefore, I move:

That the question be amended by leaving out all words after the word "House", with a view to inserting in lieu thereof the words "takes note of the announcements by the federal Government concerning funding for hospital and health services in New South Wales and calls upon that Government to restore to New South Wales its fair share of income tax revenue to enable New South Wales to carry out its responsibilities as a State in health and those other areas which are the constitutional responsibility of this State."

One of the reasons why this matter was raised in the federal Parliament yesterday, and no doubt why the New South Wales Labor Government has chosen to support this urgency motion, with the aid of the honourable member for Ashfield, is that this debate takes place a few days ahead of a most important Premiers' conference and Loan Council meeting which will take place next week. That conference has been deferred for all sorts of reasons. It is crucial because the Commonwealth must get to grips with the question of relativities and its share of income tax payments. As shadow treasurer, I went on record last year in support of the Premier's submission to the Grants Commission in May 1980 on tax-sharing relativity between the States. We remain unchanged in our view.

Taxpayers in New South Wales are now entitled to a bigger share of the income tax cake from the Commonwealth. It is no longer fair or logical to regard Western Australia or Queensland as "poor", or as mendicant States, in relation to New South Wales. This morning it was interesting to hear Sir Charles Court on "A.M." say that he had not seen all the recommendations about the changes in health care proposals but he was concerned about the small word relativity—and well he might be. Clearly, Western Australia and Queensland have been in a more advantageous position than New South Wales and, for that matter, Victoria in recent years. We debate this matter today in the light of prospective changes in the increase in the size of the income tax cake for New South Wales. The figure of 30 cents in the dollar in New South Wales is significantly less than the figure in Queensland and Western Australia. We shall continue to support that principle which the Premier and Treasurer has canvassed before the commission.

However, the Premier and Treasurer and his Government must recognize publicly that New South Wales has been fairly treated to date in the transition to flexibility provided by stage one of the Commonwealth's revenue-sharing proposals. Since the Whitlam era there has been a significant shift from specific purpose grants to untied grants and in the past four years New South Wales received from the Commonwealth an increase of \$1,000 million. In addition, the State has grabbed an extra \$800 million in State taxation over the same period, including poker machines and lotto revenue, which most other States do not have. The figure of \$130 million from poker machines went directly into the area of control of the Minister for Health in looking after the State's hospital services. We must not ignore the significance of the contribution made by gambling revenues. The Commonwealth is being asked to recognize the specific needs of New South Wales. Although there has been some improvement in economic growth in the State, it has not been good enough and it could be much more effective if New South Wales had more effective economic policies. The present New South Wales Government has its priorities totally wrong. It has squandered more than \$1,000 million of committed capital funds on projects in which the private sector is interested and wants to be involved.

The Government gives priority to the coal loader at Newcastle, a subject that was debated last night, involvement in the affairs of the Electricity Commission of New South Wales and in the exploitation and exporting of coal. The Government's activities include also a capital commitment to an entertainment centre and the Total oil refinery. If the Government considers that those matters warrant a high priority and that health and welfare of the people of New South Wales, providing housing for the under privileged and those on the waiting list of the Housing Commission, which has grown from some 24 000 to nearly 40 000 families, roads and inner urban free-ways have low priority, then so be it. They do not have a low priority so far as the Opposition is concerned. The Opposition regards those matters as far more important than involvement in coal exportation and exploitation, coal loaders, entertainment centres and the like. I am sorry that the Minister for Health does not have sufficient push in Cabinet to obtain enough money to do the things that he wants to do. The Minister for Housing, Minister for Co-operative Societies and Assistant Minister for Transport is one of the new boys in the Government, and is treated as such. He is embarrassed by the Burns report being held by the Premier and Treasurer and not made available to him.

The Government has its priorities wrong. This will be one of the central matters on which the Opposition will go to the people later this year; we do care and recognize the needs of the people. We regard housing, health and roads as far more important than being involved in these other areas in which the private sector is capable of being involved and wishes to be involved. No doubt the House will hear the bleatings from the Minister for Health. Honourable members may have heard his comments on the radio this morning. Where does the Minister stand on these matters? Does he regard the taxpayers' funding of political parties as of high priority? Does he regard committing capital to funding the political party to which he belongs as more important than providing hospital beds? Quite obviously he does, as do all Government supporters. I am appalled. As it is a socialist Government perhaps I should not be surprised by its attitude.

If the Government chooses to be critical of the Commonwealth Government and is asking from where will it get the \$87 million, which is the amount that the Government contends it will be short, it should revise its priorities and make a start by not being involved in the public funding of political parties, coal exploitation and similar ventures. Let us not hear any more nonsense about the lack of funds or asking from where the money will come. The Government has had plenty of money.

The Government has received significant amounts of money for community health facilities and for the school dental health care scheme, which the honourable member for **Ashfield** mentioned. Although there has been a reduction of direct capital funds for that scheme, in the past five years there has been an increase of 144 per cent for recurrent expenditure.

The Government's control of the Department of Health has been perhaps the worst of all Government activities. This is clearly an indictment of the Minister for Health. For too long he has been able to get away with it by blaming the Commonwealth Government. Now the chickens have come home to roost. He puts in the front line the honourable member for **Ashfield** who made a pathetic attempt to justify the Government's inefficiency. The honourable member for **Ashfield** mentioned **Shellharbour**. I should like to know where the Minister stands in relation to his threat to cut back existing hospital services to allow projects like **Liverpool**, **Shellharbour**, **Mount Druitt**, **Campbelltown** and **Camden** to go ahead. Is the Minister willing to accept responsibility for determining health care priorities in New South Wales? He will have to do that now as the Commonwealth has laid down the guidelines and objectives. The Minister will have to accept responsibility; he will have to face the people and accept that he has not got his priorities right. Although the Minister will continue to rant, he will not be successful if he continues to get the incorrect message across to the people of New South Wales that he had a tough deal from the Commonwealth Government. Although the task of the Minister's department may have been a little difficult as a result of the Minister's inability to have Cabinet approve of the necessary funds, the fact is that the Premier and Treasurer is getting away with what he wants to do.

The Government's policies are unacceptable to the Opposition. As a result of its policies the people of New South Wales have suffered in the most important areas in which a government should be concerned, namely housing and welfare activities. I am pleased that the Commonwealth Government has come to grips with this difficult problem. That Government had the courage of its convictions and made a difficult political decision. In particular the Victorian Minister for Health was not too complimentary in the comments he made this morning on the "A.M." radio programme. The Victorian Government has not had some of its priorities in the right order. I make that comment quite intentionally. I ask honourable members to support the amendment that I moved earlier.

Mr K. J. STEWART (Canterbury), Minister for Health [11.58]: I have difficulty following the speeches in this House by the Deputy Leader of the Opposition on hospital care and health funding. He is all over the place like confetti and confuses me. I cannot follow his figures and reasoning. Most of his speech was a personal attack on the honourable member for **Ashfield**. The Deputy Leader of the Opposition asked what the honourable member for **Ashfield** did or said to enhance the health and hospital care services for the people of New South Wales. The honourable member for **Ashfield** mentioned that for the next financial year New South Wales faces a cut of at least \$87 million from the federal Government for health and hospital services. The Deputy Leader of the Opposition said that family units in New South Wales that did not have health insurance will now face a burden of at least \$10 a week to insure against hospital and medical costs. The persons most affected will be the members of young family units. They are people who have bought a home in the face of soaring land and home costs and interest rates. They have balanced their budget so delicately that they will be unable to carry the additional burden of \$10 a week. They will return to the pre-1975 days of Medibank. At that time the uninsured and those isolated from proper health and hospital services in the community were members of the young family unit. They are mainly the greatest

users of hospital and health services. The wife may become pregnant and as the young family grows up it is more likely to incur hospital and health costs than other sections of the community.

I shall now refer to some of the illogical statements made by the Deputy Leader of the Opposition in the House today. He said that at last the federal Government, with its wonderful idea, has caught up with the young and healthy and that this scheme will compel them to insure. That presumes that the young and healthy are not insured at the moment. Of course, they are not presenting for medical and hospital services, and that is to be expected. The Deputy Leader of the Opposition says, "We are going to catch up with the young and healthy and force them into private health insurance funds". Of what significance is that to the New South Wales hospital system? Those young people do not present for medical or hospital attention.

The federal Government's scheme will mean that about \$350 million in hospital and health insurance fund contributions will find its way into the accounts of the private health insurance funds; none of those funds will go to health care systems in New South Wales. There will be a return to the private health funds accumulating enormous reserves of funds, which they did between 1972 and 1975. Private health funds will return to giving no assistance whatsoever to hospital or health services in New South Wales or any other State. They will be moonlighting as pseudo-merchant bankers, as they did before.

The money that the young and healthy will be compelled to pay into health and hospital insurance funds will not go to health and hospital services in New South Wales or any other State. It will find its way into the reserves of the private health insurance funds. Why did the Hon. M. J. R. MacKellar say the scheme was wonderful? Obviously because through that scheme he became the entrepreneur and the merchant banker, for he will collect hospital and medical contribution funds from the young and healthy, who are not a burden on health and hospital services. Those who draw heavily on the services are the aged, disadvantaged, poor and the family unit, who will all be socked at least \$10 a week in order to bolster the health services in all Australian States. Obviously the policy of the federal Government, subscribed to by Opposition members of this House, is that the sick will pay—the user pay.

To hear the Deputy Leader of the Opposition speak in the House this morning one would think that I was the only Minister for Health in Australia who objected to the policy that the federal Government announced yesterday. Nothing could be further from the truth. Many State Ministers for Health, including Liberal Party Ministers and Country Party or National Party Ministers, objected to it. The National Party Minister for Health in Brisbane was trenchant in his criticism of the federal Government. He said it was like that Government's hide that the first he heard of the new policy was when he listened to 2BL at 4.45 p.m. yesterday, and learned what were the policies of his own colleagues.

The Victorian Minister for Health said it was a snide attitude by the federal Government. He said what the federal Government was doing was giving the whole of the responsibility for health services to the States and resiling in every way from any responsibility or possible criticism that might come from the day-to-day operations of health and hospital services in New South Wales. In addition he said that the transferring of those responsibilities to the States either under block grant systems or under the tax reimbursement formula was effectively hanging on to the financial purse strings but abdicating completely responsibility for shortfalls in the financing of State health services. It ill behoves members of the Opposition to try to convince the people of New South Wales—as they often do---that I am some sort of kill-joy or person crying in the wilderness. I have the unanimous support of every other

Minister for Health in Australia, irrespective of political persuasion, when I criticize the federal Government's proposals. The nastiness of the federal Government in abdicating its responsibility for health and hospital services is obvious. It collects the taxes but abdicates from responsibility and reneges and repudiates its promises.

The Deputy Leader of the Opposition read from an editorial of the *Sydney Morning Herald*. Naturally, he read only part of that editorial—those parts that criticized me or other State Ministers. He did not read that part of the editorial that said that the policy of the federal Government announced yesterday represented the final abrogation of two of the most important promises—and it is credibility we are talking about now—on which the Fraser Government swept to power in 1975, that is, the preservation of Medibank and the introduction of full tax indexation. Did the Deputy Leader of the Opposition mention full tax indexation? No. Did he mention that the federal Government's proposal to restore deductibility for private health and hospital insurance contributions will be paid for by a repudiation of the Fraser Government's promises on tax indexation, which was made in 1975? Of course, he did not. That is a sleight-of-hand trick. It is robbing Peter to pay Paul. The editorial went on to say that the federal Government's policy was a masterpiece of cynical politicking, which manages to forgo the link between health funding arrangements and the indexation of income tax.

What I find most bewildering is that experienced members of Liberal Party-Country Party Governments or Oppositions in all States of Australia try to criticize New South Wales health spending. For the past six or eight weeks the Deputy Leader of the Opposition has been talking about an overspending of \$44 million by the Health Commission of New South Wales. Not one financial expert I have consulted about the figures given by the Deputy Leader of the Opposition can follow that honourable gentleman's figuring or reasoning.

Mr McDonald: Those figures appear in the *Government Gazette*.

Mr K. J. STEWART: The Deputy Leader of the Opposition now says that the figure of \$44 million overspending in the Health Commission budget appears in the *Government Gazette*. Yet he went further and quoted a statement by the Hon. M. J. R. MacKellar, who says that the New South Wales Health Commission budget was \$17 million underspent.

Mr McDonald: The Minister should get his figures right.

Mr K. J. STEWART: According to the federal Minister, the New South Wales Health Commission underspent its budget by \$17 million. However, two days later he apologized for saying that. He changed his mind and said the figure of \$17 million was wrong and that the Health Commission was only \$5 million underspent. The Deputy Leader of the Opposition in this House says that the Health Commission overspent its budget by \$44 million. He is supposed to be the financial expert of the New South Wales Opposition. He will be—if ever New South Wales suffers the disaster of going back to a Liberal Party-Country Party government—the Treasurer of New South Wales. Yet he is at odds with his federal Minister for Health. I am still receiving press cuttings from all round New South Wales that the member for Hume and the member for Killare are stating that the Health Commission of New South Wales has overspent its budget by \$17 million, when their federal Minister for Health has changed his mind after doing his sums and come up with a different figure. The commission has not underspent or overspent. At 1st December, 1980, it was almost on target. Projections to 30th June, 1981, having regard to the expenditures and commitments to the hospital system in the ensuing six months between January and June, indicate that the commission could suffer a shortfall or deficit of about \$14

million. That is why the Government asked hospitals to reduce spending. That is **why** it asked the federal Government to honour its obligation under the cost sharing agreement. I obtained a guarantee from the federal Minister for Health at the **con-**ference of Health Ministers that the federal Government would honour its obligations. Other Ministers for Health thanked me for being able to obtain from the federal Minister the promise to honour his obligations under the cost sharing agreement up to 30th June, **1981**.

The Deputy Leader of the Opposition moved an amendment to the **motion—**and what a specious amendment it was. He suggests that we should not say anything about health or hospital funding. He says, "Let us attack the federal Government for its paucity of tax reimbursement to New South Wales under the formula in getting equity for New South Wales". The Deputy Leader of the Opposition stated on the Caroline Jones programme this morning, without taking a breath, that the New South Wales hospital system is inefficient, ineffective, mismanaged, wasteful and has more money than it knows what to do with and then said that what New South Wales has to fight for is equality, because it is not getting the money it needs to run its services under the tax reimbursement formula. He did not even take a breath in making those contradictory statements. In one place he says that the Government has too much money and does not know what to do with it, yet in the House he moves an amendment and suggests that the New South Wales Government should approach the federal Government and ask that Government to restore the tax reimbursement formula.

The Victorian Government also says that the tax reimbursement formula is inequitable. But did the Deputy Leader of the New South Wales Opposition say that the Victorian Government was wasteful, inefficient and mismanaged money and that it had more money to spend on hospitals and health care than it knew what to do with? The coincidence of what the honourable member says is that under the present health funding formula New South Wales receives **38** per cent of federal funds. That is why yesterday the New South Wales Government saw a shortfall of about **\$250** million in projected payments for **1981–1982**. We did our sums on the **38** per cent and came up with the answer that **\$87** million will be the federal Government's reduction in health and hospital funding for New South Wales. However, under the tax reimbursement formula New South Wales receives only **31** per cent of the federal funds. The Deputy Leader of the Opposition is complaining that New South Wales receives only **31** per cent of federal funds under that formula.

Guess what will happen if the **31** per cent formula is applied to the Australian hospital funding programme? Guess what that would mean to New South Wales? **It** will mean a loss of **\$90** million. What a coincidence. The federal Government has applied a cut of **\$87** million under the health funding formula. Had the federal **Gov-**ernment used **the** tax reimbursement formula—the one that the Opposition is asking **to** be used—the effective tax cost to New South Wales would be **\$90** million. The federal Government has put New South Wales under the tax reimbursement formula. There appears to be no consideration whatever with regard to disadvantaged persons or pensioners. Prior to the **1975** cost sharing agreement if a person was uninsured he was given a Commonwealth subsidy when hospitalized. The sum was **\$2** for an uninsured patient; a pensioner patient got **\$5** a day; persons who were disadvantaged, unemployed or Aborigines were paid a Commonwealth subsidy of **\$2** a day. The federal Government has withdrawn all subsidies for uninsured patients. So the New South Wales Government will be expected to treat the disadvantaged, the unemployed, new migrants, pensioners and Aborigines without any Commonwealth subsidy whatever. That subsidy, which applied between **1952** and **1975**, has not been brought back **into** the tax sharing formula.

*Mr K. J. Stewart]*

The federal Government has abdicated its responsibility to the pensioners, unemployed and disadvantaged people of this State. Also it has abdicated its responsibility to look after new settlers and migrants who did not have an opportunity to take out health insurance before coming to Australia or to qualify for health and medical cover. It is certain that the federal Government accepted only those recommendations of the Jamison report that suited it. Those recommendations have nothing to do with patient care whatever. Honourable members should understand that the issue we are talking about today is not quality health care or that the federal Government was talking about quality care for patients in its announcement yesterday. All that Government talked about was economy, cutting hospital funds, and saving money. The only recommendations of the Jamison inquiry acceptable to the federal Government—having regard to its announcement yesterday—were those that dealt with cost constraint.

The Jamison inquiry made many other recommendations. It recommended Commonwealth Government input into psychiatric hospitals and that the mentally ill should not be discriminated against. It recommended also that when hospitalized these patients should be treated in exactly the same way as a surgical or medical patient. Did the federal Government take up that recommendation? It did not. It does not want to be involved in expanding funds to New South Wales or other State governments to look after physically or mentally disadvantaged persons. Did the federal Government take up the recommendation of the Jamison inquiry about nurse education in Australia? Throughout Australia the nursing profession has placed increasing emphasis and demands upon the upgrading of nursing education to diploma level. Such a scheme comes within the policies of the New South Wales Government. The federal Government tried to evade that issue after the report of the Saxe inquiry three years ago. That inquiry made recommendations to the federal Government that nurse education should be upgraded. The federal Government did not implement the recommendation.

Last December the Jamison inquiry again recommended to the Commonwealth Government that nurse education in New South Wales and Australia should be upgraded and introduced into colleges of advanced education. There has been no mention of that. The honourable member for Ashfield spoke about the recommendations of the Jamison inquiry in regard to the care of the aged and the need to support them in their homes and communities in an endeavour to keep them out of hospital. If people are given independence and are supported by the community, government money will be saved and the dignity of these people will be maintained. What could be more important than that? Surely when people become debilitated and senile we should not put them in a bed in a corner of a nursing home. I do not wish to enlarge on the tragedy that occurred at Sylvania last night. Has the Commonwealth Government any regard for those persons? Not one bit.

The federal Government's concept is that the user shall pay. If you are sick, you will have to pay. If you can afford insurance, the health insurance fund will make a refund. If you cannot afford insurance, you will have to make some arrangements with the State Government to pay the bill or have it written off. If that is to be the position, we will have a return to the problems of hospitals having large debts mounting up for many years—millions of dollars could be involved. The issue is of great importance. New South Wales faces a federal funding deficit of \$87 million. The Commonwealth Government withdrew \$87 million from the New South Wales health care services. I say again that I am not the only one affected and that the New South Wales health care system is not the only one affected by the federal Government's policies. Last night the Queensland National Party Minister for Health said he considered that by the 1982-83 financial year the Queensland health services would be disadvantaged to the extent of \$150 million and that the Queensland Government would have

to find \$150 million extra to run its health services following the decision of federal Government. It does the Opposition no credit to make a personal attack upon the honourable member for Ashfield and me. I am used to such attacks. I shall not **resile** from my responsibility. From time to time I am insulted by members of the Opposition.

*[Interruption]*

Mr SPEAKER: Order!

Mr K. J. STEWART: In the debate the Opposition has made a personal and virulent attack upon Government supporters. Government supporters have contributed in a positive and objective way in discussing this issue. The honourable member for Burrendong said it was dreadful for New South Wales to have to cut hospital services. He does not tell his constituents that any reduction in health services in New South Wales or other States is as a direct consequence of federal Government cuts. I ask whether the honourable member for Burrendong read the speech made by the federal Minister yesterday. He said that hospitals:

. . . are in many cases not physically located to ensure easy access to the community they serve, nor necessarily provide the types of service required by that community.

What the federal Minister is saying—and honourable members should have regard to this—is that in the disposition of hospital beds, especially in New South Wales, all our beds are in the same areas. One of the worst instances of bed disposition in New South Wales is on the lower north shore of the city of Sydney. The federal Minister for Health says that one of the North Shore hospitals should close. Should it be the Mater, the Royal North Shore Hospital, the Ku-ring-gai Hospital, the Mosman Community Hospital, the North Shore Community Hospital or Chatswood Community Hospital? The federal Minister did not tell us, but he says one of those hospitals should close. He says also that we should do something about taking these services out of that area. What does the Deputy Leader of the Country Party think about Collarenebri Hospital which has 27 staff and 27 beds? What does he think about Walgett Hospital, which has 45 staff and 52 beds, or Wee Waa Hospital which has 44 staff and 36 beds? What does he think about Moree Hospital which has 160 staff and 97 beds. The Hon. M. J. R. McKellar says that is a bad disposition of hospital services; it is inefficient and wasteful. The honourable member for Burrendong should watch out. He should have a talk to the federal Minister and ask him to clarify and explain his statement that in many cases hospitals are not physically located to ensure easy access by the community they serve and do not necessarily provide the types of services required by the community.

I make it clear that the New South Wales Government is proud of the efficiency of its hospital and health services. In no circumstances will members of the Government be associated with the personal attacks that have been made on hospital administrators in New South Wales by the Deputy Leader of the Opposition. So great is the efficiency of our hospital services and so excellent is the co-operation that the Government has received from the administrators and boards of directors of hospitals in this State that this financial year \$35 million of new services have been afforded in the hospital system. This has been done by reducing servicing and by economies within the system. That became necessary because in 1979 the federal Government said it would not take into account in the cost sharing agreement any new services and if the State Government wished to introduce a new service—and the Westmead Hospital which was mentioned by the honourable member for Ashfield was a new service—we had to operate that new service out of the existing budget because we would not get one additional Commonwealth dollar for the Westmead Hospital. So we had to rationalize our hospital services.

*Mr K. J. Stewart]*

We had to close beds in the inner metropolitan area of Sydney and on the North Shore in order to open the Westmead Hospital, the children's ward at Shoalhaven Hospital, extensions at Gosford and the new hospital at Wyong, all of which it will be agreed are in areas of expanding population where the services are necessary. In order to open and operate those services we had to curtail existing services. In New South Wales this year new services worth \$35 million have been commissioned and are operating as the result of the efficiencies and economies that the inefficient managers were able to make within the system on behalf of the Government. That rationalization was not effected without some heartache for the Government. I dissociate myself and my colleagues and the Health Commission of New South Wales from the insulting remarks that were made by the Deputy Leader of the Opposition about our hospital services being inefficient, mismanaged and wasteful.

Next I point out that the hospital cost per head of population in New South Wales is the third lowest in Australia. In Queensland the cost is lower because that State has free hospital service, but it is provided by salaried or sessionally paid doctors. In New South Wales we have a fee for service, so the more services a doctor provides, the more money we pay him. Can honourable members imagine what the Parliament would be like if the more speeches an honourable member made the more money he was paid? It is bad enough now. We would never be able to keep some members quiet. We would have to open the Parliament on Saturdays and Sundays to cater for the demand. That is the way we run our hospital system. The more times a doctor sees a patient, the more money he earns. In Queensland, irrespective of how many patients a doctor sees and how many procedures—irrespective of the type of procedure—the doctor performs, he is paid a contractual rate on a sessional fee or salaried basis. So Queensland has a lower hospital cost structure than New South Wales has.

Victoria has a lower cost structure also, for Victoria has less public hospital beds and more private hospital beds than New South Wales. The use of the private hospital system in Victoria is much greater than it is in New South Wales. Further, Victoria does not have the historical or geographical problems that the New South Wales hospital system has. New South Wales has 260 hospitals, spread throughout the length and breadth of the State, providing services to people in isolated communities. Every one of those communities is now under threat because of the policy statement by the federal Government yesterday. One thing is clear; Mr Fraser has no regard for the sick of the community, if it requires some sort of federal empathy, or—worse still—some sort of federal funding. Bit by bit, the federal Government has demolished or dismantled all the initiatives of the Whitlam Government including the school dental health scheme, the community health scheme and the hospital cost sharing agreement. Do honourable members know why? Mr Fraser claims that because he won in 1975, 1977 and again in 1980, that is what the people of New South Wales want. He claims that he has a mandate to continue to slash funds for hospital and health services.

I understand that next week he will claim to have a mandate to cut funds for all other welfare services and for all other services that are provided by the Government of New South Wales and by the other States, whether they be transport, agriculture, youth and community services or water resources. If he has no feeling for the ill, the sick and the aged in the community, what sort of feeling will he have for bus drivers, dam builders, engineers and the construction personnel in the other departments?

The States face the dreadful responsibility and the problem of having to increase hospital and health charges in order to make up the shortfall in federal funds. Irrespective of what decision is taken by the New South Wales Government in coming

to grips with this federally imposed problem, all the blame will be placed where it deserves to be placed and that is at the door of the Liberal Party—Country Party Government in Canberra and all its cohorts and supporters throughout Australia.

Mr GREINER: **Mr Speaker**—

Mr **FLAHERTY** (Granville), Government Whip [12.27]: I move:

That the question be now put.

The House divided.

Ayes, 56

Mr Akister	Mr Ferguson	Mr Neilly
Mr Anderson	Mr Gabb	Mr O'Connell
Mr Bannon	Mr Gordon	Mr O'Neill
Mr Barnier	Mr Hills	Mr Paciullo
Mr Bedford	Mr Hunter	Mr Petersen
Mr Booth	Mr Jackson	Mr Quinn
Mr Brereton	Mr Jensen	Mr Ramsay
Mr Cahill	Mr Johnson	Mr Robb
Mr Cavalier	Mr Johnstone	Mr Rogan
Mr Cleary	Mr Keane	Mr Ryan
Mr R. J. Clough	Mr Knott	Mr Sheahan
Mr Cox	Mr McCarthy	Mr A. G. Stewart
Mr Curran	Mr McGowan	Mr K. J. Stewart
Mr Day	Mr McIlwaine	Mr Walker
Mr Degen	Mr Maher	Mr Whelan
Mr Durick	Mr Mair	Mr Wilde
Mr Egan	Mr Mallam	<b>Tellers,</b>
Mr Einfeld	Mr Mochalski	Mr Flaherty
Mr Face	Mr Mulock	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 Smith
Mr Bruxner	Mr King	Mr Sullivan
Mr Cameron	Mr McDonald	Mr Toms
Mr J. A. Clough	Mr Mason	Mr West
Mr Dowd	Mr Moore	Mr Wotton
Mr Duncan	Mr Murray	<b>Tellers,</b>
Mr Fischer	Mr Osborne	Mr <b>Caterson</b>
Mr Fisher	Mr Park	Mr Taylor

Resolved in the affirmative.

Question—That the words stand—put.

The House divided.

## Ayes, 57

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

## Noes, 34

Mr Arblaster	Mrs Foot	Mr Punch
Mr Barraclough	Mr Freudenstein	Mr Rozzoli
Mr Boyd	Mr Greiner	Mr Schipp
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	<i>Tellers,</i>
Mr Fischer	Mr Park	Mr Catterson
Mr Fisher	Mr Pickard	Mr Taylor

Question so resolved in the **affirmative**.

Amendment negatived.

Question—That the motion be agreed to—proposed.

Mr WEST: Mr Speaker —

Mr FLAHERTY (Granville), Government **Whip [12.39]:** I move:

That the question be now put.

The House divided.

## Ayes, 56

Mr Akister	Mr Booth	Mr R. J. Clough
Mr Anderson	Mr Brereton	Mr Cox
Mr Bannon	Mr Cahill	Mr Curran
Mr Barnier	Mr Cavalier	Mr Day
Mr Bedford	Mr Cleary	Mr Degen

Mr Durick	Mr Knott	Mr Quinn
Mr Egan	Mr McCarthy	Mr Ramsay
Mr Einfeld	Mr McGowan	Mr Robb
Mr Face	Mr McIlwaine	Mr Rogan
Mr Ferguson	Mr Maher	Mr Ryan
Mr Gabb	Mr Mair	Mr Sheahan
Mr Gordon	Mr Mallam	Mr A.G. Stewart
Mr Hills	Mr Mochalski	Mr K. J. Stewart
Mr Hunter	Mr Mulock	Mr Walker
Mr Jackson	Mr Neilly	Mr Whelan
Mr Jensen	Mr O'Connell	Mr Wilde
Mr Johnson	Mr O'Neill	<i>Tellers,</i>
Mr Johnstone	Mr Paciullo	Mr Flaherty
Mr Keane	Mr Petersen	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 Smith
Mr Bruxner	Mr King	Mr Sullivan
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>Tellers,</i>
Mr Fischer	Mr Osborne	Mr Catterson
Mr Fisher	Mr Park	Mr Taylor

Resolved in the affirmative.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 57

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

Mr Ramsay	Mr A. G. Stewart	<i>Tellers,</i>
Mr Robb	Mr IS. J. Stewart	
Mr Rogan	Mr Walker	
Mr Ryan	Mr Whelan	Mr Flaherty
Mr Sheahan	Mr Wilde	Mr Wade

Noes, **34**

Mr Arblaster	Mrs Foot	Mr Punch
Mr Barraclough	Mr Freudenstein	Mr Rozzoli
Mr Boyd	Mr Greiner	Mr Schipp
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	<i>Tellers,</i>
Mr Fischer	Mr Park	Mr Catterson
Mr Fisher	Mr Pickard	Mr Taylor

Question so **resolved** in the **affirmative**.

Motion **agreed** to.

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

#### BAIL ACT REVIEW

Mr WALKER (Georges River), Attorney-General and Minister of Justice [12.44]: Yesterday the Leader of the Opposition asked me a question without notice about a man accused of being involved in a siege at Kemp's Creek. The question implied that because the man had been released on bail in respect of serious charges, somehow this established that the Bail Act was deficient. Since that blessed day when the colleagues of the Leader of the Opposition were inspired to thrust greatness upon him I find it difficult to recall his asking a question that correctly stated the facts or was not tainted by inaccuracies——

Mr Cameron: On a point of order. There has been a long-established precedent that during the course of tabling papers a Minister may, in effect, table an additional or supplementary answer to a question asked on a previous day. Under current procedures those matters are dealt with before question time and not after. I submit that it is an infringement of the established precedents of the House for a Minister at this stage of the proceedings to give a supplementary answer to a question that was not answered when the question was asked.

Mr SPEAKER: Order! There is no point of order. The only consideration is that the time allowed for honourable members to ask questions without notice is not eroded by replies to questions asked on previous days.

Mr WALKER: As I was saying before I was so rudely interrupted by the honourable member for Northcott, since that blessed day when the colleagues of the Leader of the Opposition were inspired to thrust greatness upon him, I find it difficult to recall asking a question that correctly stated the facts or was not tainted by inaccuracies, misconceptions or downright dishonest invention. This case is no exception. Before I deal with the facts, I should like to make a few pertinent

observations. The Opposition, which consists of a leaderless rabble, bereft of talent, industry or creative direction, invariably approaches question time by reading the headlines in the morning newspapers and trying to score a second-hand point or two by attempting to ascribe some blame to the Government for the events of the day. As they would wish the public to see it, the Wran Government is behind every natural disaster, tragedy, economic downturn or act of violence that occurs in society. **Of** course, nobody is fooled by such tactics and that is why the State Liberal Party now cannot muster more than 25 per cent of the electoral support and the Country Party has been reduced to less than 5 per cent of the vote.

When it comes to the question of the bail laws, the conduct of Opposition members has been quite reprehensible. Instead of welcoming the new and effective reforms, they have adopted the role of carping critics and chosen to denigrate both the reforms and the judiciary that applies them. The new Act did many things to redress **the** errors of my predecessors as Attorney-General. In the first place, bail jumping was made an offence. It is too ludicrous for words that under the Opposition's incompetent administration absconding from bail was not made a crime. The New South Wales Act now makes that a crime and provides the heaviest penalty of any Australian State or Territory for bail jumping. The new Act lays down rigid and exhaustive procedures for judges, magistrates and police for granting bail in respect of serious crime.

It is true that some criticism has been directed at the thoroughness of the new rules and particularly at the extra work load placed upon police and judges. Because a careful and exhaustive study of all the facts and circumstances is now essential before a decision is made on bail for serious offences, the police, magistrates and judges have been burdened by extra work on such matters. For this we make no apology. The protection of the public demands that the greatest attention be given to decisions that may involve violent or dangerous people being released to society. The cost of these strict new laws has been substantial. Many extra police had to be assigned to cope with the increased work. Where one Supreme Court judge could cope previously with all bail applications in a morning, now two and sometimes three judges spend the whole day carefully deliberating upon such decisions. This extra work has meant delays in our courts and the need for additional magistrates and judges—again a price that is to be paid if the public is to be properly protected.

Another point to be made is that judges, like the rest of us, are human, and sometimes make errors. Incredibly the police did not have the power under the Opposition's laws to appeal against a decision they felt was wrong. The Government gave them that right. It is significant that they have never used that right since the inception of the Bail Act in March 1980. If the police were not totally satisfied with bail decisions under the new Act, undoubtedly they would be regularly using their right of appeal. This has not happened and it demonstrates unquestionably the effectiveness of the new laws. Indeed, the occasional criticism of bail decisions that has appeared in the news media since the new Act commenced has usually proved, when investigated, to relate to decisions made under the old law.

I turn now to the facts of this case. In doing so I must point out to the House that all charges are very much sub *judice*. Justice and the standing orders demand that matters must not be canvassed that would prejudice the fair trial of the accused, and that we confine our remarks strictly to the issue of bail. For the benefit of the House I shall give the recent bail history of the man in question. In doing so I am, of course, constrained not to say anything that might prejudice the man's future. Before proceeding I caution the Leader of the Opposition not to repeat the foolishness he displayed yesterday and today by rushing in before the facts are known. It will be quite obvious from what I shall tell the House that the

Leader of the Opposition has tried to undermine and bring into disrepute the system of criminal justice in this State. He has gone off half-cocked on this matter. He should publicly apologize for his blunder. The facts are these: The man in question was first arrested in Wollongong —

Mr Dowd: On a point of order. In a criminal trial of a person on a serious charge, the character and antecedents of the accused must be kept from the jury, unless the accused raises them. It is fundamental to the principle that a person is innocent until proved guilty that this person's trial proceed without the Attorney-General and Minister of Justice using the time of the House to go through the accused person's antecedents. In a trial the facts are in issue before the court. The sub *judice* rule will be breached if the Attorney-General and Minister of Justice, for the benefit of the news media and the public, reveals the history of this man's bail problems, for those facts may then become known to jurors through the media. This is a gross misuse of the House by the Attorney-General in his attempt to flout the sub *judice* rule.

Mr SPEAKER: Order! I rule against the point of order taken by the honourable member for Lane Cove. Discretion could have been shown yesterday by the Leader of the Opposition refraining from asking the question of the Attorney-General and Minister of Justice, who I rule is entitled to answer it.

Mr WALKER: I have no doubt the question should not have been asked. But it was, and therefore it is a matter of public record. It is in the public interest that the truth be told.

Mr Mason: What rubbish.

Mr SPEAKER: Order!

Mr WALKER: The man in question was first arrested by police in Wollongong in July 1980 on a charge of domestic assault. This sort of case would have resulted in bail being granted under the old as well as the present bail law. The police granted bail on the payment by the man of \$500, on the condition that he make his first court appearance on 5th August, 1980. On that day he was represented when he appeared. He has been represented on all subsequent remand dates. His remand on those charges was eventually broken by his arrest in December 1980 on a much more serious offence. That charge related to an alleged abduction that occurred outside New South Wales. Three other charges were preferred and they involved a driving offence and two gun licensing offences. He appeared before Burwood court of petty sessions on several occasions in respect of these four charges and bail was refused on each occasion.

On 25th December, 1980, in Burwood court, an order was made to extradite him to the Australian Capital Territory to face the abduction charge. Bail was refused. On 30th December, 1980, he appealed to the New South Wales Supreme Court against the extradition order. Mr Justice Carmichael denied the appeal and remanded him to the Canberra court of petty sessions for 31st December, 1980. Mr Justice **Carmichael** refused bail. This man passed out of the New South Wales jurisdiction. During the whole of his time under New South Wales administration in relation to the abduction he was in custody.

Mr Mason: What happened in Canberra?

Mr SPEAKER: Order!

Mr WALKER: The New South Wales Bail Act does not apply in the Australian Capital Territory.

Mr Mason: This is an exercise in giving misinformation.

Mr SPEAKER: Order!

Mr WALKER: The federal Government has chosen to retain the same outdated and antiquated laws that the honourable member for Lane Cove would reintroduce through this House. It has retained those laws, which are dangerous in their design for protection of the public. The man subsequently appeared on two or three occasions before the Canberra court of petty sessions. On those occasions bail was refused. However, on 23rd January, 1981, he made a bail application before the ACT Supreme Court, and bail was granted in the sum of \$5,000 payable by him and also by a surety. I repeat, bail was granted by the ACT Supreme Court.

Mr Mason: The Attorney-General and Minister of Justice should have taken the trouble to read my question. Obviously he did not listen when I asked it. He has not had the courtesy to read it. He is misleading the House.

Mr SPEAKER: Order! When the Chair makes an exhortation for order, it is addressed to all honourable members who are disorderly at the time. Such an exhortation has been addressed to the Leader of the Opposition three times already.

Mr WALKER: In addition to the low monetary bail, a rather unusual condition was imposed: the accused was told to leave the ACT and not to return. I have no way of knowing what material was placed before that court, but it seems strange that a court in another jurisdiction should export its allegedly dangerous offenders to New South Wales as a means of keeping peace in its own backyard. I hope these facts serve as yet another reminder to the Leader of the **Opposition**—

Mr Mason: You are a liar.

Mr SPEAKER: Order! The Leader of the Opposition has addressed the remark "You are a liar" to the Attorney-General and Minister of Justice. I ask the Leader of the Opposition to withdraw the remark.

Mr Mason: I withdraw it, Mr Speaker. But the Attorney-General is completely misleading the **House**—

Mr SPEAKER: Order!

Mr WALKER: I hope these facts serve as yet another reminder to the Leader of the Opposition that he has a responsibility to resist the possibility of short-term political gain and to give this House, the news media and the citizens of New South Wales a proper standard of conduct. I give this advice yet again because the Leader of the Opposition will continue to suffer at the polls unless he changes his desperate ways.

*[Mr Speaker left the chair at 1 p.m. The House resumed at 2.15 p.m.]*

#### BILLS RETURNED

The following bill was returned from the Legislative Council with an **amendment**:  
Public Authorities (Financial Accommodation) Amendment Bill

The following bill was returned from the Legislative Council without **amendment**:

Miscellaneous Acts (Financial Accommodation) Amendment Bill

PETROLEUM (SUBMERGED LANDS) **BILL**

## Introduction

Motion (by Mr **Einfeld** on behalf of Mr **Mulock**) agreed to:

That leave be given to bring in a bill for an Act relating to the exploration for, and the exploitation of, the petroleum resources, and certain other resources, of certain submerged lands adjacent to the coasts of New South Wales; to repeal the Petroleum (Submerged Lands) Act, 1967, and the Petroleum (Submerged Lands) Taxation Act, 1967; to amend the Petroleum Act, 1955, and the Pipelines Act, 1967; and for other purposes.

## Second Reading

Mr **EINFELD** (Waverley), Minister for Consumer **Affairs** [2.17]: I move:

That this bill be now read a second time.

In April and May last year the Commonwealth Parliament passed a group of bills to give legislative effect to an off-shore settlement reached at the Premier's Conference in June 1979. Under that settlement, as outlined by the Prime Minister, the Commonwealth will share with the States and the Northern Territory powers and resources in the offshore area. This action, taken by the Commonwealth, arose from the **High Court's** decision in 1975 in the seas and submerged lands case that the low water line is the territorial limit of the Australian States.

The Coastal Waters (State Powers) Act 1980, and the Coastal Waters (State Title) Act 1980, of the Commonwealth vest in the States power and title to the territorial sea around Australia. This legislation, besides vesting in the States proprietary rights and title to the sea bed within the 3-mile limit also authorizes the States to grant mining and prospecting titles in that area. Included in this package of Commonwealth legislation is the Petroleum (Submerged Lands) Amendment Act 1980, which is intended to give effect to revised arrangements for the administration of off-shore petroleum mining outside the territorial sea.

The Commonwealth Petroleum (Submerged Lands) Act 1967, as now amended, will in future apply only outside the 3-mile limit. In that area the day-to-day administration of the Commonwealth Act will continue to be in the hands of the State mines Minister; that is, the designated authority for the adjacent area of each State. The Commonwealth Act, as now amended, sets up a statutory joint authority, comprising the Commonwealth Minister and State Minister, to deal with major matters outside the 3-mile limit. These will include matters relating to the grant, refusal or transfer of titles and the work and expenditure conditions of them. In the territorial sea area, that is, within the 3-mile limit, the mining of petroleum will be a State responsibility and governed by State legislation.

The vesting by the Commonwealth in the States of power and proprietary rights within the 3-mile limit is not intended to be retrospective, and this means that it is necessary for this Parliament to enact fresh State legislation to provide for the exploration for, and recovery of, petroleum in that area. The New South Wales Government cannot, as the Commonwealth can, merely amend the existing Act, because the State Offshore Petroleum Act was, of course, enacted before the States were vested with power to legislate for mining in that area. For this reason the bill before the House totally repeals and replaces the existing Offshore Petroleum Act of 1967. The decision taken at the Premier's Conference calls for each State to pass uniform off-shore petroleum legislation. The bill before the House was therefore drawn up in consultation with the Commonwealth, the Northern Territory and other States; and the code it

contains will, when enacted by the other States and that territory, form a common code within the 3-mile limit right around Australia. I shall briefly outline to the House the main features of the bill. At the conclusion of that summary I shall be tabling additional explanatory details of its provisions. [Quorum formed.]

The bill does not depart in any significant way from the principles of the existing Act, though its operation is limited to that part of the New South Wales adjacent area that is within the 3-mile limit. As in the case of its predecessor, this bill is intended to provide a regulatory code to govern the exploration for, and exploitation of, offshore petroleum resources. It sets up the usual 2-stage title system. There is a permit to cover exploratory work such as drilling, followed by a licence that authorizes operations for the recovery of petroleum. The existing graticular system of block areas based on block sizes of approximately 70 square kilometres is used for the purposes of the areas to be granted under these titles. The maximum area that a permit can cover is 400 blocks or 28 000 square kilometres.

The existing arrangement for the sharing of royalties is to continue. The standard royalty of ten per centum will be shared on the basis of six-tenths to **the** State and four-tenths to the Commonwealth. The general view of the States is that the legislation places them in the position they were assumed to be in and with the powers that had always been assumed as residing with them prior to the High **Court** decision—that is, State power and title over the territorial sea. My understanding is that each State proposes, as early as possible, to introduce a Petroleum (Submerged Lands) Bill in similar form. The code contained in the bill has, through its previous operation, shown itself to provide a reasonable set of laws that compares favourably with overseas petroleum practice. That completes my consideration of the bill. I table additional explanatory notes.

### Petroleum (Submerged Lands) *Bill*

#### Application of Laws

The subject matter of the bill is the offshore area adjacent to the State of New South Wales that lies within the territorial sea. The bill contains provisions concerning the application of laws under which regulations may be made so as to apply, or exclude the operation of, various laws within the 3-mile limit. This legislation, as its predecessor did, therefore includes provision for the application in the offshore area of the general body of law in force in New South Wales.

#### Graticular System

The bill carries forward the graticular system of blocks in use under the previous legislation. The size of each graticular block is 5 minutes of arc of latitude by 5 minutes of arc of longitude producing a block of about 70 square kilometres.

#### Exploration Permits

This is the **first** stage in a two stage system of title. The general method is for the Minister to invite applications for permits over specified blocks. The maximum number of blocks over which a permit can be sought is 400 or about 28 000 square kilometres. This figure was adopted under the previous legislation as giving an area in which the operators would have ample opportunity to explore efficiently. The minimum size of the permit is fixed at 16 blocks or about 1 100 square kilometres. The Minister has the power, in certain circumstances, to issue a permit over a smaller area.

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Every application for an exploration permit must be accompanied by a fee of \$3,000; this fee goes wholly to the State but if a permit is not granted nine-tenths of the fee is refunded. The procedural steps for obtaining a permit are set out in clauses 24–28.

#### Term of Permit

They will be issued for an initial period of 6 years and be renewable for successive periods of 5 years each. The permittee is required to surrender half of the existing permit area at the end of each period. This provision is intended to concentrate exploration in the most likely areas and to discourage the holding of large offshore areas which could be taken up by somebody else.

#### Rights Conferred by Permit

A permit authorizes its holder to explore for petroleum and to carry on such operations and execute such works as are necessary for that purpose in the permit area. Where a person conducts unauthorized exploration for petroleum he is liable to a penalty of \$50,000.

#### Conditions of Permit

The bill authorizes the Minister to impose conditions on the issue of a permit. This power extends to the work to be carried out and the amounts to be expended. Generally a work programme for each permit area would be submitted by the applicant and considered by the Minister.

If a permittee, during the course of his operations discovers petroleum, then the bill provides for the Minister to be notified immediately and the permittee may be required by the Minister to take steps to evaluate the discovery.

#### Declaration of Location

The bill provides that following a discovery of petroleum, a permittee may, on his own initiative or at the direction of the Minister, nominate a block to become the centre of a group of 9 blocks. This is known as a location. Each side of the location will normally be 3 blocks in length and the location will therefore consist of the nominated block and the 8 blocks that immediately adjoin the nominated block.

Where the permittee fails to nominate a block as the centre of a location the Minister may nominate that block himself. The Minister has been given this power so as to ensure that, following a discovery, a permittee does not unnecessarily delay moving into the production stage.

#### Production Licences

Where a permittee has declared a location he has the right to make an election to take out a prospecting licence. In the normal case where the location comprises 9 blocks the permittee has the right to take a production licence out over any 5 blocks of the total location of 9 blocks. He would pay a standard royalty rate of 10 per centum of the value of the petroleum at the well head.

The other option would be to take the 5 blocks together with one or more of the remaining 4 blocks from the location so as to form 2 separate production licences and to pay an additional override royalty on all production won from both licence areas. The override royalty would be negotiated between the Minister and the permittee and be not less than 11 per centum and not more than 12 per centum from all petroleum won from the area.

The bill allows a period of at least 2 years during which the permittee would have to make an election. This period, if necessary, could be extended by the Minister. Where the permittee makes an election, those **graticular blocks** not selected by him from the location are excised from the permit area and may be disposed of by the Minister by advertisement.

#### Application for Production Licences in Respect of Surrendered Blocks

Where a licence is **surrendered** or cancelled as to a block, or a permit is surrendered, cancelled or determined as to a block that was included in a location, the Minister may in certain circumstances invite in the *Gazette*, applications for the grant of a licence in respect of that block. The Minister, in doing so, may call for bids on a number of bases, for example, additional royalty bids or the payment of a cash reserve fixed by the Minister plus additional royalty bids.

Applications are required to be accompanied by a fee of \$3,000 and a deposit of 10 per centum of any amount offered for the grant of the licence. When the licence is issued the whole of the fee goes to the State but if it is refused nine-tenths of it is refunded to the applicant.

#### Rights Conferred by Licence

The holder is authorized to explore for and recover petroleum in the licence area and to carry on such operations and to execute **such** works in the licence area as are necessary for those purposes.

#### Term of Licence

The Minister is authorized to issue licences for a period of up to 21 years. Where a licensee has complied with the conditions of his licence and with the terms of the legislation, he is entitled, on application, to a renewal of it for a period of 21 years but further extensions would be at the discretion of the Minister.

#### Works to be Carried Out

The licensee is required to carry out approved works within the licence area to a value not less than \$300,000 per block for each year of the licence. This is an overall figure and a licensee would, in the case of a 5-block licence, be entitled to concentrate in any particular year, his expenditure in work on one block.

#### Pipeline Licences

For the purpose of the bill the word "pipeline" refers to a main trunk line conveying petroleum from a well to the shore line. A pipeline licence is required for the construction and operation of this type of pipeline. A pipeline licence may be issued subject to such conditions as the Minister thinks fit. It can be issued for a period of up to 21 years. A pipeline licence is not required for certain other pipes. These include pipes used for bringing petroleum from a well to a gathering or terminal station or for conveying oil or gas for use in connection with petroleum recovery operations. These secondary lines and other lines for conveying water may be constructed and operated with the consent of the Minister.

#### Registration of Instruments

The Minister is required to keep a register of permits, licences, pipeline licences and access authorities granted by him. In this register to be entered a memorial in respect of each title and this specifies various details

including the name of the holder of the title, the description of the area held, the terms of the title and other particulars which, for instance, would in the case of a pipeline licence include the route of the pipeline.

Where any title instrument is varied, cancelled or surrendered, an appropriate record has to be made in the register. A transfer of a permit licence or authority is of no force until it is approved by the Minister and registered in accordance with the bill. Registration of transfers and dealings are subject to the payment of appropriate fees.

#### Royalty

Under clause 143 royalty is payable at the rate of 10 per centum of the value at the wellhead of all petroleum recovered under an exploration permit or production licence.

Where a permittee takes up a secondary licence in addition to his primary licence, he pays an override royalty in addition to the standard rate of 10 per centum. The override is negotiated between the operator and the Minister between a base of 1 per centum and a ceiling of 23 per centum. The titleholder is required to pay the override royalty on production from both his licences. He would therefore be paying a rate of between 11 per centum and 123 per centum on all petroleum produced.

#### Apportionment of Royalty

Clause 129 deals with the apportionment of the standard royalty between the State and Commonwealth. This sharing formula is on the basis of six-tenths to New South Wales and four-tenths to the Commonwealth.

#### Royalty Rates

A permittee or licensee will pay, in respect of petroleum recovered, a royalty at the rate of 10 per centum of the value at the wellhead. This value is such amount as is agreed between the operator and the Minister or, in default of agreement, by the Minister. An additional override royalty is payable in the case of a secondary licence.

#### Fees

Division 7 of the bill deals with fees payable in respect of exploration permits, production licences and pipeline licences.

In the case of permits there is an annual fee of \$300 or a fee calculated at the rate of \$15 for each block in the permit, whichever is the greater.

The annual fee for a production licence is \$9,000 for each of the blocks comprised in the licence. A pipeline licensee pays an annual fee of \$40 in respect of each kilometre of the pipeline.

All these fees will be used to defray the substantial expenses involved in the administration of the legislation, including both office administration and inspections offshore.

#### Regulations and Directions

Clause 152 contains a regulation-making power setting out in detail the matters in respect of which the power may be exercised. This power is supplemented by the ability of the Minister to issue directions to the title holder on similar matters, including operating, safety and pollution controls.

Debate adjourned on motion by Mr Park.

CONSUMER CREDIT BILL  
MONEYLENDING (REPEAL) BILL  
CREDIT-SALE AGREEMENTS (REPEAL) BILL  
HIRE-PURCHASE (REPEAL) BILL

Introduction

Motion (by Mr Einfeld) agreed to:

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

- (i) A bill for an Act relating to the provision of credit and the licensing of certain persons in connection with the provision of credit.
- (ii) A bill for an Act to repeal the Moneylending Act, 1941.
- (iii) A bill for an Act to repeal the Credit-sale Agreements Act, 1957.
- (iv) A bill for an Act to repeal the Hire-Purchase Act, 1960.

Bills presented and read a first time.

Second Reading

Mr EINFELD (Waverley), Minister for Consumer Affairs [2.26]: I move:

That these bills be now read a second time.

Introducing the Consumer Credit Bill and cognate bills to the House gives me special pleasure. It has for a long time been a strong ambition of mine, shared by all members of the Wran Government, that there should be equality of influence and status between financiers and their customers in a simple, fair and coherent credit system. This measure, drawn up after a great deal of work and consultation, proposes to bring about this very necessary reform. The honourable member for Northcott will love this.

Mr Cameron: I am sure I shall.

Mr Dowd: So will the business community.

Mr EINFELD: I am sure they will. The use of consumer credit has expanded to a remarkable degree over the past twenty years or so. Even over the past couple of years, in economic circumstances that must have daunted the individual citizen, instalment credit for retail sales has been growing at an average annual rate of 10 per cent. This development has brought much material benefit to many people. It has helped many who could not otherwise have afforded it to own goods which are highly priced but which have come to be regarded as necessities: homes, for instance; cars; household appliances and many other items. This purchasing capacity has encouraged industrial and commercial activity which has led, in turn, to greater employment opportunities. I suppose it should be said these days that it has led to lower levels of unemployment.

The extent to which this activity depends on the credit system raises large moral questions, of course, though it is not my intention to canvass them here. It **has**, however, created practical problems for consumers and we should not forget them. My department confronts these problems every day **as** do most members of Parliament. My officers' files abound with examples of people who have become ensnared in cruelly disadvantageous circumstances because the fine print on some credit contracts has been unintelligible to them or indecipherable or because they have been

misled or misinformed. Credit is convenient and accessible; it is also expensive and complicated. Consumers should be able to enter into credit transactions on an equal footing with those who provide credit. This Government accepts that it has the obligation to ensure where possible that credit customers have this equal influence with credit providers in a system that makes sense to all involved. What the main bill proposes therefore is no less than a complete reform of the laws governing credit. It proposes to repeal present legislation which regulates credit transactions—the Moneylending Act, 1941, the Credit-Sale Agreements Act, 1957, and the Hire-Purchase Act, 1960—and to replace it with a single Act which I trust covers all forms of such transactions, not all of which are at present subject to any law. Honourable members will find it useful if I canvass the history of this measure **and** the painstaking work and consultation that have gone into it.

In 1969, a committee from the Adelaide Law School, headed by Professor Rogerson, reported to the Standing Committee of Attorneys-General that sweeping changes were needed to consumer credit law. The Rogerson Committee's proposals were adopted in South Australia, forming the basis of that State's Consumer Credit Act, 1972 and the Consumer Transactions Act, 1972. In 1972, a committee led by Mr Molomby, a Victorian lawyer, presented a report on consumer credit to the Victorian Attorney-General which also proposed major changes to the law. The Molomby Committee pointed out basic defects in the Law as it stood. As a result of the Molomby Report, the Standing Committee of Attorneys-General agreed in 1973 to the formation of a Credit Laws Committee with a view to developing uniform model legislation. This committee was composed of state and federal representatives and three members of the Molomby Committee. One of the drawbacks to the Molomby Report was that it contained almost no practical consumer input. The Credit Laws Committee therefore examined the report with particular emphasis on the effects of credit industry practices on consumers. This examination has been conducted principally by New South Wales, Victoria and South Australia, with lesser contributions from the Commonwealth and Western Australia and virtually no contributions at all from the other States and Territories.

In 1975, Judge White—now a member of the South Australian Supreme Court and then Chairman of the South Australian Credit Tribunal—reviewed the operation of that State's credit laws for the Dunstan Government and recommended a series of further reforms. The Victorian Government, with the agreement of the Standing Committee of Attorneys-General, introduced for public comment draft of proposed legislation in 1978. More than 1 000 pages of submissions from interested parties were received. Since then, New South Wales and Victoria have worked together to devise basically uniform legislation. All other Governments seem to be waiting for the New South Wales and Victorian bills to be tabled before proceeding themselves. There is expected to be considerable industry pressure on them to follow the New South Wales and Victorian models. Honourable members will also be aware that, apart from the information brought to the debate on consumer credit by the Rogerson and Molomby Committees, two reports overseas have contributed enormously to the universally-held belief that consumer credit was an activity that cried out for rationality and reform.

In 1971 a committee headed by Lord Crowther in a report to the British Parliament recommended a complete reform of credit laws. These reforms are now embodied in the United Kingdom Consumer Credit Act 1974. In 1968, the United States of America National Conference of Commissioners on Uniform State Laws approved the introduction of a uniform credit code. In 1974, the conference approved the introduction of an improved and updated version of the 1968 code. The proposals embodied in this bill have been evolved after close consultation and co-operation with the industry.

I wish to pay a tribute at this point to the Australian Finance Conference and the Retail Traders Association. Both these organizations, especially the former, have worked closely and patiently with officers of the New South Wales Government in drawing up this weighty measure. Discussions have also been held with officers of the Financiers Association.

For the information of honourable members I shall now describe the main proposals in this bill. At the outset, I should say that the provisions of this bill will not apply to corporations, for reasons that I shall explain at a later stage. It is proposed that hire purchase as a form of consumer credit transaction **will** be abolished. Three basic forms of credit arrangement are further proposed: a credit sales contract which will equate to the present hire purchase agreement and credit sale agreement; a loan contract which will equate to the present personal loan contract; and a continuing credit contract which will cover store charge accounts, bankcard and other forms of credit card which are at present unregulated. A credit sale will be taken to mean a contract of sale of goods and/or services worth no more than \$15,000. **This** ceiling will not apply to farm machinery or commercial motor vehicles, most of which, new or second hand, would cost more. The exemption is aimed at helping farmers and small businessmen, an integral part of the New South Wales Government's policy on consumer protection. The bill proposes to drop the stipulation in the present Moneylending Act that credit contracts are unenforceable if the spouse of the borrower has not provided written consent to the transaction.

The motives for this stipulation are understandable but it is difficult to carry out in practice and is in any case completely contrary to the Government's policy on sex discrimination. Another stipulation in current credit law that is proposed to be dropped is that calling for minimum deposit requirements. In the new dispensation, **it** will be open to credit providers to impose their own minimum deposit requirements if they feel that it is prudent business policy to do so. This bill proposes to permit by regulation genuine hiring arrangements with an option to buy, as in the case of television hire contracts, but the provision of credit by a leasing arrangement without an option will be excluded. Some forms of credit transaction will be exempt from the requirements of this bill such as commercial credit transactions, bank overdrafts and revolving accounts operated by pastoral houses and stock and station agents.

A fundamental aim of this legislation is that consumers should be able to know exactly what their rights and obligations are when they enter into credit transactions. They should know, for example, precisely what loans will cost them. The bill proposes therefore that a borrower shall receive full information on interest rates. It is vital also that the methods of disclosure of this information should be both standard and realistic so that prospective borrowers can shop around, compare interest rates and obtain the best deals offering. It is therefore also proposed that all references in credit contracts and associated documents will be expressed as true or effective rates of interest rather than flat rates, which can be misleading. Another important proposal is that credit documentation will be standard and simplified. In the proposed new system the credit consumer will **first** receive an offer document which, when the credit provider accepts it, becomes the credit sale contract document. It will be in three parts. The first part will be in the form of a notice in plain English outlining the rights of the borrower at the pre-contract stage. Part one will exhort the consumer to read the document thoroughly, insist on explanations for any provisions that require **it** and demand that all blank spaces be either filled in or ruled through. The second part of the documentation will outline in simple form the borrower's commitments **in** the arrangement, the interest rates to be charged and the way in which the amounts **are** to be disbursed. The **third** part will contain the terms and conditions of the contract.

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Then, within 14 days of the contract being agreed to, the credit provider must give the borrower two documents—namely, a copy of the original contract document or a prescribed summary and a prescribed summary of the borrower's rights and obligations. It is proposed that these summaries will be in plain English, possibly in a simple question-and-answer format.

The next important group of proposals in the bill deals with such circumstances as repossession, the purchase of encumbered goods and the necessity at times for the borrower to vary a credit contract. It is proposed that credit providers will no longer be able to enter a borrower's premises to repossess goods on which repayments are overdue without the borrower's permission or an order of the court. This all too common practice has been responsible for great distress and hardship to what might be called the innocent as distinct from the wilful defaulter. The bill provides that a credit provider may not repossess goods until 21 days after he has served a prescribed notice on the borrower. This notice will outline in plain English the breach giving rise to the right to repossess, what must be done by the borrower to rectify the breach and what the borrower's rights are in the situation. The credit provider will be able to do so before this period has expired only if he can prove to the proposed credit tribunal or a court of petty sessions either that he was fraudulently misled by the borrower to enter into the contract or that he reasonably believed that the goods would have or had been removed, concealed or damaged in breach of the contract. If a defaulting borrower has repaid 75 per cent of the debt, the credit provider will not be able to repossess until acceptable alternatives are examined in lieu. Even then, it is proposed that repossession cannot take place without the express consent of the credit tribunal, whose functions I shall describe in a moment.

The reason for this novel provision is that there are normally good and genuine causes of default when the borrower has already repaid a substantial proportion of the debt. They could be, for example, sudden illness or unemployment. I know that borrowers have been known to skip the last one or two repayments in the mistaken belief that the amounts involved were too small for the finance company to worry about them. But I have also heard of goods being repossessed with only one instalment of the debt due from borrowers who have found themselves in sudden, emergent circumstances. I am glad to say that the industry agrees with the Government that repossession should not be automatic in such cases and that some form of examination and consultation between the parties should take place. A special provision in the bill allows a farmer in default in a transaction involving farm machinery to apply to a court or the proposed credit tribunal for an order restraining repossession or restoring the goods for a period not longer than 12 months. This provision recognizes the fact that farm incomes, because of drought, flood, and so on, are notoriously irregular and is designed to ensure that farmers are not penalized because of circumstances beyond their control.

The bill proposes also to create statutory rights for borrowers to obtain the deferral or reduction of repayments in cases of genuine hardship causing termination or reduction of income such as illness, accident or unemployment. In the event that parties agree to consolidate a number of credit contracts, the credit provider will be required to supply a statement of the payout figure for each contract and the manner in which each payout figure has been calculated. The credit provider will be entitled to adjust the interest rate when variation of repayment results in the repayment period being extended.

However, he will not be allowed to charge a rate higher than that applying to the original contract or to increase the actual amount financed. Cases arise at present in which borrowers seek short-term deferral of repayments when, for example, they face a sudden, heavy call on funds to meet an emergency such as the death of a parent. Such

requests are usually made and agreed to verbally. Obviously, it **would** be impractical in such situations for the procedures to be followed that I have outlined just now. The **bill** therefore proposes to allow what are essentially oral deferment agreements in such cases.

Where the credit provider is entitled to make a deferral charge as, for example, where a term of the original contract permits him to do this, and he intends to levy such a charge, he must guide or send a note of the deferral agreement to the borrower. No statutory requirements will be imposed on him where, notwithstanding his right to do so, he agrees to defer the payment without charge. If the borrower cannot persuade a credit provider to agree to a temporary variation of repayments, he will be entitled to seek the help of the commissioner for Consumer Affairs. If the commissioner is satisfied that the borrower's request is legitimate and reasonable, he will attempt to negotiate with the credit provider on the borrower's behalf. If negotiations do not solve the matter, the commissioner will be required to refer it to the Credit Tribunal, which is employed to make a decision. Another provision in this group of proposals concerns the vexed matter of encumbered goods. It is proposed that a person who sells encumbered goods with intent to defraud shall be guilty of an offence punishable by a fine of \$5,000 and/or twelve months' imprisonment. The bill proposes also that a bona fide, unwitting buyer of encumbered goods shall acquire a good title to them. This is one of the most revolutionary provisions in a revolutionary law. For the first time it will prevent a situation about which so many unhappy, innocent consumers have complained to me and my department, and probably to every member of Parliament.

The bill will require that consumers will be given a greater measure of protection in cases where goods or services bought on credit are subject to contracts of insurance. For instance, the borrower will no longer be required to insure with a particular company, as is often stipulated at present. The bill will deal also with those quite frequent situations in which insurance cover is denied because of the insured person's innocent failure to disclose sufficient material information in connection with the insurance contract. The bill proposes that an insurance contract related to a credit transaction can only be voided in this respect if the insured person provides wrong information, or fails to provide relevant information for deliberate and fraudulent as distinct from inadvertent and innocent reasons. It is proposed also that an insurance company cannot take advantage of an exclusion clause to deny liability if, first, on the balance of probability the loss to be indemnified was not caused or helped by the matters contained in the exclusion clause, or second, if the insurer entered the contract without first requiring a written proposal.

This proposal deals with two specific areas which have attracted many complaints. For example, a policy covering a car might contain a condition that no loss will be indemnified if the car was not in a roadworthy state at the time of the loss. Yet the car might have been stolen and recovered only after the thieves had stripped it bare. In the records of my department there is at least one insurance company which seems to specialize in the art of denying liability in such situations. Again, some insurers make it a habit never to require the insured person to complete a proposal. The insured person thus often is not aware of the need to disclose material information to the insurance company or of what that information should be. In the event of a claim, the insurance company is in the position to avoid the policy—and there are insurance companies, which, I regret to say, specialize in that **art**, too.

Guarantors often complain that credit providers make no real effort to enforce contracts against debtors before seeking satisfaction from guarantors. The bill seeks greater fairness for guarantors in such cases in the following ways: prospective guarantors must be warned, first of all, that they have no right of indemnity against debtors

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who are minors. Second, before a credit provider seeks satisfaction from a guarantor, he must first take recovery proceedings against a debtor or at least take them against debtor and guarantor jointly. Only when a judgment against a debtor remain unsatisfied for thirty days can it be enforced against a guarantor. Third, the debtor and guarantor will both be required to receive a copy of the contract and **all** prescribed notices.

I turn now to that group of provisions in the bill which deal with what I might call administrative matters. It is proposed, first of all, that credit providers shall be licensed. A Credit Tribunal will be set up with four main functions: to administer the licensing of credit providers; to discipline them where necessary; to resolve disputes; and to conduct general inquiries into various facets of the consumer credit industry where necessary. It is proposed that the tribunal in session shall comprise three members. The chairman will be a District Court judge and there will be two part-time members, one representing the finance-retail industries and the other representing consumers, as proposed in the Molomy report. That report recommended also that the part-time members should be drawn from a panel of two industry representatives and two consumer representatives, and that the **chairman** should select the appropriate members for the purposes of a particular hearing.

Various groups have indicated since then that a panel of two industry representatives would be insufficient to represent the various facets of the industry. A panel of industry representatives has therefore been proposed in this bill with an equivalently sized panel of consumer representatives, at least one of whom will be a trade union representative. It is proposed also to create the position of registrar. In addition to administrative duties, the registrar will, on delegation from the chairman of the tribunal in non-contentious cases, be able to exercise certain of the tribunal's functions—for example, granting a licence where there is no objection and no need for a tribunal hearing into an application by the credit provider.

As I have already pointed out, it is proposed that all credit providers shall be licensed. There will be exemptions: the Crown, banks, credit unions, building societies, insurance companies, licensed pawnbrokers, municipal and shire councils and pastoral finance houses. The reason for these exemptions is that generally the institutions concerned are already under sufficient legal supervision. The credit tribunal will be required to satisfy itself that an applicant for a licence has sufficient financial backing and expertise, is likely to do business in an honest and fair fashion and is of good character and reputation. The grant or continued holding of a licence may be challenged on the grounds of a licensee being in breach of the law, a credit provider's fraudulent or unfair behaviour and his inability to meet financial liabilities. At present, the courts have only two ways in which erring credit providers can be disciplined under the Moneylending Act: suspension or cancellation of a licence. The bill proposes that the credit tribunal be given greater flexibility than this through a range of disciplinary options. It is proposed that the tribunal may either reprimand a licensee, fine him up to \$1,000, impose special conditions on him, suspend his licence for up to one year, or cancel it altogether. Decisions of the tribunal will be subject to the right of appeal to the Supreme Court.

In discussing the disciplinary functions of the tribunal, I should deal briefly with the question of penalties. Consumer credit laws have traditionally penalized erring credit providers through the *prima facie* loss of principal or interest or both. This form of penalty has undoubtedly provided the most effective possible incentives for credit providers to obey the law. The bill proposes that this civil penalty be retained, subject to the tribunal being able to mitigate the loss of a credit provider where there has been reasonable excuse for a breach of the law. If a credit provider fails to obtain a licence by some innocent act of omission and has treated his customers

honestly and fairly, he should be entitled to have a debt repaid to him. But in flagrant cases—where, for example, his licence application has been refused but he continues to do business in a dishonest and unfair manner—he will have no legal right to recover either the principal or interest. The tribunal, as I have explained, will have a range of disciplinary options arising from its licensing powers. It is also proposed **that** the jurisdiction of the Supreme Court and District courts under the Contracts Review Act, **1980**, be extended to the tribunal in respect of contracts regulated by the legislation. Thus, the tribunal will be able to void or vary credit contracts that it considers to be harsh and unconscionable. It will also be able to void or vary credit contracts that it considers charge excessive rates of interest.

An important proposal related to the tribunal's disciplinary powers is the continued unfair conduct of a credit provider whether under a regulated credit contract or otherwise. It is proposed that, where it appears to the Commissioner for Consumer Affairs that a credit provider has repeatedly engaged in unfair conduct, the commissioner may try to obtain a deed of assurance from the credit provider giving certain appropriate assurances: that his unfair conduct will be discontinued, for instance, or that he will take action to repair the effects of his unfair conduct. If the commissioner cannot obtain a deed of assurance, he will be able to refer the matter to the tribunal for inquiry.

The tribunal may make an order calling on the credit provider to cease the conduct in question or to remedy its effect. This proposal is favoured over the Victorian Market Court approach, which has some formidable drawbacks. The Market Court is intended to apply to all traders doing business with consumers whatever the industry might be. But it then expressly excludes any trader who is entitled to provide services "by virtue of any registration, licence, or other authority granted or issued to him under or pursuant to any act by any court, authority, board, committee, tribunal or other body". It will be obvious to honourable members that this exclusion effectively rules out most of the business community and renders the Market Court concept virtually worthless.

A second major shortcoming in the concept is that the enabling legislation makes no provision for the repair of losses suffered as a result of a trader's past unfair conduct. The New South Wales approach has been discussed by the Standing Committee of Attorneys-General and the various States have undertaken to examine it. South Australia has since indicated that it will adopt our approach in due course and it is understood that Victoria is also seriously considering adopting our approach, bearing in mind the inadequacies of the Market Court Act. Had this provision been in force four years ago, when my department was engaged in its well-known investigation of door-to-door loan **sharking** by a number of finance companies, the complications of that particular incident would have been avoided. Instead of having to commence proceedings for the suspension or cancellation of the companies' licences in accordance with his statutory function, the commissioner would have been legally entitled to seek formal documented undertakings from the companies as to the cessation of their illegal activities and the steps necessary to repair their effects. It would then have been up to the companies to comply or suffer the consequences.

I come now to a group of proposals about which there is some contention. The first concerns the exclusion of corporations from the ambit of the bill. The Standing Committee of Attorneys-General at first agreed that corporations should be included. The main reason for this decision was that many small businessmen and farmers were incorporated. To include them in this measure would have been consistent with the amended definition of consumer in the federal Trade Practices Act and the New South Wales Consumer Protection Act. In fact, the provision of credit to corporations was included in the draft Victorian bills of **1978**.

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The standing committee reconsidered the decision later in response to strong objections from the Australian Finance Conference. The Standing Committee **was in some difficulty**. On the one hand, the regulation of credit arrangements involving corporations would interfere with sophisticated financial transactions between **parties** well able to look after themselves. On the other hand, many small businesses **and** farming operations needed the protections envisaged by this legislation. The standing committee eventually agreed to exclude corporations. New South Wales has gone along with this latest decision with extreme reluctance, bearing in mind the need **for** uniformity on this important point. The Australian Finance Conference may have a point, but the unfortunate effect of it is that it leaves some farmers and small business-men unprotected. The New South Wales Labor Government will go down in **history** as the Government that first and always looked after farmers and **small-businessmen** and gave them protection.

A second contentious provision in this bill concerns the concept of linked credit. It proposes that, where a sufficient substantial commercial link exists **between** a trader and a financier, the financier should be liable, subject to certain provisos, for losses sustained by borrowers when the trader breaches the contract and cannot **make** good any consequent losses suffered by his customers. The liability of a **linked** financier will be limited to the amount payable by the borrower under the loan contract. It will be a defence to proceedings in this respect if the financier **can** prove that, having taken all reasonable precautions, he had good grounds for believing that a linked trader could fulfil his contractual commitments. The Australian Finance Conference put a three-fold and somewhat contradictory objection to this **proposal**. It argued first that a credit buyer should have only the same rights and remedies as a cash buyer. Inherent in the proposal, of course, is the fact that the financier materially helps the linked trader to stay in business and therefore bears a **responsibility** to the credit customers of the linked trader. The **cash** buyer, on the other **hand**, enters a transaction with no assistance from the financier. Logically, his rights **are** limited to rights against the supplier only.

The second argument by the conference against linked credit is that a **financier** who has a sufficient commercial relationship with a trader has an obligation to inquire into the bona fides and methods of the trader and that the only occasion when he becomes liable is when he breaches that obligation. This argument **implicitly** recognizes that the financier does indeed bear responsibility for the activities of **his** linked trader. But what the conference's suggestion means in effect is that this **responsibility** should be limited to cases where the financier has actual or constructive notice of his linked trader's shortcomings. A moment's reflection will show the problem **in** this approach, not least of which are the substantial evidentiary difficulties of a kind all too prevalent in the area of corporate crime.

The third argument against linked credit is that legislation should **impose** the liability on the person responsible for breaches and not on an innocent **third** party, the relationship between them notwithstanding. The Government is not impressed with this argument which, in effect, is that a financier should be **thought** innocent even though he has knowingly underwritten a trader's ability to flout **the law** and injure his customers. Honourable members might find it difficult to **imagine** the industry putting this argument with any seriousness. But my department has **files** that show that some members of the industry actually believe it. I remember **one** finance company actually admitting that, because of the nature of its linked **trader's** activities, it was not prepared to lend money directly to a trader. It was, however, **happy** to lend money to his customers because, even though the trader folded as **expected**,

it would still be able—in fact, was able—to recover the money lent to the trader's customers. The fact that the customers received nothing for their money was **con-**sidered to be of no consequence. It was this attitude and this behaviour that led to the inclusion in this bill of the concept of linked credit liability.

Another contentious provision relates to the lodging of objections to a credit provider being granted a licence. The bill provides that objections may be lodged by the tribunal, the commissioner or any other person. This proposal is in accordance with the approach adopted in South Australia and proposed in Victoria. The Australian Finance Conference argues that the right to object should be confined to the tribunal or the commissioner and should not be allowed to "an officious bystander or inter-meddlor", to use its own words. As I have said, the States disagree with this argument. The fact that costs could be awarded against an unsuccessful objector should be sufficient deterrent against frivolous objections. In any case, an objection can be dismissed without formal inquiry if the tribunal thinks that it is "frivolous, vexatious, misconceived or lacking in substance".

Some difference exists between Victoria and New South Wales concerning maximum permissible rates of interest. The proposed Victorian legislation provides maximum permissible rates of 48 per cent for unsecured transactions and **30** per cent when transactions are secured. The setting of interest rate ceilings is a matter of considerable complexity. At a time when the community is concerned with the effects of advancing interest rates on everyday living, it does not seem to the New South Wales Government either sensible or helpful to permit interest rates in consumer credit transactions far above market rates, however desirable it may be to achieve uniformity. The Governments of New South Wales and South Australia believe that the alternative proposed in this bill is preferable. That is that the tribunal may void contracts where the interest rate is considered excessive. In doing so, the tribunal is required to take into account all relevant circumstances, including the risk, the value of any security, the time for repayment and the amount of the loan.

The final major point about which there is, if not contention, at least some **complexity** arises out of the provisions of the bill concerning the sale of encumbered goods. How does a financier protect himself against loss when encumbered goods are sold to an innocent third party who, under this measure, has a good title to them? South Australia permits financiers to take out what is called title insurance. Premiums are set by regulation and may be passed on to the original borrower. If the financier suffers as a result of the conversion of his security and cannot recover the amount of the loss from the original borrower—most often because the borrower cannot be found—he is reimbursed under the title insurance policy. Both Victoria and South Australia are also considering adopting a security registration system operated in conjunction with their motor vehicle registration systems. A preliminary feasibility study of this proposal is being conducted in New South Wales. Even so, obvious problems are inherent in this proposal and, in the New South Wales Government's view, the concept of title insurance has the advantage of practicality and simplicity. The Australian Finance Conference has been advised that, until proper feasibility studies are carried out into all the options, the title insurance system seems at the moment to be the best method.

I have described at some length the major provisions of this substantial reformist legislation. More detailed explanations of all its provisions will be tabled for the benefit of honourable members. It is designed, as I have said, to bring about equality of influence between credit providers and their customers in a simplified and coherent credit system. It bestows substantial benefit on the finance industry. For example, it

abolishes measures that are obscure and often outdated and procedures that are impractical and cumbersome. By providing a wide range of disciplinary alternatives, it does away with the present situation in which the courts have no alternative but to put an erring financier out of business temporarily or permanently. It abolishes the hazards to the industry—for example, loss of terms charges in certain circumstances—contained in the statutory minimum deposit requirements of the present Hire-Purchase Act. It ensures that the financier will be entitled to recover what is actually owed him, whether a contract is secured or unsecured.

Also the bill contains considerable benefit for consumers. Forms of contract and associated documents will be simplified and made more understandable. The bill will reduce the fear of the effects on borrowers of sudden loss of income through illness or other catastrophe. Consumers will get the fullest possible explanations, in forms that they can easily comprehend, of the terms, conditions and costs of their credit arrangements. Fairness and reasonableness will be introduced into the area of repossession. A thoroughly objective arbitral system will resolve disputes between credit providers and their customers.

Mr Cameron: It sounds like defaulters' benefit legislation.

Mr EINFELD: The honourable member for Northcott will hate every word of it because he loathes consumers and people. He likes only big corporations—no one else. As I have said—and as even the most cursory reading of the bill will show—this measure is substantial, innovative and sometimes complex. For that reason—and to enable honourable members and all affected parties to study it as closely as it deserves—the Government has decided that the bill will lie on the table of the House and the debate on it will be adjourned until the spring sittings of the Parliament. I am confident that this procedure will enable the discussion of this important measure to be as informed and rational as possible.

I take the opportunity of paying tribute to the officers of my department who have worked strenuously for months. They have had consultations with the Victorian Government, the Australian Finance Conference, the Retail Traders Association and other bodies. The Commissioner for Consumer Affairs has spent many hours discussing the legislation with me and officers of my department. The head of the legal section of my department, Mr Gillooly, has spent much time conferring with people on the legislation. I pay tribute also to the many other people with whom I have conferred. The Attorney-General and Minister of Justice accompanied me to Melbourne where we held discussions with the Victorian Attorney-General and Minister of Justice and also the Minister for Consumer Affairs and officers of their departments. These people, who gave their time and advice freely, made a significant contribution to this effective, complex, difficult, reactionary and revolutionary bill. The Government is grateful to those people.

Mr Cameron: Reactionary—a Freudian slip.

Mr EINFELD: The legislation will be of tremendous benefit to the people of New South Wales. I made a mistake in using the word reactionary because I was looking at the honourable member for Northcott and realized that I was looking at the emblem of reaction, the arch defender of conservatism, who preaches the faith that people should never have protection. When I looked at this person who, if he lived in America, would have been a member of the John Birch Society I thought, there stands a man who believes in conservatism and is the arch defender of the faith that believes the consumer should suffer.

As I have said, I have left the bill on the table of the House so that open discussion may take place between everyone interested in it. I do not expect to receive any more informed comments from members of the Opposition, who are least informed when they have most information. Even they—with the exception of the honourable member for Northcott—will see the great benefit of the legislation and the value it will be to the people of New South Wales. The bill will change people's lives enormously. I now table more detailed explanations of the significant features of the bills. As one who has had the reform of consumer credit law close to his heart for many years, I commend this bill to the House with particular pleasure.

### *Consumer Credit Bill, 1981*

#### (1) The ambit of the Legislation

In essence, the Bill recognizes three basic forms of consumer credit contract—a credit sale contract, a loan contract, and a continuing credit contract.

A credit sale contract will be relevant to the situation where the supplier of goods or services is also the credit provider. To fall within the ambit of the substantive provisions of the Bill, a credit sale contract will need to meet the following criteria:

- (a) the cash price of the goods or services must not exceed \$15,000; or
- (b) where the cash price exceeds \$15,000, the goods must be a commercial vehicle or farm machinery.

In addition, either:

- (c) a charge must be made for the provision of the credit; or
- (d) the amount payable by the buyer is not required to be paid, or no credit charge is made if the amount is not paid, within the period of 3 months after credit is provided under the contract; or
- (e) the amount payable by the buyer may be paid by 5 or more instalments, or by a deposit and 4 or more instalments.

A credit sale contract meeting the above criteria is known as a regulated credit sale contract.

A loan contract is akin to a personal loan contract. To fall within the ambit of the substantive provisions of the Bill, a loan contract must meet the following criteria:

- (a) the amount financed (i.e. the principal of the loan) must not exceed \$15,000; and
- (b) the interest rate must exceed an effective rate of 14 per cent.

Where the amount financed exceeds \$15,000, the only loans falling within the substantive provisions of the Bill will be loans secured over a commercial vehicle or farm machinery.

A loan contract meeting the above criteria is known as a regulated loan contract.

A continuing credit contract will be relevant to transactions involving the provision of credit on a continuous basis. Store charge accounts and some forms of credit card fall within this category.

In essence, the monetary and interest rate criteria relevant to a regulated loan contract will determine the application of the legislation to *Mr Einfeld*]

continuing credit contracts. Clauses 53 and 54 of the Bill detail the requirements which must be met for a continuing credit contract to fall within the substantive provisions of **the** Bill.

A continuing credit contract meeting these criteria is known as a regulated continuing credit contract.

A regulated contract may be secured or unsecured. With the exception of some provisions of general application, e.g. clauses 101 and 102, the provisions of the Bill as they relate to secured transactions will only apply to securities taken over goods.

By virtue of the definition of "credit" contained in clause 5 (1), certain forms of commercial credit transaction are completely excluded from the legislation. These transactions include—

- (a) credit provided to a debtor, for the purposes of a business carried on by him, **by—**
  - (i) a documentary letter of credit;
  - (ii) discounting, or becoming a party to or the holder of, a bill of exchange or other negotiable instrument; or
  - (iii) becoming surety for the debtor;
- (b) credit provided for the purchase of raw materials or stock-in-trade;
- (c) credit provided for the purchase of services, where the purchaser has contracted to provide those services, or goods and services that include those services, to a third person.

Further exemptions are to be found in clause 19. They **include—**

- (a) the exemption of contracts where the debtor or mortgagor is a body corporate, from Parts II–VIII of the Bill;
- (b) the exemption of contracts where the credit provider is a credit union or building society from Parts III, V–VII; and
- (c) the exemption of contracts involving the provision of credit by a bank or pastoral finance company by way of overdraft or otherwise than by way of term loan.

## (2) Significant Features of the Bill

### Part I—Preliminary

Clause 2 will permit the introduction of the Bill in stages, and sufficient time will be given to the finance industry to prepare for its implementation.

Clause 4 contains a number of transitional provisions, and specifies the appropriate nexus with New South Wales for a regulated contract or regulated goods mortgage to fall within the ambit of the **legislation**.

Clause 5 contains the definitions relevant to the Bill.

Clause 6 is an important provision and needs to be kept **clearly** in mind during an examination of the Bill. In essence, wherever reference is made to a "court", the reference relates both to a court of petty sessions and the Credit Tribunal. Some functions are reserved exclusively for the Credit Tribunal, e.g., the licensing or discipline of credit providers, some for courts of petty sessions, but, in the main, most judicial functions may be exercised by either.

Clause 14 abolishes the concept of hire-purchase in relation to contracts for the hiring of goods, with an option to purchase, where the cash price of the goods is not more than \$15,000 or the goods are a commercial vehicle or farm machinery. The clause does not apply to hire-purchase agreements where the hirer is a corporation.

Hire-purchase contracts falling within the relevant criteria entered into after the commencement of the legislation will be automatically converted into credit sale contracts.

Clause 14 also deals with what are commonly known as "wink and nod" agreements. These take the form of what appear to be purely hiring arrangements, but there is an informal agreement whereby the hirer may, at some future time, purchase the goods, for example, for their residual value. The clause operates to convert these agreements into credit sale agreements, except where the goods are hired for the purposes of a business carried on by the hirer, or the hirer is a corporation.

In recognition of the fact that "genuine" hire-purchase agreements exist, specific provision is contained in clause 14 (2) to permit the exclusion of a class of transaction from the ramifications of the clause. One example might be a contract for the hiring of a television set or video recorder where, by the expressed terms of the contract, the hirer may elect, at some future time, to purchase the goods. A percentage of the **hiring** or rental charges is rebated towards the purchase price.

#### Part 11—Contracts of Sale

Situations may arise where the intending purchaser of goods or services intends to shop around for credit to finance his purchase. Normally he will do this before entering into a contract with the supplier. However, he will not be prevented from doing so prior to his obtaining finance, and the effect of clause 21 is that, provided he makes known to the supplier that he intends to obtain finance elsewhere, and takes reasonable steps to obtain the finance but is unsuccessful, he may rescind the supply contract. In the circumstances outlined in clause 21 (2), a court may award compensation for losses suffered by the supplier where he has already delivered the goods to the buyer.

An important commandment of consumer protection is that a person should always shop around for the best deal before entering into a contract. The effect of clause 22, which prevents a supplier from nominating the credit provider from whom a prospective purchaser must obtain finance, serves to ensure the rights of the consumer in this regard.

Clause 24 introduces the concept of linked credit provider. To determine whether a "link" exists between a supplier and a credit provider, reference should be made to the definition of "linked credit provider" in clause 5 (1) of the Bill, and to clause 13.

In essence, where a buyer has entered into a tied loan or tied continuing credit contract with the linked credit provider of a supplier for the provision of credit in respect of the purchase of goods or services, and is entitled to claim damages against the supplier for misrepresentation, breach of contract, or failure of consideration, in relation to the supply contract, the supplier and the linked credit provider are jointly and severally liable to the buyer for the damages.

Clause 20 (2) extends the application of the concept to a contract for the purchase of an interest in land, and specifies the criteria **which** must be met before the concept actually applies. The most important criterion is that the loan must not exceed \$15,000—this will normally only be relevant to loans for deposits.

Important features relevant to the ultimate imposition of liability on the linked credit provider are as follows:

- (a) the credit provider will not be liable where he proves that the credit was provided as the result of an approach not induced by the supplier, or where, having taken all reasonable precautions to ensure the bona fides of the supplier, he had reasonable grounds to believe, and did believe, that the proceedings would not arise (clause 24 (2));
- (b) subject to the provisos in clause 24 (5), the proceedings must be brought against the supplier and the credit provider jointly. Any judgment obtained is not enforceable against the credit provider unless a written demand made on the supplier for satisfaction of the judgment has remained unsatisfied for not less than 30 days (clauses 24 (4) and (8));
- (c) the liability of the credit provider is basically limited to the total amount payable under the loan contract or continuing credit contract, plus interest and costs (if any) (clause 24 (7));
- (d) the credit provider has a right of indemnity against the supplier (clause 24 (10)).

#### Part 111—Regulated Contracts

##### Division 1—Credit Sale Contracts and Loan Contracts

Clause 31 is intended to minimize the incidence of a consumer being tricked into signing a blank or partly completed offer document which, if accepted by the credit provider, forms the contract between the parties.

The clause requires that, before he signs the original document, the consumer must receive a copy of the document certified by the credit provider, agent or supplier, to be a true copy of the original. By virtue of the requirements of clause 32 (1), the consumer will have the subsequent opportunity to compare this copy with the document actually accepted by the credit provider and forming the basis of the contract. Clause 32 (1) requires that, within 14 days of acceptance, the credit provider must give a copy of the accepted offer or a prescribed written summary of that document to the consumer.

Where alterations or additions are made to the proposed contract document between the time it is signed by the consumer and the time it is ultimately accepted by the credit provider, clause 31 (3) requires each alteration or addition to be signed or initialled by the consumer. Both the original document, and the copy given to the consumer, must be signed or initialled.

The unauthorized alteration of a contract document with the intent to deceive the debtor, or, where the alteration or addition is made by the supplier, with the intent to deceive the credit provider, is an offence. (Clause 31 (4).)

Clause 33 requires that, within 14 days after the contract is entered into, the credit provider must give the debtor a prescribed summary of the debtor's rights and obligations under the Act. Unlike present documents intended for this purpose which are virtually unintelligible to anyone but a member of the legal profession, it is intended that the new form be presented in plain English, possibly in a question and answer format.

Clauses 34 and 35 relate to the form and content of a credit sale contract and a loan contract respectively. The Government's intention in this regard has been highlighted in the second reading speech of the Minister. Whilst the bill lies on the Table of the House, it is intended that examples of the proposed contract documents (excluding terms and conditions, which are within the province of individual credit providers) will be made available for examination and comment. These documents will be prepared in consultation with the finance industry and consumer organizations.

Schedules 2 and 4 to the bill detail the items which may be financed under a credit sale contract or a loan contract. The power exists to add further items by regulation.

Clause 37, and Schedules 3 and 5 to the bill are relevant to the disclosure of the credit charge (i.e. interest). It will be noted that clause 37 requires disclosure of the annual percentage rate on an effective rate basis, rather than on a flat rate basis.

Clause 36 deals with the special situation of "add-on" contracts which are sometimes used by retailers. To meet the dictates of practicality particularly in the retail situation, certain disclosures which would probably be required to be made at the time of the contract, may be made within 28 days thereafter.

Clause 46 is a particularly important provision. As with present consumer credit legislation, a credit provider will, in certain circumstances, face the prima facie loss of his credit charge where he is in breach of certain fundamental provisions of the legislation. These breaches, which are detailed in the clause, include the entering into of a credit sale contract, a loan contract, or a goods mortgage, which is not in writing, or, in the case of a credit sale contract or a loan contract, is not in accordance with clauses 34 or 35, or the failure to disclose the interest rate on an effective rate basis.

Clause 46 must be read in conjunction with clause 89. Under the latter clause, a credit provider may apply to the Credit Tribunal for mitigation of his loss of terms charges. Clause 89 is dealt with in more detail later on, but it is pointed out that the Tribunal may, after consideration of all the relevant circumstances, including the conduct of the credit provider and the debtor, and any loss or damage **suffered** by the debtor by reason of the **contravention**, require the debtor to pay the whole or part of the credit charge.

Clause 48 must be read in conjunction with the definition of "minimum credit charge" in clause 5 (1). The clause renders void a provision in a credit sale or loan contract to the effect that the minimum credit charge exceeds \$5 (where the amount financed does not exceed \$75), or \$7.50 (where the amount **financed** exceeds \$75).

#### Division 2—Continuing Credit Contracts

Clause 53 contains the basic definition of a continuing credit contract. In essence, it is a contract under the terms of which a person provides credit to a consumer in respect of the payment for goods or services

or cash supplied by him to the consumer from time to time. In addition, it includes a contract under the terms of which a person satisfies the liabilities of a consumer in respect of the payment for goods or services or cash supplied to the consumer by a third party.

The substantive provisions of the legislation apply only to a regulated continuing credit contract, and clause 54 specifies the circumstances in which a continuing credit contract is not a regulated contract. These include continuing credit contracts where the interest rate does not exceed 14 per cent, or where an amount in excess of \$15,000 may be owed by the debtor under the contract.

Before a debt is first incurred under a continuing credit contract, clauses 63 and 64 require that the credit provider must give the debtor a prescribed statement containing a summary of the debtor's rights and obligations under the Act, and a written notice containing details pertinent to the contract. Clause 64 specifies these details. They include a statement of the maximum amount which may be owed under the contract, the interest rate, the time within which payments must be made, and the method by which the contract may be varied.

It is important to note that, whilst credit contracts, other than continuing credit contracts, entered into before the commencement of this Act will continue to be regulated by the legislation existing at the time of their making, this legislation will apply to regulated continuing credit contracts entered into before the commencement of the Act, as far as the future operations of such contracts are concerned. See particularly, clauses 4 (5) and (6), and note that, in respect of continuing credit contracts existing at the time of the commencement of this Act, a credit provider will be required to give the written notice under clause 64 when he first gives a statement of account under clause 66 after such commencement.

The credit provider is required to give a statement of account to the debtor in respect of each billing cycle, and clause 66 and schedule 7 to the Act specify what must, and must not be, included in the statement of account. Clause 69 specifies certain circumstances in which a statement of account is not required. These include situations where there was no operation on the account during the billing cycle and nothing owing by the debtor at the end of the period, or where the address of the debtor is unknown.

Clause 55 limits a billing cycle to forty days, and clause 68 requires that the statement of account must be sent at least eight days before the end of the billing cycle if the cycle is fourteen days or more, or four days if the cycle is less than fourteen days.

Where the account is in credit, the credit provider is required by clause 70 to pay the amount of the credit to the debtor, if so requested.

Clause 65 requires that, where so permitted by the contract, a credit provider may vary the terms of the contract, but the variation does not take effect until at least seven days after notice of the variation has been given to the debtor.

Before a credit provider may institute recovery proceedings in respect of a continuing credit contract, he must, when giving the prescribed notice under clause 111, also give a statement of account under clause 66 (clause 67).

Clause 71 specifies the circumstances in which a credit provider, in respect of a regulated continuing credit contract, is prima facie liable to lose his credit charge under the contract. These include the **incorrect** statement of

the interest rate, and the failure to give the notice under clause 64. Clause 71 is subject to clause 89 which means that the Credit Tribunal may, in appropriate circumstances, mitigate the loss of the credit provider. Note also clause 92 which is particularly relevant to continuing credit contracts. Where, for example, minor errors occur in notices required under clauses 64 and 66, a court may, without proceeding to conviction, dismiss a charge in prosecution proceedings.

#### Division 3—Operation of Regulated Contracts

Clause 74 basically deals with the situation where the credit provider agrees to consolidate a number of contracts involving himself and the debtor into a single contract, whether or not the new contract is a regulated one. In essence, the credit provider is required to give the debtor a written statement in respect of each contract specifying the net balance due in accordance with clause 109 (the pay-out figure), and details of the manner in which the pay-out figure is calculated.

Clauses 75 and 76 are extremely important provisions. Under present consumer credit legislation, there is considerable doubt as to the validity of certain variation agreements, with the result that a request for a variation of the repayment term of a contract by a debtor who, for genuine reasons, is unable to maintain repayments in accordance with the terms of the original contract, often results in the debtor being compelled to enter into a new contract. The additional costs incurred by the debtor as a result of this procedure are often substantial. It is quite untenable that a debtor who is, for example, seeking to have his payments reduced and the term of the contract extended, should have to pay dearly for the privilege.

Clauses 75 and 76 are intended to put the validity of variation agreements relating to the payment of the amount owing under a contract beyond doubt.

Clause 75 deals with what might be termed a permanent variation of the repayment terms. The agreement must be in writing, signed by both parties, and the terms of the variation must be incorporated in the written agreement. Where, for example, the credit provider agrees to a reduction of each instalment leading to a consequential increase in the term of and in the amount of each instalment leading to a consequential increase in the term of the contract, he will be entitled to charge additional interest in respect of the extended term, but the rate of interest cannot exceed that payable under the original contract. The credit provider may not impose a deferral charge as well.

Clause 76 deals with what might be termed temporary deferrals. Deferrals of this kind are often sought by telephone, and, so as to meet the demands of practicality, both parties will not be required to sign a deferral agreement. If the credit provider is entitled to impose a deferral charge and intends to levy such a charge, he must send a written notice signed by him embodying the terms of the deferral agreement to the debtor. The deferral charge cannot exceed the annual percentage rate payable under the contract.

No formal requirements are imposed by the legislation where the credit provider agrees to a deferral without charge to the debtor.

Clause 77 covers the situation of default charges. A credit provider may insert a term in the contract which permits him to impose a default charge where payments are not made by the due date. The clause imposes a ceiling on such charges.

A credit provider may not impose both a default charge and a deferral charge in respect of the same payment.

Clause 79 is another important provision. Where a debtor by reason of illness, unemployment or other reasonable cause is unable temporarily to discharge his obligations under a credit sale contract or a loan contract he will have the statutory right to seek a variation of the contract by the credit provider. Such a variation could extend to a reduction in the amount of each payment and an extension of the term of the contract, or a temporary postponement of repayments.

Where the credit provider refuses to vary the repayment terms, the Commissioner for Consumer Affairs is empowered to intervene on behalf of the debtor and, where a genuine case exists and the credit provider still refuses to agree to a variation, the matter may be referred to the Credit Tribunal for determination.

#### Division 4--General

The effect of clause 81 is to permit a consumer to revoke his offer to the credit provider to enter into regulated contract prior to its acceptance by the credit provider. Thus, if the consumer changes his mind before the credit contract is finalized, he cannot be compelled to proceed with the transaction.

Clause 85 deals with the question of the assignment of rights by a credit provider or a mortgagee under a regulated contract or a regulated mortgage. The debtor, mortgagor or guarantor have the same obligations to the assignee as they had to the assignor, and may exercise the same rights against the assignee as they could have exercised against the assignor.

The liability of the assignee is limited to an amount not exceeding the amount owed to the assignor at the date of the assignment.

Clause 89 has previously been referred to in the context of clause 46.

Clause 89 provides that where, by reason of a contravention of or a failure to comply with the Act by a credit provider, a debtor is not liable to pay to the credit provider an amount that, but for the contravention or failure, he would have been liable to pay under the contract, the credit provider may apply to the Credit Tribunal for an order increasing the liability of the debtor.

Clause 46 specifies the circumstances in which a credit provider suffers the prima facie loss of his credit charges in respect of a credit sale or loan contract. Similar provisions exist in clause 71 concerning a continuing credit contract. Clause 163 provides that, where a credit provider carries on business whilst unlicensed, he suffers the prima facie loss of the amount payable under the contract.

The effect of clause 89 is to permit the Credit Tribunal to mitigate the loss suffered by the credit provider either in whole or in part where, having regard to all the relevant circumstances, it is reasonable to do so.

Where a credit provider becomes aware that he has committed a breach of the legislation giving rise to the prima facie loss of the amount financed and/or the terms charges in respect of a number of regulated contracts, clause 90 permits him to apply to the Tribunal for a general determination concerning all the contracts in respect of which the civil penalty arises.

Clause 92 permits a court, in a prosecution under various specified clauses, to dismiss the proceedings where the breach is of a minor nature.

#### Part IV—Regulated Mortgages

##### Division 1—General

Clause 93 limits the application of the Part to a mortgage or a goods mortgage given by a person other than a body corporate securing the payment of a debt or other pecuniary obligation, or the performance of any other obligation, under a regulated credit sale, loan, or continuing credit contract.

With the exception of a few provisions of general application, the legislation as it relates to securities only applies to securities by way of goods mortgage.

Clause 95 (1) requires that a goods mortgage must be in writing, subject to some practical exceptions contained in clause 95 (2). By virtue of clause 158, the regulated credit contract, and any goods mortgage taken in relation thereto, may be incorporated in the one document.

Clause 96 limits the amount of any enforcement expenses recoverable from the mortgagor to a reasonable amount, and, in cases of dispute, empowers a court to determine the amount of the liability of the mortgagor in this regard.

Clauses 97 and 98, are particularly important provisions.

Clause 97 prohibits the inclusion in a goods mortgage of a provision authorizing the mortgagee or his agent to enter premises (otherwise than in accordance with an order of a court) for the purpose of repossessing goods.

Clause 98 (1) prohibits a mortgagee or his agent from entering premises for the purpose of repossessing goods except in accordance with a court order. Clause 98 (2) nevertheless permits entry where the person entering the premises can prove that the mortgagor gave a genuine consent to the entry.

Clause 101 renders void a provision in a mortgage to the effect that the mortgagor charges all his property and/or assets without specifically identifying them. So as not to inhibit the taking of a floating charge over business assets, the prohibition does not extend to a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him.

Subject to a number of exceptions in clause 103, clause 102 renders void a provision in a mortgage to the effect that the mortgagor creates or agrees to give a mortgage over after-acquired property. The exceptions to clause 102 contained in clause 103 include a provision securing property which is to be acquired with, or partly with, credit provided under the regulated contract to which the mortgage relates and a provision in a mortgage to the effect that the mortgagor charges only property or assets of a business carried on by him (e.g., a floating charge).

Clause 104 prohibits the taking of a goods mortgage over all the goods supplied under a regulated continuing credit contract unless the mortgage specifically identifies the goods.

##### Division 2—Assignment of Goods

Clause 105 is a very important provision. Subject to the provisos contained therein, an innocent purchaser for value, who, in good faith and without notice of the prior encumbrance, purchases goods the subject of a goods mortgage will acquire a good title to those goods. In other words, where

an innocent third party acquires goods from a person who has given security over them to a credit provider, the credit provider will not be entitled to repossess those goods from the third party.

Clause 106 (1) imposes heavy penalties on a person who defrauds or attempts to defraud a mortgagee by the assignment, disposal or sale of goods which are the subject of a goods mortgage.

The remainder of clause 106 deals with the manner in which a mortgagor may lawfully assign encumbered goods. These provisions are similar to those contained in the present Hire-Purchase Act. The consent of the mortgagee is required, but that consent cannot be unreasonably withheld. The mortgagor may seek the assistance of the Commissioner for Consumer Affairs in obtaining the mortgagee's consent. If the Commissioner is unsuccessful in obtaining consent in a proper case, a court may finally resolve the matter.

**Part V—Termination and Enforcement of Regulated Contracts and Mortgages**

Clause 107 specifies the method for the determination of the net balance due under a regulated credit sale or loan contract at a particular time. Clause 108 empowers the debtor to obtain, at any time, a statement of the net balance then due and the manner in which it is calculated.

Clause 109 permits the debtor to discharge his obligations under the contract by paying or tendering the net balance then due.

Clause 110 contains provisions similar to those presently contained in the Hire-Purchase Act permitting the voluntary surrender of goods. A mortgagor may return goods, the subject of a goods mortgage, with a request that the mortgagee sell them. The mortgagee in turn is required to sell the goods, as soon as practicable, for the best price reasonably obtainable, and to account to the mortgagor in accordance with clause 118.

Clause 111 (1) requires a credit provider to serve on the debtor, and any guarantor a prescribed notice before he institutes proceedings in respect of a matter arising under a regulated contract, or, in the circumstances specified in the clause, before he exercises or purports to exercise a right arising under a regulated credit sale or loan contract. The debtor then has a period of not less than 14 days in which to rectify the default.

Clause 111 (2) deals with the procedure which must be followed before a mortgagee is entitled to repossess goods. He must first serve a prescribed notice on the mortgagor, and any guarantor. He may not repossess the goods until a period of at least 14 days has elapsed following service of the notice, and only where the requirements of the notice have not been complied with.

It is intended that the prescribed notices referred to in clause 111 (1) and (2) will, inter alia, contain details of the rights of a debtor or mortgagor, e.g., under clauses 79 or 120, to seek a variation of the contract or a postponement of the exercise of rights in genuine cases.

Clause 111 (4) outlines various circumstances in which the credit provider or mortgagee is not required to give notice before commencing proceedings or repossessing the goods. These circumstances include situations where the credit provider or mortgagee believes on reasonable grounds that he was induced to enter into the contract by fraudulent misrepresentation on the part of the debtor or mortgagee, or, in the case of a proposed repossession, that the goods will be or have been removed, concealed or damaged by the mortgagor in breach of the mortgage.

Clause 114 is an important new provision. The effect of the clause is that a mortgagee is not entitled to repossess goods where 75 per cent or more of the total amount financed has been repaid, except with the consent of the Credit Tribunal.

Clause 115 empowers a court, where it is satisfied that the mortgagee is entitled to repossess goods, and that the mortgagor has, without just cause, failed to give them up after service of the prescribed notice under clause 111, to order the return of the goods to the mortgagee.

Clauses 116 and 117 deal with the situation where repossession has taken place.

Clause 116 (1) provides that the mortgagee shall not, without the written consent of the mortgagor given without inducement by the mortgagee, or without the authority of a court, sell or otherwise dispose of the goods until the expiration of a period of 21 days after service on the mortgagor of a prescribed form relating to the rights of the mortgagor and specifying the estimated value of the goods.

Clause 116 (1) (b) deals with the situation where the Commissioner for Consumer Affairs has sought a variation of the contract under clause 79, or a postponement under clause 120. In essence, the mortgagee is not entitled to proceed with a disposal of the goods until a court or the Tribunal has determined the matter.

Clause 116 (2) contains a provision similar to that contained in the present Hire-Purchase Act. This clause requires the mortgagee to sell the goods to a buyer introduced by the mortgagor for an amount not less than the sum of the estimated value of the goods as specified in the notice under clause 116 (1) (a) and the reasonable expenses of the mortgagee incurred in repossessing and so selling the goods.

Clause 117 entitles the mortgagor to obtain the return of repossessed goods at any time prior to their sale by paying the outstanding instalments and enforcement expenses, and remedying any other breach of the contract.

Clause 118 (1) requires the mortgagee to sell the repossessed goods as soon after he becomes entitled to exercise the power of sale (which will normally be no earlier than 21 days after repossession) as is reasonable and practicable in the circumstances, and, so as to receive the highest amount reasonably obtainable by the sale.

Clause 119 is a special provision relating to the repossession, or proposed repossession, of goods comprising a harvester, binder, tractor, plough or other agricultural implement, or a motor truck, from a farmer.

The clause permits the farmer during the period commencing with the service of a notice under clause 111 (2) and ending with the sale of the goods following repossession, to apply to a court for an order preventing repossession, or, where repossession has taken place, seeking the return of the repossessed goods.

Where an application has been made, and the court is satisfied that the farmer has a reasonable prospect of remedying the default which gave rise to the repossession, or threatened repossession, within 12 months, the court may suspend the mortgagee's right of repossession or order the return of the goods, as is appropriate.

Clause 120 is intended to deal with the situation where, in accordance with clause 111, notice is given to a debtor or mortgagee of proposed enforcement proceedings, and it is not reasonably possible to rectify the

default within the period specified in the notice. In such circumstances, a procedure is specified in the clause by which the debtor or mortgagor may seek a postponement of the proposed enforcement proceedings.

#### **Part VI—Regulated Contracts and Mortgages—General**

Clause **121** is an important provision. Subject to the defences contained in clause **121 (2)**, a person will be guilty of an offence where in, or in relation to, an offer to enter into a regulated contract or a regulated mortgage, he makes a statement that is false or misleading.

By virtue of clause **121 (3)** a supplier will be similarly liable. In addition, the supplier will be liable to the credit provider for any loss sustained by the credit provider by reason of the supplier's contravention of clause **121 (3)**.

Clause **123 (1)** prohibits the assignment of wages, salary, or benefits under a superannuation scheme in payment of, or as security for the payment of, a debt or other pecuniary obligation under a regulated contract. Subject to the requirements contained in clause **123 (2)**, the prohibition does not prevent a debtor or mortgagor from authorizing regular deductions from his wages or salary in repayment of the debt.

Clause **124** specifies the requirements which must be met before a bill of exchange or promissory note may be taken in discharge of, or as security for, an amount payable under, or in relation to, a regulated contract or a regulated mortgage.

The present provisions of the Moneylending Act dealing with the advertising by moneylenders are very restrictive, and the effect of clause **125** will be to lift these restrictions. In essence, clause **125** prohibits false, misleading, or deceptive advertising by credit providers, will require disclosure of the total amount payable where an advertisement includes a reference to a periodic payment in respect of credit, and, subject to the requirements of the clause being met, creates a right in favour of a debtor who suffers loss by reason of his entering into a regulated contract where the advertisement which induced the debtor to enter into the contract contravenes clause **125 (1)**.

Clause **125 (2)** requires that, where an interest rate is disclosed in an advertisement, it must be disclosed on an effective rate basis.

Subject to the provisos contained therein, clause **126** prohibits the practice of credit hawking.

Clause **128** prevents a credit provider or a mortgagee, or a person acting on behalf of such persons, from also acting as the agent of the debtor for the purposes of entering into a contract. In other words, for example, a credit provider could not sign a contract document on behalf of the debtor.

Clause **130** is an important provision. Where there are two or more co-debtors or co-mortgagors, each co-debtor or co-mortgagor is entitled to receive his own copy of all documents, which, under the legislation, are required to be served on a debtor or mortgagor.

#### **Part VII--Contracts of Insurance**

The essential effect of clauses **131** to **133** is to prevent a debtor or mortgagor from being required to maintain insurance other than insurance required by law, e.g., compulsory third party insurance, or comprehensive

insurance of goods the subject of a regulated mortgage, to prevent a debtor or mortgagor from being required to insure with a particular insurer, or from being required to maintain in force insurance policies other than those relating to the comprehensive insurance of the goods or which are required by law.

Clause 134 (1) specifies certain basic information which must be included in an insurance contract entered into in relation to a regulated contract.

Clause 135 requires a credit provider to pay premiums included in the amount financed under a regulated credit contract to the insurer before, or immediately after, the contract is made. Clause 136 ensures that the benefit of any no-claim bonus is given to the debtor or mortgagor, not to the credit provider or mortgagee.

Clauses 137 and 138 are important provisions.

Clause 137 prevents the invalidation of an insurance contract on the basis of non-disclosure or incorrect disclosure by a debtor or mortgagor, unless the disclosure was fraudulent or the omission deliberate, or the debtor or mortgagor knew or ought reasonably to have known that the statement was material, or that the matter omitted was material.

Clause 138 imposes certain limitations on the use, by insurers, of exclusion clauses in insurance contracts to deny liability on the happening of certain events. In particular, and subject to an evidentiary requirement being imposed on the debtor or mortgagor, there must be a direct relationship between the non-disclosure or breach of the insurance contract, and the facts giving rise to the claim, before a claim may be validly denied.

#### Part VIII—Contracts of Guarantee

Clause 139 requires a contract of guarantee to be in writing, and clause 140 limits the liability of the guarantor to an amount equal to the sum of the amount for which the debtor is liable under the regulated contract, and the reasonable costs of and incidental to enforcing the contract of guarantee.

Clause 141 is a particularly important provision. A common complaint of guarantors is that very little real effort is made to recover amounts owing from the debtor before recovery action is taken against the guarantor. In a practical sense, the effect of this approach is to impose a primary liability on the guarantor when his liability is really secondary.

The effect of clause 141, subject to the logical exceptions contained in clause 141 (3), is to require the credit provider either to first bring proceedings against the debtor, or against the debtor and guarantor jointly, before he may recover the amounts owing from the guarantor. In either event, any judgment obtained against the debtor must remain unsatisfied for a period of 30 days following a written demand by the credit provider for satisfaction of the judgment.

Clause 143 requires that the guarantor must receive both a copy of the guarantee contract, and a copy of the regulated contract to which the guarantee relates. Under clause 144, the guarantor must also receive a prescribed statement of his rights and obligations in relation to the guarantee contract.

*Mr Einfeld]*

## Part IX—General

### Division 1—Credit Contracts Generally

The Contracts Review Act, 1980, already applies to contracts falling within the ambit of present consumer credit legislation, *i.e.*, the Hire-Purchase Act, 1960, the Moneylending Act, 1941, and the Credit-Sale Agreements Act, 1957, and both the Supreme Court and the District Court have jurisdiction to determine matters in accordance with the Contracts Review Act arising out of these contracts. It is therefore logical that a limited jurisdiction be vested in the Credit Tribunal, particularly since the Chairman of the Tribunal is required to be a District Court Judge, and there is a right of appeal on questions of law to the Supreme Court.

Part IX applies to regulated contracts, regulated goods mortgages, and to guarantee contracts securing performance of regulated contracts. It will be noted that, subject to the monetary and other criteria relevant to regulated contracts, **protections** are extended to the **small** unincorporated businessman and farmer.

The definition of "unjust" is to be found in clause 147 (2), and, except to the extent mentioned hereafter, is consistent with the definition to be found in the Contracts Review Act. The exception is that, in addition, the charging of an excessive interest rate may render the contract "unjust". The criteria relevant in determining whether an interest rate is excessive, and which are to be found in clause 147 (2) (b), have been taken from the present Moneylending Act.

Clauses 148 to 151 follow the Contracts Review Act.

Clause 152 maintains the present provisions of the Moneylending Act relating to the assignment of interests under wills.

### Division 2—Miscellaneous

The effect of clause 154 is to ensure that all documents required by the Act to be in writing must be readily legible.

In this regard, clause 155 imposes an important function on the Commissioner for Consumer Affairs. Where, in the opinion of the Commissioner, the form of a document is expressed in language that is not readily comprehensible; is written or printed in a colour, or on paper of a colour, that detracts from the legibility of the document; or is written or printed on a page in a style or manner that detracts from the legibility of the document, the Commissioner may ensure the discontinuance of the use of the particular document.

Clause 156 permits a credit provider or mortgagee to submit a document to the Commissioner for his determination as to whether the document is "readily legible".

Clause 160 is important. It renders void any provision in any agreement under which, except as expressly provided by the Act, the operation of a provision of the Act is excluded, modified, or restricted.

## Part X—Licences

### Division 1—Credit Providers' Licences

Clause 163 requires that a credit provider be licensed. Clause 164 (1) specifies certain classes of persons who are exempt from licensing including banks, insurance companies, credit unions and building societies. The effect of clause 164 (2) is to ensure that only those other credit providers who

carry on business by way of providing credit by means of regulated contracts must be licensed.

Clause 166 requires that notice of an **application** for a credit provider's licence must be published in a newspaper. In addition, the Credit Tribunal may request the Commissioner for Consumer Affairs (hereinafter referred to as "**the Commissioner**"), to investigate an application, and submit a report on the results of the investigation to the Tribunal. **As** with an application for a licence under the Motor Dealers Act, 1974, the Commissioner of Police can also be requested to investigate an application.

Clause 167 permits the Commissioner, with the consent of the Minister, and any other person, to lodge an objection to the granting of a licence. Where an objection is lodged, the Tribunal is required to hold a formal inquiry prior to granting, or refusing to grant, a licence.

Clause 168 specifies the matters which must be taken into account in determining whether a licence will be granted. The Tribunal may impose conditions or restrictions on a licence, and a licence is held subject to any conditions or restrictions which may be prescribed.

Clause 175 requires the Commissioner to maintain a Register of Licensed Credit Providers, and clause 176 permits the inspection of the Register by any person.

The authority conferred by a credit provider's licence is, by virtue of clause 177, an authority to carry on business under the name or names specified in the licence. In a departure from the present licensing provisions of the Moneylending Act, a licensee will not be required to carry on business **only** at licensed premises. He will, however, be required to nominate the place, or places, at which he carries on business.

Clause 180 deals with the question of disciplinary action against a licensee. The **Commissioner**, with the consent of the Minister, and any other person, may, at any time, lodge with the Tribunal, a written objection to the continued holding of a licence.

Clause 180 (5) permits the Tribunal, whether before, during, or after, a formal inquiry, to dismiss an objection if, for example, the objection is frivolous, vexatious, misconceived, or lacking in substance.

The grounds for an objection are specified in clause 180 (4). In substance, they follow relevant grounds presently contained in the Moneylending Act. Reference is particularly made to ground (h)—the taking of excessive security. It is recognized that matters will arise where security appears to be excessive, the reason being that the value of the property over which security is taken is far in excess of the amount payable under the credit contract. In situations where it was commercially proper to take security, and the property over which the security was taken was the only property reasonably available for security purposes, it is considered that this would be a factor to be taken into account in the "other relevant circumstances" requirement of ground (h).

Where an objection to the continued holding of a licence is lodged, the Tribunal is, subject to clause 180 (5), required to hold a hearing. If the Tribunal is satisfied as to the validity of the objection, clause 180 (8) specifies the course of action available to the Tribunal. It may reprimand the licensee, impose a fine not exceeding \$1,000, impose conditions or requirements on the licence, suspend the licence for a period not exceeding twelve months, or cancel the licence.

Mr *Einfeld*]

Where the Tribunal refuses to grant a licence, or takes disciplinary action (otherwise than by way of reprimand or fine), the affected person has, by virtue of clauses 181 (1) and (3), a right of appeal by way of a full rehearing to the Supreme Court.

Clause 181 (4) specifies that such an appeal does not, except in relation to the collection of payments, operate as a stay of the cancellation, suspension or disqualification, unless the Tribunal or the Supreme Court otherwise orders and any conditions imposed when ordering the stay are complied with.

#### Division 2—Finance Brokers' Licences

This Division re-enacts the provisions of Part VI of the Money-lending Act, 1941, the only major substantial change being that finance brokers carrying on business in the consumer credit area will be required to be licensed by, and subject to disciplinary proceedings before, the Credit Tribunal.

### Part XI—Credit Tribunal of New South Wales

#### Division I—Constitution of the Tribunal

Clause 196 provides for the creation of the Credit Tribunal of New South Wales having a District Court judge as chairman, a panel of up to eight part-time members, four of whom will be persons with expertise in the business of supplying credit, or goods or services. Up to four persons may be appointed representing the interests of consumers.

It is intended that, in due course, appropriate industry and consumer organizations will be invited to nominate persons as part-time members of the Tribunal.

Certain matters fall solely within the jurisdiction of the Tribunal. These include the licensing and discipline of credit providers and finance brokers, the determination of matters relating to unjust contracts (**Part IX**, Division 1), the determination of matters relating to unjust conduct by credit providers (**Part XII**, Division 2), in the main, the conduct of general inquiries into matters relating to the provision of credit or the consequences of the provision of credit (**Part XII**, Division 1), the approval of forms of contract (clauses 34 and 35), the variation of commitments in respect of regulated contracts (clause 79), the mitigation of any civil penalty imposed on a credit provider (clause 89), and the postponement of the exercise of rights (clause 120).

In addition, by virtue of clause 6, the Tribunal will have concurrent jurisdiction with courts of petty sessions in respect of most other matters arising under the legislation involving court proceedings. A court of petty sessions will be able to refer matters to the Tribunal for determination.

The role of the Credit Tribunal will be an extremely important one. As the bill is the first real attempt to modernize the law relating to consumer credit for many decades, the Tribunal will play an integral part in the consistent development of modern consumer credit law.

#### Division 2—Jurisdiction of, and Proceedings Before, the Tribunal

Clause 207 specifies the circumstances in which proceedings before the Tribunal may be heard and decided by the Chairman sitting alone. Certain

functions may be delegated to the Registrar appointed under clause 205, (see clause 206). In all other cases, proceedings shall be heard and determined by the Chairman and two part-time members, (clause 207 (4)).

Questions of procedure are to be decided by the Chairman (clause 208 (2)), and questions of law may be decided by the Chairman, or referred to the Supreme Court, (clauses 208 (3)–10)).

In proceedings other than licensing or disciplinary proceedings, clause 212 provides that the Tribunal is not bound by the rules of evidence, but shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

Clause 219 is an important provision. It empowers the Tribunal, at any stage of proceedings before it, if it is satisfied that the proceedings are frivolous, vexatious, misconceived, or lacking in substance, or that for any other reason the proceedings should not be entertained, to dismiss the proceedings and award costs against the person bringing the proceedings.

#### Division 3—Functions of Commissioner in Relation to Proceedings Before the Tribunal

Clause 227 permits the Commissioner, with the written consent of the Minister and the complainant, where it is in the public interest to do so, to initiate or defend proceedings before the Tribunal.

Clause 229 is a provision of a more general nature. It empowers the Minister, or the Commissioner with the consent of the Minister, if he thinks that it would be in the public interest to do so, to intervene in any proceedings arising before a court or the Tribunal, and to become a party to those proceedings.

Clause 229 is primarily intended to permit intervention in proceedings where questions are raised as to the interpretation of the legislation, so as to ensure that the Government's intentions as regards the legislation are put before the court or the Tribunal.

#### Part XII—Miscellaneous

##### Division 1—Inquiries

Clause 230 (1) empowers the Minister, by instrument in writing, to appoint the Tribunal or any other person to inquire into matters specified in the instrument, being matters that relate to the provision of credit or consequences of the provision of credit, or both.

The purpose of this Division is to permit the Minister to institute general public inquiries into matters relating to the provision of credit. As new forms of credit evolve, as new practices relating to credit develop, as problems arise, the machinery will exist to enable the Government to determine what action, if any, needs to be taken in respect of a particular matter.

The remaining clauses of this Division deal mainly with machinery provisions designed to facilitate the conduct of an inquiry. It will be noted that public notice must be given of an inquiry (clause 231), that the inquiry must be held in public (clause 233), and that the Tribunal or the person appointed to conduct the inquiry must formally report to the Minister the results of the inquiry and make such recommendations with respect to those results as it or he thinks fit (clause 230 (7)).

**Mr Einfeld]**

### Division 2—Unjust Conduct by Credit Providers

The provisions of this Division are particularly important. By virtue of section 16 of the Consumer Protection Act, 1969, the Commissioner for Consumer Affairs, when faced with evidence of serious breaches, for example, of the Moneylending Act, is virtually compelled to take action leading to the suspension or cancellation of the Moneylender's licence, if he is to properly perform his salutary functions. The effect of this Division is to provide for a much needed alternative.

Clause 239 provides, *inter alia*, that where a credit provider has repeatedly engaged in unfair conduct, the Commissioner, with the consent of the Minister, may seek to obtain certain written undertakings from the credit provider as to his future conduct, and, where appropriate, as to the action he will take to rectify the consequences of his unjust conduct.

"Unjust conduct" is defined in clause 238. It includes, *inter alia*, conduct that is dishonest or unfair. This provision is similar to that contained in the licensing and disciplinary provisions—see particularly clauses 168 (2) (f) and (3) (d), and clause 180 (4) (f).

Where the Commissioner obtains the appropriate undertakings, and the credit provider complies with them, the Credit Tribunal may not suspend or cancel the credit provider's licence (clause 239 (3)). Where such undertakings cannot be obtained, the Commissioner, with the consent of the Minister, may seek an order from the Tribunal restraining the conduct (clause 241).

### Division 3—General

Clause 244 imposes a limitation period of 3 years in which to bring proceedings for an offence against the Act, except where the Attorney-General consents to an extension of this period. Where an offence is committed by a corporation, a director or other officer of the corporation who consented to or connived at the commission of the offence is guilty of a like offence (clause 245).

Before a prosecution may be initiated, the Minister or a prescribed officer must, by virtue of clause 246, authorize the prosecution. Prosecutions may be initiated in courts of petty sessions, or with the written consent of the Minister, in the Supreme Court (clause 247).

Clause 249, *inter alia*, empowers the Commissioner for Consumer Affairs to exercise his statutory functions under the Consumer Protection Act, 1969, in respect of this Act. These functions include the duty to receive and investigate complaints, to conduct education programmes, to grant legal assistance in appropriate cases, and to seek injunctions from the Supreme Court to restrain the threatened or continuing breaches of the Act.

Clause 250 is a re-enactment, with minor variations, of section 45 of the Moneylending Act. For the purposes of ascertaining whether the provisions of the Act are being complied with, the Commissioner, an inspector, or an authorized person, is empowered to enter business premises to inspect records. Clause 251 imposes secrecy requirements on the Commissioner, officers of the Department of Consumer Affairs, the Registrar of the Credit Tribunal, and staff assisting the Registrar.

Clause 255 requires the Commissioner to prepare an annual report on the administration of the Act, and to submit the report to the Minister for presentation to Parliament.

Moneylending (Repeal) *Bill*

Credit-Sale Agreements (Repeal) *Bill*

Hire-Purchase (Repeal) *Bill*

Three cognate bills, the Moneylending (Repeal) Bill, 1981, the Credit-Sale Agreements (Repeal) Bill, 1981, and the Hire-Purchase (Repeal) Bill, 1981, are tabled with the main bill. These bills repeal or make consequential adjustments to relevant legislation.

Further cognate bills containing consequential amendments to other Acts may be necessary, and will be introduced at an appropriate time.

At a later date, new provisions relating to conditions and warranties to be implied in consumer sales of goods and services will also be introduced. Provisions in this regard are currently being examined by a working party of officers established by the State and Federal Ministers for Consumer Affairs.

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

SPECIAL ADJOURNMENT

Mr WALKER (Georges River), Attorney-General and Minister of Justice [3.10]: I move:

(1) That this House at its rising this day do adjourn until Monday, 11 May, 1981, at 10.30 a.m.

(2) That this House shall meet for the despatch of business on Tuesday, 12 May, Wednesday, 13 May, and Thursday, 14 May, 1981, at **10.30** a.m.

Mr CAMERON (Northcott) [3.11]: I shall speak briefly upon this motion. I begin—I am sure to the surprise of the Leader of the House—by commending the special efforts he and the Government Whip have made in the course of these sittings to give members some intimation in advance of what the programme is likely to be. Prior to the first sitting day on 24th February, the Attorney-General and Minister of Justice, in his capacity as Leader of the House, circulated a schedule of dates on which he expected the House would sit. That schedule contained the strong and unqualified proposition that it was expected that the House would finish its sitting on 15th April, though it was foreshadowed that it would sit on 21st, 22nd and 23rd April if necessary. All of those dates have now receded. It was not at any stage expected that the **extraordinary** measure of 10.30 a.m. sittings on a Monday, Tuesday or **Wednesday** was in contemplation. Nonetheless, I am sure that honourable members appreciate having received that practical guidance. The Government Whip, in a memo to members on 26th March, added to the information available to members on this matter, reminding them that Parliament would be sitting on Monday **13th**, Tuesday **14th**, Wednesday **15th** and Thursday **16th** April. We did not sit on Thursday **16th** April, but I certainly make no criticism of that as it **was** the day described by those interested in such matters as Maundy Thursday.

I certainly make no criticism of the situation honourable members now face, for I strongly believe that this House should sit on more days each year. It should have many more sitting days than the rather meagre total of about **fifty** sitting days that it normally achieves, compared with three times that number of sitting days **in** the

House of Commons at Westminster. Honourable members now face the situation that we shall be sitting for a greater number of days than was forecasted by the Leader of the House in the various intimations he has previously given.

Mr Ryan: Is the honourable member pleased about that or not?

Mr CAMERON: I am pleased that the House will be sitting on this occasion. I repeat that I believe the House should sit on a greater number of days. However, it is in stark contrast with the answer that the Attorney-General and Minister of Justice gave to a question without notice that I directed to him in my capacity as leader of the House for the Opposition. He then made it clear that there was no chaos in his handling of the Government's legislative programme; that though there were industrial disputations within the Government Printing Office, which have interfered massively with the business of the House, everything was still in sweet running order and everything was under control. There was no hint of chaos or disorder. The plain truth is now starkly revealed. These additional sittings are required in the main because of the total chaos within the Government's legislative programme. Honourable members now face the situation that the House will be sitting on Monday, 11th May—a day of the week upon which the House never normally sits—

Mr Dowd: And the commencement of the school holidays.

Mr CAMERON: The House will be sitting, as the honourable member for Lane Cove points out, in the school holidays, something it never normally does. The House will sit also on 12th, 13th and 14th May and at 10.30 a.m. on each of those days—a time never normally contemplated. Then it is foreshadowed, as I understand it, that the House will come back on 19th and 20th May if necessary, presumably again at 10.30 a.m. The Attorney-General and Minister of Justice does not enlighten us upon these matters. The Opposition says to the Government, "By all means let us involve ourselves more deeply in the processes of thoughtful legislation, but let us do it in a systematic way".

How remarkable it is, as one looks back at the programme, that the House did not sit, as one might have expected it to sit, on 10th, 11th and 12th March. This was a week off, as the Leader of the House said, because it was Senior Citizens Week. It was not because the Government wanted a week off but because it was Senior Citizens Week.

Mr Walker: We love senior citizens.

Mr Dowd: Most members of the Government are senior citizens.

Mr CAMERON: It is true, as the honourable member for Lane Cove says, that most members of the Government are senior citizens. I am a strong supporter of senior citizens, wherever they be, even those on the Government benches. But the plain truth is that those venerable and much respected and much admired senior citizens of the State of New South Wales were in totality blissfully unaware of the fact that the New South Wales Labor Government was not sitting but was taking a week's holiday in their honour. Not content with that, on 30th April and 1st and 2nd May the Government felt that honourable members needed another week off. On that occasion we did not have a grand, attractive cause like Senior Citizens Week with which to identify the week off. Nevertheless we had a week off.

It is fair to observe that throughout the whole of that time no significant or substantial legislation was being brought before the House. There was, however, the familiar pattern that members of the Opposition have noted in the session when there is nothing significant to be dealt with, that we then had an endless series of manufactured, Labor-moved Government urgency motions, beginning invariably with

the words "That this House deplors" some action of the federal Government and a second paragraph, "That this House condemns the federal Government". Then this House—a sovereign parliament with its own sphere of responsibility—wastes its **time** on occasions like this in entirely purposeless and ineffectual condemnation of another tier of government.

This is purely and simply because there is nothing of a substantial character ready to come before the House for its bona fide deliberations. Then at the end of the sittings we have invariably this period when a vast area of far-reaching legislation is brought into the House under the constant shadow of the guillotine, with frequent recourse to the moving of the gag and the continuing pattern that one Opposition member—or at the most two—is allowed to speak upon the bill. Then, when the House is dealing with vital pieces of legislation, the whole Committee stage of debate is sometimes eliminated. On the basis of what the Leader of the House says, all this is planned as part of his scheme of good organization for the legislative programme. We shall not vote against the motion; we believe that the House should occupy itself in legislative work in the interests of the electorate as a whole. However, the Government's legislative programme is in total chaos.

Motion agreed to.

#### CONSTITUTION (DISCLOSURES BY MEMBERS) AMENDMENT BILL

##### Second Reading

Debate resumed (from 13th April, *vide* page 5711) on motion by Mr **Wran**:

That this bill be now read a second time.

Mr DOWD (Lane Cove) [3.22]: I am glad to see in the chair as Mr Acting-Speaker the honourable member for Peats, who has taken an abiding interest in the subject-matter covered by this bill. I pay tribute to his diligence and patience as chairman of the joint committee that considered this matter. Indeed, it is now so long ago that the committee deliberated it is difficult to obtain copies of its report. I commend you, Sir, on your diligence. It is a pity that your Labor colleagues have not understood the contribution you made at an entirely different level. In the time the present Government has been in power we have witnessed no subject-matter that has consumed more time and incurred more costs than the measure that is now before the House. One must consider also the printing and other costs involved—all aimed at producing an imprecise measure which is as vague and **as** meaningless as when Parliament began to consider these matters.

The first committee on this topic was set up in September 1976, nearly five years ago. It produced a series of recommendations almost none of which has been followed in the bill. A further committee sat and issued an interim report; there was yet another committee set up, and it did not get the matter right. Another group **was** floated and that did not get it right either. Then, contrary to all the recommendations, this bill came before the House. What mischief is the bill designed to cure? I refer to the report of the Select Committee which the occupant of the chair knows so well. I shall quote from page 13, headed "Unique Record of New South Wales Parliament":

Some witnesses argued strongly that the unique record of this Parliament in not having experienced any major acts of dishonesty or malpractice negate the need for establishing a register. Attention was drawn to the

Parliaments in Great Britain and the United States of America which established registers following scandals of some magnitude. To this assertion it can be claimed that a register would not attempt to discover such malpractices and because the New South Wales Parliament happens to have such an enviable record there is no reason to believe that a "Watergate" situation could not occur in the future.

We are debating a bill aimed at curing a problem that will continue despite this legislation. The Government takes the cynical view that the provisions of this bill can be avoided as easily as can the provisions of the Election Funding Bill, which we debated earlier this week. Therefore, it is important to get on record what has been said about the effects of this sort of legislation. I refer to paragraph 1.35, on page 11 of the report of the Joint Committee Upon Pecuniary Interests. One able witness, whose evidence I remember well, said:

It is possible in almost every conceivable case to mask, conceal or distort the ultimate and beneficial ownership of interests such as shares in corporations, other company interests and probably partnership interests. The ease of avoiding disclosure, even under severe subsequent scrutiny was amply illustrated and referred to by The Report on the Australian Securities Markets and Their Regulation (The Rae Report) of 1974.

Further on the same page this question was asked of this expert witness on taxation matters:

Q. As well as marking a member's own personal financial interest, do I understand you to say that it is quite easy for a member who has no beneficial interest—such as where his assets have been transferred to his **wife—**

That is a significant matter for the House to consider in this bill:

—his parents, his child or what have you—

Whatever that may mean:

—for him to be able to say that he has no beneficial interest, and therefore it makes any register a farce.

The answer was as follows:

Yes. Again it would be quite possible for a person to walk in this door and to say "I literally own nothing, I legally have no means of control over anything".

Yet by virtue of a family arrangement, other than a legally binding arrangement, a person could put himself outside these provisions. This bill will lead members of **the** public to consider their attitude. Changes are about to be made to the Constitution Act, which is a fundamental part of our State's history. It has had to be used when successive Labor governments have tried to remove the rights of citizens—for example, when **a** Labor government has tried to abolish the upper House. It is a tribute to the working of the principal Act that the bicameral system in this State has been protected.

The only proper protection lies in entrenched provisions to ensure a **referendum** or whatever it may be. We chose under the Constitution Act to bring in entrenchment. However, the present Government has abused that Act. Each time it **wishes** to introduce a measure for party political purposes or as a public relations exercise, or attempts to entrench Labor prejudices in a way contrary to the wishes of most **people**

in this State, it has used the entrenchment procedure. The Government will use that procedure to its detriment. It should not seek to abuse this important constitutional measure in relation to such trivial matters as those with which this bill deals.

The Opposition is very concerned at the Government's argument that these provisions will improve the esteem of members of Parliament in the eyes of the public. The Opposition believes that the exact opposite will occur. Even a lawyer of the standing of the Attorney-General would agree that it is easy for any dishonest person to get round the provisions of this bill. It is a cynical move by the Government as part of cosmetic measures to allay public suspicion, but it will only create a greater problem. If the public will be lulled into a sense of complacency, an appalling situation will result. The public will take the view that members are disclosing their interests, but in fact it will be only the honest members of Parliament—those **who** have nothing to hide—who will bring these matters forward. It is a cynical exercise for the reason that Government members have had five years in which to arrange their financial affairs—namely, in the period before this bill was introduced. The so-called wealth in this House is more likely to be found on the Government side than on the Opposition side.

I remind honourable members of a minority report that was prepared at the same time as the report that was tabled in this House. That minority report contained some of the important factors that govern the democratic process which is scrutinized by honourable members and by the public by way of the ballot box. The minority report stated that members of both Houses of Parliament are subject to the scrutiny of other members of both Chambers and of the electorate itself. Government supporters will know that the Government keeps files on every member of the Opposition. It carries out the monitoring of the news media so that everything that happens to every member in **this** House is known. On one occasion a person who had the same name as the president of my electoral conference wished to see a Minister and he was harangued and told that he was a member of the Liberal Party and so on. Though he happened to be a member of that party, he did not like being accused of being my campaign director. Obviously the Minister had referred to the file on a person of the same name. It is disgraceful that public money should be used for party-political purposes.

*[Interruption]*

Mr ACTING-SPEAKER (Mr O'Connell): Order! It is not unusual for Government supporters to interject when a member of the Opposition is speaking, but it is highly irregular for Opposition members to interrupt one of their colleagues.

Mr Walker: Who was this crooked campaign director?

Mr DOWD: The gentleman who wished to see a Minister of the Crown was Mr Ian Collins, who was with the Australian Medical Association. It was disgraceful that Mr Collins, who has served the community and the profession of which he is a member extremely well, should be insulted by being mistaken for the Ian Collins who is my campaign director. That typifies the perverted scrutiny that is carried out by the Government. Part of the democratic process is that members do keep scrutiny one of the other, but not improperly so far as the Opposition is concerned. To suggest that it is necessary to have some cosmetic register, which will give the illusion of disclosure, is a disgrace and an insult to the people of New South Wales. It has been a tradition for each Chamber to discipline its members. There was not any convincing evidence put before the committee that members of Parliament have abused their position. In fact the Clerk of the Parliaments could cite only one instance in the long history of the Legislative Council where a member had declared a possible conflict of interests, and that was in 1931. The minority members of the joint committee considered that a code of conduct should be drawn up to assist members, the House and the

public in determining what is a proper matter for disclosure or otherwise. It believed that the ultimate sanction in the democratic society is through the ballot box and that a member who endeavours to conceal some pecuniary or other interest that he may have will be dealt with appropriately by the House if his actions constitute a breach of the standing orders.

**Mr ACTING-SPEAKER:** Order! I should like the document to which the honourable member for Lane Cove is referring to be identified,

**Mr DOWD:** As I said earlier, it is an addendum to the report that was published by members of the joint committee upon pecuniary interests. The report to which I am referring states that it was published by the minority members of that committee, namely, Mr John Dowd, Mr G. F. Freudenstein and Mr A. E. A. Viney.

**Mr Walker:** It is a slim document.

**Mr DOWD:** It is a slim document, but it is extremely well prepared. I should be delighted to make it available to anyone who wishes to see it. It was an addendum that was prepared at the same time as the majority report of the joint committee which was tabled in the House. There is no provision within the standing orders for the tabling of a minority report. It is most cogent to the debate. Although the Government seeks to have entrenched in the constitution provisions relating to the disclosure of pecuniary interests, it has not even at this stage worked out the criteria. Indeed, it has failed to carry out the wishes of the joint committee.

**Mr Walker:** It is about a referendum.

**Mr DOWD:** It is about a referendum. It typifies the Government's approach. The Government has said that the people shall have a referendum about disclosing pecuniary interests. The Attorney-General and Minister of Justice well knows that is utter nonsense. The referendum relates to a minor adjustment of section 7A of the Constitution Act dealing with changes to the rights of members in both Chambers of the Parliament. That is the only matter required to be put to the people by way of referendum. It is a minor matter compared with the major matters dealt with in the bill, which do not require a referendum. Although the Government has presented a bill for an Act to require members of Parliament to disclose certain pecuniary interests and other matters, it will enable them to go on in their usual way, trumpeting that this is a great government reform to force members to disclose all their assets and undisclosed interests. Again it is absolute nonsense. Contrary to the wishes of the joint committee, over which you, Mr Acting-Speaker, presided, the bill will provide only for a member. A member's spouse will be excluded. If a bribe is handed to a Minister's wife, consort or whatever, instead of to a Minister, there is no way in the world that this will be disclosed. If money or a concession is to be given to the children of a member, that will not be disclosed. Although the Government may trumpet that the measure has some semblance of honesty about it, it has cynically omitted wives, children, brothers, sisters, parents and so on, notwithstanding that they may be granted concessions, such as a rezoning of land, that may benefit a member's family.

**Mr Walker:** Is the honourable member for Lane Cove intending to move an amendment to have them included?

**Mr DOWD:** Of course I am not. Honourable members know that after going to a lot of trouble to introduce a motion in this House that included wives, some members on the Government side for various reasons found it expedient to omit wives, children and so on. A few friends of Government supporters had a chat to them and'

reminded them of the dangers of some of the proposed provisions. Some members may have risked the displeasure of their electors if their wealth or direct or indirect interests were disclosed. The intention to hold a referendum is a cynical posturing by the Government, which never intended to do so until the Premier and Treasurer worked out the constitutional law that was involved. Every measure on pecuniary interests that has been brought before this House has been wrong. When I was a member of the joint committee it decided that it should seek advice. The adviser, an able and dedicated public **servant**, told the committee that the Government did not have the power to move the motion that was passed in this Chamber. The committee could not work out who **would** be its chairman. Eventually it decided to elect the honourable member for **Liverpool** as he was always late in attending the committee.

Eventually the committee decided that the honourable member for Liverpool should be elected chairman, because he was always late. He was always most apologetic, and members of the committee appreciated his problem. That was the first and only sitting of the committee. Members were not paid for that sitting day, nor did they ask for payment. The brilliant Premier and Treasurer framed the motion for the appointment of the committee in incomprehensible language. Though the House passed the resolution appointing the committee, it did not have the power to pass it. The Premier did not mention when he moved the motion that it was unconstitutional because of section 7A of the Constitution Act dealing with the rights of members of this House and another place, and because it was beyond the powers of this House to pass a resolution which dealt with the families and children of members——

Mr Ryan: Did the honourable member tell the House that it did not have that power?

Mr DOWD: Must I draft for the Government every motion and every piece of legislation that comes before the House? The Opposition does not intend to tighten this measure, except in one respect. Opposition members cannot tolerate the absurdities contained within the bill. Let us examine those absurdities. It is not easy to tighten the legislation and to try to make it meaningful. Proposed clause (4) of section 14A, which will be inserted by schedule 1, is as follows:

A regulation shall not be made under subsection (1) for or with respect to the disclosure by Members of either House of Parliament of pecuniary interests or other matters unless it applies in the same way to the disclosure by Members of the other House of Parliament of pecuniary interests or other matters.

Proposed subsection (6) states:

Notwithstanding anything to the contrary in the Interpretation Act, 1897, or any other Act, a regulation made under subsection (1), or any part thereof, shall not cease to have effect upon its disallowance by either House of Parliament unless it has previously been disallowed by the other House of Parliament.

That means that one House of this Parliament can pass a valid resolution only if the other House has passed a similar resolution. But the second House passes an invalid resolution if the first House has not passed a similar resolution. Such a situation could go on for ever. This is a completely illogical, unintelligent and absurd measure. It is impossible to amend the provisions to allow both Houses to pass such a resolution.

The Government has presented legislation that cannot possibly be passed into law, because of its absurdity. The Opposition, despite its attitude towards this legislation, will propose an amendment which, although it may not be particularly elegant, **will** improve the bill sufficiently to make it workable. That is the only amendment the Opposition proposes in an attempt to improve the legislation.

No doubt Government supporters will become sanctimonious, pious and hypocritical and say what a marvellous principle or concept it is that members will be obliged to disclose their pecuniary interests and other matters. Let us consider the matters that must be disclosed. First, the bill provides for the disclosure by members of either House of all or any pecuniary interests in real or personal property. That provision is contrary to the wishes of the select committee that considered these matters. What does the term personal property mean? Normally, one would consult the definitions clause of a bill. Honourable members might not be surprised that the bill does not contain a definitions clause. The legislation will entrench in the State Constitution, that fundamental document protecting the rights of citizens, a discretion, as the Government will draw up the regulations. It will advise the Governor. The Government is attempting to con members of Parliament into believing the committees of Parliament will have the right to make submissions on those regulations. In that regard honourable members should consider proposed section 14A (5), which reads:

- (5) The Governor shall, before making a regulation under subsection (1)—
- (a) afford any committee of either House of Parliament established for the purpose an opportunity of considering and making representations with respect to the proposed regulation; and
  - (b) take into account any such representations.

That provision is absolutely fatuous. **Of** course, the Governor does not have to act on any such representations. The Government knows that. Why has not the House before it the regulations referred to in the bill? Have those regulations been drawn or, as I suspect, have they failed to crystallize? What interests will members be required to disclose? Is the Government so dishonest that it is introducing this legislation to tell the public that it has obliged members of Parliament to disclose interests? Will the Government spend another five years trying to work out the criteria involved? Many Government supporters have said they do not want full disclosure of interests. Those honourable members, who are supposed to represent the working man, do not want the public to know where their money came from or how **wealthy** they are.

Many persons who work honestly and diligently and who make a mark in this world, acquire substantial assets. Some of those persons ought to be members of this and the other House. I cannot say the same for the failed trade union officials and failed lawyers who are Government supporters. The Parliament should have representatives of the people who have made a contribution to society and have become people of substance. That would ensure that this is a representative Parliament. Who would come into this Parliament as a member knowing that he or she will have to disclose his or her interests in personal property? Such things as paintings, furniture, jewellery, insurance policies and motor vehicles are items of consequence, and may be required to be disclosed. The bill could be used as a burglar's guide, in the same way as persons wanting to find out what indecent publications have been banned merely have to buy the Government *Gazette*, which lists them.

Every honourable member will be at risk of having his home burgled by criminals, however petty. While members are in the House, their homes are unprotected. That applies particularly to members representing country electorates who must remain in the city during sittings of the House. Any honourable member would be as concerned as I am that his house may be broken into. My garage was forced and entered and the number plates were stolen from my car. When I reported the matter to the police I was handed a form to fill in. That is a risk that every person in public office must take. However, under the bill all personal property in which a member has a pecuniary interest will have to be disclosed publicly.

What is the requirement for the disclosure of a member's income? The joint committee set up by the Government recommended that the source of income of members be declared—not the amount of the income. What does the item relating to income mean? It means nothing at this stage, because no regulations are in force. The Government tells the community what it likes, but when it comes to making regulations its attitude will be different. Assuming that income means source of income, will honourable members be required to state the **weekly** or **annual** amount of that income down to the last cent? Or, as I suspect, does it merely mean the source of income?

If that provision of the bill relates to the source of income, a barrister who claims that an illegal gambling interest is a legal retainer would not have to disclose such an income. He could merely note it as income from his legal practice. The bill is as cosmetic as that. It is disgraceful that the Government has introduced such transparent and transient provisions in the bill. The next pecuniary interest that must be disclosed is financial or other contributions to any travel. It is proper that sponsored travel be publicly declared, as the community has a real interest in that matter. Opposition members agree that such an interest should be disclosed.

The legislation refers to disclosure of partnerships and trusts. How many members of this House are executors of trusts or partnerships or wills for friends or family? Members of the public are often hesitant to ask friends to take on this **responsibility**. I do not see why I should disclose the contents of wills **when** I have acted as an executor in my profession as a solicitor and a barrister. The people for whom I act are content in the knowledge that I am capable of looking after their family affairs without betraying their privacy when any tragedy occurs. **Am** I to say to those people that I cannot be their executor because I will have to disclose their assets? The legislation is an absolute disgrace. It is not easy to get people to become guardians. Why should I have to say, "I cannot be your executor or the guardian of your children unless your affairs are published in a parliamentary paper"? If one acts responsibly to one's family, one should not have to disclose such details. Why should I and other honourable members with young children have to make arrangements for other persons to act on their behalf and say, "I cannot be the trustee for your trifling bank account"? Why should my wife or another person have to become a trustee so that my teenage children do not have to have their small sums of money—\$20 or \$30—published in a public document. It is difficult enough for children of a member of Parliament, without having their personal affairs disclosed. Why should I as a trustee of several organizations have to disclose such matters?

I know some members on this side of the House will shudder when I say **that** I am trustee for the Council for Civil Liberties defence fund. The honourable member for Illawarra is my co-trustee in matters dealing with this organization. He will be delighted to know that he has been reminded of his obligations as a trustee. He and I will have to disclose **all** these matters as co-trustees. How many members in this House are trustees of **clubs** and organizations for property and other matters? Why should

*Mr Dowd*]

they be compelled to disclose them in a register? There is not necessarily **any** beneficial **interest** in acting in such a capacity. These people give their time voluntarily, and act in a responsible manner, as they should.

I now wish to deal with debts. It is extraordinary that the greatest reaction from members of this Parliament to the legislation is not to disclosing their assets, but rather to disclosing their debts. Persons do not become members of Parliament if they wish to earn a high income. I am conscious of the **fact** that many people enter Parliament without having amassed many assets. Many difficulties are encountered in the life of a parliamentarian. I am not complaining about that; members accept them voluntarily.

Why should people be deterred from entering Parliament because their spouses or families do not wish their private affairs to be disclosed? The Government by this measure is obliging honest people to disclose their affairs, and at the same time allowing dishonest people to drive a horse and cart through the loopholes in this sham of a bill. There are no definitions or regulations, but a referendum is being forced on the public in this matter by a con trick. It is a complete sham. What will be the position of the accountant, solicitor or real estate agent who has power and control over trust funds? Will the honourable member for Ashfield reveal all the trust funds with which he is connected and the amounts involved in those funds? How will he cope with the legislation if he is **compelled** to disclose these matters? Is there to be a blanket provision? How will professional people or business people who are obliged to keep trust records be able to comply with the legislation? A regulation may have to be introduced that these people do not have to disclose such matters in detail—in that event, one could get straight round the legislation and not disclose anything—or else there will have to be a provision whereby it is done in detail. That is an absolute absurdity.

One Government supporter, a member of the joint committee, actually asked the Premier and Treasurer for money to be made available for him to seek legal advice on an invalid motion that was passed by this Parliament. That was in an attempt to find out whether he had to comply with the motion. What chance will he have of trying to comply with this legislation? I hope he does receive some money from the Premier and Treasurer for legal advice. The member I refer to is a lawyer, but I know that he would be better served by legal advice than by relying on his own experience and ability as a lawyer.

In the past five years much trumpeting has been heard about this issue and many different proposals have been put forward. However, the legislation before the House is plastic and easy to get round by the mere exclusion of children and spouses of families. It is a disgrace for the Government to put the issue before the people. What does a member of Parliament know about legislation unless he is a Minister or works for a Minister. Someone on a ministerial staff may decide to back a magical new process of a company registered on the stock exchange. Another person could start releasing information through government sources about shares in the company.

The press secretary of the Premier and Treasurer handed out press releases backing an unproven coal benefaction process of Energy Recycling Corporation in an endeavour to inflate the share market. The South Australian Corporate Affairs Commission estimated that \$25 million was made in fraudulent share manipulations in Mintaro Slate and Flagstone Company. Inadequate information was given about those manipulations and that company was removed from the South Australian stock exchange. The company was relisted and large sums of money were made in New

South Wales by defrauding people who relied on a totally unproven process. Those persons were relying on the Government's press handout. Many persons stand to make money from such actions. Government employees and the staff of the Premier and Treasurer have an opportunity to make money because they have ready access to inside trading information.

Mr Whelan: That is a despicable thing to say.

Mr DOWD: It is a precise allegation; it is not despicable. I refer to the sum of \$2.77 million written off by the company once the Government was compelled, by public outcry, to cancel the prospecting authorization for Ulan. That resulted in a \$2.77 million rip-off. The total value of shares in the company rose from \$10 million to \$25 million. Shares formerly purchased for \$10 are now down to 17c or 18c. People on Ministers' staffs are in a position to use their knowledge fraudulently or otherwise, improperly or otherwise, to make money from their inside trading knowledge. The Premier and Treasurer made a fuss about the Rundle matter, knowing full well that he would not allow the Parliament to have a full debate on the Energy Recycling Corporation issue—or set up a judicial inquiry, which will be eventually set up. It is a classical example of how an American legislator, Terry Goggin, with the assistance of people in the United States of America, was able to inflate shares on the American market to make millions of dollars in a rip-off with regard to the **Sundance** Corporation.

That incident underlines the fact that the ordinary member of this House is in no position of power compared with the staff of Ministers. Members of the Opposition do not consider that the public servants of this State or journalists should be obliged to disclose their pecuniary interests or that people employed in local government should have to disclose their pecuniary interests, except as provided for in the Local Government Act, which covers the matter adequately. Despite the wisdom of the report of the joint committee presided over by the honourable member for Peats, members of the Opposition do not consider that, except as is now provided by the Local Government Act, there should be more offences for breach of confidential conditions. We do not believe in all of the recommendations in the report and obviously the Government did not consider the committee's report to be cogent.

Honourable members are talking about a measure that has cost the people of this State an enormous sum of money in terms of printing, select committees and that type of thing to bring about this piece of legislation. Members of the Opposition wish to make their position clear. This bill is purely a political ploy to try to get members of the Opposition to treat the legislation with revulsion and oppose it at the referendum. It is a simple political trick to try to get us out on the hustings opposing it so that the Government can say, "Look at what the members of the Opposition are doing. They must have something to hide". The people of this State will not be able to understand the intricacies of this legislation. So far as the Opposition is concerned, except for the stupid amendment that the Government obliges us to move and one other amendment, the people can have their register if they decide that the referendum should be passed. The Government will not tell them the facts.

The Government holds the peculiar view that it will be in power for a long time. But when the people see through the cosmetics of this measure, after the regulations have been passed, and they can see that nothing really is caught by the measure except honest people, they will not be unduly concerned about it. The Government is putting before the public something which looks good but means absolutely nothing.

Mr Hills: This amendment will make the legislation stronger.

Mr DOWD: If the Minister had come into the Chamber earlier he would have heard me say that the Opposition proposed to improve the bill. One other amendment that the Opposition will move in Committee—in the unlikely event that the Government on its present form, allows a Committee stage—will remove the provisions relating to personal property. The public, the committee presided over by the honourable member for Peats and every other committee which has dealt with this matter, have said that real property ought to be disclosed. One can understand the view of the public and some honourable members on that matter. But members should not have to disclose personal property, which is of no concern to the people of the State. Will members have to list paintings, jewellery, or stamps? What about airline tickets; are they personal property which must be disclosed? We do not know. The Government is not willing to say this. It cannot even draft meaningful legislation that has effect.

Some Government supporters have come to me complaining about this matter. The Government has assuaged the fears of its supporters by saying that the regulation **will** not be precise and the Government will be in charge of it. Those members **will** have a sense of complacency about disclosure which is probably soundly based, because the Government knows now how precise the regulations will be. The original motion has been substantially exceeded. The provisions on disclosure are an unreasonable invasion of the privacy of honourable members.

Supporters of the Government spoke about all the other registers round the world. They well know that most of those registers disclose very little and require little disclosure, as this scheme will **do** because of the exclusions that have occurred and by the Government's failure to adopt the recommendation on the joint committee presided over by the honourable member for Peats. We **are** in a parliament where there are no reported cases of the necessity to disclose. This legislation will deter from entering this Parliament people who are not willing to subject themselves to the sort of ridicule that all honourable members have to be concerned with. The Government is introducing a cynical scheme that will not prevent the sort of scandalous rip-off that occurred with people in the know in the Government in the Energy Recycling Corporation Limited case. The Government refused to set up a select committee to make sure that those who have made money out of the share rip-offs in Mintaro Slate and Flagstone Company and **Sundance** Oil are exposed. That sort of thing will not be caught by this legislation.

The Government is presenting this cosmetic legislation to the people and trumpeting about the fact that it will expose members. Members of the Opposition say this is one of the most disgraceful bills ever introduced into this House. It has no substance whatever. It is difficult for members of the Opposition not to show their revulsion by voting against the bill. We will not do so, but in Committee we will move the amendments that I have foreshadowed. This is a cynical political exercise, but the Government will not have the satisfaction of being able to say that the Opposition opposed it. I have opposed this legislation at every meeting of every committee that I have attended since the matter began in 1976. The other day the House dealt with the Election Funding Bill, which requires the disclosure of donations. I received donations of \$200 to my campaign at the last election. I have opposed and will continue to oppose this sort of sham legislation. When it has been passed the Government will go on with some more brilliant scheme, such as the public disclosure of campaign contributions, which one could drive a horse and cart through, as the Government well knows.

This Government is concerned with cosmetics and image rather than the substance of trying to do something to improve the State and run the State and do the job that it is elected to do. The bill is a disgrace to the Parliament. Government supporters

can say what they like about me on the hustings, but my constituents are satisfied to retain me as their representative, no matter what assets I may or may not have. Government supporters can criticize if they wish, but members of the Opposition will not provide them with a tool to hit us with by making out that we opposed this measure because we have something to hide. The Government has a great deal to hide. That is underlined by the fact that it has excluded all the things which would prevent people getting round this sort of legislation. We shall not improve it except to make it intelligible by the amendments we move.

Debate adjourned on motion by Mr Ryan.

## PRINTING COMMITTEE

### Fourteenth Report

Mr Cleary, as Acting Chairman, brought up the Fourteenth Report from the Printing Committee.

## ADJOURNMENT

### Distributors of Advertising Material

Mr WALKER (Georges River), Attorney-General and Minister of Justice [4.10]: I move:

That this House do now adjourn.

Mr PACIULLO (Liverpool) [4.10]: I wish to raise a subject that I understand has not been dealt with before in this House. It is a fairly recent development. In my view it involves flagrant exploitation of young and unemployed people in the distribution of advertising material to letterboxes. The organizers of this type of work are ruthlessly taking advantage of masses of unemployed persons in my electorate in particular, but the problem is occurring throughout the metropolitan area. These people are getting away with this exploitation because there does not appear to be any award to cover this type of work or the workers involved in it. The exploitation consists of the pitifully small reimbursement for difficult work and no allowance being made for the use by the distributors of their vehicles, which are essential. There is misrepresentation by the organizers about the payment for the work. The distributors are usually told that they will receive much more than they eventually get.

Finally, I refer to the long delay in actual payments made to those who have undertaken the work. So far as I can see, it is an example of slave labour 1981-style. Let me give some evidence to substantiate what I have said. The matter first came to my notice when I read a letter in the *Liverpool Leader*. The letter is headed "Girl used as slave". A mother wrote to that newspaper on behalf of her 13-year-old daughter and referred to an advertisement for high school students to deliver leaflets:

My daughter came home thrilled at having got her first job. The van (with no seats) picked her up Thursday at 4 p.m. She was told she would receive \$3 for 150 houses. This, I must add, involves putting leaflets in doors, not letter boxes. She was taken to the job and returned at 7.15 p.m. She had walked and walked. She was so tired when she came home that she went straight to bed. She says she only missed one house that had a large dog. I still find it very hard to believe that, after all this, these people handed her one dollar for all her work. If this is how our children are treated, no wonder children these days do not want to work.

That girl worked for three-and-a-quarter hours for approximately 30c an hour. That is truly slave labour 1981-style. I attempted to trace the writer of the letter **but** was unsuccessful. However, in an interview on Channel 7 I appealed for information. As a result I ascertained that children were taken long distances throughout Sydney and, despite offers of more pay, received only 20c per response for rags left out in a rag bag collection. If a child got five responses from 150 homes, he or she received one dollar. I am sure that if a child got 100 responses, she would certainly not receive \$20. The whole basis of payment is made on totally unacceptable grounds.

I then received a written complaint from a local woman. In her letter she stated that her 18-year-old son answered a local advertisement and received \$17 for 16 hours work—from 6 a.m. to 10 p.m.—in the middle of November **last** year. For one **week's** work he received \$67. That represented about half the amount he had expected to receive on the basis of the quote given to **him** by the supervisor of the organization for the work performed. A substantial portion of the money eventually received—namely the \$67—was used up in running his vehicle all over **Fairfield** where the letter box distribution took place. Having been told that he would **not** receive the money until 1981, a complaint was made to the Department of Labour and Industry. The company concerned said that it had to receive the money from the organization for which, in turn, it worked. Following complaint to the department, payment was received a week or so later.

I decided to arrange for my electorate secretary, Miss Lidia Stawiski, to answer an advertisement. I wanted to satisfy myself that these allegations were accurate and worth raising in Parliament. My secretary answered the following advertisement:

Make money while you exercise. Join a team of letter box deliverers within the following areas: Liverpool, Moorebank, **Fairfield**, Cabramatta. Must have a car and access to a phone.

It then gave a business hours telephone number. Having answered the advertisement, my secretary was referred to the same person complained of by the lady whose letter I quoted earlier. My secretary was quoted \$10 to \$15 per thousand pamphlets distributed, with payment to be made in two to three weeks. The variation in the amount of reimbursement quoted apparently dependent on the thickness of the pamphlet; I do not know what that had to do with the work performed. In January my secretary arranged for three people to deliver 1 400 pamphlets. That took six-and-a-half man hours. She was paid \$14—the lowest rate payable, a little over \$2 an hour. She received payment twenty-four days later.

Let me summarize the main areas of concern. First, a verbal contract leaves an employee at the mercy of the operator as to the payment received. Second, there is a pitiful level of pay for **difficult** work, and it is next to nothing when a vehicle is used and money is spent on petrol. Third, there is delay in payments. Finally, there are the risks when children are involved in door-to-door **selling** and exposure to traffic danger. The only logical conclusion is that the Government should **act** to stamp out exploitation. This shows why trade unionism is so necessary. Unions are criticized for their greed in some respects, which may be a matter of **public** concern, but this shows the other side of the coin.

There **are** three tiers to these selling operations. First, the company puts an advertisement in the local newspaper. The company concerned is unknown because it normally acts in a clandestine way. **An** inquirer is referred to a supervisor, usually a local person. There are then the distributors. Deliveries of this type are a growing

industry. Advertisements of this kind appear every day in the *Daily Telegraph, Sydney Morning Herald* and local newspapers. I shall be happy to provide the Minister with the letters I have in my possession. I ask him to investigate this industry and to take appropriate action. Knowing the Minister as I do, I know that he will do exactly **that**.

Mr HILLS (Phillip), Minister for Industrial Relations and Minister for Energy [4.18]: I thank the honourable member for Liverpool for raising this matter. If it is likely that children are being exploited, it is important to have information. That also applies to unemployed young people who seek opportunities to earn money. The majority of complaints received by my department relate to forms of employment that contain an element of danger to children. I refer to work performed by driveway attendants, roundsmen and the like. Prohibitions already exist in regard to such employment. However, no legislation has been enacted in respect of employment involving the distribution of pamphlets and newspapers. That type of work falls under the heading of odd jobs and provides a source of income for children but has little attraction for adults. Nevertheless, in the present period of high unemployment others are engaging in this kind of work. This area of work is award-free and the payment of remuneration depends on the terms of the contract. There is a provision in section 88F of the Industrial Arbitration Act under which action can be taken in courts where it is thought that contracts are unfair, harsh or unconscionable.

We are referring to children and to small amounts of money that normally would not attract the attention of the courts. As these children are not covered by unions, serious problems are created. The honourable member for Liverpool has asked what can be done about the matter he has raised. I undertake to the honourable member that in the cases that he has raised inspectors of the Department of Industrial Relations will discuss the matter further with the children concerned, or their parents, and confer with those people who are responsible for the contract being entered into. They appear to be obscure persons in that when the telephone number appearing in the newspaper advertisements is rung, the caller is given another telephone number. In other words secretive persons are entering into these deals. It may not be possible to talk to these people in a sensible way to ensure that the contractual arrangements are fair and equitable and not harsh and unconscionable.

Further, when the officers consider that there is a case that could proceed to prosecution as a test case, the Government would be willing to embark on a prosecution before the courts in order to establish the principles that should apply. I **warn** members of the public that they should not enter into these sorts of arrangements unless there is reasonable remuneration paid for the work done. On the other **hand**, there is an opportunity sometimes for young people to increase the amount of money available to them by carrying out the sorts of tasks referred to by the honourable member for Liverpool. Obviously we want to ensure that those avenues for earning additional money are not cut off. I reiterate, the arrangements made have to be fair and reasonable.

In summary, I am willing to have the officers from the Department of Industrial Relations inspectorate talk to the people concerned in an endeavour to negotiate better arrangements with cases already in existence. I appeal to the general public to report cases like this to the department and if a better arrangement cannot be negotiated, it will be willing to embark upon a test case. Further, the officers of my department **will** confer with their colleagues in the Department of Consumer Affairs, as consumerism is involved as well, with the object of bringing about a formal arrangement to ensure that people receive better remuneration for these tasks.

Motion agreed to.

House adjourned at 4.25 p.m. until Monday, 11th May, 1981, at  
10.30 a.m.

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### QUESTIONS UPON NOTICE

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

#### PUBLIC TRANSPORT

Mr MAHER asked the Minister for **Transport**—

- (1) What public transport arrangements are proposed for the Darling Harbour site for EXPO, the Sydney Entertainment Centre and the Museum of Applied Arts and Science?
- (2) Will the Darling Harbour–Dulwich Hill–Bankstown goods line be converted for passenger use to service the site and intermediate suburbs?
- (3) Will the use of an integrated system of buses and light rail transit be **con-**sidered if the goods line is not converted for passenger use?
- (4) Is the goods line suitable for conversion to light rail transit to serve the Darling Harbour site?
- (5) Could the unused city railway tunnels between Shakespeare Place and Park Street be utilized to link the Darling Harbour site to the suburban rail network?

#### *Answer—*

- (1) The need for adequate public transport to service the **Haymarket/Ultimo** area, and the question of traffic and pedestrian movements in the area, **has** received consideration. Bus services, which at present operate along **Harris** Street will cater for visitors to the Museum. Similarly, existing George Street bus services will be available for visitors to the Sydney Entertainment Centre. Convenient bus stops are located at the corner of George and Goulburn Streets. The question of improved accessibility to the area for rail travellers is also under review.
- (2) There have been a number of proposals over the years for the conversion of the Darling Harbour–Dulwich Hill–Bankstown goods line to passenger services. However, apart from the operational **difficulties** of mixing passenger and goods trains on the one line, upgrading of the line would be costly and would appear unwarranted.
- (3) and (4) A report from the **Glebe** Society outlining a notional scheme for the introduction of trams on the **Leichhardt–Ultimo** goods line and to other parts of the suburban area has been submitted to the Government. The report which was prepared by a Dr J. P. Gerofi is currently being examined.
- (5) A detailed study of this proposal would be necessary before a firm comment can be made as these tunnels were located to suit a railway heading up Oxford Street with no clear destination in the Quay area. It is most unlikely that the tunnels would suit the **proposal** in question.

ELECTRIC TYPEWRITERS FOR TRANSCRIPTION CENTRES

Mr SCHIPP asked the Attorney-General and Minister of Justice—

- (1) Is the Regional Transcription Typists' Pool stationed at Wagga Wagga Court House using manual typewriters?
- (2) If so, will he ensure that modern office machines including electric typewriters are supplied?
- (3) Does a programme exist to update equipment used in Court Houses throughout the State?

*Answer—*

- (1) Yes.
- (2) Approval has been given to the conversion of manual typewriters used in Transcription Centres to self-correcting electric typewriters.  
Because of the limitation of funds only 5 of the 11 Transcription Centres have been converted at this stage. The 6 remaining centres to be converted are Wagga Wagga, Penrith, Coffs Harbour, Bathurst, Waverley and Gosford.  
Due to variations in prices since machines were purchased for the first 5 centres it is necessary to call tenders for the supply of electric machines for the remaining 6 centres and action to achieve this end is currently underway. It is expected that tenders will be evaluated and orders placed by the end of July, 1981.
- (3) The Government is fully cognizant of the need to install modern office equipment and action is presently in hand to install electronic memory typewriters, visual record computers and word processors in a number of the larger courts where such installation is warranted and can be justified.

PHOTOGRAPHS ON DRIVERS' LICENCES

Mr HATTON asked the Minister for **Transport**—

- (1) Was a report prepared by the Department of Motor Transport dealing with photographs on drivers' licences?
- (2) Was this report made available to Mr Lewer to assist him in his inquiries?
- (3) Will he make this report available to the public?
- (4) If not, why not?

*Answer—*

- (1) Yes, following an Interdepartmental Inquiry.
- (2) Yes.
- (3) The report was prepared for the guidance of the Government.
- (4) It is now some time since the report was prepared and no good purpose can be seen in its release.

I might mention that the **Interdepartmental** Committee in question consisted of officers from the Department of Motor Transport, Police Department, Ministry of Transport, Privacy Committee and Treasury.

The Committee concluded that photographic drivers' licences ought not to be introduced in New South Wales on the principal grounds that they would not establish the person's true identity, the driver population would be inconvenienced, the greatly increased costs would have to be borne by the motorists or the whole community without there being commensurate benefit as the small minority of determined wrongdoers would most likely find some way to circumvent the scheme.

Adoption of photos on licences was canvassed before the Lower Inquiry. The proposal was opposed by the N.R.M.A., the Privacy Committee, the Australian Transport Officers Federation and the Department of Motor Transport.

It is the view that those groups who supported photographic drivers' licences before the Inquiry did not have the advantage of being fully informed.

The Australian Transport Advisory Council, upon which New South Wales is represented, has a number of matters relating to drivers' licences constantly under review, but it has not yet been convinced of the merits of a national move to photographic drivers' licences, nor has it received any recommendations in relation to such a proposal.

The recent Management and Strategy Review of the Department of Motor Transport which was carried out by professional consultants quite external to the Department and reflecting analytical judgement from the private sector, endorsed the conclusions of the Interdepartmental Committee referred to above and found that a move to photographic licences would impose additional costs (over \$3 million) and inconvenience to the public, and, in return, offer **only** an illusory benefit.

#### BYRON ELECTORATE LOCAL GOVERNMENT AND ROADS

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

- (1) Does he intend visiting the Byron Electorate in the near future?
- (2) If so, will he provide me with details of his proposed itinerary in order that arrangements can be made for constituents and organizations to discuss with him problems relating to his portfolios?

*Answer—*

Invitations have been received from the South Tweed Progress Association, the Northern Boat Harbour Action Group and other organizations to visit the Tweed Heads area to meet the officers and members of those organizations to discuss matters of importance to them. These organizations have been advised that I will be happy to accept their invitations, and the appropriate arrangements are being made, but are not yet finalized. The honourable member for Byron can be assured that as is my usual practice, I **will** advise him officially of my visit prior to it taking place.

#### MURWILLUMBAH-CASINO RAILWAY

Mr BOYD asked the Minister for **Transport**—

- (1) What was the total annual income of the **Murwillumbah-Casino** railway line in the previous ten years?

(2) **Has** there been any major fluctuation in **this** income, if so, what are the causes?

*Answer—*

(1) Owing to the amount of work involved it is not possible to fully provide the details required. In this regard it must be appreciated that while the revenue actually collected by stations on the Casino to **Murwillumbah** line can be obtained, this does not give an accurate picture of the total situation. This is because the figure would not include any revenue collected interstate or intra-state for stations on the **Munvillumbah** line.

Nevertheless, bearing this in mind I set out hereunder the coaching revenue collected by stations on the **Munvillumbah** line. It should be noted that this revenue covers passenger, parcels, stamps and C.O.D., traffic only:

	\$
1971 .....	351,624
1972 .....	380,328
1973 .....	428,364
1974 .....	595,751
1975 .....	602,225
1976 .....	840,216
1977 .....	1,069,783
<b>1978</b> .....	<b>1,189,903</b>
<b>1979</b> .....	<b>1,277,523</b>
<b>1980</b> .....	<b>1,461,759</b>

(2) There have been no significant fluctuations in the growth trend in coaching revenue over the last ten years.

#### RAILWAY OVERBRIDGE MAINTENANCE

Mr MOORE asked the Minister for **Transport—**

(1) Has Ku-ring-gai Municipal Council been informed by the State **Rail** Authority with respect to the railway overbridge in Strickland Avenue, Lindfield, that “. . . minor maintenance only is currently programmed to ensure safety of the structure pending proposed replacement of the bridge in 1983 dependent upon funds being available. This means that whilst structure safety **will** be maintained there will be insufficient replacement of members to provide adequate fixing for the proposed safety fences.”?

(2) If so, will he order an examination of the state of the footpaths on the bridge with a view to repairing them to provide increased safety for pedestrians seeking to use that footpath?

*Answer—*

(1) Yes.

(2) State Rail Authority **staff will** carry out repairs within the next two (2) months to those members of the bridge necessary for the erection of the safety fences. This will then enable Council to proceed with the construction of the safety fences which are its responsibility.

