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**TUESDAY, 23 OCTOBER 2007**

**Madam Speaker** took the Chair at 2 p.m.

**Prayers.**

**VISITORS****Australia—President of the Senate**

**Madam SPEAKER:** I have much pleasure in informing members that Senator the Hon Alan Ferguson, President of the Senate, Parliament of Australia, is within the precincts of this Chamber. I am sure that members would wish that he be welcomed.

The Hon Alan Ferguson, accompanied by the Deputy Speaker, entered the Chamber and took a seat on the left of the Chair.

**QUESTIONS FOR ORAL ANSWER****QUESTIONS TO MINISTERS****Economy—OECD Rating**

**1. JOHN KEY (Leader of the Opposition) to the Prime Minister:** Is it still her Government's goal to see New Zealand's economic indicators back in the top half of the OECD?

**Rt Hon HELEN CLARK (Prime Minister):** The Government would certainly like to see New Zealand's GDP per capita ranking back in the top half of the OECD. As I told the member several months ago, to achieve that requires clear, deliberate policy programmes sustained over time.

**John Key:** Is the Prime Minister aware that in 1999 only nine countries in the OECD had a lower tax burden than New Zealand but that by 2005 it was 17 countries, and that under her leadership she certainly has got New Zealand into the top half of the OECD—the half that pays a lot more tax?

**Rt Hon HELEN CLARK:** I am advised that taking into account a one-off change, our tax revenue as a proportion of GDP sits at around the OECD average and puts us in the same bracket as the United Kingdom.

**John Key:** Is the Prime Minister concerned that for the last 5 years the Australian Federal Government has embarked on a programme of lowering personal taxes, and that we have now seen both the Labor Party and the Liberal Party in Australia promising large future personal tax cuts; and does it not worry her that that gap between New Zealand and Australia for after-tax income continues to widen because of those tax cuts, and for how long can New Zealand ignore this problem?

**Rt Hon HELEN CLARK:** As has been said many times, this matter will be addressed in next year's Budget.

**John Key:** Why is the Prime Minister telling New Zealanders that for 8 years the Government has been roughly running large surpluses, that the inflation environment in many of those years has been low, but that, miraculously, the only time a Labour Government in New Zealand will ever talk about tax cuts is election year, and does she not think that looks a little bit desperate?

**Rt Hon HELEN CLARK:** Of course, the Government has enabled families to have substantial tax cuts, it has cut taxes on savings, and it has made substantial tax cuts on business to encourage economic growth.

**Hon Dr Michael Cullen:** Given the Leader of the Opposition's enthusiasm for the Australian tax scales and rates, will the Prime Minister be expecting from him support

for lifting the top tax rate, introducing a capital gains tax, and introducing stamp duty, which are all part of the Australian tax system?

**Rt Hon HELEN CLARK:** My experience is that the National Party borrows very selectively from Australian figures. For example, it does not want to face the fact that under a Labour Government unemployment is consistently lower than in Australia. It does not want to face the fact that under a Labour Government in New Zealand economic growth rates have outpaced those of Australia as well as the whole OECD.

**John Key:** Is the Prime Minister aware that in 2000 the average wage in New Zealand was roughly \$34,000 and it has risen to about \$44,000—that is, a \$10,000 increase—but that, in fact, if one takes into account the increase in inflation and the bracket creep, the average New Zealander is only \$500 better off after that \$10,000 increase, and is that not a bit of an insult to the average New Zealander?

**Rt Hon HELEN CLARK:** I would not take any of that member's figures at face value. What I know is that for the average single-earner couple with two children in the family, the tax wedge is at the second-lowest in the OECD at 2.6 percent, compared with 13.6 percent when National left office. The National Party did nothing to reduce the tax burden on the average family.

**John Key:** If tax cuts have not made sense for the last 8 years, why will they miraculously make sense next year, in election year?

**Rt Hon HELEN CLARK:** The member should listen more carefully. There have been huge tax cuts for families under Labour, and there have been big tax cuts for business under Labour. Both those areas of tax cuts have been consistently voted against by the National Party.

**John Key:** Why should any New Zealander trust whatever miraculous tax cut programme Labour comes up with in election year when all of those New Zealanders will know that they are the same people who were promised tax cuts in 2005 only to have them taken off them by the same Labour-led Government?

**Rt Hon HELEN CLARK:** I wonder why any New Zealander would believe anything those National members said about tax cuts when they have consistently voted against every Government bill bringing in tax cuts in the House.

**Rodney Hide:** Does the Prime Minister accept that no OECD country has achieved 4 percent growth on a sustainable basis—which was her Minister of Finance's goal on assuming office—with total spending above 40 percent of GDP, and if she does not accept that the tax take has an impact on growth, why not?

**Rt Hon HELEN CLARK:** I understand that there have indeed been countries in the OECD that have seen growth rates like that. They might perhaps be better described as emerging economies that have come more recently into a market economy system. But the last time I looked, the average amount of economic growth since this Labour-led Government took office was close to 3.4 percent a year. That was higher than Australia, higher than the US, Japan, the United Kingdom, the OECD, and the European Union average rates for that period. That is economic success, Labour style.

### **KiwiSaver—Uptake**

**2. CHARLES CHAUVEL (Labour) to the Minister of Finance:** Has he received any recent reports on the take-up of KiwiSaver?

**Hon Dr MICHAEL CULLEN (Minister of Finance):** The last formal report was on 9 October, when nearly 213,000 Kiwis were enrolled in KiwiSaver. Of those, nearly 102,000 actively chose a provider and went directly to a scheme to enrol, 67,000 actively chose to join KiwiSaver and enrol via their employer, and 44,000 new employees were automatically enrolled.

**Charles Chauvel:** Has the Minister seen any recent international reports on the benefits of superannuation schemes such as KiwiSaver?

**Hon Dr MICHAEL CULLEN:** Yes. Last week the Boston Consulting Group found that the growth in personal wealth in Australia was largely due to Australia's superannuation system. I have also seen a report from the New Zealand Institute of Economic Research trying to claim that New Zealand does not have a savings problem, due to a booming but unquantified informal economy. That is at odds with the rise in household debt, decline in savings rates as measured by public indicators, current account deficit, and net international investment position. But an unmeasurable, hidden economy somehow explains our savings problem completely away!

**Hon Bill English:** Can the Minister tell us how much money actually went into KiwiSaver accounts on 1 October, what proportion of it was the Government start-up payments or subsidies, and what proportion of it was actually contributions from new members?

**Hon Dr MICHAEL CULLEN:** I am sorry; I do not have those numbers in front of me. There would be quite limited Government start-up payments as of 1 October.

**Charles Chauvel:** Has the Minister seen any reports suggesting that the KiwiSaver scheme should be changed significantly?

**Hon Dr MICHAEL CULLEN:** Yes, I have seen various and usually conflicting reports that suggest scrapping all or parts of KiwiSaver and suggest that the provision for retirement savings in New Zealand is too generous. Those reports nearly all come from Bill English and John Key.

### **Taxation—Australia - New Zealand Comparisons**

**3. Hon BILL ENGLISH (Deputy Leader—National) to the Minister of Finance:** Does he agree with the NZIER's analysis that, at the same income, wages are generally taxed more highly and levels of tax credits provided are lower in New Zealand than in Australia; if not, why not?

**Hon Dr MICHAEL CULLEN (Minister of Finance):** Even given the parlous ideological state of the New Zealand Institute of Economic Research, it would not take much analysis to show that that has been the case since the mid-1980s, when the National Government's top tax rate of 66 percent was progressively lowered—first to 48 percent, then to 33 percent—by a Labour-led Government. However, I welcome the fact that the member now accepts that tax credits are part of the taxation system. It makes it even more baffling that he voted against the last tax credit increases for working families.

**Hon Bill English:** Does the Minister agree with the decision by the Australian Labor Party to support significant long-term tax cuts, given his statement last week that the tax cuts promised in Australia were not the sorts of tax cuts one would expect from a Labour party?

**Hon Dr MICHAEL CULLEN:** Although I have no responsibility for the Australian Labor Party—and indeed seek no responsibility for the Australian Labor Party—the fact is that it is my understanding that Mr Rudd was promising a rather different variety of tax cuts from those promised by Mr Howard. No doubt our great Australian friends will decide between the two menus on offer.

**Darren Hughes:** Has the Minister seen any reports on the drivers of income and wage growth in Australia?

**Hon Dr MICHAEL CULLEN:** Despite the Work Choices programme, the stronger bargaining position of employees in Australia due to a more centralised industrial relations system has seen labour capturing a high share of the dividends of economic

growth. The fact is that under this Government the rate of growth in profits has exceeded the rate of growth in labourers' incomes.

**R Doug Woolerton:** Does the Minister believe that the benefits of targeted taxation outweigh the perceived gains of a general cut in taxation, which often benefits only the wealthy to any meaningful degree?

**Hon Dr MICHAEL CULLEN:** I agree that there has to be a balance in these matters. We inherited a situation whereby one-third of New Zealand children were being raised in poverty. That situation was therefore the priority for the Labour-led Government. Bill English voted against reducing the number of children living in poverty.

**Hon Bill English:** In light of the situation in the Australian election campaign, which means that significant tax reductions are now certain, does the Minister still stand by his statements that Kiwi workers who go to Australia are "functionally innumerate" and that New Zealand was "better off without them"?

**Hon Dr MICHAEL CULLEN:** Although a large number of New Zealanders will be voting in the Australian election, I will not be one of them, and I will leave those people in Australia to decide what kind of Government they want.

**Hon Bill English:** Does the Minister believe that the certainty of significant income tax reductions in Australia makes any difference at all to his own Government's strategy for making New Zealand an attractive place to live and work?

**Hon Dr MICHAEL CULLEN:** I have already laid out the conditions under which we will consider reductions in personal taxation. They include, first of all, not borrowing for tax cuts. Mr English's first condition for tax cuts is to borrow for them. Secondly, there will be no reduction in services in order to fund tax cuts. Mr English, when he was a Minister of Finance, cut taxes, then cut New Zealand superannuation—the elderly paid for the tax cuts for those in the working-age groups. Thirdly, the tax cuts must be able to be sustained. Fourthly, they must be fair; that is, the benefits must not all go to those on higher incomes but must be spread more fairly across the entire population. What is it about that that Mr English does not find to be reasonable economic policy?

**Hon Peter Dunne:** Will the Minister confirm that any tax cuts introduced in New Zealand will not follow the Australian path of including capital gains taxes, mortgage duties, stamp duties, land taxes, and all of the other things that the average Australian pays at a state level, both in New South Wales and Victoria, and in other parts of the country?

**Hon Dr MICHAEL CULLEN:** It needs to be remembered that the Australian Government collects a large amount of revenue from sources that are untaxed in New Zealand. It needs also to be remembered that the Australian Government levies a very severe income and assets test on its public pension scheme, which reduces very substantially the expenditure going to elderly Australians compared with that going to elderly New Zealanders as a proportion of Government expenditure. Those things, of course, have to be made up for out of other forms of revenue.

**Hon Bill English:** Can we take it from the Minister's answer previous to that one that the facts that Australia has had 5 years of lower taxes already and that it plans to have another 5 years of lower taxes do not make any difference to him at all; and why is he alone in New Zealand in not being concerned about the growing income gap between Australia and New Zealand?

**Hon Dr MICHAEL CULLEN:** That income gap grew most between 1984 and 1993, during the period of the largest economic change and reform. The income gap since that time has not grown as greatly as that, at all. It would be very nice in this country if we had an enormous amount of minerals that could be exported in such a way

as Australia is doing. The Australian Treasury has increased its forecast revenue for the next few years by NZ\$70 billion.

**Hon Bill English:** Why has the Labour Government continued to tax people on \$39,000 a year at 33c in every extra dollar that they earn, when 3 years ago in the 2005 Budget the Government indicated that it thought it should change those tax rates, but did not?

**Hon Dr MICHAEL CULLEN:** No, we did not indicate that there would be a change to the marginal tax rate; there was an indication of some threshold change. The member, of course, rejected that as a “chewing gum tax cut”; now he wants to swallow it.

#### **Operation Ark Programme—Results**

**4. JILL PETTIS (Labour) to the Minister of Conservation:** What reports has he received about the success of the Operation Ark programme?

**Hon CHRIS CARTER (Minister of Conservation):** I have received the 3-year progress report for Operation Ark, which started in June 2004 to protect populations of whio, or blue duck; orange-fronted parakeet; yellowheads; and bats in South Island beech forests from possible extinction. I am pleased to advise the House that this report reveals spectacular results from the work done by the Department of Conservation. The risk of extinction of these populations has been reversed, with all populations surviving major outbreaks of predators. For example, there has been an increase of over 200 percent in blue duck numbers.

**Jill Pettis:** What other measures has the Labour-led Government taken to protect New Zealand’s unique biodiversity?

**Hon CHRIS CARTER:** In February 2000 the Prime Minister released the New Zealand Biodiversity Strategy, and in 2002 the Government provided a package of funds to implement the highest priority projects in the strategy. The funding, which was \$184 million over the first 5 years, provides protected-species management in mainland islands, kiwi sanctuaries, weed and pest control, and biosecurity measures. At the end of the 5 years the Department of Conservation base-lined the biodiversity funding, and this was increased by a further \$33.5 million per annum.

#### **State Houses—Non - New Zealand Citizens**

**5. PITA PARAONE (NZ First) to the Minister of Housing:** How many primary applicants who were not New Zealand citizens at the time of application were housed in Housing New Zealand Corporation properties in the 2006/07 financial year and how does this number compare with the number housed in the 2001/02 financial year?

**Hon CHRIS CARTER (Minister of Housing):** In 2001 and 2002, 1,197 applicants housed by the corporation were not New Zealand citizens at the time of application. In 2006 and 2007, 1,466 applicants were not New Zealand citizens at the time of application but were lawfully resident in New Zealand. Many people who hold New Zealand residency, particularly from the UK and Australia, have been in New Zealand for a very long time.

**Pita Paraone:** How does the Minister think that ordinary New Zealanders who have been New Zealanders their whole lives feel, as they linger on Housing New Zealand Corporation waiting-lists for years, when they find out that this Government has overseen a 22.5 percent increase in houses—or as many as 7,000—granted to people who were not New Zealand citizens, in the past 6 years?

**Hon CHRIS CARTER:** I remind the member and the House that anyone housed in a Housing New Zealand Corporation unit or house has to be lawfully resident in New

Zealand. New Zealand residents have full rights of citizenship in our country, and are encouraged to apply for citizenship. Many people choose not to.

**Russell Fairbrother:** How are Housing New Zealand Corporation properties allocated?

**Hon CHRIS CARTER:** Applicants for State housing must be lawfully, and ordinarily, resident in New Zealand to be eligible for a home. Housing New Zealand Corporation gives priority to people with the highest need. That is quite unlike the previous National Government's approach, which merely focused on the ability of people to pay the Government's exorbitant rents.

**Pita Paraone:** Can the Minister confirm that immigrants, other than refugees, are able to apply for, and receive, a State house after holding permanent residency for just 2 years; and can the Minister not see the irony in the fact that immigrants, who are supposed to come to New Zealand with jobs and a degree of financial support, even need to apply for State housing?

**Hon CHRIS CARTER:** I can confirm that a resident, having been resident in New Zealand, can apply for a Housing New Zealand Corporation house, but I remind the House again that we have a priority system of allocation, based on the greatest need.

**Pita Paraone:** Can the Minister confirm that under the guise of providing "security of tenure" Housing New Zealand Corporation does not check to see whether the circumstances that led to people being granted a State house have changed at some time, a situation that means that an immigrant not only can receive a State house after being in New Zealand for just 2 years but also can live in it for life, no questions asked; and does the Minister agree that such a situation is grossly unfair for the thousands of Kiwis currently on the waiting list?

**Hon CHRIS CARTER:** I can confirm that the waiting list for Housing New Zealand Corporation has gone down. I can confirm that tenants have security of tenure in their houses. That has been a feature of Labour's policy for State-house tenants. I can confirm also that one in five New Zealanders was born outside our country. We are a nation of immigrants.

### **Housing New Zealand—Confidence**

**6. PHIL HEATLEY (National—Whangarei) to the Minister of Housing:** Does he have confidence in Housing New Zealand Corporation; if so, why?

**Hon CHRIS CARTER (Minister of Housing):** Yes, I do have confidence; because under the Labour-led Government, Housing New Zealand Corporation provides affordable homes for almost 200,000 people. We have turned Housing New Zealand from the real estate agency it was under National to a vital social service, working across the country to securely house needy families, repair substandard rural houses, help Kiwi families in their first home ownership, support local authority and community organisations to develop social housing—the list goes on and on.

**Phil Heatley:** What action did he take following revelations last year via his answers to parliamentary questions that damage by tenants and their guests to State houses had risen by a staggering 30 percent, from \$16.5 million to \$21 million in only 12 months; and was the action that he took successful?

**Hon CHRIS CARTER:** Statistics have to be looked at in their context. We house almost 200,000 people living in New Zealand. The average tenant debt is just \$370, and we take all reasonable steps to recover that debt. But it needs to be pointed out that it is rare among our tenants. Only 9 percent of properties have any damage to them.

**Phil Heatley:** If he is so successful at managing the housing stock, why has tenant damage and vandalism, and the damage caused by tenants' guests, risen again this year, to \$23.3 million—now a 40 percent increase over the last 2 years?

**Hon CHRIS CARTER:** A very active reaction to damages is one of the reasons why the statistics have gone up. But I remind the House again that the most common form of damage is actually broken windows, which can be caused by the most minor thing.

**Phil Heatley:** How is allowing a current tenant in Henderson to run up a damage bill of \$11,762, and another in Waitakere to run up a damage bill of \$10,439, addressing this problem; what does he say to those 10,000 people languishing on the waiting list who would value the State homes that these vandals still live in?

**Hon CHRIS CARTER:** What I would say to people listening to this question time today is that the average tenant debt is \$370. What I would also say is that the 13,000 houses that were sold under National could easily have addressed our 10,000-person waiting list.

**Sue Moroney:** What has Housing New Zealand Corporation achieved in this past year?

**Hon CHRIS CARTER:** Housing New Zealand Corporation has continued to expand its range of services, reflecting the Labour-led Government's strong commitment to ensuring that all New Zealanders have access to affordable, sustainable, good-quality housing. In the past year alone we have increased our social housing stock by 1,923 homes, housed nearly 3,000 more tenants, retrofitted 2,000 homes, helped more than 1,000 people to buy their first home, and supported the development of 384 social housing units by local government and community providers. There is more to do, and this Government can be relied upon to continue investing in social housing—unlike National, which, true to form, wants to start selling State houses again.

**Phil Heatley:** What was the point of recording the vandalism debt of \$11,762, or the Waitakere vandalism debt of \$10,000, when Housing New Zealand Corporation, according to answers this Minister has given, has written off \$2,478,000 worth of damage debt owed by tenants, just in the last year?

**Hon CHRIS CARTER:** I remind the House again that the average size of debt for damage is \$370. The two cases the member has plucked out, to try to demonstrate his argument, actually show, in the context of Housing New Zealand Corporation's 200,000 tenants, how incredibly small this issue is.

**Phil Heatley:** If the Minister is saying that it is just a few individuals who are involved, and the corporation clearly knows who they are, why does he let them run up huge damage debts, then write off the debts, all the while allowing them to remain in their State houses, while thousands of genuinely needy families languish on the waiting list?

**Hon CHRIS CARTER:** Yes, it is a great pity they are on the waiting list. If his party when in Government had not sold off those 13,000 houses, we would not have a waiting list. Much of the debt the member is alluding to is of a very trivial nature. Often it would be more expensive for the corporation to pursue the cost of repairing a couple of broken windows than it would be to wipe off the debt.

**Phil Heatley:** I seek leave to table the Minister's own figures on the extent of the damage and vandalism costs.

**Madam SPEAKER:** Leave is sought to table that document. Is there any objection? Yes, there is.

**Phil Heatley:** I seek leave to table some photos of State house vandalism that is not broken windows.

**Madam SPEAKER:** Leave is sought to table those documents. Is there any objection? Yes, there is.

### **Land Transport Management Amendment Bill—Recreational Boating**

**7. Hon MARK GOSCHE (Labour—Maungakiekie) to the Minister of Transport:** How will the recently introduced Land Transport Management Amendment Bill be of benefit to recreational boaties?

**Hon ANNETTE KING (Minister of Transport):** The bill allows the Minister of Transport and the Minister of Finance to allocate fuel excise revenue received from pleasure boat users to activities such as maritime search and rescue, boating safety education, and maritime safety services. For too long, organisations like the Royal New Zealand Coastguard Federation have had to rely heavily on donations to do their work. This move is good news for recreational boaties and the organisations that provide a safety service to them.

**Hon Mark Gosche:** Why is this of benefit to recreational boaties?

**Hon ANNETTE KING:** Pleasure boat users have not received a refund on excise duty since the days of Sir Robert Muldoon, when he discontinued it in the 1970s. Now a source of funding is available specifically to meet the cost of well-founded boating safety measures. The recreational boating community will see a benefit from the excise duty it pays, and I think this addresses what has been an inequitable situation.

**Peter Brown:** Does the Minister accept that her answer has a familiar ring about it, and will she therefore confirm that what is being proposed in the Land Transport Management Amendment Bill is, in fact, New Zealand First policy?

**Hon ANNETTE KING:** Yes, it does have a familiar ring to that member and to New Zealand First because it is in their transport policy, and I know that that is one of the reasons why this bill has strong support from New Zealand First.

### **Corrections, Department—Confidence**

**8. SIMON POWER (National—Rangitikei) to the Minister of Corrections:** Does he have confidence in his department; if so, why?

**Hon DAMIEN O'CONNOR (Minister of Corrections):** Yes; but there is always room for improvement.

**Simon Power:** How can the Government get its prison forecasting so wrong that exactly 2 months ago it held an extensive decommissioning ceremony for the 111-year-old Dunedin Prison, involving blessings, a tapu lifting, and flute playing, only now to reconsider reopening it as a working prison?

**Hon DAMIEN O'CONNOR:** The Government is not considering reopening the prison. However, I have asked for a number of options to be put before me before we consider selling the prison site back to Ngāi Tahu. It is sensible for me to do that.

**Hon Phil Goff:** Can the Minister confirm that, in fact, there is far more scope for housing offenders in prisons today than there was in 1999, when the then Minister of Corrections for the National Government confirmed that most of New Zealand's prisons were within a few inmates of exceeding their capacity?

**Hon DAMIEN O'CONNOR:** I can confirm that this Government has built over 2,100 additional prison cells in its time, contrary to the inaction of the previous National Government. We are looking at all options as we move forward, but we have in place an Effective Interventions programme that is putting in the investment at the front end in order to reduce over time, hopefully, the number of people in this country who have to be locked up.

**Keith Locke:** Can the Minister confirm what I was told at the new Wiri women's prison on Saturday, which is that its policy is to provide incoming prisoners with three pieces of paper a week but no pen to write with, and does that typify the department's approach to confronting the huge literacy problem in our prisons?

**Hon DAMIEN O'CONNOR:** What I can say is that there is a huge, increased emphasis on literacy and numeracy skills in every prison. I am not aware of the shortage of pens in Auckland, but I will certainly commit to that member to make some inquiries and ensure that we do have some pens.

**Simon Power:** Did he read a March Budget paper that states that the Effective Interventions initiatives have allowed Ministers to avoid decisions on 800 additional beds over the 5-year period to 2011, and since the current prison population is now at the level it is forecast to be at in 2011, will the sixth corrections Minister under this administration, Clayton Cosgrove, be advising New Zealand next year that we will be building a new prison?

**Hon DAMIEN O'CONNOR:** It is very hard for me to prejudge the future. A number of decisions will be made. But I can say that there has been a huge amount of effort from this Government to both build the necessary prison cells and try to prevent an increase in the rising prison population, which in my view is an embarrassment to this country. The Government has many very good social programmes and has invested in families around this country, in the hope that that will prevent over time more people from being locked up in prison.

**Simon Power:** Which were the six prisons that a March Budget paper identified as being “obsolete”, meaning that they are unusable and it would cost more to bring them up to standard than to replace them; and when half of all prisons are currently below standard, how many of those obsolete prisons will not be decommissioned in the near future because of the latest muster crisis?

**Hon DAMIEN O'CONNOR:** I wish that member would make up his mind. When we build state-of-the-art prisons he criticises us for doing that, and then, when we have to continue with prisons that I accept are inadequate, he criticises us for that. I would like the member to put his policy on the table, so we can finally see what the National Party would do in this area. The only thing we have heard from National members is that they will privatise the prison system in this country; that is their solution.

**Simon Power:** Can he confirm that 165 employees were investigated in the last year—an increase of 43 percent on the previous year—with 15 being sacked and eight resigning as a result of that; and is that what his chief executive meant when he said it was just “a few bad apples” and “probably five in the whole organisation”?

**Hon Damien O'Connor:** That figure represents about 2.5 percent of the 3,800 employees we have. I have said publicly in this House time and time again that we will investigate any allegations, be they by prisoners, by staff, or by the public. We will continue to do that. I am pleased to say that the vast majority of those allegations have proven to be untrue, thankfully.

**Hon Phil Goff:** How does the strict approach to staffing matters today compare with the approach in the 1990s under the National Government, when escapes were running at up to 166 a year compared with just 20 a year now, and when in one prison, Rangipō prison, of the inmates who were tested, 61 percent tested positive for drug use?

**Hon DAMIEN O'CONNOR:** Those figures speak for themselves. In relation to drug testing and escapes, every indicator on an international basis says that this Government and our Ministers have done a very good job in those areas. The previous Government completely neglected the Department of Corrections and ran the whole system down.

**Simon Power:** Why did his department spend \$8,000 to hire actors to role play scenarios for guards seeking promotion?

**Hon DAMIEN O'CONNOR:** I am informed that that figure is for over 3 years. It is far better to train staff right across the corrections system to deal with difficult situations, rather than to front up with completely inexperienced and untrained staff and to try to resolve the situation at the time.

**Simon Power:** What does it say about the leadership within his department when 91 staff members in management positions are only acting managers?

**Hon DAMIEN O'CONNOR:** We have been going through a review of the public prison system and a review of its head office, to make the improvements that that member keeps demanding. That is why we have held those managers in temporary positions. I am pleased to say that the results of the Public Prisons Service review have now been completed and the staff informed of them, and that the vast majority of those people will be employed full-time.

**Ron Mark:** Has the Minister seen the rather conflicting reports and criticisms of the Department of Corrections in the media; and specifically, can he confirm that when New Zealand First has said it has no confidence in the senior management, it means it, that when New Zealand First has said it wants corrupt staff to be rooted out and fired, it means it, and that when New Zealand First says officers who are in inappropriate relationships with inmates need to be investigated and, where found guilty, fired, it means it—

**Madam SPEAKER:** It is not within the Minister's responsibility to confirm other parties' positions.

**Ron Mark:** I raise a point of order, Madam Speaker. I started my question by asking the Minister whether he had seen reports, and I was concluding by making the comparison with some political commentators who demand things and, when those things occur, then complain—unlike other political parties that do not. I was asking him to confirm that.

**Gerry Brownlee:** I raise a point of order, Madam Speaker. When we ask questions each day, we have to take some evidence down to the Clerk to show the veracity of the questions. I wonder whether Mr Mark would consider tabling those reports, in order for him to verify his question and not simply be a patsy for the Government.

**Madam SPEAKER:** As I am sure the member knows, that verification order does not apply to supplementary questions. However, would the Minister please just respond to the part of the question with ministerial responsibility.

**Hon DAMIEN O'CONNOR:** Yes, I have seen reports and had claims made by New Zealand First, and a huge number of those have proven to be correct. That member raises them genuinely, unlike Simon Power, who raises them for cheap, political point-scoring, which undermines the morale of the vast majority of corrections staff, who do an excellent job day in, day out. It is about time that Mr Power supported them and supported corrections.

### **Organic Farming—Sustainable Inputs**

**9. NANDOR TANCZOS (Green) to the Minister of Agriculture:** Does he agree with the Hon Dr Michael Cullen's recent statement to the House that "Organic farming uses a range of unnatural inputs that happen to be 19<sup>th</sup> century in their technology and that are not necessarily sustainable."?

**Hon JIM ANDERTON (Minister of Agriculture):** Yes, I do. As with any land-based agricultural system, organics requires a range of inputs to ensure production and to provide disease and pest control. Currently, some of the technologies available to organic growers are potentially toxic and unsustainable if not managed well and applied with care—reliance on copper sprays for disease control is a particular example. The Government is working with the organic sector to develop new tools and technologies to deliver the growth potential of organics, and to remove the risks associated with these technologies—for example, the Ministry of Agriculture and Forestry's Sustainable Farming Fund project is investigating the vapour biocontrol system as a replacement for copper sprays, to control black spot in apples.

**Nandor Tanczos:** Is the Minister familiar with the United Nations report *Organic Agriculture and Food Security*, which states that conventional agriculture together with

deforestation and rangeland burning are responsible for 30 percent of carbon dioxide and 90 percent of nitrous oxide emissions worldwide, and that a worldwide shift to organic agriculture could fight world hunger; improve environmental quality, economic efficiency, and social equity; and, at the same time, tackle climate change?

**Hon JIM ANDERTON:** I am sure every sphere of these arguments can take some consolation from reports like that. But I have to say to the member that there is clear evidence that a management approach, rather than a specific production system, is the key influence on sediment and nutrient runoff—for example, into waterways. That is demonstrated in work completed by the Foundation for Research, Science and Technology and the Sustainable Farming Fund in the funded project that compared sediment and nutrient runoff from hill-country sheep and beef from both organic and conventional farms. What this research effectively shows is that organic farming systems do not necessarily improve the quality of water runoff.

**Nandor Tanczos:** Is the Minister aware of growing evidence from the United States and New Zealand that soils may be as important as forests in storing carbon, and that organic systems generally trap more carbon in soil than conventional systems because of their explicit focus on building healthy soils; if so, how is the Government building this into its plans for carbon neutrality?

**Hon JIM ANDERTON:** Yes, the Government and its agencies are aware of that research. But I am advised that soil carbon can increase or decrease in organic agriculture, depending on the management techniques used in the farming system. Soil carbon can increase under pasture in both organic and conventional systems—for example, soil carbon in arable agriculture accumulates under zero or minimum tillage. However, soil carbon is rapidly depleted, once the land is cultivated, in either organic or conventional agriculture.

**Nandor Tanczos:** What is the Government doing to ensure that Landcorp, which is New Zealand's biggest farmer, contributes to the Government's vision of sustainability and carbon neutrality by at least piloting organic forms of production on some of its farms—and I note that it has no farms currently using organic production methods—particularly in the areas of sheep and beef farming, where returns for conventional produce have been low over recent years and the price premium for organic produce particularly high, which are trends likely to continue?

**Hon JIM ANDERTON:** Yes, the Government expects its agencies to operate on a sustainable basis. However, the decision as to whether to farm organically is an operational decision under the State-Owned Enterprises Act 1986 and, therefore, it rests with the Landcorp board and management. However, I am advised by Landcorp that it has considered commercial proposals that would use organic methods, and it would assess any future such proposals based on their commercial and sustainability merits.

**Hon Dr Michael Cullen:** In view of the reference to copper-based products, can the Minister confirm that copper mining is often one of the most environmentally damaging forms of mining in the world, and are any studies being done on the concept of “peak copper”?

**Hon JIM ANDERTON:** I am not aware of any such studies, but if the Minister of Finance would like to advise me of them I would be interested in reading them.

**Nandor Tanczos:** I seek leave to table the Bio-Gro certification standards, which indicate that the use of copper is restricted.

Document not tabled.

### **Immigration, Minister—Developments**

**10. Dr the Hon LOCKWOOD SMITH (National—Rodney) to the Minister of Immigration:** What does he consider to be the three most important developments he has progressed as Minister of Immigration?

**Hon DAVID CUNLIFFE (Minister of Immigration):** Immigration is essential to New Zealand's economic transformation and contributes significantly to our evolving national identity. To support this, the Government has been progressing a major change programme across immigration operations, policy, and legislation. This will help us to deliver enhanced skills, security, and settlement outcomes.

**Dr the Hon Lockwood Smith:** Which of those developments does he consider to be his greatest achievement, and why?

**Hon DAVID CUNLIFFE:** We will leave that for the public to judge while we get on and do the work.

**Dr the Hon Lockwood Smith:** What challenges remain to be solved by him as the Minister of Immigration, if any?

**Hon DAVID CUNLIFFE:** The department is always seeking to self-improve. No organisation that deals with the volume of work that immigration does—nearly half a million decisions each year for over two million border crossings—will get it right all the time. My focus has been on improving the underlying systems that will generate increased performance over time.

**Dr the Hon Lockwood Smith:** How much, as Minister, did he personally contribute to those claimed achievements?

**Hon DAVID CUNLIFFE:** As I said earlier, I am happy to let the public judge that, as I am sure the member was when he was the Associate Minister of Immigration in 1999.

**Dr the Hon Lockwood Smith:** What reports has the Minister seen about how his achievements as a Minister compare with those of, say, the Hon David Parker as the Minister responsible for Climate Change Issues?

**Hon DAVID CUNLIFFE:** All I can say is that the member does not get out enough.

**Darren Hughes:** In explaining Government policy around the country, has the Minister been forced to leave any public events via a lavatory window?

**Hon DAVID CUNLIFFE:** I have no recollection of that.

**Peter Brown:** Does the Minister share our view that removing the Immigration Service from under the auspices of the Department of Labour and setting up a separate immigration service would be a very significant development indeed?

**Hon DAVID CUNLIFFE:** While undoubtedly being significant, it may not assist good labour market outcomes.

### **Health Services—Quality of Advice**

**11. MARYAN STREET (Labour) to the Minister of Health:** Is he satisfied with the quality of advice available from the New Zealand health system?

**Hon PETE HODGSON (Minister of Health):** Yes; in general, I am. However, last week National's Tony Ryall claimed that the MidCentral District Health Board was not offering patients treatment in Australia when, in fact, it is. He seems unable to keep up. Also, last week Katrina Shanks stated that 600 midwives had left the sector in the past 12 months when, in fact, the number of midwives has risen slightly. She cannot keep up either, and she cannot count. Then we had National's Wayne Mapp saying that too many people are going to the emergency department, whereas National's Tony Ryall says that a National Government will remove the cap on general practitioner's fees, which would lead to more people going to the emergency department. So National members cannot keep up, they cannot count, and they cannot agree amongst themselves.

**Maryan Street:** What other misleading statements and poor conclusions on New Zealand's health system seem to be coming out of the National Party camp?

**Hon PETE HODGSON:** Many statements, all issued regionally, all from National's Tony Ryall—

**Gerry Brownlee:** I raise a point of order, Madam Speaker. Surely at least the wording of that question was wrong. I think the intent was quite inappropriate for parliamentary question time, but if that is not to be ruled, I think the wording was inappropriate.

**Madam SPEAKER:** It is a matter of debate, but maybe the member would like to rephrase the question for the Minister.

**Maryan Street:** What other reports has the Minister seen recently on the conclusions arising out of the New Zealand health system?

**Hon PETE HODGSON:** I have seen a number of reports. For example, I have seen reports responding to the many statements issued from the National Party's Tony Ryall, saying that first specialist assessments for elective surgical—

**Hon Dr Nick Smith:** I raise a point of order, Madam Speaker. You will recall that last Thursday you asked me to leave the Chamber in respect of a question to the Minister of Justice about New Zealand First and what reports had been received. I simply ask for a little bit of consistency. You ruled on that occasion that it was not appropriate to ask the Minister of Justice a question on what reports he had received about New Zealand First in respect of the electoral law before the House. Why is there a change of rules today—

**Madam SPEAKER:** Would the member please be seated. I thank the member. I recall the matter clearly; it was a matter of ministerial responsibility. The Minister had no ministerial responsibility, another Minister did, and I ruled accordingly. Would the Minister please address the question.

**Hon PETE HODGSON:** Yes. I have had many reports in response to regionally issued statements from National's Tony Ryall. All of these reports said that first specialist assessments for elective surgical services had dropped drastically. The feedback from district health boards has been very interesting. A few pointed out that Mr Ryall had his facts wrong; one was able to point out that Mr Ryall had his facts wrong again. But of all the rebuttals heaped on National's head, my favourite comes from the Canterbury District Health Board, which said that rather than counting the number of first specialist assessments, it measures efficiency and quality of service. It went on to say that the 100 percent increase in the number of hips and knees replaced in Canterbury since 2004 has been achieved with a reduced number of first specialist assessments being required. We can see that more surgery means less assessment. Mr Ryall continues to find fault at a time when elective surgical services are at an all-time high since reliable reporting began.

### **Te Puni Kōkiri—Confidence**

**12. Hon TAU HENARE (National) to the Minister of Māori Affairs:** Does he have confidence in Te Puni Kōkiri; if so, why?

**Hon PAREKURA HOROMIA (Minister of Māori Affairs):** Yes, I have confidence in Te Puni Kōkiri because the employees are hard-working and conscientious.

**Hon Tau Henare:** Has Te Puni Kōkiri received the final report from its internal investigation into its underspend from the last financial year; if so, will the Minister release that report to the public?

**Hon PAREKURA HOROMIA:** The variance reported in the Te Puni Kōkiri annual report in respect of the Māori Potential Fund, the non-departmental expenditure, is not

an underspend. This funding was reprioritised during Budget 2007 for initiatives to be undertaken during 2007-08, and expense transfers of \$3.6 million into 2007-08 were approved to fund Māori wardens' development and the extension to the Treaty 2U touring exhibition.

**H V Ross Robertson:** Can the Minister tell the House what forward-looking work Te Puni Kōkiri has undertaken to help realise Māori potential?

**Hon PAREKURA HOROMIA:** Along with Te Puni Kōkiri, I recently launched a publication—*Ngā Kaihanga Hou*—for Māori future makers. This publication presents research that explores the key drivers of future change in the global economy, the current position of Māori in the economy, and what needs to be done now to position Māori for optimal success in the future. Those key things are encouraging Māori into growth and strategic industries, increasing export growth and participation, improving the qualification base for Māori, promoting higher levels of entrepreneurship, and nurturing innovation.

**Dr Pita Sharples:** What advice did Te Puni Kōkiri give the Minister to announce on TV3 last Thursday that Tame Iti is not a terrorist, and does he stand by his comment: "I have known Tame Iti for a long time as a friend and whatever else, and I think he's an aging rocker."?

**Hon PAREKURA HOROMIA:** My ministry gave me no advice. That comment was a true comment on my affiliation with Tame Iti.

**Hon Tau Henare:** Can the Minister confirm that Te Puni Kōkiri has put all future funding of community organisations on hold and is directing those organisations it would normally fund to other Government ministries, all because after 2 years of not bidding for an increase, it underspent on last year's budget?

**Hon PAREKURA HOROMIA:** In addition, an in-principle expense transfer in 2007-08 of up to \$4 million was approved to fund cross-agency partnered interventions. Those interventions are certainly in relation to strengthening issues around young people and those who are socially disadvantaged. Certainly, at the moment, if one looks at Gisborne one sees that in 1999 there were 2,007 unemployed youths in the age band of 18 to 20-year-olds and that now there is one unemployed youth. That is the sort of advance that people are making. Across the board, the unemployment rate has dropped. Of those people on unemployment benefits, 80.6 percent have removed themselves. That is the sort of work that Te Puni Kōkiri encourages.

**Hon Tau Henare:** What advice does the Minister have for those community organisations that have applied for assistance but been told to go somewhere else to find help, because there is no money at Te Puni Kōkiri?

**Hon PAREKURA HOROMIA:** If that member dares to come over and sit down with me I will show him that there is finance that is prudently managed. Audit New Zealand said: "We found the systems put in place to administer and distribute NDOE appropriations to be robust. The basis for our assessing the new systems as robust is as follows: ... we consider that the introduction of contract advisers in the regional offices adds an extra level of quality assurance in the contract awarding and monitoring processes employed by TPK."

**Hon Tau Henare:** I seek leave to table a letter from a community organisation that states that there is not any money to be had.

**Madam SPEAKER:** Leave is sought to table that document. Is there any objection? Yes, there is objection.

**Dr Pita Sharples:** What advice has the Minister received from Te Puni Kōkiri to respond to yesterday's media statement from the Montreal Maori Solidarity Committee: "We strongly oppose New Zealand's bid for a place on the UN Human Rights Council for its clear suppression of the legitimate rights to dissent, and for the ongoing violent

repression of Māori people. We demand that New Zealand government release those arrested and apologize to the Tuhoë.”?

**Hon PAREKURA HOROMIA:** I would like to remind the member that this country has one of the best sets of race relationships. There is tension in that, certainly, but it is not new; it has come through. If we are serious about nationhood, then we should not be putting us asunder to test that, just for the sake of it. A whole lot of rubbish is being talked about on this issue at the moment.

## **PROTECTED DISCLOSURES AMENDMENT BILL**

### **First Reading**

Debate resumed from 18 October.

**R DOUG WOOLERTON (NZ First):** New Zealand First supports the Protected Disclosures Amendment Bill going to a select committee. In doing so we are saying that, in this country, not only is it important for justice to be seen to be done but also it is important that everybody in society knows where to go to seek justice and redress in any matter of wrongdoing. People need to understand that where they do that, to a degree, they will have some sort of protection under the law.

We in New Zealand First also believe—and we have spoken about it many times—that the law does not confine itself just to the letter of the law. We believe that people should understand the protocols that in many instances guide people in jobs of responsibility in our country. We believe it is important that people live up to their moral obligations as well as living up to the letter of the law. We cannot always rely just on the letter of the law. If we were to do so, our courts would be jammed full of people seeking redress over petty matters. So we think it is most important, if our society is to work properly, that when there is wrongdoing and someone within an organisation sees that something is seriously amiss—and often it is an employee—that person knows not only what to do but also where to go in order to redress the situation.

New Zealand First would like to see this bill go to a select committee. We would like the people of New Zealand to have their right and proper chance to submit on this issue, and we would like to hear what they say.

**KEITH LOCKE (Green):** The Green Party will be supporting the Protected Disclosures Amendment Bill going to the select committee. The Green Party supported the original legislation that this bill is amending and improving on. The whole area of whistleblowers is fraught with difficulty. We need to protect whistleblowers, particularly when they expose very serious wrongdoing, be it of a management type or of a financial type. Often the people doing the wrongdoing, if they are in positions of authority in the public organisation, have a vested interest in persecuting any potential whistleblower or any person who might support that whistleblower.

In respect of the original legislation I remember we said at the time that there were some problems—in a certain sense there is an inevitability of problems—of the whistleblower having to go through the official management structure of the organisation in making a complaint, in that sometimes the person he or she was complaining to was directly or indirectly involved in the wrongdoing. This bill helps to rectify that problem by providing a certain ability for the Ombudsman to say that he or she can see the whistleblower’s point and will direct that person’s complaint to a more appropriate authority or person who is clearly not accused of the wrongdoing being brought into the picture in the whistle-blowing. I think that helps, as well.

One of the issues involved in that, of course, is protecting the confidentiality of the whistleblower, and that is sometimes difficult. In organisations people will ask who blew the whistle, and word gets around and people start talking. The situation is

somewhat difficult. Having more protections, with the Ombudsman being involved in those protections, is very important, because if people think that both their jobs and their reputations will be threatened if they whistle-blow, then we will not get very far. It is important not only to protect the whistleblower but also to protect those who, as the bill states, come forward on a voluntary basis and say: “Yes, I would like to give information. I support what the whistleblower has said. There is corruption here that should be investigated, and I saw an instance of it in looking through the books the other day.”, or whatever the situation might be.

Having the institution of the Ombudsman take more of a managing role in how the whistle-blowing complaint proceeds is, I think, quite useful too, because the Ombudsman is a neutral party. The Ombudsman is experienced in these matters, and can understand and build up the expertise of where organisations can go wrong in dealing with whistle-blowing. For most organisations it would be quite a novel event. Under the Protected Disclosures Act to date there have not been very many uses of the whistle-blowing legislation, which indicates some problems with it. The management of most organisations would not be too experienced in how to deal with complaints because of that, and the Ombudsman can help, in that respect. The Ombudsman has a more technical role too in defining the information and other technical requirements in terms of applying the Act correctly.

The bill’s explanatory note indicates that, under the original Act, if somebody did something a bit technically wrong and did not refer to the Act when making a complaint—and just said: “I want to expose some wrongdoing.”—or if he or she missed some step in the technical procedures, then that person could get into problems. This bill is saying that as long as the whistleblower is acting in good faith in making the complaint, even if he or she makes a few technical mistakes along the way, the complaint should proceed and should not be undermined or ruled out because of that. The Ombudsman will play a role in determining that, as well.

The Green Party thinks that this is a very good bill. Whistle-blowing is so essential in keeping us as a robust democracy and keeping public institutions accountable. The more we can correct a situation where an organisation is secretive, can hide its wrongdoing behind walls of secrecy, and perhaps punish, in one way or another, people who object, the more our democracy will prosper. Thank you.

**HONE HARAWIRA (Māori Party—Te Tai Tokerau):** When employees, former employees, or members of an organisation are able to report misconduct such as a violation of health and safety regulations, corruption, fraud, or any other activities that might provide a direct threat to public interest, we politician types have coined a phrase making it all sound nice and legal. We call it protected disclosure.

The bureaucrats like to call it whistle-blowing because it makes them feel that what they have done is righteous and good for the country. There is another name for it, of course, and that is the one that the hoodlums use: they call it narking. If one gets caught doing it, one does not get any medals or write-ups in the paper; one gets the bash.

The original Protected Disclosures Act, whichever way one wants to look at it, was koretake anyway. A recent review highlighted evidence of delays, inconsistencies, confusion, difficulties in using the procedures, a lack of communication, a lack of confidentiality, and a lack of protection of identity. That is hardly the promise a person would want to lay out in front of those potential narks and whistleblowers who he or she hopes will sabotage their careers to serve his or her interests. In fact, given the current flaws in this legislation, it is no wonder narking has such a bad name.

Then there is the question about exactly what kind of crime we are talking about, because the real crime ain’t the stuff plastered across the front pages of one’s local paper; it is the stuff hidden away in the pages of the business section. Criminologist Dr

Greg Newbold reckons that for every dollar stolen by blue-collar criminals in this country, around \$40 slides into middle-class pockets. Get this, folks: your poncy-ass, professional, pilfering pals are taking this country for millions, while my whanaunga are filling up the jails, and you wonder why us Māori have this strange notion that the criminal justice system works only for rich white folks. Insider trading, price fixing, illegal offshore accounts, tax avoidance, employee theft, insurance fraud, stolen or counterfeit product sales—mate, when it comes to crime, the white-collar bandits have got it sussed.

To confirm that strange Māori notion about rich white criminals always getting the breaks, even David Bradshaw of the Serious Fraud Office reckons that the approach taken towards white-collar offending tends toward the softly softly method of crime control. In his 2004 annual report, Bradshaw noted several cases that suggested white-collar criminals were being treated more leniently than other criminals. Jonathan Krebs of the Law Society's criminal committee was not so subtle. Just last month he said that the police had a poor record of tackling white-collar fraud, and instead prioritised resources towards physical crime.

This stuff about how the white-collar crims get away while poor Polynesian crims get jailed for some rather petty bloody offences makes me want to go out and preach in prisons to all of the whanaunga I have in there: "Mend your ways, all ye brownies who have fallen by the wayside. Come unto the path of righteousness, whiteness, light fingers, and fraudulence; and if thou must sin, then sin with aplomb, sin with style, and sin with a white collar for greatest effect. Make lots and lots of money, slip a smidgeon to the Lord, and sin against only the poor and the Māori, for theirs is already the kingdom of heaven when they die, so they will not mind you robbing them blind while they live."

But to bring a sense of perspective to all this, let me also say that while white corporate raiders continue on their merry way, untroubled by the pathetically weak laws of this land, Māori people are being hunted down and arrested, as we speak. That is not because of any life-threatening actions, but because of this Government's kihi-kōtore, sycophantic, yassum-massa attitude to America's demand that we accept, unreservedly, its definition of terrorism, which is justified, no doubt, by some protected disclosures.

Is this whole terrorism thing over-blown? Hell, yes! Television One flies in an expert on terrorism and protected disclosures. He looks over the facts, and he tells us that the police action is over the top, unnecessary, and overkill, and that what has been identified is not terrorism, at all, but just good old-fashioned Kiwi activism. Even Ross Meurant—who was in the Auckland task force and the Red Squad, and was the MP who used protected disclosure to try to get me lynched for terrorism during his maiden speech in this very House—reckons that officers were victims of their own propaganda. He said "the actions of the police are totally excessive in the extreme", and added: "This is always the case where subjective assessment of information is peer-reviewed by one's immediate supervisor and all persons on the police unit concerned have a self-interest to justify their existence". Meurant compared the police actions to those of the Bush administration invading Iraq with supposed evidence of weapons of mass destruction.

Is there a threat to the stability of this nation? Hell, yes! Here is a protected disclosure, for example, from the Justice and Electoral Committee, where we are trying to turn back this Labour Government's nasty little attempt to stack the next election to suit itself, in the face of massive criticism from the Law Society, the Human Rights Commission, and thousands of others.

Is there a threat to the Prime Minister? Hell, yes! If the polls are to be believed, John Key is hoping to put her out of business permanently at the next election.

Is there a threat to life? Hell, yes! Pissing off a policeman, like Steven Wallace did, can be a very serious threat to one's life.

Are these threats from Māori serious? Hell, yes! There is mounting frustration and anger right across the country by Māori genuinely aggrieved by the continued loss of lands, the denial of the Treaty, and now these raids, smashing into Māori homes and terrorising Māori communities. Of course Māori are bloody angry. Why would they not be?

But guess what, folks: none of this is news really. Māori have been protesting land theft for 150 years, and the State forces have always opposed them. How many times have we heard Māori says that they are prepared to fight and die for their land. For heaven's sake! Shane Jones used to talk like that, before Helen Clark got him by the tongue. Tariana Turia came to this House as a dedicated Māori activist, and she has not changed one iota. I got in here only because of a tidal wave of unrest and an absolute rejection by Māoridom of the thieving ways of this Government.

So is this terrorism threat serious? Yes; hell, yes! The actions of the New Zealand Police—who, contrary to what the Minister says, are not separate from the Government but are, in fact, an arm of the Government—highlight an ongoing ignorance of the Māori community by the New Zealand Police; a reluctance to engage Māori and a willingness to arrest Māori; a refusal to allow their own Māori officers to negotiate on day one, in order to save the country a million-dollar surveillance operation over the next 18 months; and a readiness to brutalise Tūhoe in exactly the same way the they did 100 years ago, even using 70 armed constabulary like they did back then.

The recent actions of the New Zealand Police, with the support of this Labour Government, signal clearly not just to Tūhoe but also to the rest of Māoridom that, hell yes, the terrorism of the Māori community has, in fact, never ever ended—

**The ASSISTANT SPEAKER (Ann Hartley):** Please be seated. I have given the member a fair bit of latitude but he really needs to come back to debating this bill.

**HONE HARAWIRA:** This bill plans to deal with all the inefficiencies and errors in the Act by allowing the Ombudsman to provide information on the procedures that must be followed when making a disclosure, information on protection for those who make the disclosure, and guidance for those considering blowing the whistle on their mates. That is great, of course, but in terms of protected disclosure, what protection would there be for those of us in the Māori Party who are required to advise our electorates that the Labour Maori MPs, including Parekura Horomia, Nanaia Mahuta, Mahara Okeroa, Mita Ririnui, Dover Samuels, Dave Hereora, and Shane Jones, voted to delete “the Treaty of Waitangi and its principles” from all legislation? In terms of protected disclosure, what protection is there for those of us who have to blow the whistle on those same Labour Māori MPs for going along with this Government's decision to cancel manaaki taura?

Mind you, when we think about it, maybe it is Parekura Horomia, Nanaia Mahuta, Mahara Okeroa, Mita Ririnui, Dover Samuels, Dave Hereora, and Shane Jones who will need the protection when their people find out that they also sat by and said nothing when their own Government decided to take the Treaty out of the curriculum. Indeed, that protection for protected disclosure may be an absolute necessity come election time, when our people find out that those very same MPs—yes, members know the ones—are also opposed to the Declaration on the Rights of Indigenous Peoples, which was signed up to by 143 countries right across the world.

The Māori Party takes this opportunity to raise again the injustice of poor people being penalised for crimes of need, while the white-collar boys continue to get away with their crimes of greed. We condemn the system of injustice that continues to brutalise and traumatise Māori communities, while those who commit crime against the

whole of society do not just get more lenient treatment, but some even get knighthoods for their acts of financial piracy and destruction of whole communities.

**Hon PAREKURA HOROMIA (Minister of Māori Affairs):** I raise a point of order, Madam Speaker. I just want to point out that the Māori members in the Labour Party have supported this bill going to the select committee.

**The ASSISTANT SPEAKER (Ann Hartley):** That is not a point of order; it is a debating point.

**Hon PETER DUNNE (Leader—United Future):** That inflammatory speech would be one of the most disgusting, embittered, divisive, and downright irrelevant speeches I have heard in this House in a long time, and it ill becomes the dignity of the member Hone Harawira and this House to behave in that manner on a matter of this type.

**Hone Harawira:** I raise a point of order, Madam Speaker. Could you ask the speaker to stick to the bill.

**The ASSISTANT SPEAKER (Ann Hartley):** I will just rule on that. The member is trifling with the Chair. The member was speaking to the bill, and that is not a point of order.

**Hon PETER DUNNE:** I intend to waste no more time on the member, because, frankly, he does not deserve it.

**Hone Harawira:** Point of order—

**The ASSISTANT SPEAKER (Ann Hartley):** I warn the member about raising points of order that are not points of order.

**Hone Harawira:** I raise a point of order, Madam Speaker. Could you just clarify why that was not a point of order, please.

**The ASSISTANT SPEAKER (Ann Hartley):** As the member knows, the member speaking is entitled to respond to the previous speech. He is just going to continue with his speech.

**Hon PETER DUNNE:** Thank you, Madam Assistant Speaker—

**Hone Harawira:** Point of order—

**The ASSISTANT SPEAKER (Ann Hartley):** I have ruled on that point of order.

**Hone Harawira:** I raise a point of order, Madam Speaker. I take personal offence at the comments made by the speaker, and I would ask him to withdraw and apologise.

**Hon PETER DUNNE:** Speaking to the point of order, I, like the rest of New Zealand, take personal offence at many of the comments made in the speech preceding mine, so I think we are about even.

**Hone Harawira:** Point of order—

**The ASSISTANT SPEAKER (Ann Hartley):** Please be seated. I am going to rule on this point of order. The member is really trifling with the Chair. I do not accept his point of order. I ask the Hon Peter Dunne to please continue.

**Hon PETER DUNNE:** I want to indicate that United Future supports the introduction of the Protected Disclosures Amendment Bill. The bill amends the original legislation, which was passed in 2000. If one goes back a few years, one notes that it is a little ironic that we now legitimate the practice of protected disclosure, because many years ago—in fact, up until the time of the incidents that led to the 2000 legislation—this was an activity that not only was frowned upon by officialdom but was actively sanctioned against.

I can recall when as a young public servant in the Department of Trade and Industry in the late 1970s it was clear that significant abuses were occurring with the then import licensing scheme, and a source within the department was drawing those abuses to the attention of a national newspaper. All of us who were involved in working in that section were lined up not once but several times by the permanent head and challenged as to who was the source of this outlandish behaviour—behaviour that ultimately led to

the individuals concerned being tried in court for fraud. The official attitude at that time was that anyone who sought to draw attention to the fact that wrongdoing was occurring was not to be protected, let alone applauded, but was to be hunted down, closed down, and shut up. So it is somewhat ironic that 30 years later we now pass legislation that protects the person who makes information available in that circumstance. As the Minister said, it is progress; it is a recognition of the fact that there are times when one has to draw a line and ensure that information that would otherwise be withheld is made public in the wider public interest.

This bill refines and changes some of the provisions contained in the original Act—which, if my memory serves me correctly, arose out of the disclosure of certain information relating to the practice of Lake Alice Hospital, just west of Palmerston North—and therefore brings the practice that has emerged since the year 2000 and the passage of the original bill more into line with contemporary arrangements. That is a good step. I do not want to see us go to the point where the rule of law—for want of a better term—is totally subverted in the interests of all disclosure that occurs; but where there is a legitimate case for what has become known as whistle-blowing to have occurred, then the whistleblower or those who assist the whistleblower are entitled to some protection, and that is what this bill seeks to provide.

When the bill gets to the select committee a number of people will want to make submissions upon the more technical nature of its provisions to ensure that the protections being advanced are in fact adequate for the purpose for which the legislation has been drafted, and that is entirely as it should be. But in this day and age, one can hardly object to the practice of disclosure that occurs in such circumstances. There is a proud history. This really developed, I guess, in the international environment, right since the time of Watergate and Deep Throat of disclosure being made where a person in a position of some trust deems it to be in the public interest to make that disclosure. We have come to accept throughout Western society that in such circumstances those whistleblowers deserve protection rather than harassment. They deserve encouragement in the quietest sense rather than a penalty for their activity. This legislation, with its parent Act, is the way in which we regulate that environment in New Zealand.

So, with those few words, I am happy to support the bill, and I await the outcome of its consideration by the select committee.

**CHESTER BORROWS (National—Whanganui):** The National Party is pleased to support the Protected Disclosures Amendment Bill and looks forward to discussion in the select committee. The bill is designed to give the Ombudsman an enhanced guiding, reviewing, and investigative role in disclosures of wrongdoing. A review of the 2000 Act in 2003 revealed some evidence of delays, inconsistencies, and other difficulties, including a lack of clarity for whistleblowers as to how to go about disclosing their concerns.

It is good to see that one of the prime points of this legislation is that the bill will broaden the scope of who is to be considered a protected person, treating board members and volunteers in organisations as employees for the purpose of the protection of the Act. In recent times we have seen, for instance, whistle-blowing by a board member of the Whanganui District Health Board, Clive Solomon, who made his disclosures to the public about deep concerns he had as far as health delivery in Wanganui was concerned. In many ways he was strongly castigated by those looking on, by other members of the board, and by employees of the board, as well. We saw, for instance, moves to sanction him—quite unfairly—for bringing to the notice of the public a number of concerns that later on were found by a review by the Ministry of Health to be completely justified. Although the reviewing officers may not have been

particularly keen on the way in which Mr Solomon made these matters public, nevertheless they agreed that they were worthy of being brought into the public arena.

Another provision of this Protected Disclosures Amendment Bill is that it will allow to be protected those disclosures that may not formally fit into the criteria of what has previously been protected. The importance of that was asserted by the former Chief Ombudsman Sir Brian Elwood, who said in reference to protection of disclosures: “It should become part of the psyche of New Zealand society. It is easier to achieve that psyche if legislation applies generally with few, if any, exceptions.” We should all be taking an interest in what is going on around us. Those of us who are involved in Government departments specifically—but also those in any other organisation that is dealing with members of the public—have by our own power and ability the means to inflict circumstances on to members of the public, who unknowingly or unwittingly have to accept a level of service, and may have to accept a set of circumstances that are actually working against them in a negative way. Anyone in an organisation should be able to bring that to the attention of the public.

We heard previously—and it is a matter of history now—that the initial legislation came out of the Pugmire disclosures in respect of Lake Alice Hospital. Since then we have seen some other interesting disclosures that were dealt with in other ways. I wonder, if this legislation was actually in vogue at the time, whether, for instance, Mr Kit Richards would have been dealt with in the way that he was. Members may remember that he was the man who worked for Timberlands on the West Coast who sent some email correspondence to other people, both within and outside the organisation. He did not formally fit the criterion for protection under the whistleblowers’ legislation. The Prime Minister said she wanted his head on a plate by lunchtime, and she got it. Is that the society we want to live in within this country? No, I do not think it is the society that we want to live in. We want to know that people who have the courage to bring forth these issues to the public and to hold a point of view will not lose their job because they happen to invoke the ire of the Prime Minister or anybody else.

The legislation also allows protection for those who substantially comply with the Act but with some minor technical failure fall outside it. It protects witnesses in support of the whistleblower. So the friends of Mr Richards, Mr Pugmire, or Mr Solomon, who may have decided—because of evidence that they had, or knowledge or experience that they had—to support those disclosures, are also protected by this legislation. That is a good thing too.

The Ombudsman can take a managing and coordinating role but is not given the role to advocate for the whistleblower or issue directions. The Ombudsmen have consecutively had the confidence of Parliament; the Ombudsmen are seen as holding a very important role within New Zealand society and are held in high regard across Parliament and the public. They are a good fit for the increased facilitation and coordination role. We look forward to further discussion around those matters when this bill goes before the select committee.

It was interesting to see in recent times disclosures made by Senior Sergeant Iain Saunders within the police. He was working on a project in relation to police recruiting in the shadow of other comments that had been made by the manager of human resources within the police. The work that he was doing was throwing up some inconsistencies with the line that was being trotted out nationally on the effects of recruiting policy as it was seeing recruits enter the Police College. A newspaper got hold of this work and wanted release of it. It sought this from the police through the official information channels, and it was denied and denied. Time frames expired and

the information still was not released. Eventually the newspaper reporter went to the Ombudsman and the police had to release it.

On release and publication of that information the human resources manager went to Senior Sergeant Iain Saunders and made threats to him—as they were perceived by Mr Saunders, in any event—to destroy his career. What happened then? A review was held by someone contracted by the police, a Mr Churchman, who was an expert in labour relations and industrial law. But we know that after his inquiry, which lasted for several weeks, there were absolutely no written statements taken from a number of key players in that investigation. In the end it was found that Mr Annan had apparently not made a serious threat to destroy Mr Saunders' career, although the words were used. I find it quite ironic that we had a situation then where we would expect that as a whistleblower Mr Saunders would have been protected by the legislation that existed at the present time, but he still did not have the satisfaction of being able to have the points he was making fully investigated by someone who at least took written statements from those people who were the main players.

Of course, we also saw that on the completion of that investigation, the deputy commissioner came out and said that Mr Annan had been cleared of any wrong doing. This was at a time when other members of the police were under a strict threat—some would say suggestion, or advice—not to go to the media but, what do you know, within the media there was a release that basically said that everything that Mr Saunders said was wrong and everything that Mr Annan said was right. I fail to see how that follows along with the good faith of the employment legislation introduced by this Government, which should have been followed by its servants.

In any event National is looking forward to seeing this matter arrive at the select committee. We will be supporting it and, as I said earlier in the words of the former Chief Ombudsman Sir Brian Elwood, to take responsibility for blowing the whistle, or drawing to the attention of the New Zealand public those inconsistencies that exist within public organisations and negatively impact on New Zealanders, is something we should be encouraging within this society.

**SHANE JONES (Labour):** Kia ora, Madam Assistant Speaker. I stand to take a call on the Protected Disclosures Amendment Bill, which will be referred to the appropriate select committee. I do not plan to continue on in the incendiary way that my fellow Northland Tai Tokerau member Mr Harawira did but rather to focus on the content of the bill.

However, I would like to point out that this bill is designed to give the Ombudsman an enhanced reviewing and investigating role, and we have in our midst Mr McGee, who is soon to depart to assume that role. In the context of this speech—and I took the liberty of checking whether such an insertion into a speech about the Protected Disclosures Amendment Bill would be permitted—I join with other MPs who no doubt will have made, and will be making, congratulatory references to Mr McGee. As a young MP it has been very impressive to watch him dispense advice and knowledge in the House.

This bill strikes at the question of how potential wrongdoing, potential fraud, or acts of a corrupt nature see the light of day when those who suspect they witnessed the potential crime or witnessed potential larceny feel unwilling or unable to give evidence or highlight the existence of such an act. These potential whistleblowers suffer doubts as to whether they should fulfil either an ethical or a moral duty, because historically there have not been comprehensive levels of protection. I would point out, however, that an earlier Labour Government did seek to offer levels of protection to whistleblowers. This is an essential ingredient for any system, any institution, and in particular the public sector to work effectively.

We can all think of instances that have hit the media and indeed have been the substance of debates in this House. There is hardly a member in this House who would not have had referred to him or her from time to time anxieties, doubts, and even suspicions of wrongdoing. Under this bill whistleblowers will enjoy elevated protection. Those who are board members, volunteers, etc. will now be regarded as having the ability to enjoy protection under this proposal. Such a level of protection will not only afford a greater level of security to them when they make the harsh and difficult step to isolate a person or a group of people who may have committed a crime but also obliges the authorities to protect the identity of the whistleblower and to treat with a great deal of judiciousness the information that may be referred to them.

When my colleague Annette King introduced the bill to the House she accentuated the importance of maintaining integrity and standards in the public sector. There are already a host of valves and avenues—processes—to enable decision makers to be made accountable. Earlier we heard from Mr Hone Harawira, who told us in a very heated fashion about his view in terms of the decision makers in relation to recent police actions. I just say to all members, and in particular our Māori members, let us have a clear head and not a fiery mouth, and let us just suspend judgment and embrace Sir James Carroll's dictum of *taihoa* until we are in possession of the information. Flinging around wild accusations and making an already fraught situation more difficult with torrid outbursts does not advance our situation in any way whatsoever.

I was in Australia recently and had occasion to read in one of the local papers over there about a recent cartel case that had been successfully prosecuted. A sum of \$30-odd million had been paid over by the owner of a packaging company called Visy. In that article was an interesting reference to the fact that when Australia sought to extend and develop greater levels of protection in terms of whistle-blowing, it was able to borrow on the American model. I raise this because the problems that we are dealing with here are not isolated to New Zealand. If there are practices, behaviours, and systemic failures that ought to see the light of day and enjoy the disinfectant quality of media scrutiny, or public approval or disapproval, then it does go to the heart of our nation's reputation in the eyes of our trading partners and other nation States that look to us as to the way we are observing the rule of law and contract law, and the manner in which our institutions are governed and managed.

So just as the Aussies managed to borrow, and no doubt amend and adapt an American model, leading to whistleblowers coming to the fore to a substantial settlement to break up a cartel in the packaging area—the name of the company I have earlier referred to—I have no doubt that there will come a time when people who work in our institutions will feel emboldened to bring wrongdoing to the attention of their superiors, public officials, or members of the media, who no doubt will treat it with a level of sophistication and seriousness, which we all too often do not see. The bill accentuates the duty on all of us in this House to ensure that where people make the difficult step to highlight probable wrongdoing, they will not be personally hounded into penury, and their professional standards that have developed in terms of a reputation will not be swept out, down some sort of a bung.

Of course, there will be a fear that vexatious, mischievous, and half-baked claims—one or three of those come forward in the House from time to time—might actually blight this area of the law or the people who hold responsible positions, whether they are senior figures in the education field, leaders in the public sector commercial field, or those handling sensitive areas such as the Department of Corrections. There may be a fear that very negative, embittered minds might use this legislation or this option for a mischievous trivial purpose. When we think of the calibre of the man who is soon to become our newest Ombudsman, I have no doubt in my mind that such claims that are

not substantial, but could be designed for trivial purposes, will be winnowed out, and that this area of the law will not be trivialised, but rather will offer a particularly good level of protection.

From time to time we hear and learn about abusive practices and abusive types of behaviour that have been visited upon women and young workers. Indeed, I remember being a young worker in the Westfield freezing works, in the fellmongery. While I worked there I knew that whatever I did I was going to suffer the boredom of university and get a degree, because suffering green paint down my finely honed legs and going home hairless was not a career. Such things do occur in the fellmongery when one's mind is not on the job. Abusive work practices also are an example where people will be able to complain and not suffer a greater level of either abuse or intimidation. All of these abusive practices will be swept up, and a larger number of people will be able to ensure that workplaces are safe, but superiors and bosses who have an obligation to abide by standards of integrity and to ensure that the institutions are governed and managed in a compliant and law-like manner have to tow the line.

So, along with my colleagues from this side of the House, and in contrast to my whanaunga's incendiary speech, I look forward to learning more about this bill when it eventually returns from the select committee. Kia ora tātou.

**DARREN HUGHES (Labour—Otaki):** I stand to support the motion moved by the Minister of State Services, the Hon Annette King, that the Protected Disclosures Amendment Bill be now read a first time. This bill amends legislation that we in the Labour Party have taken seriously for a long time: the need for there to be on our law books a legal protection for people who do want to be a whistleblower, as it is often called. This legislation had its start in the 1990s when the Labour spokesperson on justice, the Hon Phil Goff, attempted to introduce a member's bill to make sure there was a law in this area. That bill was not successful, because Labour was in Opposition at that time, and the then National Government voted it down. On Labour becoming the Government at the end of 1999, Trevor Mallard as Minister of State Services picked up the idea of having protected disclosures legislation, and it was passed into law. Now we are coming back, after the law has been in effect for some time, to have a look at it.

I know that students from Kirkwood Intermediate School from Christchurch are visiting Parliament today, and I know that they are trying to learn as much as they can about Parliament. One of the great things about our House and our system of democracy is that we put a lot of trust into our elected officials. Through our elected officials we hire the public servants—all the people who work in the different Government departments and ministries across the country and in different areas of importance to New Zealanders. With that has to go a lot of trust, because those people obviously have a lot of responsibility over all our lives and the lives of people in this country and all its communities. But we know that sometimes people do the wrong thing; when they are given responsibility, sometimes that can be misused. If a person is working alongside somebody in an organisation, sees a wrongdoing, and thinks that the right thing should be done, that person wants to have a way of speaking up about that and making sure that it can be put right.

This Protected Disclosures Amendment Bill is all about making sure there is a system where people can safely raise the concerns they have but not get into trouble for doing that. The term "whistleblower" is used to describe a member of staff or a member of the public who sees something going wrong in an organisation he or she is connected with and wants to try to make sure that the right thing can happen.

**Christopher Finlayson:** Like a rotten Government.

**DARREN HUGHES:** I am glad the Opposition member said that, because one of the things this bill actually points out is how transparent and free of corruption our

Public Service in New Zealand is. I think that one of the saddest things in politics in recent times has been the way in which some National members have thrown the word “corrupt” around this Chamber, as though we lived in a country where we cannot trust our Government departments and political parties. I think that that reflected very badly on those members, actually. Whenever international studies have come out that benchmark our institutions of State, of Parliament, and of Government departments against others around the world, we are lucky in New Zealand that we always come out at the top of those surveys. I know that just recently the Ethics Research Center in Washington DC ranked New Zealand’s Public Service as the least corrupt in the world.

That is a good thing, but we have always to make sure that we have mechanisms in place to keep it that way—to keep our systems as good as they possibly can be. That is why we have bills like this to make sure that can happen. Also, a big global organisation called Transparency International has always rated New Zealand as being one of the countries most free from corruption. I guess that whenever people travel, have dealings in other countries and with different systems, and try to negotiate their way through different regimes where there is not such an emphasis as the one we place on honesty, transparency, making sure that the truth is told, and due process—the right thing being done by people—then we can see that because of those other countries where that does not happen to the same extent, it makes us grateful that we live in this country. We have a small, very robust democracy, whereby people when they see things happening want to speak up about them.

I think that this legislation is a good example of Labour’s quite long record of trying to bring legislation like this to Parliament over the last two decades. It has become very important under MMP as well that this bill can take—

**Christopher Finlayson:** Spare us the political science lecture and focus on this bill.

**DARREN HUGHES:** I hear Mr Finlayson interjecting. Well, he is not allowed to take a call on this; he is allowed to take calls only on dry-as-dust bills that none of his colleagues want to speak about. So he has come down to the House for the next bill. But he is so self-obsessed that he cannot wait 5 minutes for someone else to speak in Parliament, because the “Chris Finlayson Show” is about to start and he wants everybody to focus on that—

**Hon Annette King:** On TV.

**DARREN HUGHES:** —now that it is on television. But he will be so disappointed, because he will have to wait a little bit longer while I speak about the virtues and the merits of this first reading of the bill. I am sorry to put the member through so much misery.

Clearly, the bill has two key parts. The first is to extend the number of people who are defined under the legislation—those who will be covered by it. I think that that makes it much clearer. Probably a fair criticism in the review that Mary Scholtens undertook was that people were not always sure how to use the legislation. So although it sat there on the statute book as a good idea and as something people would probably consider worthy, it was not always apparent to people how they could access and use it, or how the internal procedures for all the various forms of Government agencies were using it. Extending the legislation in the way the Minister is proposing will bring in a broader range of organisations and Crown entities, and that should—hopefully—make it clearer for people.

The other thing that is very important, too, is the expanded role of our Ombudsman. That is particularly important given the great role of trust Ombudsmen play, from a parliamentary point of view, appointed as they are as Officers of Parliament. My colleague Mr Jones made reference to the fact that we have just appointed a third Ombudsman in Dave McGee, who will be taking up that position after he leaves his role

as Clerk of the House next Thursday. A number of members, of course, will miss him in his current role, but in moving to the new role of Ombudsman and in being an official Officer of Parliament, he is taking on very important responsibilities on our behalf, just as Ombudsmen do with regard to the complaints of prisoners. Ombudsmen receive a lot of complaints from prisoners who feel that some of their treatment while they are incarcerated is not within the spirit or intent of the law—

**R Doug Woolerton:** No P and stuff like that.

**DARREN HUGHES:** Sorry, Mr Woolerton?

**R Doug Woolerton:** No P.

**DARREN HUGHES:** Ha, ha!—and so Ombudsmen play that role now. We are expanding that role further, along with their longstanding role under the Protected Disclosures Act, and we are making the role much clearer in terms of what they can do. I think that is something that people would have to say is a worthy thing for our Ombudsman to do. I suppose the Government Administration Committee will look over some of the technical amendments in the bill, and go through those roles the Ombudsman will be taking.

The definition of “serious wrongdoing” is also an area the Minister outlined during her first reading speech. We could get into a situation, I guess, where an allegation of serious wrongdoing is made, but when it is investigated it may not stand the ground for that test. So where does that leave people who are trying to invoke the Act? That is something that needs to be considered, as well, as also does the role of the New Zealand Defence Force, which is coming into the bill for the first time.

I think, overall, that the legislation will continue to develop and be of use to people. It had its origins, as I said earlier, with the situation at Lake Alice Hospital, when Neil Pugmire, as an employee, saw things happening in the 1990s in the health system that he did not think were right. He attempted to bring those to the public’s attention and suffered as a result. That is what brought the issue to prominence when Mr Goff was interested in this issue, which led Labour, on becoming the Government, to bring through legislation.

Finally, I guess that the other thing for us to reflect on, as members of Parliament, is that we are often in our constituency clinics in a similar role to that of the topic under discussion this afternoon. People bring to us examples of things they see happening in their communities, their organisations, or their workplaces—somewhere where they see taking place something they are concerned about. Of course, we have the protection as members of Parliament in our elected capacity to be able to make inquiries, which means that we can often act in this way. But in a complex system like the State sector, there are obviously lots of things taking place that would not be reasonable for an elected member of Parliament always to know about. There are people who work far more closely and intimately in the State sector who may see situations where they feel they have to speak out—to “blow the whistle”, so to speak. The amendment bill we have put forward to the House this afternoon on the principal Act will now just take that a step further and make sure we have protections for those people to ensure we have good government in New Zealand. I wish the Government Administration Committee well under the fine chairmanship of Shane Ardern and the deputy chairpersonship of Darien Fenton.

Bill read a first time.

Bill referred to the Government Administration Committee.

**CRIMES (REPEAL OF SEDITIOUS OFFENCES) AMENDMENT BILL****In Committee****Part 1 Amendments to principal Act**

**Hon MARK BURTON (Minister of Justice):** It is good to have this bill back before the Committee of the whole House from the Justice and Electoral Committee. It is an opportunity for us to perhaps have a more careful and extended look at the provisions of the Law Commission's report and its recommendation that New Zealand finally set aside the laws of sedition.

The Law Commission was asked to review the seditious offences provisions set out in sections 81 to 85 of the Crimes Act 1961 and to make any recommendations that it considered to be necessary or, indeed, desirable. The commission concluded in its report that the seditious offences are overly broad and uncertain, and that they infringe on the principle of freedom of expression and have the potential for abuse. I am sure that is a matter that a number of members will want to consider in more detail as we look at this important legislation.

The Law Commission report recommends that sections 81 to 85 of the Crimes Act 1961, which contain these offences, should be repealed. The commission believes that nothing should replace those sections. To the extent that conduct that would be covered by existing sedition provisions needs to be punished—and there are a number of areas that that may well apply to—the commission suggests very strongly that it can be more appropriately dealt with by other provisions of the criminal law. Abolishing sedition, therefore, will better protect the values of democracy and free speech.

It is perhaps appropriate that we visit briefly some of the historical background that sits behind the sedition law, because I think it affords members a better understanding of the law's origins and, therefore, how and why the Law Commission reached the conclusion that it did. Of course, New Zealand inherits its common law on sedition from the British common law. If we go back to the English Statute of Treasons of 1351, we see that it defines many types of offences against the king, as the authority was then, as treasonable. It looked at the offences that were increasingly used in those times to prosecute people who spoke or wrote words publicly in opposition to the king. Those watching *The Tudors* on Tuesday evenings would find it interesting that in 1534 an Act declared that it was treason to act or write anything to the prejudice, slander, or disturbance of the king's marriage to one Anne Boleyn. I think we see an indication there of how specifically this sort of measure could be applied.

A court decision somewhat later, in 1606, created the very wide offence of seditious libel. I know that Dr Worth is likely to discuss this at some length later on; it is a matter I have heard him canvass on occasion. There was the prosecution of seditious libel for people who used words that could urge insurrection against those in authority, censured public men—and it was men—for their conduct, or criticised the instruction of the country.

As I indicated, New Zealand inherited the British common law on sedition, and our own experience is, therefore, well illustrated with appropriate references. The Criminal Code Act of 1893 codified the law on sedition, and it was set out again in the Crimes Act 1908 and then in the Crimes Act 1961, which we now find ourselves focusing more directly upon. Of course, if we go back to the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century, we see that a number of charges of sedition were laid in New Zealand. A number of those charges were successfully prosecuted; one or two not so.

Most of these charges, it is fair to say, were laid during times of political or civil unrest, or during war. For example, charges were laid against Māori in land disputes, against striking workers, against those opposing conscription during World War I, and

against those possessing communist literature. Interestingly, there are a number of references to successful prosecutions against those possessing communist literature—and I will come to those later. One or two examples of that literature can be found in the very library of this institution. How times change.

If we go back to 1881 we see that arrests were made at Parihaka over a land dispute. Te Whiti said: “Mine is the land from the beginning.”, and he went on to make a very famous quote. He was, indeed, charged with sedition for allegedly uttering words and language calculated to promote disaffection.

A little later on, in 1913, Henry Holland make a speech at a strike of waterfront workers in Wellington. The Court of Appeal concluded that the jury would have been justified in regarding counsels of that kind as intending to promote feelings of ill will and hostility between the waterside workers and their employers.

During World War I, as I indicated previously, sedition charges were laid for making speeches in relation to opposition to conscription under the Military Service Act 1916. If we go on to 1917 we find that one Herbert Armstrong was convicted for an anti-conscription speech, in which he said: “I claim the right to criticise the Government of the country.” He was convicted. In another case a Rev. James Chapple was charged with sedition for making comments against the war. Again, he was successfully convicted.

In another case a young woman was convicted in 1921 for the possession and circulation of communist literature. Not only was she convicted and fined £10 but, perhaps more significantly, her studentship was terminated. Of course, better known names like Walter Nash were charged with bringing into New Zealand a document entitled *The Communist Programme of World Revolution* and another pamphlet. Both of those documents were said to encourage violence and unlawfulness. Walter Nash was fined £5. Those documents are amongst the works held in the Parliamentary Library; I suggest them to members for their reference.

I think all of this illustrates a very different time. It is equally important to acknowledge that until very recently, apart from a couple of very notable examples after the 1920s, the offences of sedition had appeared to have fallen into disuse in New Zealand until the famous, and some would say infamous, case in 2006 when Timothy Selwyn was prosecuted for sedition.

I know that a number of my colleagues intend to explore some of the arguments for repeal, following my brief introductory remarks, but there are two arguments that I will touch on because I think they serve as something of a launching pad for wider discussion. First, the legal profile of the offence is broad, variable, and unclear. The meaning of sedition has changed over time. This is one of the five principal reasons that the Law Commission gave for its view that the time to put aside and to repeal the law of sedition in New Zealand had come.

Secondly, and most overwhelmingly in my view, the Law Commission has argued that the law is not needed because those elements of it that should be retained are more specifically covered by other offences. This is perhaps the decisive argument that the Law Commission makes. The seditious offences that should be covered by the criminal law are adequately and more appropriately dealt with elsewhere under other offences. These include incitement and conspiracy, and public order offences, along with threatening offences, and offences such as treason and riot. An argument made in support of an offence of sedition is that it is easier to establish than some of the other offences. But, as the Law Commission noted, it considers that in the interest of freedom of expression, such speech-only offences should not be easy to prove.

I leave my opening remarks there, but in doing so I strongly commend the recommendation made by the Law Commission to the Committee. The time for putting aside the laws of sedition in New Zealand is well and truly upon us.

**CHRISTOPHER FINLAYSON (National):** That was an interesting speech from the Minister—more akin to a first or second reading speech. Of course, Dr Worth and I gave all those examples that the Minister has sought to repeat in the context of a Committee stage debate. But there we have it—it is good to see that he has been reading our speeches. He always quotes to me my maiden speech, and it is good to see him quoting back to me this afternoon my first reading speech on the Crimes (Repeal of Seditious Offences) Amendment Bill. What I want to do, unlike the Minister, is really to make a fairly close and detailed analysis of the provisions that we propose to repeal, because, as I have said earlier, National supports the repeal of these particular offences.

The seditious offences are dealt with in the context of Part 5 of the Crimes Act 1961. Part 5 deals with various crimes against public order. Examples include the crime in section 73, which deals with treason—an offence that the Prime Minister charged Tim Groser with when he decided to stand for Parliament for the National Party. However, a close analysis of section 73 indicates that had the Prime Minister carried through and instructed Crown Law to prosecute Tim Groser, she would have had a lot of difficulty. Section 77 lists another interesting crime against public order, and that is inciting people to mutiny, which is what is probably going on in the Labour Party caucus at the moment as people are being told that they are on their way.

But the particular offences that we are dealing with are the seditious offences that are said to be contained—I will say something about that in a minute—in sections 80 to 85 of the Act. Section 80 is not going to be repealed. That is the offence of taking an oath to commit an offence. Everyone who does that sort of thing is liable to imprisonment for a term not exceeding 5 years. It is not really a seditious offence, which is the point I made in my second reading speech, and it is entirely appropriate that that particular offence remain. But the other offences are said to be seditious offences, although section 81, as the Minister said, defines exactly what a seditious offence is. In my second reading speech I went through that in some detail, so I will not repeat myself here. But I agree with the Minister and the Law Commission that it is a very vague definition. When one looks, for example, at subsection (1)(e), which sets out one of the criteria that define a seditious intention, one sees it is an intention “to excite such hostility or ill will between different classes of persons as may endanger the public safety.” What exactly does that mean? As the Minister said, that is the kind of measure that was used to prosecute poor old Walter Nash, even though the communist pamphlet he allegedly brought into New Zealand was, as the Minister said when copying my speech, contained in the Parliamentary Library.

Then we have the actual offences that need close examination—

**Hon Mark Burton:** Very insecure—

**CHRISTOPHER FINLAYSON:** Oh, there is no copyright in this material, I say to the Minister, so I do not take offence; I am just mildly touched that he has decided to refer to that material and to quote yet another one of my speeches. Section 82 deals with seditious conspiracy. Section 83 deals with seditious statements, and that is the one that really has been used over the years mostly to shut down public debate. Section 84 deals with the publication of seditious documents. Section 85 is an interesting and a most extraordinary provision: the use of an apparatus for making seditious documents or statements. It deals with the sorts of things that one would have seen in *Doctor Zhivago*, where the revolutionaries had their printing presses and were printing posters to stick up around St Petersburg, and the like. So that is the kind of thing that section 85 is directed at.

The Minister is right; those offences have outlasted their useful stay on the statute book and it is time to repeal them. On behalf of the National Party, when dealing with Part 1 of this bill, I simply say let us get on and repeal them as quickly as possible, because I frankly do not think the Labour Party realises what wonderful instruments of oppression they really are. Of course, we have the Electoral Finance Bill, and we have the other offences the Government has introduced over the years. But the seditious offences are ones that the Labour Party, given its malignancy, could use against people in the National Party, as the Prime Minister said in relation to Tim Groser, so the sooner they are repealed the better it will be. I think that if Government members gave it more than a moment's thought, they would realise that maybe those offences should not be repealed because they could be used, say, hand in hand with the electoral finance provisions, to destroy the freedom of New Zealanders.

**LYNNE PILLAY (Labour—Waitakere):** It is a pleasure to stand and take a call on the Crimes (Repeal of Seditious Offences) Amendment Bill during the Committee stage. I think that it is worth reflecting on what a seditious offence is. Seditious offences are set out in sections 81 to 85 of the Crimes Act of 1961. They cover making or publishing a statement that expresses a seditious intention—publishing includes printing, selling, importing, distributing, or delivering to the public—conspiring with a seditious intention; and using apparatus for making statements that express a seditious intention. The offences hinge on a seditious intention, which is defined broadly as an intention to bring into hatred or contempt, or to excite dissatisfaction, against Her Majesty, or the Government of New Zealand, or the administration of justice; to incite the public or any persons or class of persons to attempt to procure otherwise than by lawful means the alteration of any matter affecting the constitution, laws, or Government of New Zealand; or to incite, procure or encourage violence, lawlessness, or disorder; or to incite, procure, or encourage the commission of any offence that is prejudicial to the public safety or to the maintenance of public order; or to excite such hostility or ill-will between different classes of persons as may endanger public safety.

Seditious offences have been used at times of perceived threats to the established authority. The Law Commission concluded that seditious offences, as they were set out, were overly broad and uncertain. They infringe on the principle of freedom of expression—something that we all in this Chamber hold dear—but they do have the potential for abuse. This is the potential that has been realised in some periods of our history when these offences have been used to stifle or to punish political speech.

The five main arguments that the Law Commission put forward in support of repeal were that the legal profile, as I said before, is broad, variable, and unclear, and that the meaning of sedition has changed over time. As a matter of policy the present law invades the democratic value of free speech for no adequate public reason. Specifically, the present law falls foul of the New Zealand Bill of Rights Act 1990, which, of course, the National Party members did not vote in support of.

**Darren Hughes:** Really!

**LYNNE PILLAY:** Yes, really, they did not. That is them, though.

**Darren Hughes:** That is another flip-flop.

**LYNNE PILLAY:** I know. Seditious offences can be inappropriately used to impose a form of political censorship, and they have been used for that purpose. Most important, the law is not needed, because those elements of it that should be retained are more specifically covered by other offences. Seditious offences that should be covered by the criminal law are dealt with by a number of other laws in this country, including incitement, conspiracy, and public order offences, along with threatening offences, and offences such as treason and riot.

One argument made in support of seditious offences is that they are easier to establish than some of the other offences. However, as the Law Commission noted, we consider that in the interest of freedom of expression such speech-only offences should not be easy to prove.

So will repealing seditious offences leave gaps in the law? I think not. There are currently a number of existing offences that adequately deal—as I said before—with the elements of seditious offending that should be retained; and also incitement and conspiracy, like sedition, can be a thought or intention crime. For example, one could be found guilty of incitement to an offence, even if the offence one was inciting was not actually committed. Additionally, if the inciting leads to the commission of an offence, then the inciter could be prosecuted as a party to the offending under section 66 of the Crimes Act 1961.

**Dr RICHARD WORTH (National):** I must confess to having some concern when I learnt that the Crimes (Repeal of Seditious Offences) Amendment Bill was to be sent to the Justice and Electoral Committee. But my hopes rose when I saw who was on that committee, and appreciated that the merit of the legislation would be judged by Christopher Finlayson—the deputy chairperson—and Chris Auchinvole. Quite clearly, in looking at the traits of those two people, I saw that they were blessed not only with razor-sharp intellect but also unerring insight. It is the case that this bill comes back from the select committee without amendment, and I think we probably owe a debt of gratitude to those two National MPs, who saw immediately that the merit of this legislation was undoubted.

I started by saying I had expressed some concern, because in the course of the speech made by the previous speaker she described these offences that are now to be struck from the statute book as speech-only offences. But they are not that at all, and that represents a misreading and a misunderstanding of those provisions that are now to be repealed. It is quite true to say that the legislation is concerned with seditious statements, but the statements may not only be made orally but also be in writing. A particular provision in section 84 of the current law deals with seditious statements. To reinforce the point, section 85 is headed “Use of apparatus for making seditious documents or statements”.

The Minister has carefully taken us through an analysis of the history of sedition. I would simply say that sedition is a term of law that refers substantially to covert conduct that is deemed by the legal authority as tending towards insurrection towards the established order. Put in very simple terms, sedition is the stirring up of rebellion against the Government in power. Sedition is more about encouraging the people to rebel, and treason, which remains on the statute book, is actually betraying the country. I cannot help but observe that it is an interesting comment on the jurisdictions of Australia and New Zealand that Australia retains these offences on its statute book, and, as recently as 2005, transferred the sedition provisions to anti-terrorist legislation, which was then going through the House.

What we are concerned with here is, in effect, a balancing of interest, which is a role that politicians must constantly perform. We are looking at a series of offence-creating provisions that have been on the statute book for a very long time, and then looking at the New Zealand Bill of Rights Act 1990 as, I guess, the balancing point for an evaluation as to the appropriateness of this legislation. We speak a lot about the New Zealand Bill of Rights Act and its provisions—

**Christopher Finlayson:** Except in the context of the Electoral Finance Bill.

**Dr RICHARD WORTH:** Except in the context of the Electoral Finance Bill, as I am reminded. I think it is an important point, in noting the provisions of the New Zealand Bill of Rights Act, that although it affirms certain rights and freedoms, it makes

it very clear that those rights and freedoms are not absolute. In fact, section 5 of the New Zealand Bill of Rights Act contains an ability for there to be justified limitations. Here, we are talking about a particular right called the freedom of expression. Scripted in this way, everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind, in any form.

This legislation that we are looking at in Committee is a very good example of how quickly a Government can act when faced with a Law Commission report that it favours. I note that in April 2007 the commission's report—which, as others have said, was titled *Reforming the Law of Sedition*—was tabled in Parliament, and we have seen this legislation progress at speed from there.

**RON MARK (NZ First):** I rise on behalf of New Zealand First, and this is rather a strange situation, actually. I am more used to the situation where another party stands alone on a point of principle; that is often the position taken by other parties in this House. But this time New Zealand First finds itself completely on its own in speaking against the Crimes (Repeal of Seditious Offences) Amendment Bill. I guess what we are saying at this part of the Committee stage is that it is timely to analyse some of the statements that have just been made in support of the bill, including the statements made by the Law Commission in advocating the need for it. I am just going through the summary that I have received, and a couple of things stand out very clearly to New Zealand First.

One of those is the reason given for repealing the sedition law: that the legal profile of the offence is broad, variable, and uncertain. That is just like the principles of the Treaty of Waitangi, which this House has had no problem in enshrining in scores of pieces of legislation. It seems to defy logic, from New Zealand First's perspective, to say that the sedition law is broad, variable, and uncertain. I am really puzzled as to why the National Party seems to accept that argument, when it too agrees with New Zealand First that the principles of the Treaty of Waitangi are vague. Those principles are not defined, they are not clear and concise, they differ in statement of intent after statement of intent and in annual report after annual report, and they are the cause of much angst in their application. That argument does not stack up.

Let us look at the statement: “as a matter of policy, the present law invades the democratic value of free speech for no adequate public reason;”. What poppycock! The “adequate public reason” is that where sedition occurs it involves, by definition, the promotion of violence. We find it quite bizarre that Labour members advocate that the New Zealand Police's main aim is to reduce violence in the community. Well, maybe that is why we are seeing such an escalation in violent crime, because the police actually pay only lip service to that statement. They are actually not interested in curbing people who would promote violence. But ironically, we have the police engaged in a major operation right now, bringing to the courts of this land people who are accused of promoting political objectives through the use of the force of arms. No good, adequate public reason? We would have thought that above all the things we stand to uphold in this country, freedom of speech and democracy stand supreme above all others. Democracy deserves better protections than the humdrum legislation people are alluding to that exists right now to give us that protection.

People have said that the law against sedition has not been used. Well, let us thank God for that. Just because a particular law has not been exercised, that does not mean it serves no purpose or has no place. New Zealand First says there is good public reason for keeping it. Some of us have worn uniforms and carried weapons in funny places in order to preserve freedom of speech. The last thing we in New Zealand First would ever want is to see freedom of political expression denied, curbed, or, ah—

**Dr Richard Worth:** Interdicted.

**RON MARK:** —interdicted in any way. Thank you. But to stand up and say it is OK for someone to advocate his or her political disagreement and promote violence in achieving his or her goals is completely different from that.

We might well agree with the Government and with other parties that other laws serve their purpose, but the test is yet to be seen, is it not? We would have thought, given the events unfolding in New Zealand right now and the charges that have been laid, that we should pause, take a deep breath, and watch with interest to see how effective those laws are. It is probably time for us to have one of those famous Labour Party cups of tea, and to sit down and watch. It should be a case of less haste, less waste, as my nana used to say. What is to be lost by pausing at this point in time? Nothing. What is to be gained? Well, a whole lot, if this move proves to be wrong. We will advocate throughout this debate that it is wrong. We do not agree with it. We will be voting against this bill and against this part of it. We look forward to hearing more of the arguments about the bill.

Looking specifically at one of the other statements that has been made—that the present law falls foul of the New Zealand Bill of Rights Act—I ask how new that is. This House regularly accepts that some of its laws and statutes stand outside the New Zealand Bill of Rights Act, does it not? Let us look at superannuation, for a start—

**Dr Richard Worth:** The Electoral Finance Bill.

**RON MARK:** The honourable Dr Worth says the Electoral Finance Bill stands outside the New Zealand Bill of Rights Act.

**Hon Mark Burton:** No, it doesn't.

**RON MARK:** The Labour Party member says it does not. New Zealand First supports the Electoral Finance Bill. We say there is legislation that is in breach of the basic New Zealand Bill of Rights Act. For example, one cannot qualify for superannuation until one is aged 65. That is a breach of basic human rights, is it not? The National Party contested for years that legislation or policies aimed at closing the gaps were outside the New Zealand Bill of Rights Act. It was quite happy to campaign at election after election against State funding going towards specific ethnicities because that was outside the New Zealand Bill of Rights Act. What has happened? What has changed? Oh, I forgot; Don Brash has gone. Maybe that is the change. The fundamental principle needs to be addressed. We do accept that in some special circumstances there is justification for legislation being outside the New Zealand Bill of Rights Act. New Zealand First would advocate that this is one such occasion.

It has been argued that the law on seditious offences can be inappropriately used to impose a form of political censorship. Well, hello! We have seen that sort of thing going on in this country. That issue comes down to the role of this House, does it not? The people we have in power—the Government—are not permitted to use laws to shut down political debate or political opposition to their policies, initiatives, and philosophies. We all stand for that; let us be sure of that. Going back to the time of the 1981 Springbok Tour, I say people made it pretty clear then that they were not about to accept the policies of the Government of the day. They were successful. Not all of us agreed with them, but they were successful.

We are saying that the excuses that are touted out as reasons for repealing the sedition law do not stack up to legitimate scrutiny. We are engaged in this House in an element of feel-good legislation—probably designed to fill up a rather bleak-looking legislative agenda and suck up House time—and the National Party has fallen for it. We ask the Committee to stop, pause, take some time out, and put this bill to one side. Let us test the legal systems as they currently exist and see post the current investigations where any deficiencies lie. That may quite clearly show us in New Zealand First quarters that there is ample legislation to deal with acts of sedition going forward and

that there is no reason for giving democracy an enhanced status—or the preservation of democracy—or for the protection of the judiciary or the Government institutions that underpin and give democracy an enhanced status. It may show us that there is no special case for having special legislation to protect the very things that are depicted on the walls around us—the men and women who went to the various battles and wars that are all highlighted on the walls of this Chamber. It may show us that there is nothing special that needs protecting.

If those things can all be tied up in the humdrum, everyday bits of law that we have around, then let us take a look at those humdrum bits of legislation that people say are effective. Let us talk about our non-association laws. Let us talk about the ability of the police to lay charges against people for associating with criminal elements. It could be argued that that legislation is ineffective. Maybe that is why we have seen some amendments to it. But still that offence has not disappeared from the slate, has it? A simple principle is that just because something is old, that does not mean to say it is past its use-by date. Some parties tend to have that view of our elderly and senior citizens in this country. That is why those parties consistently and persistently attack them, with cuts in their superannuation and cuts in the increases, and with an inability to meet promises made to them.

In terms of legislation, the law against sedition is very old, admittedly. It has a very specific aim. If that aim needs to be narrowed and zeroed in on to make the law a little tighter, then let us look at doing that. But to throw out the legislation at this point in time, New Zealand First would advocate, is not wise. We might actually be a lot better off to take a pause right now, put the legislation to one side, and revisit it post the police operations in the situation they are dealing with right now. Let us see just how effective the laws are in dealing with that situation and in getting convictions, before we repeal this law.

**Hon MARK BURTON (Minister of Justice):** I will take just a short call because this is a Committee stage and I think it is appropriate to respond quickly to a couple of Ron Mark's points.

Firstly, the member quite properly raises the question as to why this matter is on the Order Paper at all at the moment. The answer to that is quite simple: it is because this Government has set about clearing up years and years of neglect by the National Government, which never advanced the work of the Law Commission. Endless piles of work was done, but then nothing happened to it. This Government has set about not only tidying up the backlog but getting on with new referrals, and seeing that work progress through and something being done with it. I think that explains it, but the member raised a very fair question.

Secondly, the reason it is now appropriate to look at what is, indeed, as the member said—and I made reference to it in my own earlier remarks—law that has its genesis in very ancient law in both England and, more recently, New Zealand is that it has proven to be no longer appropriate on our statute book. There is better legislation that suits the purpose of providing a response to any such offences. That is the considered view that the Law Commission has offered to Parliament. It is why, I think, the legislation enjoys considerable support.

The member quite properly raised both of those points of concern in his contribution.

**CHRIS AUCHINVOLE (National):** I thank my colleague Mr Worth for the perceptive and kind remarks he made, during his speech, about the presence of myself and Mr Finlayson on the Justice and Electoral Committee. It is a select committee that is a pleasure to be part of, not so much for the way it is managed but more for the opportunity it gives to discuss very interesting content that is of great moment to

solicitors and legislators but also is particularly important to ordinary people. When it comes to ordinary people, one does not get much more ordinary than myself.

The Crimes (Repeal of Seditious Offences) Amendment Bill has its origins right back in the early litigious period of history in England, the period of Henry VIII and his daughter Elizabeth I—the Shakespearean period. It was a period of intrusiveness by the Government into the private life of citizens—the like of which we had not seen until the present Labour Government, someone suggested to me.

I was interested in the speech from New Zealand First. The difficulty I have with the comments made by Ron Mark is that if we simply have a pause before we remove legislation, we would still have crimes like elopement with an adulterer or the taking of a nun. Those laws from the Edward I period were not removed from the Crimes Act until the 1960s. We would still have the civil rights of convicts law of 1828, from the period of George IV. All those things would still be there. When we have legislation that is serving no great moment, I think it is a good use of the House's time—even though Labour clearly has a problem with its legislative programme and is searching for things to do—to remove clearly redundant legislation.

But is this law clearly redundant? The New Zealand law on seditious offences is set out in sections 81 to 85 of the Crimes Act 1961—the same Crimes Act that cleaned up this business I mentioned earlier of eloping with an adulterer. The main offences are making or publishing a statement that expresses a seditious intention, or conspiring with a seditious intention. Section 81(1) states: “A seditious intention is an intention—(a) To bring hatred or contempt ... against Her Majesty, or the Government of New Zealand, or the administration of justice; or (b) To incite the public ... to attempt to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, laws, or Government of New Zealand; or (c) To incite ... or encourage violence, lawlessness, or disorder; or (d) To incite ... or encourage the commission of any offence that is prejudicial to the public safety or to the maintenance of public order; or (e) To excite hostility or ill will between difference classes of persons as may endanger the public safety.”

Prosecution for sedition, as has been mentioned by other speakers, was extremely rare in the second half of the 20<sup>th</sup> century. The last recorded successful prosecution seems to have been in 1942, when the Rev. Ormond Burton published an anti-war poem.

I will give reasons why the current law is undesirable. The parameters of the offences are extremely wide. All the offences rely on establishing a seditious intention. As can be seen from what constitutes “seditious intention”, the current definition covers a wide range of types of activities, and also applies at a very low and very uncertain threshold. I know that earlier speakers have addressed this question, and I do not doubt that subsequent speakers will do so. It is a sort of catch-all job. Someone suggested to me that it is a case of if we cannot get someone on anything else, we get him or her on sedition, and that is not really justice, is it? It is a form of law enforcement.

**Ron Mark:** You still have to prove it.

**CHRIS AUCHINVOLE:** Yes, of course. But the fact that one still has to prove it does not make it reasonable to drag people through the courts simply on a whim. That is not justice, and I am sure the member realises that.

The latter point is particularly troubling, as merely encouraging these types of activities is deemed criminal under the current definition. I am put in mind of the policeman who used to say: “We know you did it, we saw you do it, and your mother said you did.” One does not have any defence, and it is much the same with this thing. The overall breadth and uncertainty make for very dangerous law. In particular, criminal

law should be clear; otherwise, individuals cannot modify their conduct to ensure they stay within the bounds of the law. Thank you, Madam Assistant Speaker.

**KEITH LOCKE (Green):** Ron Mark said we should just sit quietly and wait for the police to look at this law, and perhaps bring in prosecutions. In fact, when the police brought in a prosecution in the Tim Selwyn case, they used this law, and because of the archaic nature of the law, Tim Selwyn was wrongly convicted. That is how people will interpret what happened, once this law is taken off our statute book—that he was already punished for criminal damage for leaving an axe in window of the Auckland office of the Prime Minister. He was tried and convicted for sedition for saying that other people should engage in symbolic acts—which was the term he used—against the Foreshore and Seabed Act. As has been pointed out in the debate, the sedition laws are criminalising free speech.

It occurred to me, when I heard Chris Auchinvole reading out that bit about inciting contempt against the Government, that I have heard Mr Mark being quite contemptuous of the Government, on occasion. I would not want my good friend and close colleague here to be dragged away for the honourable role he plays in being a watchdog for wrongdoing and for sometimes bringing contempt upon the Government in doing so. Chris Auchinvole also read out something about creating hostility or ill will between different classes of people. I was listening to a speech made by my colleague Hone Harawira not long ago that quite upset Mr Peter Dunne. I think one could say that that speech incited hostility between the middle classes, the white collar, and the blue collar.

**Chris Auchinvole:** Oh no, I am sure he wouldn't do that.

**KEITH LOCKE:** He was. He was talking about white-collar crime and saying we were not paying enough attention to that, and I am sure he could have been sent down for sedition. In fact, one former leader of the Labour Party, Harry Holland, was convicted of sedition for that very reason—for causing ill will between the classes when he talked about the need for the working class to assert itself and rise up and take power, and all the rest of it. Harry Holland was inciting disaffection against what he would have considered to be the ruling classes or the rich classes of that day. So we have a problem here. Getting rid of the sedition laws is getting rid of thought crimes, and it is really good if we value free speech.

There is a whole parallel here between this debate and the debate on the Terrorism Suppression Act, in that if the police go down that track, the prosecutions that have been threatened to be brought under the Terrorism Suppression Act might end up in the same basket as the sedition laws. This is because people will see that that Act is, in a sense, a restriction on free speech, too, in that it is so broad in its application and could be applied to what people say, as well as to what they do. If people commit any specific crimes of incitement, the sedition laws are not required, as there are specific provisions in the Crimes Act. It is the same under the Terrorism Suppression Act: if any crimes are committed in terms of involvement in an organised criminal conspiracy, that is covered under the Crimes Act, so we do not need a Terrorism Suppression Act that has a much broader application and inhibits our civil liberties.

So it may be that what we are doing today, following on from the Tim Selwyn case, will be done tomorrow with the Terrorism Suppression Act, if the police bring prosecutions. Even if they do not do so—and we do not know the full details of the cases yet—I point out that a lot of these people do not, on the surface of things, seem to be involved in the deep level of wrongdoing that the Terrorism Suppression Act suggests. So I see that parallel there, and I support this bill wholeheartedly. It is a bill whose time has come. There has been a debate in the Chamber between National and Labour on this issue, and it is great that National and Labour are coming together with

the other parties—the four minority parties that held a press conference a few months ago on this bill—

**Christopher Finlayson:** We apply it to the Electoral Finance Bill, as well.

**KEITH LOCKE:** Yes, that is good—a dialogue across the Chamber on what to do about the Electoral Finance Bill.

**RUSSELL FAIRBROTHER (Labour):** The difference between the law of sedition and the Terrorism Suppression Act is that the law of sedition is entirely censorious. It censors what one can say. That law, as we heard from the Minister, derived from the English common law, but the difference between the English common law and the present law under the Crimes Act is that in the transfer to the codified Act the fact that a violent outcome had to be advocated was removed from the common law. So in the codification in 1961 the law on sedition was entirely that of committing a censorious act. That, perhaps, is the difference between the Selwyn case and many other cases that Ron Mark and others have referred to in this Chamber. Tim Selwyn was convicted of an offence on an indictment that contained the imploring of others to commit a violent act. The present law of sedition does not need that element, although that was apparently in his indictment; the present law of sedition creates a criminal offence of saying certain things.

The Terrorism Suppression Act, which has been referred to by one of the earlier speakers, includes an element of incitement, but it is incitement to commit specific outcomes, and the commission of those outcomes must be part of the message. The outcomes are not just any outcomes; the outcomes specified in that Act include bringing about the death of another person, damaging major infrastructure, and other serious offences that go to the basic infrastructure and law and order of the country for ensuring there is a peaceful country.

The time for removing the law on sedition from our Crimes Act is long past. Ron Mark said we should take more time to consider it. But we have had since 1961 to think about it; 46 years is a long time. That time has revealed that no substantial convictions have been made under that law—no convictions that probably could not have been secured under other legislation.

Ron Mark drew a parallel between the law of sedition and the Treaty of Waitangi, and he said the Treaty of Waitangi suffers because it is uncertain. That is correct, but the Treaty of Waitangi—

**Ron Mark:** The principles of the Treaty of Waitangi.

**RUSSELL FAIRBROTHER:** The principles of the Treaty of Waitangi are uncertain; it is true that they are. But the Treaty of Waitangi is not a criminal sanction. Nobody is convicted for breaching any aspect of the Treaty of Waitangi or the principles in relation thereto.

When we impose a criminal sanction, it is necessary that the law be specific about what the offence is, because a criminal sanction involves two aspects. The first is doing the thing complained of, known as the *actus reus*, and the second is the intention to bring about that circumstance, known as the *mens rea*. So that requires a specificity of thought and a specificity of outcome. Under the law of sedition we suffer from a lack of specificity, unless one is talking about a general law of censorship. That is why the law of sedition so seriously breaches the New Zealand Bill of Rights Act.

Under section 14 of the New Zealand Bill of Rights Act, everybody is guaranteed the right to free speech—the right to express an opinion. That is unqualified. Mr Mark referred to the fact that it was perhaps qualified by section 5 of the Act, but that is not really appropriate in this circumstance. Section 5 allows an exception to be made if there is a greater public purpose. The greater public purpose that may have laid behind the law of sedition in 1961 has since been overtaken by the compounding conspiracy

offences we find in our Crimes Act, in our Misuse of Drugs Act, and in similar legislation that has followed the passing of the Crimes Act.

A similar provision to the law on sedition is found also in the Terrorism Suppression Act of 2002. As I have said, it requires not only the incitement to action but the desire to achieve a certain outcome, and those certain outcomes are codified as well. They include the bringing about of the death of another person or the damaging of major infrastructure, and similar infrastructural safeguards.

So the New Zealand Bill of Rights Act is in direct conflict with the laws of sedition in our present Crimes Act, and it is just a tragedy that when the New Zealand Bill of Rights Act was passed back in the early 1990s, it did not include as an amendment the removal of the law of sedition from the Crimes Act as well. These days, it is hard to understand why that did not occur.

**COLIN KING (National—Kaikoura):** It is indeed a pleasure to rise and speak during the Committee stage of the Crimes (Repeal of Seditious Offences) Amendment Bill. It gives me great comfort to review the work of those members who were on the Justice and Electoral Committee to see that the issue has been well and truly canvassed and, in effect, has been tested.

I take reasonable comfort also from the knowledge that when representatives from the New Zealand Police were speaking to their submission, they did not give any indication that they had any concerns whatsoever. In fact, I take it from their position that they were reasonably comfortable about there being the ability to address any matters for serious concern through other parts of the Crimes Act.

When I note that the police stated that these laws of sedition are really up to the independent interpretation of the police, I take comfort that the Law Commission deemed it necessary and appropriate that we should be looking at removing these offences from the Crimes Act, by repealing sections 81 to 85. The Law Commission said it was necessary and desirable to do that, because those provisions infringed on the principle of freedom of expression.

One would like to think that over the annals of time we have progressed as a democracy to the stage where we do not need to be as concerned about freedom of speech as the monarchies and Governments of yesteryear were. I take Mr Fairbrother's point that since 1961 we have had this review of the Crimes Act—over some 40 years. That probably lays to rest the comment made by Ron Mark that we should wait a while, should pause, and see whether this is a sound judgment.

It is very important to balance the common interests, the appropriateness of what freedom of speech and the New Zealand Bill of Rights Act attest to—that is, the justification of expressions, and the right to express viewpoints, verbally or through apparatus, be it electronic means or otherwise. Over time there is no doubt that the meaning of “sedition” has changed. We can think of Anglo-Saxon law back many, many years ago, when the offence of sedition would have been enacted originally. However, I take this opportunity to raise a concern relating to the Minister's reply around the freedom of speech. A lot of us in the House would take a view that the Electoral Finance Bill gags freedom of speech and suchlike. On that basis, Mr Mark's suggestion that we pause, wait and see probably has some merit.

The meaning of “sedition” certainly has changed over time. Presently, the law invades our democratic values—the freedom of speech—and that makes it all the more important that we move on. The situation around the New Zealand Bill of Rights Act has been well canvassed, with regard to the unqualified right to be able to express one's own views and opinions.

On that basis, and considering what other members have said, especially members on this side of the Chamber, I must commend them for having given us the confidence to

be able to remove this legislation from the statute book, even though we express a level of concern about the present Government's act of bringing forward the Electoral Finance Bill. But we trust that at the end of the day the Government will live up to the true essence of democracy and allow for freedom of speech. On that basis I take great pleasure in supporting this bill. Thank you.

**CHARLES CHAUVEL (Labour):** Having sat on the Justice and Electoral Committee and heard the submissions, I would like to speak to the Committee stage of Part 1. It seems that for once in his life Mr Finlayson did not notice me at an event! Just starting with the summary of the submissions, I have made a note that the committee received 16 submissions; 14 supported the bill and two were opposed. Interestingly, none of the submitters provided comment on the specific clauses of the bill. Three submitters made oral submissions, and we invited the New Zealand Police to give some evidence, which was extremely useful, in my view.

Of the 14 submissions that expressed support for the bill, most were short and provided comments such as that of Associate Professor Geddis of the University of Otago faculty of law. He stated: "My submission is brief. I support this bill for the reasons outlined in the Law Commission's very thorough report. The select committee, in my opinion, should report it back to the House in an unchanged form." Similarly, the Canterbury community law centre stated: "We support this bill and are pleased that law reform is finally happening in this area."

There were two opposing submissions, which one member opposite has described as weak—and I think he is right. They were the submissions of Brian Anderton and the Maxim Institute. It just goes to show that Mr Finlayson can get it right on occasion. Mr Anderton submitted that the sedition provisions should not be repealed because they may one day be needed. I think Mr Mark made this point in his speech, and I would like to deal with why the committee rejected that view. It really refers back to the Law Commission's report.

The Law Commission noted the argument that as we do not know what the future will hold, we should not remove sedition as a weapon from the law enforcement armoury. But the Law Commission's response—and I agree—is that the concern about the offences can be described in the same vein, because we do not know what the future will hold. We must try to ensure that the law does not contain a weapon that might be used by a future regime to suppress dissent.

Another point the Law Commission noted was the importance of protecting freedom of expression to the greatest extent possible, while ensuring that inciting violence is prohibited. A balance needs to be struck, as in all matters. The commission did not think that the current law, with the broadly drawn offences that are contained in sections 80 to 85 of the Crimes Act, caught this balance correctly; hence it recommended repeal.

The Law Commission's third point is that a number of offences dealing with the essential elements of the seditious offences are being retained. Lynne Pillay made this point in her speech. In fact, she listed most of the existing elements of offences where there is a double-up in substance between a current provision of the criminal law and the provisions relating to sedition. So that was the third limb of the argument made by the commission in favour of repeal.

We heard from the Maxim Institute, the other submitter that suggested the current offences should be amended rather than repealed. It acknowledged that the current offences are too broad and are open to misuse, but, rather than repealing the legislation, it suggested amendment. It said that the function of the sedition provisions—and again, this echoes the arguments made by Mr Mark—is to protect lawful authority. It suggested that taking away that protection would devalue lawful authority and, therefore, our constitutional system. It said that the speech that should be prohibited is

speech intentionally urging violence against lawful authority and creating an immediate or direct danger of that violence.

I think it is fair to say that the committee again adopted the Law Commission's effective three reasons for rejecting those submissions. First, rather than advocating amendment, it thought that repeal was the best course. Amending the offences so that they focused on incitement to violence against lawful authority did not add anything to the existing offences of incitement to commit other crimes that are already proscribed by the Crimes Act. The Law Commission noted that the term "sedition" has historical baggage, and that baggage alone was enough reason for getting rid of it rather than retaining it, as argued by the Maxim Institute. Again, what was suggested should be covered by sedition is adequately covered by the current law.

I would like to conclude by dealing with the submission from the New Zealand Police. It was an extremely helpful one, and it will be seen that the report of the committee records this. We asked the police to provide us with information on their current application and use of sedition laws in order to assist us in our consideration of the bill. The police provided us with information on how decisions are made, about whether to charge, and what offences should be used. Although all sworn members of the police have the discretion about which charges to lay, checks and balances are built into the system. Also, a number of factors are taken into account, including the nature and seriousness of the alleged offence, provable facts, and then those are matched with the appropriate charge. These are then reviewed before being laid in court.

The police commented on their recent use of the sedition charge. They commented that of the three known recent prosecutions, two were actually withdrawn after a review determined that they did not fit properly with the elements of a proof of a charge of sedition. In response to questions, the police rejected quite emphatically the suggestion that there was ever any political interference in these decisions, commenting that the commissioner guards his independence fiercely. I think that is an appropriate point to record in the debate on this Committee stage of this legislation.

**HONE HARAWIRA (Māori Party—Te Tai Tokerau):** Kia ora, Mr Chairperson. Kia ora tātou katoa. In rising to speak to Part 1, it has just occurred to me that I may be the only one in the House who has actually been charged with sedition. The charge was laid in this House, when Ross Meurant came to Parliament fresh from his dastardly deeds as head thug for the Red Squad. He warned the country in his maiden speech of a small group of Māori—10 of us—who he said had plans to overthrow the Government, who were seditious. Well, I was one of those he named, and he was right, actually. The overthrow of the Government was exactly what I had in mind in those days. It is still what I have in mind today, and it is the promise I intend to carry out. Back then, of course, Mr Meurant was trading on his reputation as a hard man to try to cast us in a seditious light. But I note that the tough guy got all quiet when he was asked to repeat his charges outside the House.

The charge of sedition is a strange one and I am glad we are getting rid of it, because it is a contradiction. The contradiction, of course, in repealing this so-called seditious offences legislation is that the act of sedition—"To bring into hatred or contempt, or to excite disaffection against, Her Majesty, or the Government"—should even be considered an offence at all. People who have been charged with sedition are often our sharpest citizens, who are passionate about their causes and patriotic about their country. They are the peacemakers, the protestors, the movers, and the shakers of Aotearoa.

The Minister himself, like others in the Committee, has already mentioned the names of our most celebrated prophets of sedition, and I would like to do so again. They are Erueti Te Whiti o Rongomai and Tohu Kākahi, who in 1881 were both charged with

“wickedly, maliciously and seditiously contriving and intending to disturb the peace”. Despite their protests and demands for a proper trial, Te Whiti and Tohu were held in custody in New Plymouth for 6 months before being shunted off to the South Island with many of their followers. Then, in another contradictory and self-serving act of legislative juggling, the Government passed the West Coast Peace Preservation Act in 1882 so that Te Whiti and Tohu would not be tried for sedition but could be detained indefinitely as the Government thought fit.

Dr Ranginui Walker explained this best when he stated in *Ka Whawhai Tonu Matou: Struggle Without End* in 1990: “It was by violence that a tribal (Maori) society was destroyed in the first instance, and the (Pakeha) nation state brought into being.” That so-called peace preservation law resulted in peaceful prophets being assaulted, arrested, jailed without conviction, and treated like animals, all for daring to passively resist colonial land-grabbing.

I will say that again: the so-called Terrorism Suppression Act last week resulted in peaceful prophets being assaulted, arrested, jailed without conviction, and treated like animals, all for daring to passively resist colonial land-grabbing. It just goes to show that even though it has happened in the past it seems we have not learnt from it. The so-called peace preservation law was, in fact, a declaration of war against people who were seeking nothing but peace. The so-called Terrorism Suppression Act of 2002 is in fact a declaration of war against people who also seek nothing but peace.

Then, of course, there is the man immortalised in song from last century, and in a three-part series of paintings by Colin McCahon: Tūhoe prophet, Rua Kēnana, of Maungapōhatu, who was charged with sedition in 1916 for daring to call himself a prophet of peace, for daring to call his community Hiruharama Hōu—the New Jerusalem—for daring to establish a policy of non-violence, and for daring to call upon his people to hold to their faith and not enlist for World War I. The police hunted Kēnana down, killing his son in the process, and they packed him off to Auckland to stand trial for sedition.

Then there is the man likely to be immortalised in song and a four-part series of paintings by just about anybody: Tūhoe prophet Tame Iti of Maungapōhatu, who was charged under the Terrorism Suppression Act for daring to call himself a prophet of peace, for daring to call on Tūhoe to be an independent nation, for daring to establish a policy of non-violence within the borders of Tūhoe, and for daring to call upon his people to oppose State terrorism in 2007. It is likely that the police have, in fact, hunted Tame Iti down—I sincerely hope they do not kill his son in the process—and I understand he is still in jail, as we speak, for charges that remain unknown to most of us in this House.

Also, at this end of the last century, other Māori activists, including lawyer Annette Sykes, Mike Smith, Niko Tangaroa, Ken Mair, and Tame Iti again, were accused of sedition for their intentions to incite, encourage, or procure lawlessness in protesting against the creeping control and ownership of Aotearoa by foreign investors—an issue that people are only now starting to wake up to. This is the nub of the whole issue for us. Sedition has been used to quieten the natives and to suppress and oppress anyone daring to challenge the status quo. In fact, even the former Prime Minister and president of the Law Commission, Sir Geoffrey Palmer, admits that the archaic offence of sedition is too wide and too unclear, and that it has been used to muzzle unpopular political speech.

The most recent expression of this ridiculous law, of course, came when Timothy Selwyn was charged for opposing the foreshore and seabed legislation, and there is that contradiction again. The Government passes legislation to steal away people’s rights and then it charges people with sedition for daring to oppose such theft; for daring to

speak up for the Treaty, which the Prime Minister herself calls the constitutional foundation of our nation; and for daring to speak out for human rights. Selwyn made submissions, he started a petition, and he sent out emails, but he was stymied by a Government that was determined to ignore due process to ensure it got its way. So he was forced to take more direct action and—surprise, surprise; not—he gets done with a charge of sedition.

Again, I would just like to honour those who have helped to bring this bill to where it is. They are those who have suffered so we can more easily see the mean-spirited, ugly, demeaning, and destructive nature of the charge of sedition; Idiot/Savant for drafting a bill and badgering us all to sponsor it; those who still speak against conscription and war; those who still speak out for their land rights and their Treaty rights; those who still speak out against colonisation and foreign control; those who still speak out against injustice; and those who still speak out against violence and the economic abuse of power. Theirs is a fight for freedom and we dedicate this bill to them all. Kia ora tātōu katoa.

Part 1 agreed to.

## **Part 2 Amendments to other enactments**

**The CHAIRPERSON (H V Ross Robertson):** The question now is that Part 2—clause 6, a very narrow clause—stand part.

**CHRISTOPHER FINLAYSON (National):** I certainly hope it is not trifling with the Chair when I say I agree with you that this is a very narrow point and I think I can be very brief on behalf of the National Party in addressing Part 2, because it deals simply with amendments to other enactments and, indeed, there is but one—an amendment to the District Courts Act 1947.

Part 2A of the District Courts Act sets up the criminal jurisdiction of that court in respect of indictable offences and it was inserted in May 1981. Section 28A sets out the extent of the jurisdiction conferred on the District Court under this part, and I am not going to go through that section in any detail. Suffice it to say, it confers on the District Court a jurisdiction to try certain indictable offences and these are more particularly referred to in schedule 1A of the District Courts Act, and in Part 1 of schedule 1A are the offences we are dealing with this afternoon. As can be seen from clause 6, it is proposed that the items relating to sections 82 to 85 of the Crimes Act in Part 1 of schedule 1A be repealed and of necessity where one deals with the proposals in Part 1, it follows that the offences be struck out of Part 1 of schedule 1A of the District Courts Act.

So that is all that needs to be said about clause 6. It is a logical clause and, of course, if one supports the repeal of the seditious offences legislation, if one supports Part 1, then—unless one is a complete moron—one has to support clause 6.

**RUSSELL FAIRBROTHER (Labour):** I do not want to speak in support of the previous speaker, Chris Finlayson, because of the threat in his concluding comments, although I would have trouble escaping that label on many occasions, particularly since coming here. However, I have to say that this legislation demonstrates the folly of the law of sedition. The law of sedition is a serious crime in the Crimes Act, if it ever was fully realised, because it is a crime against the State not far removed from the crime of treason in concept. But, of course, because it relates only to words, it is a rare instance when it can properly be charged and those instances cannot be morally justified.

In 1981 this crime was brought within the range of criminal trials that could occur under the District Courts Act. The District Court was created following a commission of inquiry set up by Justice Beattie, as he then was, who recommended a review of court structure. He envisaged a District Court being known as the “People’s Court” where

trials would take place in as many court districts as possible so that one would have trials at District Courts that sometimes may be only 30 kilometres apart. That was a very good idea to start off with, and court rooms were modified so that 12 jurors and a range of counsel could be squeezed in, but it proved to be totally unworkable because the buildings did not accommodate that sort of activity and the staff were not so trained, so gradually the District Courts retreated back generally to the High Court jurisdiction venues and then they ran in parallel series but dealing generally with less serious offences.

So it was a little strange, and perhaps it is a reflection of the time, that in 1981 no one cast his or her mind as to whether the law of sedition was intrinsically serious enough to remain in the High Court with other very serious offences or whether it was too trivial to worry about at all. The irony is that someone could be charged with treason—as was the case then—and that would be tried in the High Court, and someone could be charged with sedition and that case could be moved down to the District Court by election of either the accused or the determination of the deciding High Court judge. In 1981, when this was placed in a schedule that is very hard to read even to this day, we had a reasonably mindless following through of what was an innovative view of the courts back then by the then Justice Beattie's review of the court system.

My experience in Parliament now is that parliamentary counsel are rigorous—and it probably reflects the computerised age, I might say, as well as an overall high standard of competence of parliamentary counsel—and that any consequential amendments to other legislation are picked up and are generally brought before the notice of a select committee, if not to sign off then at least to consider. It would be my view that back in 1981, if this matter had been brought to the attention of the House, and if there had been a select committee considering the establishment of the District Courts and what offences they should deal with, then there would have been a more careful consideration. Someone would have asked: what are we really doing with this law of sedition; is it relevant; what prosecutions will follow; does it have the certainty required of our Crimes Act; should we be even bothering with it; and why do we not recommend in a report to the House the abolition of it? If that had occurred, given that the New Zealand Bill of Rights Act followed only 9 or 10 years later, one could imagine that this debate could have been sparked off back in 1981. I daresay then that Timothy Selwyn may have been saved from being convicted of the offence of sedition, but he surely would have been caught by other crimes, such as inciting wilful damage.

What we have today, by this concentration on Part 2, which seems entirely technical and of a very narrow compass, reflects a movement in our legislative lawmaking in this Parliament from what was obviously a cumbersome process back in 1981, to a very sophisticated process today whereby select committees are enjoined by parliamentary counsel and by their advisers to look at consequential changes and to take a more holistic approach. What we are really doing today is a clean-up of the statute book, which should have occurred back in 1981, in my view, and certainly back in 1990 when the New Zealand Bill of Rights Act went through its legislative changes. It is difficult, and I think everybody except New Zealand First agrees that there is no substance these days to the law of sedition. It is a pity that was not seen back in 1981.

**Dr RICHARD WORTH (National):** As you have commented, Mr Chair, this is a very narrow debate on Part 2 of the Crimes (Repeal of Seditious Offences) Amendment Bill. But as we look at these changes that have been made to the District Courts Act, consequent upon the planned passage of Part 1, we would do well to remind ourselves that the courts in New Zealand are not established by royal prerogative. They are not established by convention. They have a very pure statutory base. In the case of the District Courts, it is a base established by the District Courts Act 1947.

Clause 6 takes away a jurisdiction that the District Court had in respect of various crimes against public order in the Crimes Act. That leaves remaining for the jurisdiction of the District Court, in connection with crimes against public order, only two offences. The first offence relates to oaths to commit offences—a rather curiously named crime. But, in effect, what happens in terms of that offence-creating provision is to set a penalty of 5 years' imprisonment for people who administer or who are present or who consent to the administration of oaths purporting to bind others to commit any offence.

So in summary I say that it is basically a “blood brother” offence whereby people get together and swear to take part in criminal activity, and that offence remains. It remains as part of one of the crimes against public order. The other is section 90 of the Crimes Act, which deals with riotous damage. When one sees what is then left for the jurisdiction of the High Court, one finds that it is a bit of a hotchpotch of crimes against public order that continues. So there are offences like inciting to mutiny, like espionage, like communication of official information that is wrongful, like an old offence called forcible entry and detainer, like piracy, like slave dealing, and, finally, like a relatively newly created offence in section 98A of the Crimes Act that deals with participation in criminal gangs.

So there it is. Part 2 is a modest part that is, in effect, a machinery provision containing consequential outcomes that, if Part 1 is passed, will see those jurisdiction provisions removed for the District Court, its officers, and the juries that sit in judgment on criminal activity in that lower court.

**KEITH LOCKE (Green):** I was listening to Russell Fairbrother speaking, and I say that I think it is worthwhile looking at the two streams that are leading us to this decision tonight. One is that we are removing from our democratic parliamentary system those laws restraining free speech that have been applied during the period of our democratic Government in the 1900s.

When we look at the actual provisions, we see that, in another sense, it is a case of the parliamentary system maturing and moving away from the monarchy. It is no accident to see, when we look at section 81 of the Crimes Act, which states: “To bring into hatred or contempt, or to excite disaffection against, Her Majesty, or the Government of New Zealand ...”, that Her Majesty comes first. It is true that Her Majesty is the official head of State.

**The CHAIRPERSON (H V Ross Robertson):** This is a very narrow debate.

**KEITH LOCKE:** Yes, but it relates to our court system and our parliamentary system in that this legislation represents a maturing of parliamentary democracy, away from the traditional system that existed in earlier centuries, particularly in Britain, where the monarchy had more powers vis-à-vis the Parliament. Sedition laws were originally brought in and carried through to today to protect the monarch against the development of the Parliament and against criticism in the Parliament and amongst the people. I think it would be useful to look at this as a maturing of our democracy, in the parliamentary sense.

**CHARLES CHAUVEL (Labour):** As has been said, the debate on Part 2 confines itself to the provisions that repeal the substantive jurisdictional provisions concerning the sedition offences. It is interesting to look, as Dr Worth began to do, at what is left on the statute book relating to what is able to be punished by the law in this broad area. As Lynne Pillay said in her contribution on Part 1, there are the thought and intention crimes relating to the incitement and conspiracy provisions in the Crimes Act. Obviously, I think as Dr Worth said, there is treason, but also there are other provisions such as those to do with riot, unlawful assembly, criminal nuisance, and there are the offences in the Summary Offences Act.

Also, I think probably of relevance in terms of what remains on the statute book is the offence of inciting racial disharmony, which, of course, is an offence under the Human Rights Act 1993. The fact that a victim of an offence was targeted because he or she was part of a particular group, such as race, colour, nationality, or religion, can be taken into account also at sentencing as an aggravating factor under the Sentencing Act 2002, which was passed in the previous term of this Labour-led Government. In such circumstances the offender may be subject to a higher sentence if it can be shown that the person incited the offence because of his or her attitude toward the victim's race, nationality, or religion.

It is clear then, and I think that the House can be comforted, that the removal of these provisions, and also the substantive provisions that are repealed by clause 5, still leaves New Zealand's criminal law in a position where offences that need to be dealt with by the criminal law can still be dealt with by the law, and indeed they can be dealt with more appropriately by that law. It is interesting to compare the approach that is being taken in New Zealand, where the District Court's jurisdiction is being in part deprived, consequent on the repeal of the substantive provisions, with the provisions that obtain both in the United Kingdom and in Australia.

In the United Kingdom, presumably, the Crown Court has jurisdiction over common law seditious libel offences, at least at first instance. Of course, in the United Kingdom, prosecutions for seditious offences have been few and far between in the 20<sup>th</sup> century. There was the 1977 United Kingdom Law Commission report into sedition, where the preliminary view was that there was no longer any need for the offence. None the less, despite that, the common law offences remain in the United Kingdom, and proceedings can lie under those common law offences—which, of course, are not known to the law in New Zealand—in the Crown Court.

In Australia, I imagine, the Federal Court is the court that is seized with the first instance jurisdiction to deal with the offences relating to sedition. It is interesting to note that in 2005 the Australian Government decided to modernise sedition laws in that jurisdiction and to adapt them for anti-terrorism measures, and also to increase the penalties associated with them. That is a different approach from the one now being taken in New Zealand.

None the less, clearly Part 2 is to be commended to the House. It is an essential and sensible component to those provisions found in Part 1.

A party vote was called for on the question, *That Part 2 be agreed to.*

**Ayes 112**

New Zealand Labour 49; New Zealand National 48; Green Party 6; Māori Party 4; United Future 2; Progressive 1; Independents: Copeland, Field.

**Noes 7**

New Zealand First 7.

Part 2 agreed to.

**Clauses 1 to 3**

**CHRISTOPHER FINLAYSON (National):** In speaking to these clauses I will take a brief call to congratulate Mr Locke in particular, because as Mr Hide said in an excellent speech in the second reading debate the other night, this really is Mr Locke's bill. Mr Locke is the person who became interested in this issue and worked with other parties to see that the issue was taken up by the Law Commission, which published, as the Minister said, a very good report. It has led in no time at all to the introduction and rapid passage of this legislation. So I congratulate Mr Locke on being a staunch

supporter of fundamental human rights. He has worked hard on this bill and has secured its passage. I simply do nothing more than ask him to apply that zeal for human rights to his party's analysis of the Electoral Finance Bill. Were he to do so—were he to examine clause 5, for example, and were he to examine the definition of “third party”—he would see that there are some very real human rights concerns.

It is fair to say that when I first came into this House, I thought a lot of Mr Locke's views were not just out of the mainstream but loopy. However, I have come to respect him and I acknowledge that I was wrong. I respect him as a zealous guardian of human rights and, in many respects, as the conscience of this Parliament on some of these issues. We do not always see that in members of Parliament. For example, in the Labour Party we see people who spout about human rights when it suits them, but, then—we can take the example of the Attorney-General—failed to provide a section 7 report on the Electoral Finance Bill. Why? It is because it is too hard, and because loyalty to party is more important than loyalty to the democracy in which we live. One would never ever say that about Mr Locke, because he is a man for whom loyalty to principle comes before loyalty to party. If there is a conflict, he will rise above it and deal with the hard issues. So I congratulate Mr Locke, and I hope he does not think that these are simply weasel words, because they are genuinely felt. He is a man of principle and he has achieved a great victory in getting rid of these odious sedition laws. I ask him to apply that zeal to the rotten Electoral Finance Bill.

The second point I will make is in answer to Mr Mark, because he raised two objections to the repeal of this legislation. By way of analogy to the Principles of the Treaty of Waitangi Deletion Bill he said that that phrase “the principles of the Treaty of Waitangi” was vague, and asked the National Party why it applied one standard to the sedition legislation but a different one to the Principles of the Treaty of Waitangi Deletion Bill. With the greatest of respect to Mr Mark, I ask him to look very carefully at the report of the Justice and Electoral Committee on the bill, because the bill does have its problems. It seeks to repeal already repealed legislation, and it seeks fundamentally to alter the jurisdictional section of the Treaty of Waitangi Act, which, if the legislation were passed, would render the Waitangi Tribunal redundant. There is much to be said of the arguments of Mr Paraone in the select committee that some of these clauses need refinement and better definition, but the bill is defective and we are certainly opposing it for that reason.

Mr Mark's second point was an interesting one and I will briefly touch on it. He urged us to leave the laws as they are just in case they are needed, and that is an argument not without merit because sometimes there are reasons why, out of an abundance of caution, legislators may keep a statutory provision on the books to see how the law develops. But I do not think there is any dispute—certainly from the majority of this House—that having looked very closely at the Law Commission's report, and having looked carefully at the bill, there is no other argument to be made but that this particular kind of offence against public order is redundant and therefore justifies repeal. It is in much the same way as section 412 of the Crimes Act provided that as from the time of passage of the Act certain ancient provisions would be repealed, including such old legislation as the Corruption of Blood Act 1814—the statute that my friend Mr Auchinvole referred to, which goes back to the time of King Edward I and deals with elopement with adulterers and the taking away of nuns—the Whipping Act of 1820, and the Witchcraft Act of 1735.

These are examples of legislation that was justifiably repealed at the time the Crimes Act came into force and, frankly, I am surprised that in the 1960s, under a great reforming Attorney-General and Minister of Justice, the Hon Ralph Hanan, a former member for Invercargill, the sedition laws were not repealed then. As I say, in all of the

time the Crimes Act has been in force, the only person who was prosecuted for treason was Mr Selwyn, who lobbed an axe through the Prime Minister's electorate office window. That perhaps gives an answer to Mr Mark—that although the legislation may have had a reason for being in existence hundreds of years ago, it has long since ceased to have any justification. Like the Whipping Act of 1820 and the Witchcraft Act of 1735, it is high time that the sedition provisions were put in the trash heap of history.

**Hon MARK BURTON (Minister of Justice):** As has been noted, of course, the Crimes (Repeal of Seditious Offences) Amendment Bill will bring into force on 1 January 2008 this measure that repeals the sedition laws of New Zealand. In so doing, it amends the Crimes Act 1961.

I too want to acknowledge the sincerity of the work and the views that many of my colleagues around the House have brought to this matter. It was interesting, and not only a measure of sincerity but also astute political timing, I think, to spot the train coming and to announce its arrival just before it got to the station. But the Greens, United Future, ACT, and the Māori Party did that, and they did it with a certain amount of flair. I acknowledge their political acumen for that. In no way does it detract from the sincerity of the views that the members themselves hold; I believe that to be the case.

I think Mr Finlayson could perhaps have brought his praise to Mr Locke had he left alone the reference—

**Darren Hughes:** Yes, that's the only reason he said the first part.

**Hon MARK BURTON:** Well, that is right. If Mr Finlayson had left alone the reference to the Electoral Finance Bill, then his praise may have had the ring of genuine sincerity about it. But, of course, he could not let that one go by.

As a result, I will have to respond to the member on it, and I will say just this. There is plenty of opportunity yet for debate on the Electoral Finance Bill. That bill, in contrast to this bill, is one that is most timely. It is very much relevant to this Parliament and to this country's electoral system, because it is about protecting the right and the voice of ordinary New Zealanders to be heard and not to be overwhelmed by vested interest and vast sums of money, which can be wielded like an electoral weapon by the few to overcome, stifle, and drown out the voices of the many. There is absolutely—absolutely—no valid comparison between that bill and this one.

I will not go down that path any further, but I would simply say to members that it is timely that we progress with the abolition of these provisions, whose repeal is now long overdue. I think that the statute book will be, as one or two members have already said, a little tidier and a little more modern for their passing.

**RON MARK (NZ First):** It has been an enjoyable debate to listen to up to this point in time, and, clearly, I am looking forward to the third reading. New Zealand First just wants it firmly put on the record that we move with great caution on this issue. We make no bones about the fact that we have reservations about the need to totally repeal this legislation. We have made it clear that we believe that if there are issues of vagueness, of broadness, or of scope, then those things could have been easily dealt with through amendments to the existing legislation, but that the seditious offences law at this point in time should not be repealed.

I look at the title of the bill. There are a number of titles for this legislation that New Zealand First could possibly put up, given the debate that we have heard. It is interesting to hear the debate from around the Committee that is supported by the National members. I recall Stephen Franks, who is a colleague I miss in this Chamber—

**Tariana Turia:** Do you?

**RON MARK:** I do. Stephen was a great advocate for the ACT party. I do not subscribe to all of the views of the ACT party, but I recognise talent and sincerity when I see it. Stephen brought the House's attention very sharply to focus on the

Government's intention to pass legislation to prevent hate speech. I remember the National members rallying in behind that call because it was a direct attack on freedom of speech. Now the Government says that it is getting rid of sedition laws because it is a direct attack on freedom of speech. Well, it did not have that view when it was advocating for the passage of legislation to prevent hate speech. The National Party, the ACT party, and New Zealand First were very firm in their belief that no legislation should be passed that impinged on people's rights to legitimately argue against the Government and legitimately define or argue against something they fundamentally disagreed with.

It is interesting that the boot is now on the other foot with the Government today. It is interesting to hear the debate from National members advocating freedom of speech as being paramount, and saying that if someone wants to advocate violence we will pick up some other piece of legislation and maybe get a conviction there. In regard to freedom of speech, do these names spring to mind—Marilyn Waring, Peter McCardle, Michael Laws, Christine Fletcher, John Banks, the Rt Hon Winston Peters, and, most belatedly, Brian Connell? I ask National members where these great principles about freedom of speech were when those MPs dared to stand up to tell their caucus colleagues that they disagreed—and this was not about advocating violence, nor about overthrowing the Government, which National was in the days of Christine Fletcher, John Banks, Winston Peters, Michael Laws, and Peter McCardle. These people just wanted to be heard to have a differing philosophical and policy view, but they were shut down. We are not talking about 1881 or 1886; we are talking about this year—Brian Connell.

What did Brian Connell do? He spoke the truth. What did he get? He got kicked out of the caucus and banished into the never-never. He was not permitted to speak in the House, and now he is squeezed right out of the electoral race. I ask National members to tell me where their principles on freedom of speech are. It is great and fine to stand in this Chamber and advocate that the legislation should be repealed because it denies freedom of speech, but I have two words to say to National members: Brian Connell. I have two more: Winston Peters. I have two more: John Banks. I can go on—Marilyn Waring. All of these people had committed one crime, and it was not sedition.

**Hon Member: Banks?**

**RON MARK:** Well, John Banks caused all sorts of troubles in the National Party by advocating views in this Chamber that its other members did not agree with. In fact, he sat right in that seat over there when I was the junior whip for the Government. The National members certainly made it clear to John Banks on those occasions that they did not agree with him. They did the same for Christine Fletcher—she was out of caucus for a little time, was she not?

**Christopher Finlayson:** No.

**RON MARK:** She was certainly outside the caucus psyche and off to one side from the rest of her colleagues, who labelled her all sorts of things behind her back for simply having a different view. Brian Connell is the most poignant example to point to right now. What did Brian Connell do wrong, other than to express freely the words, the views, that he held? Who shut him down? The Government? Did the police march in with the seditious offences legislation and charge Mr Connell for daring to say terrible things about the Prime Minister-elect—or almost Prime Minister-elect; he did not quite get there, did he? No. Was Brian Connell right? Well, he had to be right, because the person about whom he spoke disappeared out of this Parliament like a flash. Mind you, it is the same people who sat Brian Connell down who stuck the knife into the boss and kicked him out the door, too.

So let us be clear, when we talk in such high and mighty terms about the need to preserve freedom of speech, about what our track record is. Winston Peters was kicked out of the National Party. Brian Connell was kicked out of the National Party. A number of titles for this bill spring to mind in citing those examples, but probably half of them are unparliamentary if I am to be truthful. All of us in this Chamber, deep down, sincerely wish to protect freedom of speech, and because of that New Zealand First understands the reason why parties—and the Government, in particular—wish to repeal this legislation. We fully accept Mr Locke's view, because he is consistent—unlike some people who make some rather condescending speeches about him. We understand that, and we are not saying no; we are asking, right now, what the need is. Can we not deal with the issues that have been raised in legitimate debate in this House by narrowing and refining? Going forward, with terrorism being the issue it is and with matters unfolding inside of our nation, are we sure that this is a timely moment to be repealing this legislation?

All of us stand for freedom of speech. All of us want the right to campaign, to change Governments, and to change the direction of this nation through legitimate, lawful means. But we stand firmly—as New Zealand First always does—against the pursuance of objectives by people through violent means, advocating violence, promoting violence, or legitimising violence, and then saying that it is all being done because they are freedom fighters and they are in pursuit of a legitimate political cause. New Zealand is a free and democratic nation that has such a proud history of 150 years of democratic rule, and it is a leader internationally for having such a long, sustained period of democratic rule. We all stand for that. But people who wish to take a path politically through force of arms need to be stopped.

Every honourable member in this Chamber is here, whether or not we agree with each other, because he or she has a genuine belief in the philosophies and policies that his or her parties advocate, and every member truly wants to make a difference. But those members choose to do it by lawful means. No member in this House chooses to achieve his or her objectives by inciting other people to violent recourse. That is the concern that New Zealand First has.

I have heard some very good arguments articulated by Russell Fairbrother and by Chris Finlayson, but we are a little bit, I guess, disappointed at the rather—and that "h" word keeps coming into my mind, and I am trying to find another word for it—differing positions that are so clearly demonstrated by some people who would advocate for freedom of speech. I make no secret about it. I, and New Zealand First, have a lot of respect for Brian Connell. We have a lot of respect for people who protect freedom of speech, such as Keith Locke. But we do not have a lot of respect for people who advocate it on the one hand and then deny it on the other.

**KEITH LOCKE (Green):** First of all, I would like to thank Chris Finlayson, the Minister Mark Burton, and also Ron Mark for the complimentary remarks they made about me and the Green Party for our stand on these issues. I think, just reflecting, it shows a maturity of MMP, and over the last year in particular it has been the work of the smaller parties that has had a lot to do with it. But it is not just the smaller parties; there has been a maturing on many of these issues, with people not just sitting in their camps and defending their position—they are genuinely listening a bit more to what others are saying. That is a very good thing for our society. That is what happened on this issue of sedition. It did not have much momentum in the Parliament a couple of years ago, but it has picked up that momentum, and Geoffrey Palmer had a big role to play there, in addition to the role played by the smaller parties.

I think that in respect of the highlighting of the sedition laws, Parliament is reflecting more the feelings of ordinary New Zealanders, because if one goes into the pubs and

various meeting places in New Zealand, one finds a very robust democracy where people speak in very blunt terms. A lot of eccentric people say funny things. People say outrageous things that are often very damning and critical, and sometimes foreigners do not understand that. They say: “Oh why are you being so violent in your language to that other person?”, and then they find the two people with their arms wrapped around each other as best mates an hour or two or a day or two later. That is the nature of our society—our democracy—and one of the reasons why it is particularly important to get rid of the sedition laws. People in New Zealand say all sorts of things, like to be allowed to say those things, and are tolerated for it.

Some speakers say that Chris Finlayson should not have challenged me on the Electoral Finance Bill, and that there was a sting in the tale, but I welcome the challenge, and I think the Green Party as a whole welcomes the challenge on such issues. It keeps us all up to the mark and we have to answer the particular points. The Electoral Finance Bill is one with so many cross-currents and issues involved, and Mark Burton pointed out some of them, as well. I think we should all welcome those challenges.

It sets a better stage for discussion on matters such as the Terrorism Suppression Amendment Bill, which will be coming up again shortly for its second reading. I was actually quite impressed—and it was before all the latest developments around the Ureweras and whatnot—that in the first reading of the Terrorism Suppression Amendment Bill there was much more considered dialogue between the different speakers than was the case when the original Act was discussed and passed back in 2002. So I think people are a bit more conscious of human rights and a little bit more conscious how those can be undermined in the current world situation, and how we have to protect people and have to think about New Zealand’s interest, and the interests of New Zealanders.

I did say in my first reading speech on this particular bill, if I remember correctly, that in the Committee stage I might be moving an amendment on the blasphemy aspect of the Crimes Act, which is another thought-crime provision, but I decided not to do it at this stage, because I want to take part in what, I think, is a celebration of our all being together on this bill, and not necessarily pursue that particular track at this time. There are a few ends to be tied up in the Crimes Act as regards thought-crime, but we can do that at a later time.

**CHARLES CHAUVEL (Labour):** I join the other speakers who have paid tribute to the Green Party and to Keith Locke for his advocacy, on a consistent and principled basis, for the provisions of this legislation. I commend the other parties in the House that have joined with the Government to support the repeal of the sedition legislation, based on the very detailed and well-reasoned provisions of the Law Commission. I am sorry that in the end we were not able to persuade Mr Mark and his party of the merits of the decision to push for repeal, but it is encouraging that there has quite clearly been, for the most part, a good-humoured acceptance of the need to hear the arguments and respond to them. That is always something that the public respond to well when they listen to this House. It is a shame, in my view, as a relative newcomer to this place, that there is not more of that sort of thing and less of the ad hominem argument that is all too often a feature of debates, even in the Committee stage.

A previous speaker referred to a reforming Attorney-General of the 1960s, who certainly made some good progress, but obviously we should record our thanks to the great reforming Attorney-General of the 1980s, Sir Geoffrey Palmer, without whom we would not have had the Law Commission sedition report and the present legislation. So with those brief comments I conclude my contribution on the Committee stage of this bill.

A party vote was called for on the question, *That clause 1 be agreed to.*

**Ayes 112**

New Zealand Labour 49; New Zealand National 48; Green Party 6; Māori Party 4; United Future 2; Progressive 1; Independents: Copeland, Field.

**Noes 7**

New Zealand First 7.

Clause 1 agreed to.

A party vote was called for on the question, *That clause 2 be agreed to.*

**Ayes 112**

New Zealand Labour 49; New Zealand National 48; Green Party 6; Māori Party 4; United Future 2; Progressive 1; Independents: Copeland, Field.

**Noes 7**

New Zealand First 7.

Clause 2 agreed to.

A party vote was called for on the question, *That clause 3 be agreed to.*

**Ayes 112**

New Zealand Labour 49; New Zealand National 48; Green Party 6; Māori Party 4; United Future 2; Progressive 1; Independents: Copeland, Field.

**Noes 7**

New Zealand First 7.

Clause 3 agreed to.

Bill to be reported without amendment presently.

*Sitting suspended from 6 p.m. to 7.30 p.m.*

Bill reported without amendment.

Report adopted.

## **HUMAN TISSUE BILL**

### **Second Reading**

**Hon HARRY DUYNHOVEN (Minister for Transport Safety)** on behalf of the **Minister of Health**: I move, *That the Human Tissue Bill be now read a second time.* The bill has been reported back from the Health Committee, which recommended that it be passed with amendment, and I would like to thank the committee for its careful consideration of the bill. I am sure there will be a few members listening who say that this is a very unusual bill for the Minister for Transport Safety to be involved in, and certainly it is, so I say at the outset that I am doing this reading tonight on behalf of the Hon Pete Hodgson, the Minister of Health.

But this bill is one that in the past I have had some interest in, in that on a driver's licence, of course, one will see that the word "Donor" is, or is not, on that licence. I invite everyone to check their drivers' licences right now. Members may take their licences out of their wallets, if they have them, and check them. Certainly, I am proud to say that as far as I am concerned, after I have gone they can use whatever bits of me they need to help prolong the life of anyone they might be useful to. But that leads to the particular matter before us.

The Human Tissue Bill was introduced in November last year to provide a framework for regulating the collection, storage, and use of human tissue—primarily, of course, tissue from deceased people. It also regulates trading in tissue, the export and import of tissue, and the use of tissue for non-therapeutic purposes—for example, research, education, audit, and anatomical examination. Once enacted, the Human Tissue Bill will repeal and replace the Human Tissue Act of 1964.

The bill makes “informed consent” the fundamental principle underpinning the lawful collection and use of human tissue. It replaces the use of “lack of objection” in current legislation with “informed consent”, which is consistent with the Code of Health and Disability Services Consumers’ Rights. By specifying who may give consent for the collection and use of human tissue, the bill provides clarity for organ and tissue donation and the collection and retention of tissue at a post-mortem examination.

The bill provides some exceptions to the general rule that informed consent is required to collect or use human tissue—for example, where tissue is collected or used under the Coroners Act 2006 or for criminal justice purposes. The bill also recognises that there are certain limited circumstances where, because appropriate safeguards are in place, the public good associated with the use of tissue outweighs informed consent requirements, and an example is certain research where that research is approved by an ethics committee. The bill sets out who is able to give informed consent in four different circumstances: the collection and use of tissue from a deceased person for general purposes, including organ and tissue donation and research; the collection and use of tissue from a deceased person for anatomical examination or public display; the use of tissue that was collected from a living person for a secondary purpose after that person’s death; and the collection and use of tissue from a living person where the code does not apply and the analysis is for the purpose of obtaining genetic or other information about a particular condition or trait. The consent framework is slightly different for each of these situations, and I am pleased that the committee has recommended the inclusion of flow chart diagrams to aid understanding.

I will briefly describe the consent framework for the collection and use of human tissue from a deceased person for general purposes. In this case, the primary consent will be that of the deceased before he or she dies, or of someone nominated by the deceased person to consent on his or her behalf. In that absence of consent to donation by the individual, or by his or her nominee, the decision will be made by the immediate family. The bill provides for decision making by an available close relative of the dead individual if the immediate family is unable to reach a decision.

Since the bill’s introduction, the committee has heard from a diverse range of submitters, which has resulted in a number of improvements to the consent framework. One of the key amendments recommended by the committee is the introduction of “informed objection”. This amendment recognises the ability of decision makers to raise an informed objection alongside the ability to give informed consent. Both “informed consent” and “informed objection” will have legal standing, and will prevent others from consenting or objecting.

The committee also recommended two amendments to give greater recognition to the culture of the immediate family. The first requires decision makers to take into account the cultural and spiritual needs, values, and beliefs of the immediate family. We want to encourage individuals who want to make a decision about the collection and use of tissue after their death to consider the impact of their decision on their family. But we also want individuals to retain the right to make a decision that their family does not agree with.

The second amendment requires the person collecting or using human tissue to take into account the cultural and spiritual needs, values, and beliefs of the immediate

family. It is entirely appropriate for clinicians, researchers, and others who are collecting and using human tissue from a deceased individual to do so with proper recognition of, and respect for, the immediate family. A number of submitters noted the difficulty of enforcing the wishes of the individual if those were at odds with the wishes of the family.

Other situations where organ and tissue donation may not proceed, even though there is consent, include situations when the organ or tissue is unsuitable or there are no available recipients. The committee has recommended changes to make it clear that nothing in the bill requires any person to collect or use human tissue, and that a person who proposes to collect or use tissue may decide not to act on informed consent. It is appropriate that organ donor coordinators, transplant surgeons, and others should be free to decide not to act on informed consent if the information available indicates that they should not do so. If individuals have not made a decision before their death, or nominated someone, then their immediate family may consent or object to the collection or use of their tissue.

The bill as introduced provided that the immediate family could not give consent unless a majority of the immediate family agreed with that decision. The committee has recommended that the need for a majority decision is removed. This amendment will mean that a member of the immediate family may give informed consent, or raise an informed objection, once it is clear that all capable family members accept, or would accept if consulted, that decision. This amendment will allow families to reach a decision in whatever way is appropriate to them, as long as they collectively agree with the decision.

The Human Tissue Bill has been reported back by the Health Committee, and the committee has recommended that it be passed with the amendments shown. Certainly, the issue of donors, in terms of organs for transplant, is one that has a great deal of emotion surrounding it. I commend the select committee for the thorough and sensitive way in which it approached this issue. There are many of us who, when we had our photo driver's licences issued some years ago, opted to become organ donors. In other words, if we are unfortunate enough to lose our life in a crash on the road—or indeed in any other circumstance—our organs, we feel, may be used by whoever could make use of them. Surgeons would obviously have to assess their suitability, etc. We will all be aware of people whose lives have been extended or indeed saved by the ability to receive transplanted organs from other people.

I commend the bill to the House, to provide clarity on the consent required for the collection and use of human tissue for the public, clinicians, and others involved in the collection and use of tissue. I think it is a bill that the House will be most anxious to debate thoroughly, a bill with subject matter on which many people have very strong views, and a bill that I believe this Parliament should seriously consider. I commend the bill to the House.

**Dr JACKIE BLUE (National):** The National Party will be supporting the second reading of the Government's Human Tissue Bill, although we remain concerned that an organ and tissue donor register is on hold for the moment.

First, I would like to make some general comments about the bill. The Human Tissue Bill provides a consent framework within which the individual's wishes, if they meet the definition of informed consent, are given primacy. The National Party absolutely supports this intention. This is the basis to the Code of Health and Disability Services Consumers' Rights, which was launched in 1996 by former National MP the Hon Katherine O'Regan when she was Associate Minister of Health. I would like to take the opportunity to wish Katherine a speedy recovery.

The establishment of the code of rights came out of the recommendations of the cervical cancer inquiry in 1988, which was a turning point in our health system. Specifically, the code talks about an individual's right to be fully informed, and the right to make an informed choice and to give informed consent. The difference is that although the Human Tissue Bill predominantly regulates the collection of tissue from dead human bodies, the code is about living people. None the less, the basic principle that an individual's informed consent has primacy in both this bill and the code is absolutely appropriate.

This bill replaces the Human Tissue Act 1964. It is a complex bill and raises many complex issues. It has raised the issue of the cultural context of informed consent. Researchers were very concerned about how the bill would affect established cell lines where the original donor was untraceable. They were concerned that if established cell lines were included, research would grind to a halt. We also heard from a private company that collects cord blood from newborn babies to store that it could go out of business if it paid a fee for the blood to be collected. These and other issues had to be considered.

Apart from our concerns about an organ donor register, the National Party was reassured that the Human Tissue Bill in its latest form had no loopholes or unforeseen, unintended consequences. It regulates the collection and use of tissue, primarily from deceased people, for non-therapeutic use such as for education, research, and audit, and the use of cadavers in medical schools. It regulates trading in tissue—export and import. It regulates schools of anatomy, closes gaps in current regulations for the use of tissue for living people, and allows for the provision of an opt-on organ donation register.

The Government's Human Tissue Bill was heard alongside my member's bill, the Human Tissue (Organ Donation) Amendment Bill. Andy Tookey was the driving force behind my member's bill. Andy has been a tireless campaigner, highlighting the issue of falling organ donation rates and the need for a register. The member's bill provided details on how an organ donation register could work. The way the Government bill was drafted was that if during the Health Committee process it was clear that the organ donation register was needed, then the member's bill could easily have been cut and pasted into the Government bill. Sadly, this was not to be. Even now it seems incomprehensible that this will not happen.

There have been two previous Health Committee reports—in 2002 and 2003—both calling for the establishment of an organ donor register. The Labour Party, as part of its 2005 election manifesto, said it would establish an organ donor register. We have seen our organ donor rates drop from the high 30s in 2001-04, to 29 in 2005, and to just 25 in 2006. We face the situation whereby the threshold to go on a waiting list has been lowered, which means there are more and more people waiting for a transplant. Organ transplantation is now an option for more illnesses. We face an obesity and diabetes epidemic. Some of the complications of diabetes are end-stage renal failure, chronic ill-health, and a life dependent on dialysis. There are reports of around 200,000 people being infected with hepatitis B or C. Liver failure is a complication of these illnesses, and those suffering from liver failure face certain death without a liver transplant.

It seems inconceivable that faced with such huge need and demand for organs, the backing of the Government, and two previous Health Committee reports, we should not be proceeding with an organ donor register immediately. However, we were told there was no international evidence for a register. This is despite a steady stream of media reports I have seen of countries turning to legislation to improve donor rates, establishing new organ donor registers, or going from intent registers to consent registers. These have all been done as a response to falling organ donor rates, in the face of increasing need. In January 2006 the Australian Capital Territory issued a press

release stating that their impressive increase in organ donations confirmed the importance of registering with the Australian programme. In September 2006 the UK Human Tissue Act came into effect to ensure that if a person registers his or her wish to donate organs, then that takes precedence over objections. In April 2007 Texans expanded their organ register into an online register. In the same month a Canadian media report called for the establishment of a national database and network, in the face of falling donations. In July 2007 there was a media report from Switzerland that they were establishing an organ donor register. In August 2007 Ontario reported that they would be establishing a register to replace what they called a “completely ineffective donor card system”.

I would like to make some comments about donor card systems, because without an organ donor register, in essence that is what New Zealanders will have to depend on. In other words, without an organ donor register, New Zealanders will have no other option but to carry around advanced directives or have instructions in their will. The Ontario experience is that when there is a sudden illness or accident, the last thing medical staff and family members worry about is their purses and wallets, which often get locked up. There are numerous examples of countries or states in the USA taking up registers, yet New Zealand is backing off. Where does that leave New Zealanders? The answer is, with not much at all. We are in a watch-and-wait situation.

There is provision in the Government’s Human Tissue Bill for a future Government to bring in an organ donor register by regulation, if one is deemed necessary in the future. We were told that a public information campaign would be crucial to an overall strategy to increase organ donor rates, but there was no information or detail about how a public relations campaign might work. Without a register, the call to action of a public information programme will be diluted and lost. A register would provide a crucial focus to a public relations campaign. A register would provide an informed consent process, which is fundamental to this bill. The register is the key. We have no register and no evidence of a public information campaign, and we are facing huge need and demand for organs. The focus will now be on Organ Donation New Zealand, which is the publicly funded body for retrieving organs for donation, to prove that a register will not be needed in the future and that it will be able to lift our organ donor rates. My very great concern is that it will not be able to do it alone and that we will be delaying the inevitable and wasting precious time. In summary, National will be supporting the second reading of the Human Tissue Bill, but we remain very concerned that an organ donor register is not forthcoming at the present time.

**SUE MORONEY (Labour):** I thank the Minister Harry Duynhoven for his introduction of this important bill. As a member of the Health Committee that heard the submissions on the Human Tissue Bill, it is a great pleasure to be able to participate in the debate on its second reading this evening. The select committee had several complex issues to deal with in relation to this bill. It was certainly one of those bills whereby the more we looked into the detail of it the more complex the issues became. Of course, it was incumbent upon the select committee—as it is with all legislation, but in particular with this bill—to treat all of the issues with great sensitivity. I believe that the select committee was able to do that right across the board, with all parties.

The select committee was able to fully canvass the issues, seek as much advice and detail as we needed from officials, and talk through the range of very complex issues that comes with dealing with human tissue and its use, and also with organ donation, which Jackie Blue has just finished speaking about. I do, though, want to comment on the issue of an organ donation register. There has been some quite misleading commentary on the Health Committee’s position.

It is not the position of the Health Committee to say no to an organ donation register; in fact, the framework has been set up and the option left open for that very thing to occur. I wanted to take the opportunity to clarify that. Also, in response to the previous member's speech on this issue, I was surprised to see that the National members on the select committee did not vote in support Jackie Blue's organ donation bill, that it was unanimously voted against by the select committee, and that the select committee's view was to proceed with the Human Tissue Bill, which I will now speak to.

I intend to tell the House a bit more about the wider policy background that led up to the bill's introduction. The policy behind the bill was informed by a review, and that review included public consultation undertaken by the Ministry of Health on the regulation of human tissue and tissue-based therapies. The review identified concerns about the current consent framework for the collection and the use of tissue. The Minister Harry Duynhoven has discussed how those concerns have been addressed in the bill and the amendments that have been recommended by the committee.

That review also highlighted issues relating to the regulation of the non-therapeutic use of human tissue—the import and the export of tissue and trading, which until now has not been adequately addressed in our current legislative framework. The non-therapeutic use of tissue is currently largely unregulated, with the exception of the schools of anatomy. The review found general agreement that an overarching standard for the non-therapeutic use of tissue was needed. The reasons for such a standard were the need for clarity and consistency, and to allow for monitoring of the processes around tissue use.

This bill will ensure the safety and quality of the non-therapeutic use of human tissue through standards being prescribed or approved by regulations. These standards will apply to the collection and the use of tissue for research, education, audit, diagnosis, post-mortems, anatomical examination, and other non-therapeutic purposes. So it is very comprehensive. The bill also contains additional requirements for schools of anatomy, including the licensing of those schools, given the invasive nature of the anatomical examination and the absolute need for public confidence in those processes.

The ministry review found general support for a more comprehensive oversight of the import and export of human tissue, to address issues such as safety and ethical concerns. Many respondents supported the import and export of tissue for quality assurance, for peer review, and for diagnostic and transplantation purposes, where adequate safety levels can be assured. The bill provides for regulations prescribing or approving requirements and standards for the import and export of human tissue. This will, if necessary, permit rigorous monitoring of safety and quality.

The bill also provides for requirements relating to informed consent for the import of tissue. These currently do not exist. These provisions will enable more stringent informed consent requirements for particular types of tissue—for example, human embryonic stem cell lines. The Health Committee took a particular amount of time to address this issue, because of all the factors that surround the very emotive and moral issues relating to the use of human embryonic stem cell lines, particularly with regard to their import or potential export.

The ministry review found general support for a prohibition on the sale and purchase of human tissue. I want to clarify that point, because it was important for select committee members to absolutely get clarity in their minds around this issue. There is general support for a prohibition on the sale and purchase of human tissue, but there is an acknowledgment that there should be some allowance made for the recovery of reasonable administrative costs associated with the collection, analysis, and processing of such tissue. The select committee needed to consider this issue very carefully, because, of course, there is quite a fine line between the costs associated with the

recovery of reasonable administrative costs associated with the collection of such tissue, and any suggestion that there might be reward or financial gain for the collection of such tissue.

The bill repeals Part 3A of the Health Act 1956, which regulates trading in blood and controlled human substances, and it replaces it with similar but extended provisions covering, for example, trading in all human tissue. The sale and purchase of human tissue, including blood, will, as a general rule, be prohibited, and that is the point I wished to clarify earlier. I want to make sure that anyone listening to this debate is absolutely clear on this point: under this bill the sale and purchase of human tissue, including blood, will, as a general rule, be prohibited.

In further clarifying the media reports that I referred to when I started my speech on the second reading debate on the bill, I made a comment about the select committee's findings on the need or otherwise of an organ and tissue donor register. I will read specifically what the select committee's findings were, because, as I said before, there have been some quite misleading media reports in this regard. This is what the select committee found: "We were informed that there is as yet no compelling evidence that an organ and tissue donor register increases the overall rate of organ and tissue donation. Nevertheless, some of us feel that a register would be useful as a focus for informing and educating the public and thus promoting organ and tissue donation. Others feel that the cost of establishing a register could be better used to fund a direct information campaign."

It is interesting to pause and reflect on that particular statement from the select committee, because we often hear from the Opposition benches that those members are in favour of reduced Government spending where they do not feel that there is a demonstrated need or sufficient evidence to pursue some of the issues that the Government wishes to pursue. That is of particular relevance when we address this issue, because the select committee found that there was not enough compelling evidence to support the cost of establishing such a register at this point. So the majority of the committee did not recommend establishing a register at present. But, most importantly, it recommended including a clause that permits the establishment of an opt-on register, by regulation, at a later date. That is the very point that I think has been glossed over by some of the media reports.

This select committee has gone about recommending that a framework be put in place so that such a register can actually be brought into place at a later date, where the evidence shows us that it would have the outcome of increasing organ donation rates. The issue of increasing organ donation rates was very much in the minds of the select committee members when we heard submissions on this bill.

I thank the submitters who came forward. Many of them had very personal and very heart-wrenching stories to tell about their experiences of dealing with the untimely, unexpected deaths of loved ones, and the way in which they had to make some decisions, or not. Some submitters were there to tell us that they would have liked to have the opportunity to make such a decision about organ donation, but in that moment of grief the issue was not put before them. Certainly, some of those submitters were there to tell us that they would like the medical profession to put those issues before them so that they can make those decisions. In conclusion, I commend the bill to the House.

**BARBARA STEWART (NZ First):** On behalf of New Zealand First, I rise to support the second reading of the Human Tissue Bill. As a member of the Health Committee, I acknowledge the work that the officials put into this bill. The process was very complex, and their advice was very, very thoroughly researched. We believe that it benefited us and allowed us to make relevant changes to the bill.

The select committee members worked very diligently on the bill. We were very aware of the important research that has been carried out by the universities and the many other research institutions that are involved in this area, and we did not want to hinder any of this vitally important research.

The bill is important. The commentary on the bill states: “The bill regulates the collection and use of tissue from dead human bodies and sets up a framework for informed consent for tissue use.” The bill is comprehensive and quite complex, but it provides clarity on informed consent and informed objection. In the schedules of the bill there are actually flow charts. This is one of the first bills I have ever seen that contains flow charts, but we believe that they provide clarity and that they help to show the intent of the bill.

The bill also allows for the setting up of an organ donor register, if at some time in the future there is sufficient evidence to establish an opt-on register. Of course, this provision links with Jackie Blue’s bill in which the focus was on the mandatory establishment of an opt-on register. The data the select committee received from overseas countries regarding the establishment of an organ donor register does not show at this point in time that setting up an organ donor register actually ensures that increased numbers of people donate organs and tissue.

New Zealand First, like other parties in this House, believes that an extensive public marketing campaign is required, if an opt-on register were to be successful. Without that campaign, organ donation will always remain in the too-hard basket. Basically, there has been no action at all on this front since 2004, when the Health Committee recommended that a legally binding register should be set up here in New Zealand. We are very aware that the register and any public information campaign need to go hand in hand, as the bottom line is that any register that is set up cannot afford to fail.

At this point in time the rates of organ donation are very low; there were just 25 donors last year. But increasing numbers of people are waiting for organ transplants. We are only too aware of this situation. This House is very aware too that the land transport database of organ and tissue donors does not work. It makes one question why the organ donor option has to be indicated on a driver’s licence, if it is of such little value. More discussion is needed when a person ticks the relevant boxes on the driver’s licence form, whether with his or her family or in some other way, but it needs to happen.

I remind the House that the tick on a driver’s licence is only an indication of a person’s wishes; it is not legal consent for donation. I think many people believe it to be so. That tick has often left grieving families unsure about what to do, so usually nothing is done. The donation of organs can be an extremely controversial decision for families at a very stressful time in their lives. The select committee tried very hard to clarify the consent process that is required—hence the flow charts. We thank the many submitters who came forward with some very sad stories to tell.

New Zealand First believes that the bill should provide informed consent requirements that must be met before tissue collection or use. This issue is not going to go away. It has not been addressed, at this point in time, to the satisfaction of all New Zealanders. However, I need to remind people—like the previous speaker—that the potential is there in this legislation to develop an opt-on register at some later stage.

When we look at the use of human tissue in a wider context we see that it is important that researchers are aware that this bill does not make lawful any activity that is currently prohibited. As has always been the case in New Zealand, a person cannot sell his or her own tissue, or tissue from a body that the person is responsible for. That is prohibited, as it always has been. The last thing that most New Zealanders would

want to occur is financial consideration for human tissue or organs. We believe that the gift status that these donations have been accorded must remain.

It was very interesting to hear, over the course of the select committee process, that a few submitters believe there should be mandatory harvesting of organs, once a person has died, because the person would not need them any more. The submitters believe that that would save the health system millions of dollars, as people would not need expensive treatments, or the medications that are required, while they are waiting for a donor. It is a very interesting concept, but it is far beyond the scope of this bill at present.

This bill outlines the other requirements for, and restrictions on, the collection and use of human tissue. It is cross-referenced to a number of other bills, such as the Coroners Act, Human Assisted Reproductive Technology Act, Health Act 1956, and Commerce Act. So there has been quite a comprehensive review of all that legislation, as well.

New Zealand First believes that this bill clearly sets out the processes that need to be followed for the collection and use of tissue from dead human bodies, and sets up the framework for informed consent for human tissue use. We look forward to further discussion of this bill at the Committee stage and to hearing the views of the other parties as we debate the various clauses. In conclusion, New Zealand First supports this bill.

**TARIANA TURIA (Co-Leader—Māori Party):** Tēnā koe, Madam Assistant Speaker. Tēnā tātou katoa. As we in the Health Committee were completing our analysis of the Human Tissue Bill, I came across an interesting article by Dr Jean Hera of Palmerston North, who was questioning the way society deals with death. She said: “Watching over and caring for our dead, as is the Māori custom, is also our culture and we need go back less than a hundred years to discover this.” Dr Jean Hera is Pākehā, and the traditions she talks of are the traditions of Pākehā culture. She said: “It isn’t well recognised that the present mainstream Pākehā experience that sees death treated with detachment and hidden away as much as possible, is not our death culture as Pākehā.” She said it had been a recent intervention.

The Human Tissue Bill has been one of those rare opportunities before the Parliament where the traditions and practices of our cultures, such as in the processes around death and dying, have been at the forefront of our discussions. I want to mihi to Sue Kedgley, and, indeed, the Health Committee, for the generosity of time to explore the issues central to Te Ao Māori. Any bill that deals with the collection and use of human tissue from dead bodies was bound to evoke strong responses from Māori—and, indeed, from myself—because the processes around the collection or use of human tissue we have always seen as being in the realm of whānau, hapū, and iwi decision-making. As such, we in the Māori Party have been fully alert to the concerns and fears that would be raised by the whānau of the deceased at the time of decision making, and these decisions are cradled in a context defined by whakapapa—a context in which the philosophies of mauri, wairua, and tikanga are sacrosanct.

For explanation of this context, a paper that Dr Paratene Ngata wrote for the *New Zealand Medical Journal* in 1995 is still relevant to this debate. Dr Ngata was addressing the context around death and dying from a Māori perspective: “Death and dying, like giving birth and living, are considered natural and normal processes like breathing, eating, sleeping and creating life. Death is also a transitional process—from Te Ao Marama (the world of light) to Te Ao Pouri (the world of darkness), a normal part of the life cycle.” He said also: “And while contemporary Māori attitudes and beliefs have been significantly influenced by the Christian doctrine, any attempt to intervene in any natural and biological process—like Tane’s struggle to conquer

death—would generally meet with antagonism, disapproval and vigorous opposition.” Dr Ngata did go further to suggest that any changes to this process must, as a priority, involve the collective wishes of whānau and hapū. As he concluded, “consultation with, and participation of, iwi Māori in the debate is essential”.

The tension between the “antagonism, disapproval and vigorous opposition” and the collection and use of human tissue could be addressed only, in my view, through the effective participation and involvement of whānau and hapū in the debate. I concur with the views of Dr Mārewa Glover from the faculty of medical and health sciences at the University of Auckland who advised that having a few Māori on a committee, or writing submissions, is not enough to constitute proper consultation or engagement. Tangata whenua deserve to receive all of the relevant data and robust information in order to know what questions to ask, to be able to determine optimum outcomes to assess whether whānau or hapū will derive some benefit from the proposals. Despite our best intentions, the advocacy that came through at the select committee was insufficient to make the changes necessary to enable whānau decision-making to have the final say.

During the process of the bill the Māori Party worked with the Parliamentary Counsel Office and drafted amendments that were tabled before the Health Committee. The amendments were to enable an overriding objection to the collection or use of human tissue to be raised by a deceased person’s whānau, the effect of which would be to prohibit any collection or use. As the record shows, however, the committee voted down the amendments, with the consequent effect that wishes of the individual will prevail at all times and at all costs. And the cost is quite simply another piece of legislation that marginalises, ignores, and rides over the cultural imperatives provided by tikanga Māori.

We were interested that the Bioethics Council, Toi te Taiao, agreed, despite also privileging individual rights over whānau, that the bill does not provide adequate consideration or recognition of tikanga Māori. Its submission reminded us all that in Māori world view the body is considered tapu and therefore requires specific consideration and respect. It considered that the collection and use of human tissue for research may inadequately respect the cultural values of Māori as it currently appears in the bill, so they suggested that more kōrero and wānanga with tangata whenua is needed to discuss issues involved with organ donation.

Much the same concerns came forward from the Dunedin Community Law Centre. It supported the right of families to object to the use of human tissue, noting that once an individual has passed away, his or her needs should become secondary to those still living. This is very much the hub of the debate around death in a Māori world view. We see the deceased as belonging to his or her family, both through a genetic and cultural history, knowing that without our ancestors or our descendants we would not exist.

There was one other opinion that very powerfully put the case for initiatives and measures to ensure equitable access for Māori to receive organ transplants. Dr Jessica Hutchings, resident scholar of Te Mata o te Tau, Massey University, came from the perspective of Māori relationships with new technologies, such as genetic technologies and nanotechnologies. Her key point to the committee was the same as that raised by Dr Pat Ngata, that the issue of informed consent is critical. In a context that is driven by considering the impacts on and the implications of mauri, whakapapa, and ira tangata, and the states of tapu and noa of organs, she strongly advocated for the development of information for Māori audiences to be developed by Māori. We have raised the same two concerns—the call for whānau involvement and access to effective information—throughout every stage of the progress of this bill, but it appears to no avail.

The Māori Party cannot support this bill in its current form. Our people have spoken consistently and passionately that the use of human tissue requires the recognition of

both individuals and collectives in the consent process. The bill in its current form denies the collective involvement of whānau by reducing the decision-level authority down to the cause of the individual. The bill appears to place greater emphasis on the rights of the individual and the closest members of the family than on the extended whānau. Although the bill does give some consideration to the wishes of the immediate family, the provisions remain insufficient to give whānau the ability to make an overriding objection. The Māori Party asked for an amendment to the informed consent provisions to include the words “informed consent” within a cultural context, which would have included all cultures. But, sadly, as in many other pieces of legislation in this House, there is only one world view, and that is definitely not indigenous.

The intensivists who deal with families coping with trauma in intensive care clearly understood all the issues. Transplant does not occur during the normal process of a person dying of a disease; it happens when families are in trauma. Tangata whenua are actually not totally opposed to transplant. Whānau have been more than willing to donate organs between their members while living, and this is already happening. It makes sense to us as tangata whenua. Dr Jessica Hutchings asked the question: “Is our current health system capable of responding appropriately and sufficiently to issues of protection, informed consent, Māori control of information and medical processes, access to information, and medical care?”. We would have to say no.

It is because of our deep-seated caution around such significant issues for Māori that our position in this second reading will be to oppose it. Never a party to give up, however, the Māori Party will be tabling a Supplementary Order Paper at the Committee stage of this bill to give this House the opportunity to create legislation that the Health Committee, by majority, passed up—the opportunity to create legislation that is inclusive of a Māori world view. Kia ora.

**SUE KEDGLEY (Green):** The Green Party will be supporting the second reading of the Human Tissue Bill. I would like to speak briefly in my capacity as chair of the Health Committee. We gave this bill the same very objective consideration we gave the Health (Drinking Water) Amendment Bill. We approached the issue with a very open mind, and we listened very intently to submissions. It was a very collective process, and we came up with legislation and a report that we believe most responded to the issues and the submissions we heard.

The Human Tissue Bill is an incredibly complex bill. In fact, it is so complex that we asked the officials to put in flow charts to explain, for example, the consent process, because we felt that most New Zealanders reading this bill would not be able to understand it. Obviously the whole issue of giving organs and tissues from deceased persons is a very emotional and sensitive one. We heard submissions, on the one hand, from intensivists who have to deal with this issue on a daily basis, and, on the other hand, from persons whose children would stand to benefit from organs or would need them in the future. Those people have a very, very intense interest in increasing the very tragically low rate of organ donation in New Zealand.

I think that the select committee went about its consideration of the bill with an open mind. I can certainly say I did. In fact, when we began to consider the bill I expected I would be supporting a mandatory organ donor register, as the select committee had previously recommended. It really was only by listening to the submissions that I slowly came to change my mind. The reason I thought I would support an organ donor register was the reason that others have pointed out—namely, the tragically low numbers of organs being donated in New Zealand and the awareness of the huge and escalating demand that there will be for organs in New Zealand, particularly because of end-stage renal disease as a result of diabetes, and because of end-stage liver disease.

We noted that in America the number of people waiting for kidney organs alone has more than doubled over the past decade, and that that country is seriously considering whether a rationing system should be set up. The issues being considered include whether the young should be given priority, and whether older patients over the age of 70 or 79 would be accepted for organ donation. That is the level of debate being considered in America. Of course, we can cast our mind to China. Recently I attended a lecture about the Chinese situation of organ harvesting, whereby organs are taken from prisoners or from people who have been executed, presumably because the demand for organs in China is huge, as it is elsewhere in the world. Let us hope we never get to the stage that the Chinese have got to—harvesting organs from prisoners.

There was a turning point for me. I suspect that it was also the turning point for Steve Chadwick, who originally had a member's bill calling for a mandatory organ donor register, and that it was the reason she withdrew her bill. That moment was when the intensivists pointed out that there was no evidence at present that having a mandatory organ donation register, or an opt-on one, actually increased organ donor rates.

The scientists said to us that if we were scientists we would have to have some demonstrable evidence that if we were going to introduce something pretty major—which establishing a register would be—it would work. They said that if scientists have to respond on the basis of proven evidence, why should not politicians? Why should politicians go ahead and recommend the establishment of an organ donor register when, in fact, we do not have any evidence from registers that have operated in other parts of the world that they actually result in an increase in the number of organs donated?

Given that our whole purpose as we debated that particular part of the legislation was to find a way to increase the number of organs donated in New Zealand, that certainly gave me—and I suspect other members—serious pause for thought. Why indeed would we set up a register when, at this stage, there is no evidence that a register works? That is why we came up with what I think was a compromise, which is that we will give regulatory powers for the Government to set up such a register if evidence emerges that it does result in an increase in organs donated. Ordinarily the Green Party is opposed to legislation that sets up regulatory powers for Governments to do quite significant things such as this, but on this occasion we supported it. We felt it was a very sensible way through the dilemma we faced—namely that if strong evidence does present itself, then a Government does not have to come back to this House but can act to set up a register using its regulatory powers, but it does have to demonstrate that there is international evidence, whereas at the moment the evidence is inconclusive.

The other point that has not been mentioned thus far, which also had a significant influence on my decision, was the realisation that, actually, there is only a tiny, tiny fraction of New Zealanders who could donate their organs. Sometimes when we listen to the debate on organ donation we ask why, with 4 million New Zealanders, are we not just handing over our organs? Why is there this problem of only 25 or 30 organs being donated? The truth is that there is only a tiny fraction of people who would ever be in a situation to donate an organ when they are deceased, and that is because they would have to be brain-dead and they would have to have tissue in very good order, and last year, for example, there were only 104 possible donors in New Zealand. So we are not talking about hundreds of people who are not donating organs. We were informed that because of the ability to keep people alive after accidents, the number of people who are clinically brain-dead and who have the right tissue is diminishing, which, as the intensivists told us, is one of the reasons that the numbers were not increasing.

There are huge moral and ethical issues surrounding the whole issue of organ donation. We—certainly the Green Party—totally respected the views expressed by the Māori Party and in particular by Tariana Turia about the views of tikanga Māori and the

need for whānau to have the final say over whether to donate the organs of a deceased person. We accept that there are completely different views and values around death and the taking of organs between Pākehā and Māori and other cultures, and we strongly supported the Māori Party's amendment that would have allowed whānau to have the final say over whether to donate an organ. We were very disappointed that the rest of the select committee did not support that. We are very pleased to hear that the Māori Party will be putting up that recommendation again.

It seems to me that the situation is as Tariana Turia said—we end up here imposing what we could say is the Pākehā view of death and organ donation rather than taking into account adequately the sensitivities of different cultural traditions, and I think that is a great shame. We tried very hard to achieve that. Officials worked with a Māori adviser, and I thought we came up with an excellent amendment, and I am deeply disappointed that it did not go through.

Obviously there are many other complex issues in this bill. Overall, we are pleased with it. We are particularly pleased with the way that informed consent is the fundamental underpinning of the entire bill, and that it will not be possible to use tissue or organs without informed consent. So with some misgivings we are pleased to support the bill.

**JUDY TURNER (Deputy Leader—United Future):** I will take a brief call for United Future on the second reading of the Human Tissue Bill. We will be supporting the second reading. I would like to congratulate the Health Committee and Sue Kedgley as chair of that committee on working on what is a very complex bill. I would also like to congratulate Dr Jackie Blue. I am glad she is in the House tonight because I know that this is something she has been really passionate about. For her, the bill is a compromise position, and that is a hard pill to swallow, and I understand that.

Back in 2002, when United Future enjoyed representation on the Health Committee, I was able to be part of those early discussions around organ donation. Like Dr Jackie Blue and Sue Kedgley, I was very moved by the story of advocates like Andy Tookey to see what we could do to improve organ donation rates within New Zealand. At the time, a mandatory register seemed like an extremely sensible approach and a way of increasing the opportunity for organ donations within New Zealand.

But even back in 2002, one of the things I remember very clearly was the submission we received from intensivists, from those who work at the coalface of organ donation and intensive care wards with people who are on life-support machines and technically brain-dead, and their grieving families, who are in the process of making some horrendous decisions to turn off life-support. In those circumstances these amazing medics work with families to suggest the possibility that organ donation may be something they are able to consider. They said that we could regulate as much as we wanted regarding having a register, and making it mandatory, and closing the door for families to object once somebody had made up his or her mind—we could basically pass any law we liked—but they, as caring health professionals working with families and loved ones, were not ever going to insist that organs were harvested from a body against the wishes of a family.

I found that very compelling, and I have always believed that if Parliament is to do any work of substance, then we must make sure that what we are talking about is, no matter how ideal it is, actually able to be applied and implemented where it matters. The very clear message we got from doctors at that time was that although they agreed with us that it would be great to improve the donation rate within New Zealand, they were completely unconvinced that a register would secure a higher donation rate—that was their first point—and their second point was that we did not walk in their shoes. We did

not understand the dynamics of the work that they do, and therefore we needed to be developing ideas in consultation with them, rather than dumping policy on them.

However, I think what the select committee has done in this regard is great. The fact that it has included a clause that permits the establishment of an opt-on register by regulation at a later date, should we consider that to be the way to go, is a very good step, and it means that we can revisit this if we get greater clarity on how we can proceed in a way that has efficacy.

Of course, the bill is about more than just organ donation. It is about the handling of all human tissue other than that which is covered under the Human Assisted Reproductive Technology Act, passed in the last Parliament. There are some interesting provisions that I remember our talking about in relation to that Act, such as trading in human tissue. I am really pleased to see that the committee recommended that the bill that existed at the first reading be amended so that offering, providing, requiring, or accepting financial or other considerations for human tissue was totally prohibited, ensuring that in New Zealand society we recognise the gift status of human tissue. The committee was very clear about making sure that the wording was not in any way able to undermine current provisions within Government policy that provide for income support for live donors—I think it is good to protect that policy gain—and it also reinforced the current status of blood donations as a gift.

Another interesting ethical dilemma that is touched on in the commentary on the bill is the collection and use of gametes and embryos from dead persons. I remember that when we considered the Human Assisted Reproductive Technology Act we read some really interesting case history. There was the infamous case in Britain where a woman was allowed to harvest sperm from her dead husband, then was unable, under British law, to use it to have a child by in vitro fertilisation. However, she was able to transfer it to France, from memory, and under French law was able to use it. The ethical dilemma that that creates around children being born to a biological parent who has long since died is an immense issue, but I think it is good that there is some reference to that, and I like the default position that the committee has arrived at. The clear wishes of the deceased need to be taken into consideration in these matters, particularly when dealing with, say, an unborn child whose mother has died in an accident but who is unable to be born live. Again, the law as it applies to the mother applies to the child, unless the child has previously been born.

A number of really interesting ethical issues come up in this bill. I think the select committee has done a very good job. We appreciate the fact that it insisted on some flow charts to guide us through the hierarchy of consents that it has put in place, because it is a very complicated issue. United Future is happy to support the second reading.

**Dr JONATHAN COLEMAN (National—Northcote):** As has already been well canvassed by my colleague Dr Jackie Blue, National will be supporting the Human Tissue Bill. Other speakers before me have laid out quite clearly what the bill is all about, so I do not think we need to go over that again.

One of the things that is disappointing to National members is that the opportunity to establish an organ donor register has been lost. If we look at the bottom line, we have a real problem in this country with a lack of organ donors. Last year only 26 donors were available across the whole country to provide organs for those in need. At the same time we have this massive explosion in diseases like diabetes, hepatitis B, and hepatitis C. Those are all diseases where, at the end stages, if people are going to survive them they will need transplants of live organs. In the case of renal disease obviously they will need a kidney, and in the case of hepatitis they will need a liver. We are faced with the very real situation of a dire shortage of organs, and New Zealanders on waiting lists are

dying every year because they cannot get the organs that they need. It is an emergency situation.

The Health Committee found a lot of common ground on this bill. It is fair to say that intellectually it is probably the most challenging bill we have been faced with during our time as a committee. But it also threw up quite a few points for discussion and some points of difference. The chairperson Sue Kedgley touched on the point that there was no evidence to support the establishment of a register. I think members need to consider that there is pretty much no evidence to support a lot of the things that are done in Parliament and decided upon, but Governments and political parties vote on those anyway. I think this situation, the possibility of creating an organ donor register, is one where we could have taken the bull by the horns and done something that has a chance of addressing this problem. It is true that the clear evidence may not be there yet, but it is good enough for people in Australia. They have decided that that is where they have to invest their money and invest their effort in dealing with this problem. It is good enough for people in many jurisdictions in the United States. They have established organ donor registers. We really have to do something about this problem. I commend my colleague Dr Jackie Blue for her member's bill. I think it is a shame that it has not been incorporated as part of this bill, and that we could have come away from this debate with something concrete upon which to base future efforts in raising organ donation rates.

There were other points of contention. Tariana Turia gave a very thoughtful contribution before, outlining some of the cultural differences in approaches to tissue and organ donation, and those differences are very real. The National Party point of view is that informed consent on the part of the individual has to take primacy, and that basically if people make a decision during their lifetime that they want something to happen to their body parts, that should not be overruled. I can understand, though, from the perspective of other cultures that that is not an acceptable position and that we need to have an element of collective decision-making. The problem I see, though, is that in terms of collective decision-making we may never get the organs that we require for the donors who require them. I think that is something that as a society we have to find some sort of way around, because we do need a practical answer to this problem.

We heard from many submitters during the process who talked of the way their families had found some redemption and gained something positive out of the death of a loved one when they knew that those organs that their loved ones were giving up were going to give other people a chance at life. We are faced with a very real decrease in the numbers of organs available. One of the good things about the decreasing road toll, of course, is that there is much less needless waste of life on our roads every year. The flip side of that has been that fewer organs are available for transplant from those car crash victims who, while unable to continue with their own lives, do have healthy organs to offer up. That has had a real impact on the transplant scene. No one is suggesting that we want to see the road toll increase; the reduction has been a very positive thing. But at the same time we need to find ways to meet demands for those organs. It is going to be very, very important.

A key issue that came up during the select committee discussions was the trading of tissue. No one wants to see organs and tissues traded on an open market, but there is a very real need for researchers and medical scientists to have access to the tissues they need so that research can be carried out. Once again, it is a situation where we have to look at the needs of our whole society. We would not want some of our fine learning institutions around the country to be handicapped because they cannot get access to those tissues and materials that they need.

The issue of consent has been touched upon and, as members will see in the report from the select committee, its members constructed some fairly complex flow diagrams to try to clarify the issue. There is a hierarchy of people available to give consent. Gaining consent is quite a tortuous, convoluted path, but at the end of the day National believes that if an individual makes a decision about what he or she wants his or her body to be used for after passing on, that decision should be respected and no one should be able to overrule that. We think that if we held that point about the primacy of informed consent at the very centre of the tissue donation process, it really would protect the rights of the individual and it would also go quite some considerable way to addressing this issue of a shortage of donor organs.

I want to pay respect to Andy Tookey, a member of the public who has been very central to seeing something actually happen with regard to raising awareness of organ donation. He has been the driving force behind trying to establish an organ donation register. I know that he will be very disappointed that his dream has not been realised. He has put a lot of effort into this. He has a little girl who needs an organ. She is a brave little girl; she came before the select committee. It brought home to us as select committee members the real human cost involved in this whole organ shortage issue. I think that we as a society cannot just sit back and do nothing; we have to say that there is a donor problem in New Zealand. It will not just be good enough for people to be registered as donors on their drivers' licences knowing that someone from their family can come and overrule their wishes, and that the destinations people would have wanted for their bodies will not come to pass—that they will not have the opportunity to give up their organs to give someone else the chance of life. Fundamentally, I think that is really wrong.

I had a lot of confidence in Jackie Blue's bill—that that would go quite some way to addressing the problem. I think if we had had an organ donor register, and if it had had sufficient publicity, young people in New Zealand would have become educated about what they could do to put something back into society by becoming organ donors. I can tell the House that unless we actually have a supply of organs for donation—unless New Zealanders step up to the plate and say “Yes, I am prepared to be a donor.”, and unless we are going to respect that and not override people's wishes to do with their organs as they so desire—we will have increasing numbers of New Zealanders on waiting lists dying of kidney failure and liver failure because they cannot get the organs they want, and that would be a tragedy.

As I say, National is supporting this bill. We have some reservations and we would have liked to see it go further, but I think this is a good start.

**MARYAN STREET (Labour):** It is with pleasure that I rise to support the Human Tissue Bill. I will make a couple of comments in response to some of the speakers before me, before I begin to speak on a couple of points I want to make in particular. I pay tribute to Sue Kedgley as chair of the Health Committee for the way in which she guided this very complicated and quite emotive legislation through the select committee process. I also acknowledge the contribution of the Māori Party, through Tariana Turia, to the discussions on this bill and its provisions. The comments that Tariana Turia made earlier in this debate are important, because it is very clear that there is a dynamic and ongoing conversation within Māoridom about issues relating to organ donation. There are very sensitive issues of tikanga and very sensitive issues about whanaungatanga and whānau, and there are issues to do with the rights that individuals or whānau might have over the donation of organs after death.

All of those issues were canvassed carefully by the select committee—even though the particular proposal that Tariana Turia brought to the select committee did not proceed—with the support of the whole committee. But I acknowledge particularly the

fact that we had Māori submitters who took different positions, and it was quite clear that an ongoing and dynamic conversation is happening amongst Māori on marae all around the country currently, especially as Māori reflect on health issues and try to reconcile health demands with some of the traditional practices and values that are so dear. So I wanted to make that acknowledgment, and pay tribute to the chair for her work in guiding this matter through.

This bill has demonstrated to me, more than anything, that nothing is simple. One would think intuitively that the trade in human body parts is anathema, that it should be forbidden, and that no civilised society should engage in such a practice for money. However, when it comes down to the definitions of body parts and human tissue, we begin to see that such things as cell lines have been advertised and, effectively, traded across international boundaries for a long time for purposes that this House without a doubt would support—that is, non-therapeutic purposes of research and scientific progress. Those are some of the issues with which the select committee had to deal.

We have heard a lot from previous speakers about one of the parts of this bill—the one relating to organ donation, which is the part most likely to attract public attention. In response to that particular issue, I say that the establishment of an organ donor register is not a cure in itself for our deplorable organ donation rates in this country. We all know of and support the need to increase those numbers, but the presence or absence of a register, quite frankly, has nothing to do with the rates of organ donation. What we do want, however, and what we have provided for in this legislation, is the ability to establish an organ donation register, should it be considered useful at a future time. As the chairperson of the select committee said earlier, that matter will not need to be brought back to this House but in fact can be determined by regulation, because the conditions surrounding it are established in this primary legislation.

I will come back to that in a moment, if I have some time, but I really want to talk about a couple of other things. I want to outline amendments that aim to address issues raised by researchers. I will outline the amendments that deal with those and briefly talk about them, and talk about the amendments to the trading provisions. These are the less popularly accessible parts of the bill, but I think they are profoundly important to scientific and medical research. First of all, submissions from researchers raised two main issues. The first related to the inclusion of established human cell lines in the definition of human tissue. Researchers were concerned that this would mean that further ethical approval or proof of consent would be required for the use of established human cell lines. Submitters argued that gaining consent for the initial tissue collection is sufficient, because human cell lines grow continuously and there is no need for further interaction with the donor. The committee recommended an amendment so that the standards or regulations developed for the collection or use of tissue for non-therapeutic purposes can specify exceptions to the requirement for ethical approval. This is an excellent compromise, I think, as it provides for the standards to identify a particular kind of research where it is not necessary to obtain ethical approval, while ensuring at the same time that all research, including that using established human cell lines, complies with requirements relating to quality or safety.

The second main issue raised by researchers related to their ability to purchase tissue arrays and other forms of scientific and research material that included human tissue. Researchers were also concerned that the advertising of such material, commonly done in international scientific catalogues and journals, would be prohibited. This is the point I alluded to earlier about the trading of human tissue as it has been done previously, but which, of course, seems counter-intuitive when one thinks about human tissue as organs alone.

The committee has recommended amendments to the provisions relating to the sale and purchase of human tissue, and the advertising of it for sale and purchase, so that researchers and others involved in quality control and diagnosis are able to purchase products derived from human tissue and processed human tissue samples. These amendments will mean that researchers will be able to purchase tissue arrays, packed blood cells or proteins, but not whole unprocessed organs or body parts. Here we get to the critical point about what is intuitive and what is practical—what is required and necessary and what is anathema. There are two further amendments in the trading provisions. The first amendment will ensure that the sale and purchase of tissue that was lawfully collected from a living or deceased person is prohibited. The second amendment brings forward an existing provision in the Health Act 1956 that prohibits payment for the collection of blood for administration to another person.

These amendments do not affect the Government policy of providing support for live donors of kidney or liver tissue. There is no impact on the ability of organisations such as the New Zealand Blood Service and Cordbank Ltd to recover the costs of collecting or using tissues, but it specifies the boundaries and the permission within which those activities may be conducted. I commend the bill to the House.

**JO GOODHEW (National—Aoraki):** I rise to speak on the Human Tissue Bill. This is a Government bill, and it replaces the Human Tissue Act 1964. I, along with my National colleagues, will be supporting this bill. As one would expect, there has, since 1964, been great progress in science and technology. That progress has necessitated, in many ways, this bill to bring the use of human tissue and the way it is dealt with into a more modern age.

This is a complicated bill. It regulates the collection and use of tissues from dead human bodies, but it also sets up a framework for informed consent for human tissue use. But there is much more to it, as well. It sets up regulations for trading in tissue—for exporting and importing tissue—and for the use of tissues for non-therapeutic purposes. Some people will wonder what non-therapeutic purposes are. Well, they include audit and research, education, and anatomical examination. The bill also addresses the need for informed consent from donors for the analysis of tissue collected from living people other than in the course of health-care procedures, and it safeguards the use of tissues collected while the donor was alive after the donor's death.

This bill is a balancing act between the stakeholders associated with human tissue. Who are those stakeholders? Firstly, and most important, there is the person from whom the tissue has originated. We in National believe that that person has primacy. But in the Health Committee we wrestled with decisions about who should decide on the use of tissue from a person who is no longer living.

With regard to my own body—and I speak entirely for myself—it is my belief that my responsibility is to take whatever steps I can to ensure that my family is aware of my wishes for organ donation, and for my tissues to be of the maximum possible use to those people who have the use of them after I die. In order to make that happen, I have talked quite extensively with my family. I have explained to them the sorts of things—the unspeakable traumas, really—suffered by families who lose a loved one to a sudden, unexpected death. The reason I have talked to them about that is that I want them to understand that although I know how traumatic it is for those loved ones, I still wish them to remember it is my wish that my organs be used for donation if at all possible. That is my wish.

Other stakeholders in that important decision-making process are the health professionals that are involved. As a former health professional, I know the burden of comforting the grief-stricken relatives of someone who has died suddenly; I know that personally. Those health professionals seek to care for those who are left behind. We

were told in the select committee that that motivation sometimes means health professionals will go against the wish of the deceased person, and will, in fact, act on the wishes of the family who do not wish organ donation to take place—they will respect those family members who are suffering so much that they just cannot countenance the idea of organ donation happening, and they will not respect the wishes of the person who has died. I guess that is why I have put so much effort into talking to my family.

Researchers and New Zealanders whose future health may depend on aspects of this legislation are also stakeholders. Often constituents will come into my office to tell a tale of woe. Sometimes they are eager for someone to take responsibility or to redress the situation, but often they are big-hearted enough to wish that whatever their misfortune is, it will not be suffered by others. Often that will be the motivation for consenting to the use of tissue for research, both now and in the future.

Concerns were raised during the submission process that aspects of the bill would endanger the use of private cord blood banks. There is an Auckland-based private cord blood bank that, we understand, was established in 2003 to enable parents to bank their newborn baby's cord blood in order to provide a source of stem cells for future medical use. The director of that cord blood bank, Rosenbaum, was concerned that this particular bill may put all that under threat. In fact, most of the issue was around the fact that money was paid to collect the cord blood and to store it. There were also some concerns from the New Zealand Blood Service about the recovery of costs for storage and collection. That issue has been addressed within this bill; that will not be illegal. We hope the submitters are reassured about that.

International researchers are also stakeholders. They were concerned that the purchase of tissue arrays currently advertised in international scientific journals and catalogues, and often available long after the death of the donor, may become illegal. That was mainly around the advertising for sale of that particular tissue. An exemption will amend the bill to allow that to be lawful. It is very important that we do not stifle science and research.

The most important issue arising from the bill also came up. That issue was around the consent of the person whose tissue would be used and who could give that consent. That issue has gained in stature over the last couple of decades, in fact. A number of sorry episodes in New Zealand's history have fuelled that particular issue, and they include the National Women's Hospital's unfortunate experiment. What did we learn from the tragic deaths of women who were unaware that they were part of that experiment? We learnt that people have the right to understand what is happening to them when any health-care procedure is carried out. So if a tissue sample is taken, we have the right to know what it will be used for. Most people, as I have already mentioned, will be more than happy if, for example, that tissue will be used to better other people's lives in the future, but also if the tissue is used for diagnosis or quality control analysis or training. Mostly, people just want to know that their own health will be enhanced and that their privacy will be protected. That is, of course, very important, because if someone has a very rare disease, he or she will not want to think that the use of his or her tissue in the future, and the reporting of that use, will identify that person.

I now want to spend a moment or two talking about a trust that I launched in Timaru in March this year. The South Canterbury Organ Transplant Trust was launched to administer some funding that was left over from the Brent Shears Trust. Brent Shears received a transplant and a lot of community money assisted with that, and there was money that the South Canterbury Kidney Support Group actually applied for to use in the organ transplant trust. The reason the trust was put together was so that the families of organ transplant recipients could actually have some of their expenses paid for,

because those expenses do cause quite a considerable strain on the recipient's family. Although I was able to launch that trust, it was also wonderful on the same day to be able to present Gift of Life certificates to live donors who had given kidneys to family members.

That brings me to another point—one of the points that was repeatedly debated with regard to this bill and also the bill of my colleague Dr Jackie Blue, the Human Tissue (Organ Donation) Amendment Bill. That point was the shortage of organ donations, which is a serious concern to New Zealanders. The publicity around both of these bills—the publicity engendered by the bills—will go part-way towards raising awareness, but I must say there is a long way to go.

This bill, as has been mentioned by other members in the House—has flow charts, and those flow charts will be very, very essential in order for people to understand the process of decision making within this bill. We did, in the select committee, ask the officials to put those flow charts together. They are still not simple, but they are an improvement to the bill.

Also part and parcel of this bill is the ability for equal weight to be given to informed consent and informed objection. I truly believe that that is an improvement to the bill. It underlines my earlier statements about the importance of awareness of what giving consent and also withholding consent mean.

National is supporting this bill, and although we have a sense of disappointment that there is a facility for an organ donation register in the future but no immediate move to establish one, the bill does move our laws forward to acknowledge a more modern era and the need to bring our laws into line with technology.

**LESLEY SOPER (Labour):** As a member of Health Committee I rise to support the Human Tissue Bill—actually a very important bill—and I want to thank the many submitters, and particularly those who came to present to the committee in person. I intend to speak on the issue of maximising organ and tissue donation.

During the select committee process a number of submitters took the opportunity to discuss organ donation, and various solutions to increase the very low donor rate within New Zealand. We heard some very heartfelt and emotional debate on organ donation, including personal stories from some submitters on their experiences in the intensive care setting, faced with a decision about the organs of a loved one, sometimes with no idea precisely of what that person had wanted. We also heard about a lack of clarity in relation to the donor status of the current driver's licence register. Many people think that the current register records consent, when it is actually only an indication of wishes. That register is not routinely accessed by many health professionals involved in organ donation.

It is fair to say that all submitters to the bill were united in their desire to see the rate of organ donation increased in New Zealand, but the views of submitters differed on the best way to achieve that result. To provide some context to this debate: as at January 2007 there were 433 people on the waiting lists in this country for a kidney transplant, 13 for a liver transplant, five for a heart transplant, eight for a lung transplant, and four for a combined pancreas-kidney transplant. Even if organs were retrieved from every potential deceased donor in this country, the supply, particularly for kidneys, would still fall well short of the demand for them. Kidney transplants from deceased donors can only ever be a small part of the response to growing levels of kidney failure amongst New Zealanders.

What we heard on the select committee was that only a very small number of New Zealanders die each year in circumstances that allow them to become organ donors. Organ donation is possible when an individual is determined to be brain dead, prior to his or her blood circulation ceasing, and that occurs only within an intensive care unit.

A 2002 estimate put the number of medically suitable potential donors per year in New Zealand at approximately 100. That will come as a shock to many New Zealanders who believe that there are hundreds upon hundreds of potential organ donors out there, being prevented from making donations.

In recent years there has also been a reduction in brain death rates in intensive care units, and that is due to a declining road toll, continuous improvements in clinical practice, and survival rates from trauma. Data from Auckland City Hospital alone shows an overall trend of fewer patients becoming brain dead, with a reduction of about one-third between the years 2000 and 2006.

When the bill was introduced to the House, the Minister encouraged us, as a select committee, to carefully examine the international evidence on the impact of registers on organ and tissue donation rates. The committee did that quite extensively, and recommends that a register is not established at present. However, the committee does recommend including a clause that permits the establishment of an opt-on register by regulation at a later date, should it become desirable to do so. In other words, and contrary to much media misinformation, we have set in place the framework for a register when the evidence shows conclusively that a register will actually be effective in increasing organ donation rates in New Zealand.

I want to emphasise here that the vote to not proceed with the Human Tissue (Organ Donation) Amendment Bill in the name of Jackie Blue, which we considered at the same time as the Human Tissue Bill, was unanimous. To the best of my recollection as a member of the Health Committee, there was no voice arguing to proceed with that register bill when the select committee came to make that decision, because the evidence did not support it. I wanted to say that particularly tonight, because some of those members on the other side of the House would have left a different impression on that point. It is important that New Zealanders know that that decision was unanimous by the committee.

The international evidence tells us that registers are limited in their usefulness in increasing the number of available deceased donors because of the small number of people who actually register. Registers are not a significant influence on the number of deceased donors available for transplantation. Other factors such as the religious and cultural views towards death and the body, the predominant cause of death, and the number and efficiency of transplantation coordinators, make a much more significant contribution to the number of organs and tissues available for transplant.

The evidence actually suggests three main approaches to maximise organ and tissue donation. Work is already under way on the first two, and the select committee heard that. Those are developing clinical expertise to improve identification and management of potential donors, and processes used to request donation from family members; and coordination between various parties involved in organ and tissue removal and transplant processes.

Organ Donation New Zealand has an ongoing role in training intensive care unit and operating theatre staff, and intensive care medical trainees, in processes supportive of organ donation. This includes delivery of the Australasian Donor Awareness Programme training, and hospital study days for staff involved in organ and tissue donation. Organ Donation New Zealand has also started training for the implementation of donation after cardiac death. It is estimated that this could increase the number of deceased donors by about three per year, but there is still uncertainty about that.

Organ Donation New Zealand also provides the Link Team programme that ensures that every New Zealand hospital with an intensive care unit has a designated and trained senior intensive care nurse, operating room nurse, and doctor with direct links to Organ Donation New Zealand. Organ Donation New Zealand is developing a system of death

audits in intensive care units, which will, when implemented, provide more information on processes, such as identifying potential donors and requesting donation from families. It was heartening to hear during submissions that medical intensivists themselves did acknowledge that more could be done by them in dealing sensitively with families at this difficult time, and I look forward to their work helping to improve New Zealand donor rates.

The third approach to maximising organ and tissue donation involves carefully developed social marketing and public education. Preliminary work by the Ministry of Health suggests an approach that includes both general messages, and initiatives targeted to specific communities. The ministry is working with the sector to develop options for promoting organ and tissue donation. There is also no doubt that the consideration of this bill itself has already raised public awareness, and I have certainly been in discussion with many individuals who have stated that they intend to discuss the issue of organ donation with family members so that there is clarity as to their wishes.

While it is reassuring to see that the number of deceased organ donors so far this year is higher than for the same period last year, none of these approaches will result in a sufficient supply of organs to meet current or likely future demand. The best hope for reducing the excess demand for transplant tissue over time in New Zealand is to reduce the preventable causes of demand for organs, such as type 2 diabetes. That, of course, is the subject of the August 2007 report of the Health Committee to this House, *Inquiry into Obesity and Type 2 Diabetes in New Zealand*. I recommend that all New Zealanders with an interest in life-long, long-term health status of New Zealanders read and support the recommendations in that report. The select committee spent a great deal of time carefully considering this bill and its provisions. I commend the bill to the House.

A party vote was called for on the question, *That the amendments recommended by the Health Committee by majority be agreed to.*

#### **Ayes 115**

New Zealand Labour 49; New Zealand National 48; New Zealand First 7; Green Party 6; United Future 2; Progressive 1; Independents: Copeland, Field.

#### **Noes 3**

Māori Party 3.

Question agreed to.

Bill read a second time.

### **COPYRIGHT (NEW TECHNOLOGIES AND PERFORMERS' RIGHTS) AMENDMENT BILL**

#### **Second Reading**

Debate resumed from 4 September.

**Dr RICHARD WORTH (National):** This is complex and difficult legislation, and I hear with regret from Mr Deputy Speaker that I have only 6 minutes to speak on what is material of substantial academic and intellectual interest. So I am going to skid over the top of the challenging issues the Commerce Committee faced when it looked at this bill.

I think that in very general terms one can say that copyright is a property right that exists in original works, and the Copyright Act 1994 gave to copyright owners exclusive rights that allowed them to control certain aspects of a work's exploitation while at the same time provided limited exceptions to those rights for copyright users. One of the events that characterised the progress of the bill before the Commerce

Committee was the appointment of expert advisers, which I think in this setting is something to be very much encouraged. Not only does it allow officials from the Government to offer a policy input to legislation but with the appointment of expert advisers it sets up a foil so that the practical ramifications, the ramifications from a commercial perspective, can be looked at and considered by the select committee. In that way, I think, the chances of having workable legislation are significantly enhanced.

The select committee made a number of changes.

**Shane Jones:** What about the universities?

**Dr RICHARD WORTH:** I will come back to the point Mr Jones has made. I know he will make a very substantial contribution to this debate, and I look forward to that. But as he settles back in his seat I do not sense that the time for that contribution from him has quite yet come.

The sorts of issues we looked at, and the sorts of issues we decided were appropriately to be changed, touched these areas. First of all, there is the issue of copying for educational purposes. Then there is the issue of storing information for educational purposes. In that same context there is an issue of copying by librarians and archivists for replacement. There are conditions for libraries and archives in making and supplying digital copies. There are issues relating to observing, studying, or testing computer programs, and the response of the select committee to that particular issue was to recommend the insertion of a new section to clarify that a lawful user of a computer program may observe, study, or test the functioning of a program under certain circumstances.

But it became tricky—there were issues of conflict or division—certainly in one area, and that is the area of what are called communication works. We looked at that, against the background of submissions we received on issues such as format shifting for personal use, time shifting, free public playing or showing of a communication work simultaneous with reception, and reception and retransmission of broadcasts in cable programme services.

I should say something about the latter, because I think that that debate is still very much alive. It will be visited in the Committee of the whole House when we look at issues arising there, because National agreed to support the passage of this bill only with some reservations. One of the issues that National certainly strongly held out on concerned the provisions in the so-called section 88, which is the topic I have just touched on. The provisions deal with the rebroadcast of free-to-air television over cable networks. The bill makes it clear that the reception and delivery of any such rebroadcast must be in the original format of the free-to-air TV programme.

I have referred to that issue of cable networks, but we know that cable networks have not yet taken off in this country. That is significant because Mr Gordon Copeland, an Independent member in this Parliament, has produced a Supplementary Order Paper that would clearly give significant life to section 88. He is seeking to extend the provision of section 88 to satellite rebroadcast or simulcast free-to-air television programming. That is quite significant. It has impacts for Television New Zealand and Sky television. It is fair to say that there has been a degree of lobbying around those issues, but the Supplementary Order Paper is one issue that I think will be quite significant in the Committee of the whole House.

The second issue, which has been raised by a number of parties since this bill was reported back, relates to Internet service provider obligations. In this world we are looking to compare our stance on complex issues of copyright across the board with the stance that other nations have taken—most particularly, Australia, Canada, and the US. The sorts of issues that arise there are the requirement for a policy to terminate accounts of repeat copyright infringers, the liability if users infringe copyright, and the liability

for storing infringing material. I think I have said enough to indicate that there is some complexity around these issues, so I would like to go back—to retreat, as it were—to a more simple position, and to say in my remaining time what this bill is about and why it is needed.

The bill makes amendments to the Copyright Act to take account of the impacts of new technology, such as digital music and film. The bill tries to take account of those impacts while maintaining a balance between the often competing interests of creators, owners, and users of copyright works. The bill is really part of a wider reform or process developed to ensure that New Zealand's intellectual property legislation is up to date, takes account of international developments, and is relevant in the 21<sup>st</sup> century.

Sadly I sense that my time is up, so I will close there. But I look forward to a heady and determined involvement when these issues come before the Committee of the whole House for the deliberation they are so clearly entitled to.

**NANDOR TANCZOS (Green):** The Greens alone opposed this bill at its first reading. We voted against it because, contrary to the ministry's 2002 advice, it served to protect access control technology, which is technology that has been used to price discriminate and control geographical distribution of works, to the detriment of users. We opposed the bill because although it tried to provide for fair use, that provision was temporary. In addition, it failed to provide for visual as well as audio media. We opposed it because of its potential to hinder innovation in that blurry world between the personal and the commercial, and because of its potential to hinder the development of compatibility and interoperability in products and hinder legitimate security research. We opposed it because it protected the interests of the rich and powerful against those of ordinary people. It tied the hands of people who might seek to circumvent any number of encrypted intrusions incorporated into digital works, even when those might be contrary to New Zealand law.

So has the Commerce Committee made it any better? Yes and no. Let us begin with the issue of format shifting—the copying of works to different formats for more convenient or preferable use. A typical example might be ripping a CD to a computer or an MP3 player. The select committee removed the sunset clause from the fair-use provisions, and we welcome that. It made no sense to recognise for the first time a right to, for example, copy a track from a CD on to a device but then have that right last for only a couple of years. However, the select committee countered that move with some retrogressive steps. The bill now requires that the owner of a recording keep hold of the original. One of the reasons why I started ripping CDs on to my computer was the realisation that the promise of indestructibility was just another corporate con when it came to CDs, and that my CDs were not lasting even as long as my vinyl. Under those circumstances, why would I hang on to a broken disc? In addition, the committee has retained provisions that unreasonably restrict time shifting and has clarified that copyright owners can opt out of fair-use provisions. Presumably, that might mean just putting a sticker on the cover of a CD. We would find that unacceptable.

Lastly, the provision still excludes video, because in the words of the committee: "... format-shifting of music for private and domestic use is widespread, while format-shifting of other types of copyrighted works is not." Maybe it is not so widespread as to have reached the ears of the members of the committee, but even John Key is now on YouTube. It is not that I expect any but the most loyal or masochistic to be watching him on a portable, but the point is that the assumptions that the committee used in making that determination simply do not hold in the modern world. We believe that the public has been let down by format shifting in this area and, like other ill-conceived prohibitions, they will simply ignore it.

The clauses around digital rights management, or technology protection measures, remain problematic. It is good to see a move to more neutral language. It is good to see the definition of technological protection measures being amended to specifically exclude controls on access to a work for non-infringing purposes such as regional zone access protection. It is also good to see an amendment to allow a user to seek assistance from a qualified person to exercise a permitted act using a technological protection measure circumvention device. However, we are not clear about how a member of the public can legitimately get hold of a technological protection measure circumvention device that they are allowed to use in the exercising of permitted acts, if the sale and distribution of the device is itself an offence.

The last thing I would like to discuss relates to Internet service provider obligations. The Green Party welcomes the clarification the committee made in relation to new section 92B. However, we are extremely concerned about section 92C and the retention of the notice and take-down regime previously referred to by the Minister in the second reading in relation to claims of breach of copyright. Under the bill, if an Internet service provider is informed about a claimed breach of copyright in relation to material it stores, then it is liable if it does not "as soon possible after becoming aware ... of facts or circumstances that make it apparent that the material is likely to infringe copyright in the work, delete the material or prevent access to it;". I think it is important that members note the words "likely to infringe", because an Internet service provider, in practice, will interpret this as "might possibly infringe a copyright work", because it simply cannot afford to take the risk.

This sort of measure can easily be abused, and has been abused in other jurisdictions. The recent case of Solid Energy attempting to injunct a satirical annual report put together by opponents of its Happy Valley coal mine is a case in point. Under this provision, the Internet service provider would have had to remove the material immediately Solid Energy complained, even though the court in that case ended up finding substantially in favour of the defendants. The Green Party would much prefer a notice provision whereby notification of a claim of breach of copyright would require the Internet service provider to notify the person responsible for the material alleged to be in breach. In most cases, the person will either admit guilt or simply fail to respond. Both of those examples would lead to the immediate removal of the material. Only a small percentage would contest the claim, and the matter could then be adjudicated in an impartial manner. We believe that this approach would provide fair protection to copyright holders while also protecting legitimate use, or would at least allow claims to be contested. The current notice and take-down provision, even with the right to sue for unjustified proceedings, does not do that, especially in relation to cases where there is a reasonable argument to be made in either direction.

As a secondary matter, I also understand that the select committee has recommended that a notice by a copyright holder to an Internet service provider be in a prescribed form, with fairly strong penalties on copyright holders if they make errors in that notification. This seems to us to be quite bizarre. Surely, to simply ensure that the intent of the communication is clear and contains the necessary information should be enough.

The Greens had hoped to be able to support this legislation following the select committee process, but we find ourselves unable to do so at this stage because of what we consider to be outstanding flaws. I will be talking to the Government and the Minister in charge of the bill, and I will also be looking to move a number of amendments during the Committee of the whole House, in the hope that we might still be able to see this bill come through the process in a form that the Green Party would support. We agree that it is very important to get this legislation in place, and that it is

important to get it right. There are a number of problems with the existing legal situation that need to be remedied fairly speedily.

**Hon BRIAN DONNELLY (NZ First):** New Zealand First did not have a member sitting on the Commerce Committee, but we have been briefed on the progress of the work in it. Pretty obviously, people will be aware that the Copyright (New Technologies and Performers' Rights) Amendment Bill amends the Copyright Act 1994. There is a real need to amend that legislation and to bring it up to date because of the emergence of new technologies.

I look at Maryan Street over there. She would know that one of the issues around schoolteaching in the 1970s and 1980s was the introduction of the photocopier. The moment the photocopier came along we could suddenly take out large chunks of a whole pile and range of different textbooks. Prior to that, we could not do it. The photocopier is almost obsolete now in terms of the new technologies that have developed since that time. So, pretty obviously, this is a timely measure. One amendment to the legislation is to ensure that within 5 years the whole process is to be reviewed. Given the way technology is moving, it will probably be time for us to update this particular law within that space of time, not after 13 years as we are doing here now.

One of the things that the people who put the legislation together have tried to do—and I know that the Commerce Committee has tried to adhere to this—is to maintain the existing balance between the interests of the owners and the users of copyright works; in other words, to take up the general principles and the basic elements of the Copyright Act 1994, then try to restructure it and reword it in such a way that it would meet the demands, possibilities, and potentials of the new technologies that have become available. Just so that listeners are aware, I say that the bill actually incorporates many aspects of the two treaties negotiated by members of the World Intellectual Property Organization—or WIPO—the World Intellectual Property Organization Copyright Treaty, and the World Intellectual Property Organization Performances and Phonograms Treaty.

The first thing that we need to take note of is that the Commerce Committee has recommended a name change. It is a sensible change that purely and simply changes the name from the Copyright (New Technologies and Performers' Rights) Amendment Bill to the Copyright (New Technologies) Amendment Bill. It simplifies it. Although the legislation certainly affects a few performers' rights it is largely around the new technologies, and it simply seems to be redundant to have the additional words. Let us keep things nice and simple. New Zealand First thinks that it is a pretty sensible move.

Nandor Tanczos, the previous speaker, talked about format shifting. That is one of the issues that the Commerce Committee addressed, and it is something we all have to get our heads round. Those people who have been putting their CDs on MP3s and iPods have technically been breaking the law. Yet they are not criminals; they are just normal citizens doing what normal citizens do. I go and buy a CD, and it is pretty tough for me to carry a CD player when I am going for a walk, so I put it on my iPod and, whoops-a-daisy, I have shifted the format and breached the copyright law. The designers of this legislation have used some real sense in terms of saying that, yes, it is OK, if one owns the material, to shift it from one format to the other, but what one cannot then do is sell off the original or even give away the original—in other words, cut into the potential market that the producer or the creator of that particular item had in the first place. That seems to me to be eminently sensible. It takes on board the common sense of New Zealanders shifting from one format to another to make use of new technologies without breaching, I believe, the rights of the producers in this particular case. New Zealand First certainly believes that the legislation has actually got the formula right when it

comes to format shifting. We also believe that the legislation has got it right in terms of time shifting—the retransmission sort of stuff, and I will come to section 88 in a little while.

Education is, fairly obviously, a very important use of material produced in a variety of different forms, whether it is in word format, musical format, or whatever. We need to be able to use it. As an ex-teacher—and Pita Sharples will tell members this—I say that teachers need to be able to use multiple resources to put together lessons and to have themes around lessons, and to create for young people the sort of learning we want. Gone are the good old days when the education department came out with piles and piles of textbooks, and generations of kids worked from the same book on Euclid's geometry for decade after decade. Those days have gone now.

Teachers need to look at the needs of their class, the composition of their class, where the students have come from, then design their courses around those needs. Educationists have to be able to use material for the purpose of going about their particular jobs. My experience with photocopies is that schoolteachers actually used to push the boundaries of the law quite extensively, and I think it is quite good that we start getting this clear, so that we do get a balance of rights—the rights of schoolteachers, the rights of students to learn in the best possible way, but also the rights of the producers of that material to be fairly paid for what they are producing.

Once again, although Recording Industry Association of New Zealand may not be entirely comfortable with what the Commerce Committee and the original designers have come up with, New Zealand First believes that largely we have got it right. There may be some tinkering at the Committee stage, and that is fine; that is not a problem. We are still listening to people who are coming to us.

People are also coming to us with issues around the responsibilities of Internet service providers. We make them so onerous, to the point that the providers are liable for just about anything on their network, regardless of whether they have power over it. We might as well shut down all our Internet networks, because no one will be prepared to operate as an Internet service provider.

We need to get the balance right. Have we got it right? There is still, I think, a little bit of debate around that, but it is about fine-tuning. It is certainly not about large-scale changes to the legislation at this time. I would have to say the same thing applies to technological protection measure circumvention devices; the law has been written in such a way to ensure that these devices are not available for sale for people to use and to circumvent the intent of this law.

I think there will be debate of section 88, around the provision in the current copyright law for cable television to be able to take up and retransmit almost simultaneously—one cannot retransmit exactly simultaneously. I have to say to the Māori Party that free-to-air material will have quite an impact upon Māori Television and the material offered through it.

We are well aware of a Supplementary Order Paper that not only makes that retransmission available to cable television—which is just TelstraClear—but makes it available to satellite television, and there is a very strong likelihood it will make it available to the Internet, in which case we are opening up portholes to the world. We need to think very, very seriously about the impact of that Supplementary Order Paper that is being proposed at this point in time. We know also that the Government is planning to put up a Supplementary Order Paper to repeal section 88, which would take away the rights of cable television and the rights of those who have made an investment in cable television.

So some work is still to be done on this legislation, but New Zealand First members largely believe that the Government, in its first preparation, and the officials, and then

the Commerce Committee with its fine-tuning, have actually got this right. At this point in time, New Zealand First will be supporting this legislation.

**Dr PITA SHARPLES (Co-Leader—Māori Party):** Tēnā koe, Mr Deputy Speaker. I was looking over a review written in 1973 of the classic recording of Ma-wai-hakona Maori Association, *Songs of Maori Heroes*. The review, written by Alan Armstrong, was effusive in its praise of that album, describing it as one of the most important recordings of Māori music to be issued for some years. But the reviewer was far less pleased with the fact that all the original items were labelled copyright. As he said: "Such a move would be unprecedented amongst Maori groups and would certainly have tarnished Ma-wai in the minds of many. The free circulation, use and even adaptation of the works of others has always been a feature of most Maori music and composition." Those are strong words indeed, and they provide a dramatic contrast to our current performance climate, in which Māori performers are passionate about the need to protect their cultural heritage, which provides a source of material for performance.

The 1973 album is also interesting in laying the foundation for the developments we see reflected in this bill, the Copyright (New Technologies and Performers' Rights) Amendment Bill. One of the tracks on the album was of a canoe poi, "Hoea Rā", penned by Hera Dovey Kātene-Horvarth, a Ngāti Toa kuia. Aunty Dovey was a stalwart member of Ngati Poneke, resident composer for Ma-wai-hakona club, and patron of the Aotearoa Maori Chorale. That poi has an honourable story of its own. Aunty Dovey wrote the poi in the times of the mass outrage over the loss of Māori land. The poi was performed en masse at Waitangi in 1974, and it appealed to everyone to keep paddling through the turbulent waters of injustice in order to one day achieve peace. But "Hoea Rā" was also known for becoming the source of a 1975 Rolf Harris hit, "We're the Maoris", from his *She'll Be Right* album. In that hit the copyright was attributed to Ma-wai-hakona Maori Association, ensuring that the club earned due recognition and monetary return for the use, or misuse, that the Australian entertainer made of the original composition "Hoea Rā". Trust copyright? Sure can!

I have chosen to bring this story to the House because I believe it indicates the history that Māori performers have of respecting the cultural integrity of works once they enter the public domain. Just as Ma-wai-hakona Maori Association stood for the collective cultural rights over 30 years ago, Toi Māori Aotearoa has consistently promoted the concerns that Māori performers have about retaining the collective ownership of Māori cultural knowledge and intellectual property. Toi Māori Aotearoa represents 10 national art form committees, and it argues for the need for widespread discussion about the rights provided to performers in legislation. Those rights stand to be threatened by the ongoing risk of piracy and unauthorised digital downloading. The International Federation of the Phonographic Industry reports that 20 billion tracks were downloaded in 2005 alone. That attack on cultural integrity jeopardises the security of the recording industry, musicians, and songwriters alike.

This bill is intended to address the risks that come with digital technology, by clarifying how copyright exists in a digital environment. The submission of the New Zealand Society of Authors outlined that it is imperative that the move to digitisation must not exacerbate an already complex situation. It reminds us all that an author's copyright material may be all that he or she has to earn an income from, and there must be sufficient protection in place to protect the material from unauthorised copying.

The environment in which new technology sits is a completely different world from the one of 1973, and that only adds to the intensity of the fight that Māori publishers, performers, artists, creators, owners, and users have in seeking the protection of mātauranga Māori. But there is one key point of commonality between the 1973 fight and the 2007 legislation. That is the call for collective rights to be preserved and

protected as the cultural property rights that have been created over the generations. Te Rōpū Whakahau, the professional association of Māori who work in libraries, archives, and information services, explains this view: “We contend that there is a need to develop a category of collective ongoing and enduring rights that will ensure that Māori retain the right to control the appropriate expression and transmission of our cultural heritage. This control is one that can’t be invested in an individual and protected by conventional intellectual property mechanisms such as copyright.”

What Te Rōpū Whakahau is saying—and indeed many Māori performers say this—is that the comprehensive protection of mātauranga Māori requires unique measures—measures that could well result from the Wai 262 rulings. It is widely hoped that the tribunal’s conclusion on Wai 262 will advocate for a package of measures, such as sui generic systems, customary law, intellectual property laws, and preservation initiatives—in effect, new systems to protect Māori knowledge. Wai 262 seeks recognition of the rights of indigenous peoples to their own control and decision making over taonga. The goal is to ensure that the integrity of Māori culture is retained and treasured.

We in the Māori Party commend the intention of this bill in balancing protection with access for users to cultural property, including indigenous knowledge and culture. But alongside our disappointment with the omission of any mention of collective property rights, we are also concerned that the bill does not appear to comply with international law and practice in three forms. We note the concerns of the Recording Industry Association of New Zealand and of Independent Music New Zealand that this bill is out of step with copyright developments in other territories, and particularly those in Australia, the United Kingdom, USA, and the European Union. The concern of those organisations is that 1996 World Intellectual Property Organization treaties established specific measures to give legal protection against circumvention—procedures that they suggest this bill falls well short on. It is their considered opinion that the failure to exclude circumvention devices clearly covered by the laws of other nations could, in effect, make New Zealand a haven for the manufacture and sale of circumvention devices that are prohibited in other countries.

Those organisations also draw attention to the creation of a whole new category of work—a communication work—that sets up a new status for any person who communicates a work, such as in a sound recording or a film. A new category is dreamt up, with rights that clearly conflict with the rights of the creators of the work, as well as clashing with international treaty obligations.

The third limitation in relation to the protection of cultural and intellectual property is particularly relevant to indigenous knowledge. There is no reference in the bill to the international context of cultural restoration and the nurturing and protection of the traditional knowledge. A strong comparator could be found in looking at the experiences of the Sami of Norway, Sweden, Finland, and Russia. Those States have established a reproduction rights organisation that is set up and governed by indigenous peoples to represent the interests of the Sami culture. It is a model we could have emulated. Another example could be found in the Pacific Model Law for the Protection of Traditional Knowledge and Expressions of Culture or, indeed, as I referred to at the first reading of this bill, the Mātaatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, which sets in place a framework for protecting, controlling, and valuing indigenous cultural heritage.

Māori concerns around the treatment of cultural objects in the electronic environment are basically focused around the fear of the loss of control of information when it is digitised. In the days when Aunty Dovey’s lyrics were transformed into a Rolf Harris song, the ownership of the original poi was firmly retained by the writer Dovey Kātene.

But in an electronic environment, the chances of retaining any cultural property right are greatly threatened by the increase in availability. Once an item is digitised and placed on the Internet, access is no longer controlled, and cultural safety is no longer guaranteed. There are too many risks and dangers inherent in this legislation for us to do anything but vote against it. Thank you.

**Hon LUAMANUVAO WINNIE LABAN (Minister for the Community and Voluntary Sector):** Kia ora, talofa lava, and warm Pacific greetings. It is my pleasure indeed to stand to speak in support of the Copyright (New Technologies and Performers' Rights) Amendment Bill. I also want to thank the submitters and the Commerce Committee for their hard work and participation.

The bill amends the Copyright Act 1994 and promotes a legal framework that guides the protection and use of copyright material. The bill creates a more flexible framework for technology to operate within the Copyright Act, and will ensure the effective operation of the Copyright Act in the face of emerging technologies. The bill also clarifies the liabilities of Internet service providers and copyright infringement, and it strengthens technical protection measures, meaning copyright holders can better guard against piracy.

Technology has vastly improved, and our world is vastly different from the world of 1994 when the Copyright Act was passed. Indeed, new technologies are changing the way our citizens here in New Zealand and the citizens of the world create, share, and interact with each other digitally and over the Internet. The ability for new media to be broadcast on the Internet and sent around the globe in seconds has existed for a few years, but we are now seeing a real impact from this. Now everyone can broadcast and share new or existing material outside of and away from traditional media. There has been a huge rise in independent media through blogs and online news websites and a huge rise in video and audio across the Internet, through websites such as YouTube and others. MP3 players and flash drives are much cheaper, easier to use, and can hold a great deal more on them. The portability of information on digital media is impressive, but copyright holders need adequate protection from piracy.

However, we do not want to make everyday use of digital technology impossible or against the law. A good balance is needed and I believe that this bill strikes that balance, but it is not as easy as it sounds. On one hand we have the rights of individuals to use, share, and copy information and digital media, and on the other we have the authors, editors, and creators of those media who need to be protected and in some cases compensated. Kiwis are not just consumers of digital media; we dream, we innovate, and we create a great deal of digital music, film, and other media, too. We want to ensure that our creative industries in these areas are adequately protected. Members will recall what happened to *Sione's Wedding*. We do not want a repeat of that. *Sione's Wedding* reminds us that the digital age is a time not just of great opportunity but also of new and previously unimaginable threats to business. Copyright law is key to this balance and key to this protection. Solid copyright protection promotes investment in creativity, arts, and innovation. This is good news for creators, good news for consumers, and good news for the economic transformation of New Zealand's economy. It is about fair play, which is a Kiwi value of our New Zealand society and our national identity as Kiwis, and proud Kiwis.

One area of this bill of high interest to the public is that dealing with format shifting—for example, copying CDs on to an iPod or MP3 player. I am pleased that the Commerce Committee clarified this area, and I am enormously grateful that our committee worked hard to address this issue. Amendments were made to clarify that private and domestic use includes personal use in a public place—for example, someone using an MP3 player on his or her way to work on the bus, a bike, or the train. A sunset

clause was deleted, which clears up any confusion over whether people who purchase older sound recordings can continue to format-shift these in the future. The bill removes a number of compliance costs for libraries and simplifies the use of digital copies of work within libraries and our educational establishments. I know that our librarians and archivists will be pleased with these changes.

In response to the input of National's Richard Worth on section 88, I want to say that Maryan Street gave a very comprehensive explanation of this whole issue in her recent second reading speech. The bill had sought to remove section 88, which deals with the retransmission of free-to-air television services. Although the select committee has reinstated section 88, this section does not encourage investment in telecommunications, and a Supplementary Order Paper will seek to repeal this section of the Act.

The bill clarifies the law for the benefit of Internet service providers. It will ensure there is no liability for any copying that takes place as a matter of course as their business Internet service providers. It also means that Internet service providers will have no liability for storing material in the course of their business that may infringe on copyright, as long as they act to remove it when they find material that is in breach, or they have reason to believe is in breach, of copyright. This is a sensible amendment and it will clear up ambiguity in this area.

Finally, I am glad that this bill will be reviewed within 5 years. Given the pace at which technology is changing our world, this seems a very sensible idea. What is important is its effective operation. The bill strikes a fair and reasonable balance. It clarifies a number of provisions and updates the Copyright Act 1994 to cater for today's digital age.

In summary, this law is important because of the increasing emergence of new digital technologies. The use of these technologies is becoming more and more commonplace. We need legislation that will protect copyright holders from piracy. Digital formats and the Internet have made the copying and spreading of pirated material easier. However, we do not want ironclad laws that make the everyday, legitimate use of digital technology against the law. I thank the Commerce Committee and, more important, the submitters for participating. I especially thank Judith Tizard for her leadership and her stewardship of this bill. Thank you.

**LINDSAY TISCH (National—Piako):** In the few minutes remaining I want to dwell very quickly on a couple of issues, but first I would say that this legislation is piecemeal law reform that falls well short of what good legislation regarding the emergence of technology, especially the Internet, should be doing. In fact, this goes back to the year 2000. One would have thought that a bill of this sort at this time would cater for all the issues that have been brought forward through submissions, but in fact it does not.

Although we note that the introduction in the bill's commentary states: "The Ministry of Economic Development advised us that this legislation will be reviewed in five years' time to ensure that copyright legislation in New Zealand keeps pace with technological advances.", the point I make here is that in the 21<sup>st</sup> century we should be far more proactive than we have been. I want first to draw the House's attention to some issues that have not been resolved, and they were issues that were spelt out to the Ministry of Economic Development.

Debate interrupted.

**The House adjourned at 10 p.m.**

