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**TUESDAY, 14 NOVEMBER 2006**

**TABLE OF CONTENTS**

**QUESTIONS FOR ORAL ANSWER—**

**Questions to Ministers—**

Cancer—Radiotherapy .....	6409
Public Broadcasting—Digital Technology .....	6410
Ingram Report—Ministerial Review .....	6411
Overseas Investment Act—Impact Forecast .....	6412
Fraud—Zero Tolerance .....	6413
Psychiatric Patients—Abuse Claims .....	6414
National Certificate of Educational Achievement—Unit Standard Credits ..	6415
Disability Strategy—Progress Reports .....	6417
Closing the Gaps Policy—Outcome .....	6418
Stadium—Auckland Waterfront .....	6421
Trials—Timeliness .....	6422
Business Law—Streamlining .....	6424
Road Accidents—Young Drivers .....	6424

**URGENT DEBATES DECLINED—**

Stadium—Proposed Location, Auckland .....	6426
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**NGĀTI MUTUNGA CLAIMS SETTLEMENT BILL—**

**In Committee—**

Preamble .....	6427
Part 1 Purpose of Act, acknowledgements and apology, interpretation provisions, settlement of claims, and miscellaneous matters .....	6427
Part 2 .....	6432
Part 3 .....	6432
Speaker Recalled .....	6433

**In Committee—**

Schedule 1 .....	6435
Schedule 2 .....	6435
Schedule 3 .....	6435
Schedule 4 .....	6435
Schedule 5 .....	6435
Clauses 1 and 2 .....	6435

**BUSINESS LAW REFORM BILL—**

**In Committee—**

Part 1 Companies Act 1993 .....	6438
Part 2 .....	6440
Part 3 Financial Reporting Act 1993 .....	6440
Part 4 Friendly Societies and Credit Unions Act 1982 .....	6444
Part 5 Insurance Companies' Deposits Act 1953 .....	6445
Clauses 1 and 2 .....	6446

CONTENTS—*continued*

GEOGRAPHICAL INDICATIONS (WINE AND SPIRITS) REGISTRATION BILL—	
Third Reading .....	6449
PROPERTY LAW BILL—	
First Reading .....	6460
HUMAN TISSUE BILL—	
First Reading .....	6467
SOCIAL SECURITY (LONG-TERM RESIDENTIAL CARE) AMENDMENT BILL—	
In Committee—	
Part 1 Amendments to principal Act .....	6476
Part 2 .....	6483
Schedule .....	6483
Clause 1 .....	6483
Clause 2 Commencement .....	6483
Clause 3 .....	6483
EVIDENCE BILL—	
Second Reading .....	6483

**TUESDAY, 14 NOVEMBER 2006**

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

**Prayers.**

**QUESTIONS FOR ORAL ANSWER****QUESTIONS TO MINISTERS****Cancer—Radiotherapy**

**1. Hon TONY RYALL (National—Bay of Plenty) to the Minister of Health:** Are cancer patients getting appropriate timely access to radiotherapy treatment; if not, why not?

**Hon PETE HODGSON (Minister of Health):** As the House will be aware, radiotherapy treatment has been delayed in a number of centres. Multiple pressures have led to delays, including the pressure brought by industrial action.

**Hon Tony Ryall:** What is the latest information he has on the number of category C cancer patients—these are mainly people with breast cancer or prostate cancer—who have been waiting more than 8 weeks for radiation treatment, which is twice the recommended guideline according to the Cancer Society?

**Hon PETE HODGSON:** I have the information of the number of patients who have gone to Australia in recent times. I understand that about 20 patients have gone to Australia and a further 13 are likely to go next week.

**Ann Hartley:** What reports has the Minister received on survival data of New Zealand breast cancer patients?

**Hon PETE HODGSON:** I have seen reports that New Zealand's 5-year survival rate for breast cancer is higher than the average rate of nine OECD nations studied by the Commonwealth Fund and better than the rates of Australia, the United Kingdom, Japan, France, and Germany. This is a testament mostly to the quality of cancer treatment services in New Zealand. However, the Government believes that our investment in breast screening will see our overall mortality rate improve still further.

**Hon Tony Ryall:** Is the Minister aware that the number of cancer patients waiting longer than 8 weeks for radiation treatment is now the highest it has been since the middle of the 2004 cancer treatment crisis, and what is he doing to help the many cancer patients now facing an uncertain and worrying period of up to 3 months to begin their radiation treatment?

**Hon PETE HODGSON:** It is important to realise that any patient with cancer in category A or category B is receiving his or her treatment within what is known as a good practice framework. However, some category C patients in Auckland, and prospectively, in time to come, in Wellington, may be offered treatment in Australia, because of the waiting-time extensions.

**Hon Tony Ryall:** If the Minister is blaming industrial action by radiotherapists for the growing delays, why has he not done anything to end the industrial action; and is he oblivious to the fact that patients have been contacted by the MidCentral District Health Board to be offered treatment in Australia, and that a woman has been offered treatment in Australia between Christmas and New Year, which means she will be away from her children and grandchildren, or face receiving radiation treatment in the middle of February—14 weeks away?

**Hon PETE HODGSON:** I am aware that the MidCentral District Health Board is reviewing its situation weekly and is considering offering treatment to five patients to go to Australia. That is the sum of my information.

**Hon Tony Ryall:** Now that the Minister is aware that the number of patients waiting more than 8 weeks to receive their radiation treatment is now the highest it has been since the middle of the 2004 radiation treatment crisis, is it not time that the Government gave to all people facing a wait of over 8 weeks for radiation treatment the opportunity to get their treatment in Australia, or is he happy to sit by and let these people face an uncertain and worrying future?

**Hon PETE HODGSON:** There are six district health boards in New Zealand that provide radiotherapy treatment for cancer. Each of them is in a different situation. One of them has already indicated that it will—in fact, has—offered treatment for patients to go to Australia. It seems to me that Capital and Coast District Health Board may well join that list, as indeed may MidCentral District Health Board. These are district health board by district health board decisions, and I am satisfied that they are taken with appropriate clinical safety for New Zealanders in mind.

**Dr Jackie Blue:** If the Minister agrees that there is a link between escalating radiotherapy cancer waiting times and industrial strikes, why, when we are in the middle of a 9-day strike, with the promise of more to follow, has he done absolutely nothing but is content to sit back and watch the situation deteriorate?

**Hon PETE HODGSON:** We are in the middle of a 9-day strike for medical radiation technologists, or radiographers, as the member will know. These are medical radiation technologists; the primary question was about radiotherapy—that is to say, not about diagnosis but about treatment.

### **Public Broadcasting—Digital Technology**

**2. MARTIN GALLAGHER (Labour—Hamilton West) to the Minister of Broadcasting:** What is the Government doing to support the future of public broadcasting in response to the challenge of digital technology?

**Hon STEVE MAHAREY (Minister of Broadcasting):** In June this year the Government announced funding of \$25 million to support the establishment of FreeView, a platform to deliver free-to-air digital television to New Zealanders from 2007. Today we announced backing for Television New Zealand (TVNZ)'s digital content proposal, with funding of \$79 million over the next 6 years. This investment will strengthen TVNZ's position as our flagship public television broadcaster, and New Zealanders can expect such things as more local content and diversity, more in-depth programming, and opportunities for a wider range of audiences to view programmes at more accessible times.

**Martin Gallagher:** How does the Minister intend that progress towards a digital television environment be funded?

**Hon STEVE MAHAREY:** Broadcasters across the board, not just TVNZ, will mostly fund their changes off their balance sheets, as will TVNZ. However, some revenue can be expected from stronger credit management. In particular, the sector is owed \$112,000 by the New Zealand National Party, and I think the National Party could help this change into the digital era if it recognised that the law has been broken, that it owes money, and that it should just pay it back.

**Pita Paraone:** Does the Minister believe that by making the two free-to-air digital channels commercial free, TVNZ will be able to reduce the risk of bad debts being brought about by advertisers refusing to pay the GST content of their advertising bills, such as the one owed by the National Party?

**Hon STEVE MAHAREY:** Because TVNZ will not be exposed to any commercial revenue on those two channels, it will mean that the problem it had with the National Party, which is still refusing to pay back its \$112,000, will not arise.

**Ingram Report—Ministerial Review**

**3. Dr the Hon LOCKWOOD SMITH (National—Rodney) to the Minister of Immigration:** Does he stand by his statement to the House on Tuesday, 12 September 2006 that he has reviewed the immigration matters covered in the Ingram report?

**Hon DAVID CUNLIFFE (Minister of Immigration):** Yes. A number of immigration matters were covered in the Ingram inquiry report, which I have read on a number of occasions.

**Dr the Hon Lockwood Smith:** When reviewing the immigration matters covered in the Ingram report, what information did the Minister find had been provided to the Ingram inquiry by the Hon Phil Goff and Ross Robertson MP regarding the involvement of Taito Phillip Field with Thai national Mr Sunan Siriwan in Samoa?

**Hon DAVID CUNLIFFE:** I have not turned my attention in particular to the question of what evidence was provided by those members. I am aware, however, that the members briefly visited Mr Field's house in Samoa but did not discuss immigration matters.

**Dr the Hon Lockwood Smith:** In reviewing the immigration matters covered in the Ingram report, what steps has the Minister taken to ascertain why the Hon Phil Goff did not volunteer information to the Ingram inquiry regarding Taito Phillip Field's involvement with Mr Siriwan, given that in March 2005 Mr Goff reportedly spoke to both Mr Siriwan and Mr Keith Williams at Mr Field's house in Samoa, while Mr Siriwan and Mr Williams were screening the floor, and discussed with them the work that they were doing to level the floor in preparation for tiling?

**Hon DAVID CUNLIFFE:** What information the member did or did not provide to the Ingram inquiry is not the responsibility of the Minister of Immigration.

**Dr the Hon Lockwood Smith:** Can the Minister confirm that Taito Phillip Field denied that there was any arrangement for Mr Siriwan to work on his house in Samoa, as detailed in paragraph 77 of the Ingram report, when Mr Robertson saw Mr Siriwan and Mr Williams screening the floor at Mr Field's house in Samoa, and Mr Goff spoke to both men about the detail of the work they were doing, yet both Mr Goff and Mr Robertson failed to provide this material evidence to Dr Ingram?

**Hon DAVID CUNLIFFE:** I am sure that Mr Ingram has correctly recorded in paragraph 77 what he was told by Mr Field, but the assertions that the member is making about conversations that other members of this House may have had in Mr Field's abode do not square with my recollection of those members' own statements.

**Dr the Hon Lockwood Smith:** In reviewing the immigration matters covered in the Ingram report, can the Minister confirm that Noel Ingram QC could not establish that Taito Phillip Field knew that Mr Siriwan was working on his house prior to his crucial meeting with Associate Minister Damien O'Connor on 17 May 2005, but that if Mr Ross Robertson had provided evidence that he saw Mr Siriwan screening the floor at Taito Phillip Field's house in mid-March, and Mr Goff had provided evidence that he spoke to Mr Siriwan while he was doing that screening, the findings of the Ingram report might have been different?

**Hon DAVID CUNLIFFE:** As the member knows, there are ongoing matters surrounding those issues that are currently the subject of investigation by the New Zealand Police. That is the proper process, and all members of this House will be very interested in their conclusions.

**Dr the Hon Lockwood Smith:** When reviewing the immigration matters in the Ingram report, did the Minister investigate why his senior Cabinet colleague the Hon Phil Goff failed to tell either him or the Ingram inquiry that he had met Keith Williams while Mr Williams was working on Taito Phillip Field's house in Samoa, and knew his

name, yet failed to come forward with that information when Keith Williams was named as one of the key figures in the instigation of the Ingram inquiry?

**Hon DAVID CUNLIFFE:** I think it has already been established that the Minister of Immigration is not responsible for the individual representations of members of Parliament to the Ingram inquiry. However, I know the member in question to be a man of honour and integrity.

#### **Overseas Investment Act—Impact Forecast**

**4. R DOUG WOOLERTON (NZ First) to the Minister of Finance:** Was any forecasting done on the impact of the Overseas Investment Act 2005 prior to its passage; if so, how does the value of businesses, assets and property bought by overseas companies or individuals in the past year compare with that which was forecast?

**Hon Dr MICHAEL CULLEN (Minister of Finance):** There was a forecast in relation to the likely change in the number of approvals because that, obviously, was the issue in relation to resources required. As the initial proposal was to lift the business threshold to \$250 million, but in eventuality this was lifted only to \$100 million, clearly more approvals required to be considered than was originally forecast.

**R Doug Woolerton:** If we were to include transactions to overseas buyers in the past year, which were worth between \$50 million and \$100 million and are now no longer subject to official oversight, does the Minister think that the total value of such transactions has been in line with the intent of the legislation and the will of the New Zealand public; if so, why?

**Hon Dr MICHAEL CULLEN:** Yes. When one looks particularly at the total number of approvals, and the amount of land involved in the land approvals, in fact there is very little change. In a number of areas there has actually been a reduction, particularly in terms of land.

**H V Ross Robertson:** How is the Government using the Overseas Investment Act 2005 to protect waterways and New Zealand's access to them?

**Hon Dr MICHAEL CULLEN:** Under the new legislation, foreshore, seabed, riverbed, or lake bed proposed as a sale to an overseas person must first be offered to the Crown. The Government has already accepted a number of such offers, at no cost to the Crown except for surveying and the like. We also required additional public access to be provided along some waterways by way of the equivalent of marginal strips, the most notable being the recent approval for the sale of the Carter Holt Harvey forest estate.

**Sue Bradford:** Is the Minister considering any means of restraining the ongoing influx of foreign investment into the housing market, given its upward pressure on house prices?

**Hon Dr MICHAEL CULLEN:** Generally speaking, except for subdivisions, that does not normally come within the purview of the Overseas Investment Act because the land areas are too small, or for other reasons. Often subdivisions do, because they back on to drainage reserves or similar. Usually, of course, at the end of the day they are onsold to New Zealanders. So the issue that the member raised is quite a different one from the Overseas Investment Act procedures.

**R Doug Woolerton:** Was it the intention of the Government to increase hugely the total value of sales to foreigners as a result of the Overseas Investment Act; if not, is the Minister satisfied with a 60 percent increase in the value of transactions compared with the average of the previous 2 years?

**Hon Dr MICHAEL CULLEN:** In terms of the sales that have been approved, the gross value of consideration for the year to date 2006 is within a ballpark—or a stadium, at least—figure of the period for 2005, but the net investment is slightly up.

Net investment is very, very much lower than the gross investment figure because many of these sales are from overseas owners to other overseas owners, but each registers as a sale to an overseas owner.

**Sue Bradford:** Does the Minister agree that there is a crucial difference between investment that grows wealth for this country and simple asset sales that produce wealth for the purchaser, with no increase in employment, technological innovation, or public good; and does the Minister plan to take any measures at all to make sure we get more of the former, productive kind of investment and less of the latter?

**Hon Dr MICHAEL CULLEN:** In general I think it is true, and one of the issues under consideration around taxation changes is exactly how the tax system may lead to various changes in one direction or another. In this area, of course, business taxation fundamentally is simply a good business test, rather than a national interest test such as that which applies to land. We would be in serious difficulties in terms of our international agreements if we moved back to other considerations than a good business test in that particular area of business sales. I ask members to remember that not a single business sale has actually been declined since 1984, even though many have been through the approvals process.

### **Fraud—Zero Tolerance**

**5. JUDITH COLLINS (National—Clevedon) to the Minister for Social Development and Employment:** Does he stand by his statement that his ministry has a zero tolerance policy for fraud?

**Hon STEVE MAHAREY (Minister of Education) on behalf of the Minister for Social Development and Employment:** Yes.

**Judith Collins:** Is his ministry conducting an investigation into student loan fraud at any prisons in New Zealand; if so, where?

**Hon STEVE MAHAREY:** The cases around the prison that the member is referring to, of course, are matters that have not yet gone to trial and are under investigation. Therefore it would be premature to comment at this time.

**Georgina Beyer:** What are the trends for benefit fraud investigation and prosecution?

**Hon STEVE MAHAREY:** In the past financial year the number of cases of substantiated benefit fraud fell by 11 percent. The total overpayments as a result of fraud fell from \$41 million, roughly, to around \$38 million. Thanks to the ministry's early intervention of prevention strategies, 95 percent of benefit fraud prosecutions undertaken were successful. Audit New Zealand has recently upgraded the ministry's status following its annual review of the ministry's internal controls. The ministry has numerous data-matching identity checking systems in place, although it would not be wise to divulge all those at this time. The ministry recently established an intelligence unit similar to those in overseas benefit systems where identity fraud is more prevalent, and that is already proving to be effective.

**Barbara Stewart:** Does he consider that ease of public access to documentation such as birth certificates should be reviewed in order to reduce the risk of fraud to the welfare system, as occurred recently?

**Hon STEVE MAHAREY:** That is an excellent suggestion, and one so excellent that my understanding is that the ministry is already looking into that matter.

**Paula Bennett:** When will the Minister share with Parliament the outcome of the investigation into student loan and student allowance fraud in New Zealand prisons?

**Hon STEVE MAHAREY:** As I mentioned before, the cases, if they are the same ones that are being referred to as I have here in my notes, are not coming to trial yet at this point, therefore it would be prejudicial for me to comment on them.

**Anne Tolley:** When did the Minister first become aware of the investigation into student loan fraud at any prisons in New Zealand?

**Hon STEVE MAHAREY:** Since I am replying on behalf of the Minister for Social Development and Employment, I ask the member to put that down as a written question. I am sure the Minister will answer it for the member.

**Judith Collins:** Was information about fraud by prisoners using student allowances and student loans omitted from the Minister's ministry's weekly risk analysis at any time this year?

**Hon STEVE MAHAREY:** It is always the case, when acting on behalf of another Minister, that one does not have those particular details. So once again I would urge the member to put that down as a written question.

**Gerry Brownlee:** What have you been doing for 4 hours?

**Hon STEVE MAHAREY:** But just to reassure members on the other side, including Mr Brownlee, at no time does the ministry accept any case of fraud, and it always gets its money back.

**Judith Collins:** What proposals has the Minister received to reliably determine the extent of welfare benefit fraud, and is it true that a proposal by the ministry's general manager, benefit integrity services, for a study to reliably determine the extent of benefit fraud has been declined this year?

**Hon STEVE MAHAREY:** My understanding is that the previous Minister for Social Development and Employment, if I can answer from that point of view, moved on a zero tolerance policy for a number of years, and reviewing why benefit fraud arises has been something that has been undertaken through a large number of studies. As to the specificity of the last question, once again that lodges in the Minister's head, and the member would need to ask that in a written question.

**Judith Collins:** I raise a point of order, Madam Speaker. I seek a point of clarification. Is the Minister saying that he does not know?

**Madam SPEAKER:** Well, I think the Minister addressed the question. That was not a point of order.

### **Psychiatric Patients—Abuse Claims**

**6. TARIANA TURIA (Co-Leader—Māori Party) to the Attorney-General:** Will the Government commit to establishing a settlement process to respond to claims being made by former patients of Porirua and other psychiatric hospitals, along the lines of the inquiry headed by Sir Rodney Gallen into abuses at Lake Alice Hospital; if not, why not?

**Hon Dr MICHAEL CULLEN (Attorney-General):** No; the Government's view remains that the claims are materially different in important respects.

**Tariana Turia:** Does the Government accept that the claims now being made by former patients of Porirua and other psychiatric hospitals are essentially similar to the claims made by the former patients of Lake Alice Hospital for which the Government has paid compensation; if not, why not?

**Hon Dr MICHAEL CULLEN:** No, the Government does not accept that. There are a number of differences: the Lake Alice Hospital claims allegations related to a confined period; the claimants were all treated by the same doctor; contemporaneous medical records enabled the circumstances to be well established and verified; and also, of course, an approach was made in that case for discussion in terms of allowing people's stories to be heard. There are, therefore, some significant differences. Obviously, we shall await what happens through the court legal process.

**Dr Jonathan Coleman:** Who took the decision to withhold \$35,000 from the compensation awarded to Mr Paul Zentveld by Sir Rodney Gallen, and did that person

or persons also order similar amounts to be withheld from the 87 other second-round claimants in the Lake Alice Hospital case?

**Hon Dr MICHAEL CULLEN:** I cannot be certain of this, but my recollection is that that was a collective decision in the end, and was not the decision of an individual Minister.

**Tariana Turia:** Why has the Government decided to force the victims of mistreatment, who have already been severely traumatised, to go through the torment of court procedures in order to seek justice; and would the taxpayer-funded costs be better used to reach settlement with the claimants?

**Hon Dr MICHAEL CULLEN:** I accept these cases are always extremely difficult. I do not deny the issues around the way people feel about their experiences. But one of the more difficult issues that always comes into play in these kinds of considerations is what was generally accepted at the time these things occurred, not what is the general acceptance at the present time as to what should have occurred. If we do not actually ask the former question, the Government could be liable for an extraordinary wide range of compensation across an extraordinary wide range of issues.

**Tariana Turia:** Does the Government accept that the claims now being made by former patients at Porirua and other psychiatric hospitals are evidence of a widespread culture of violence and abuse towards psychiatric patients that existed between the 1950s and the 1980s; if not, why not?

**Hon Dr MICHAEL CULLEN:** There have been many changes in culture. We regarded it as normal in the 1950s and 1960s to lock up large numbers of people in mental hospitals, perhaps for the remainder of their lives—sometimes, merely because they had an intellectual disability, not any form of mental illness. These days we do not accept such forms of treatment or behaviour as being within the norms of a modern society. That does not mean to say the Government should be paying compensation to everybody who was kept in a mental hospital in the 1950s and 1960s. We have to be very careful here about how practices and attitudes have changed over time.

### **National Certificate of Educational Achievement—Unit Standard Credits**

**7. Hon BILL ENGLISH (National—Clutha-Southland) to the Minister of Education:** What are the minimum requirements for an activity to qualify for unit standard credits in NCEA?

**Hon STEVE MAHAREY (Minister of Education):** The process to determine whether an activity qualifies for unit standards is that unit standards are put forward by a recognised standard-setting body such as industry training organisations, the Ministry of Education, and the New Zealand Qualifications Authority. They are then assessed by the New Zealand Qualifications Authority against registration criteria. Those include showing a need for the standard, and showing that it represents an achievable outcome worthy of certification and is fit for its purpose. Credit value is based on the time taken to study, learn, and assess. Schools then select unit standards to shape courses that meet the learning standards of their students, and, as the spokesperson of the National Party will know, those criteria were pretty much established under the previous National Government when unit standards were put into the system.

**Hon Bill English:** Can the Minister tell us who decided that attending school for 20 days, keeping healthy, holding a conversation with a friend, understanding friendship, and gift-wrapping an item, among other activities, warrant two or three National Certificate of Educational Achievement (NCEA) credits, and does he agree with those decisions?

**Hon STEVE MAHAREY:** As I mentioned before to the member, unit standards are put forward by recognised standards bodies, such as industry training organisations.

They are then assessed against a range of criteria. In relation to the particular items that were raised by the member, I say all of those operate at level 1 in NCEA. They are not available at level 2 or level 3. If I take, for example, the gift-wrapping of customer purchases, of the 70,000 students who have gone through NCEA level 1 over the last little while, two students have taken that particular unit standard. Those two students are examples of students who have learning difficulties and who obviously exit the system quite early, and that is what most of those unit standards were put together for.

**Moana Mackey:** How does NCEA better recognise the learning of all students?

**Hon STEVE MAHAREY:** NCEA enables all students, whether they are taking a maths programme or taking a lower-level programme at level 1, to leave school with a transparent Record of Learning that shows an employer or a tertiary institution what they can do and how well they can do it. Recent research into student motivation showed that students enjoy the flexibility of the system and that they enjoy being internally and externally assessed. It means that over the last 20 years we are now seeing a significant drop in the number of students who are leaving school with no qualifications at all, and that they can take those qualifications on to an employer. I say once again, in relation to level 1, that most of those qualifications are taken by students who are in supported learning situations. The fact that they have a qualification to take to an employer is a good thing.

**Hon Brian Donnelly:** Can the Minister confirm that the initial design of NCEA, as agreed to by New Zealand First and National, did not include unit standards, the achievement of which would have been only recorded on the certificate, and it was not until the break-up of the coalition Government that decisions were made to blend unit and achievement standards as integral parts of the NCEA, with associated credits?

**Hon STEVE MAHAREY:** I can confirm that it was during that period of time that unit standards were put in, in the way that we now see them. I would defend, however, the view that unit standards have a place in our schools in the way that I have just described at that lower level, because they give students who will exit the system very early an opportunity to demonstrate what they can do and then take that to an employer. They cannot do those standards at level 2 or level 3. I would also say that, because of the debate around these issues, this issue is one of the ones that we are looking at. We want to make some improvements in this area.

**Hon Bill English:** Has the Minister asked any students what they think of a system that equates gift-wrapping an item and understanding friendship as level 1 credits alongside other level 1 standards with the same number of credits, such as describing ecological characteristics in two biological communities, examining a contemporary geographic issue and evaluating courses of action, and using geometric techniques to produce a pattern or object; and does he think that most students would regard it as fair that one gets the same number of credits for both lots of standards?

**Hon STEVE MAHAREY:** As the member will know, research such as that undertaken by Victoria University into the motivation of students raised that very kind of issue. That is one of the reasons that—unlike the National Party—we are seeking to address that issue. I would point out once again, however, that before we go down a track of ridiculously undermining what is going on at level 1 of NCEA, these standards are available only at level 1. They are taken by students who are often in supported learning situations, and it allows them to go off to an employer and say that they do have some job-relevant skills, whereas the maths students being pointed out by Mr English will, of course, go on to level 2 and level 3 and, hopefully, on to further tertiary education.

**Hon Bill English:** In light of the Minister's comments that these standards are taken by students in special circumstances—

**Hon Steve Maharey:** Usually.

**Hon Bill English:** —usually—why did the New Zealand Qualifications Authority first tell the media last week that the standards were from a “special supported learning section”, and that this would appear on the student’s record, only then the next day back down and admit the truth, which is that these are mainstream NCEA standards that earn the same kind of credit as every other standard, and that in fact the Minister has no guarantee that they are not used by schools for all sorts of students, and not just those he has mentioned in his answers?

**Hon STEVE MAHAREY:** I will let the New Zealand Qualifications Authority speak for itself. But I need to make clear it that that appears on the Record of Learning. For example, in relation to the gift-wrapping of customer purchases standard, which two students out of 70,000 have taken, the standard appears under a retail distribution and sales qualification. That seems to me to be a reasonable thing for many students to take, if they were to move on to that; in a way, it is surprising that only two have taken it.

**Hon Bill English:** In light of the Minister’s emphasis earlier on the fact that more students are gaining a qualification, can he confirm that a student who shows up to school for 20 days, gift-wraps an item, holds a conversation, picks up litter, and understands friendship will earn enough credits to meet the ministry definition of a qualification, and therefore will appear in his statistics as someone who left school with a qualification?

**Hon STEVE MAHAREY:** At level 1, that student could accumulate those kinds of credits. But let me just take one of the examples the member listed: the level 1 qualification that about 1,500 students out of 70,000 students have taken, over the last little while, in applied listening skills. The member may like, for example, to enter an MBA programme, where lecturers teach exactly the same communication techniques as those. Those are worthwhile techniques for the students who will always exit the system early, and hopefully they will apply them in getting a job.

### **Disability Strategy—Progress Reports**

**8. DARREN HUGHES (Labour—Otaki) to the Minister for Disability Issues:** What reports, if any, has she received recently of progress on the New Zealand Disability Strategy?

**Hon RUTH DYSON (Minister for Disability Issues):** I have seen a report on the recent closure of the last institution for disabled people, the Kimberley Centre at Levin, and I was honoured to be part of a major celebration to mark this occasion at Parliament today. The celebration included many former residents of our 13 institutions. Deinstitutionalisation is about ensuring that disabled people can live in their communities and do the day-to-day things that most of us take for granted, which is a key aim of the Disability Strategy. The closing of the last institution is not only a historic milestone for disabled people but also a mark of our maturity and progress as a nation.

**Darren Hughes:** Has the Minister received any other reports concerning any potential obstacles to progress on our New Zealand Disability Strategy?

**Hon RUTH DYSON:** Actually, I have. I have seen a recent report that advocates backward-thinking arrangements for employing disabled people. It comes, not surprisingly, from the National Party, and I note that the Disabled Persons Assembly has issued a media statement calling the National Party statement outdated and out of touch. I can only really strongly agree with the assembly.

**Dr Paul Hutchison:** Why did the Government fail to find suitable accommodation for people such as David Stephens in the North Island, close to where his relatives had explicitly requested he be sent, but instead send him to Dunedin, leading his mother to

say of the process of deinstitutionalisation: “I was shocked and angered but am now devastated by the decision and the way it was handled.”?

**Hon RUTH DYSON:** Unlike that member, I will not breach Mr Stephens’ privacy by disclosing his wishes about where he wanted to live. But I can assure that member and the House that despite the member’s protestations, Mr Stephens is in a home where he feels secure, is safe, and is participating in the community. Not only that; he is very nearby to relatives who will actually visit him.

**Dr Paul Hutchison:** I seek leave to table two documents. The first is from a *Listener* dated October 2006, and quotes Mrs Stephens saying: “We feel like we’ve been bullied. We’re just stunned. We don’t know what we can do now.”

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

**Dr Paul Hutchison:** I seek leave to table a letter from David Stephen’s sister, Sarah Nelson, dated 30 October 2006, that states: “David and others like him need a facility in the North Island in order to provide safe, secure, professional long-term care. The family was excluded from any court hearings.”

Document not tabled.

### **Closing the Gaps Policy—Outcome**

**9. GERRY BROWNLEE (Deputy Leader—National) to the Minister of Māori Affairs:** Was the closing the gaps policy successful?

**Hon PAREKURA HOROMIA (Minister of Māori Affairs):** The results speak for themselves. They include the lowest level of Māori unemployment on record and the highest wage growth for Māori. Māori participation in early childhood and tertiary education is the highest on record. More Māori are involved in business. There are strong efforts to make a go at improving Māori health.

**Gerry Brownlee:** Does the Minister stand by his statement in the House on 25 May of this year that “this Government has achieved a 30 percent decline in Māori poverty”, given that the Ministry of Social Development has shown that the number of Māori living in severe hardship has increased 243 percent under his ministry?

**Hon PAREKURA HOROMIA:** Yes, I do. Using two internationally recognised income-poverty measures with poverty thresholds set at 50 and 60 percent of the median household income, the Ministry of Social Development has estimated that after the full implementation of Working for Families there will be a 70 percent reduction in child poverty at the lower threshold, and a 30 percent reduction in child poverty at the highest threshold.

**Pita Paraone:** Tēnā koe, Madam Speaker. How has closing the gaps assisted in addressing concerns regarding the escalating rates of diabetes, thus minimising any possible threat of Māori becoming extinct before the end of the century, as warned by Professor Paul Zimmet, director of Monash University’s International Diabetes Institute?

**Hon PAREKURA HOROMIA:** Building on the closing the gaps policy, the Government’s initiatives to help New Zealanders into homeownership—including the Welcome Home Loan package and the establishment of Kiwibank, KiwiSaver, and the homeownership education programme—are very clear, and the Government can do a lot more in relation to diabetes and all those sicknesses. But we do not see miles and miles of long, lengthy queues outside the food banks, as we did when that party was in Government, and we do not see people sleeping in cars any more, as they did then. We are doing something about it.

**Rodney Hide:** I raise a point of order, Madam Speaker. I enjoyed that answer enormously, but, unfortunately, the Minister is required to address the question. My colleague Mr Paraone's question was about diabetes—

**Hon PAREKURA HOROMIA:** Paraone, not Pareone.

**Rodney Hide:** The Minister can interrupt if he likes, but he should let me have a shot.

**Madam SPEAKER:** There are no interruptions during points of order.

**Rodney Hide:** The question was actually about diabetes, not about KiwiSaver, or homeownership, or getting into houses. Maybe if the Minister could draw it together a bit and say that somehow that will pick up diabetes, the House might be somewhat—

**Madam SPEAKER:** I thank the member. I got the gist of his point of order, and towards the end of the Minister's answer, although I will say that members were starting to barrack again, I did hear him address the matter of diabetes.

**Gerry Brownlee:** Does the Minister accept that diabetes currently accounts for one in every five Māori deaths compared to one in every 25 non-Māori deaths, and the Ministry of Health reports that if current Government policies remaining the same, by 2020 one in every three Māori will die of diabetes compared to one in every 20 non-Māori; if so, what is he doing to fix that?

**Hon PAREKURA HOROMIA:** What has to be understood alongside that is that Māori are decreasing in the negative statistics three to four times quicker than Pākehā. The percentage gap the member is using is painting a dastardly picture. We understand that that is the case, and this Government's policies are certainly trying to ensure that that percentage is not real. I can tell the member, and the person who has gone further than dictating—like a certain person talked about the derivation of our blood—that we will still be here in 50 years' time, irrespective of the māuiui.

**Gerry Brownlee:** What specifically is the Minister doing to address the current appalling statistics for diabetes among Māori; and what will he do to ensure that by 2020 one in every three Māori is not dying from diabetes?

**Shane Ardern:** Just say "Free exercise bikes."

**Hon PAREKURA HOROMIA:** That is right, exercise is part of this. The Government is committed to that in the sense of Fruit in Schools, better regulating forms of obesity, getting New Zealanders off the couch and into being more active, including us too—getting us off the couch and being more active. We are putting a lot into it. At the end of 2007 we will be injecting \$1.6 billion in Working for Families, which will make a difference with better housing standards and ensuring that health improves.

**Hon Pete Hodgson:** Can the Minister confirm that under his Government there has been a substantial increase in the "Get Checked" programme enrolments from Māori; a substantial increase in the Care Plus programme enrolments for Māori; that the primary health care strategy is designed to take a population-based approach to disease, especially as it reduces inequalities that exist in our society; that last month the policy on very low fees was rolled out to those primary health organisations that often deal specifically with Māori populations; and that, for the most part, these moves have for years been staunchly opposed by the National Party opposite?

**Madam SPEAKER:** It is impossible to hear.

**Hon PAREKURA HOROMIA:** Proudly, most certainly yes. In areas like Wairarapa, where diabetes is high, let that lot over there remember that they sold 13,000 State houses, put people out on the road, and set a market rent. This Government brought that down. We share and care for our people in relation to diabetes, so do not come at that.

**Rodney Hide:** Point of order—

**Madam SPEAKER:** There is no need for a point of order.

**Rodney Hide:** I think there is, Madam Speaker.

**Madam SPEAKER:** No, I just want to remind members, including Ministers when they are addressing questions, that shouting does not necessarily aid the hearing of the answer. I also ask members who both ask and answer questions to do so succinctly.

**Rodney Hide:** I raise a point of order, Madam Speaker. You addressed a bit of my point of order, but it goes like this. We saw several breaches of the Standing Orders. The first thing was that the Minister of Health, who asked the question, actually answered it. I am sure that if members of the Opposition were in a position whereby they could ask a question and answer it at the same time, they would take that opportunity. The second thing is that the Minister is required to answer a question briefly and to the point. When the Minister said yes, he had done so. He did not need to go into a long rant, as interesting as it was, about State housing and what the National Party might have—

**Madam SPEAKER:** I thank you, Mr Hide, but you have made your point and, as you said, I had addressed it. I hope members heard it.

**Gerry Brownlee:** How can the Minister claim that he has closed the gaps for Māori when the employment gap between Māori and non-Māori has widened under Labour, and when the Ministry of Social Development—the very organisation whose figures he just quoted—reported this year that the employment rate for Pākehā has increased 88 percent faster than the employment rate for Māori, and if one randomly picked an unemployed New Zealander off the street, the chance that that person will be a Māori is now greater under a Labour Government?

**Hon PAREKURA HOROMIA:** That difference in relation to the labour market has been there for a long, long time. The closest the gap has ever been is right now. When we came into Government, the unemployment register for Māori was 50,000. What is it now? It is 13,500. That is about skills and knowledge, and about making sure that our people get a better life—

**Hon Member:** And they're all dying of diabetes.

**Hon PAREKURA HOROMIA:** No. The minimum wage has been increased seven times. So there has been a real prop up in relation to employment. I ask that member to go back and check his record in his Government's time.

**Gerry Brownlee:** I raise a point of order, Madam Speaker. The Minister might want to clarify his answer. Did we hear him say that the cure for Māori diabetes was to repurchase 13,000 State houses?

**Madam SPEAKER:** That is not a point of order.

**Gerry Brownlee:** What does he say to Tahī and Marama, social workers in Hamilton, who told the *Waikato Times* on 12 August that they have been forced into a generational poverty trap; talked of their anger that their oldest son could get ahead only if he was to cut his ties with his family and his wider whānau by moving to Melbourne to get a decent wage; that they have yet to see any benefits in their community from the Working for Families programme; and that the best thing they thought the Government could do for them, and other low-income New Zealanders, was introduce some decent tax cuts?

**Hon PAREKURA HOROMIA:** I find that a bit rich coming from that member, because a lot of people go to Melbourne. I do not know the case, but if he refers it to me, I will certainly look at it. I want to talk about the tax cuts. This Government wants to ensure that the benefit of its expenditure is used to make sure that less well-off families are well cared for—not like that member, who tries to look after his rich mates.

**Stadium—Auckland Waterfront**

**10. RODNEY HIDE (Leader—ACT)** to the **Minister for the Rugby World Cup**: At which Cabinet meeting was the option to build a stadium on Auckland's waterfront first proposed, and whose idea was it?

**Hon Dr MICHAEL CULLEN (Leader of the House)**: on behalf of the **Minister for the Rugby World Cup**: On 28 August Cabinet requested a feasibility study on a range of options, including a waterfront stadium. This study was considered on 6 November. This matter has always had the primary carriage from the Minister for the Rugby World Cup.

**Rodney Hide**: Will the Minister stake his political career on the total cost of the stadium on the waterfront—should it proceed—costing less in total than a billion dollars; if not, why not?

**Hon Dr MICHAEL CULLEN**: I think it would be inappropriate for me, on behalf of Mr Mallard, to stake my ambitious understudy's future on the costings of the stadium.

**Keith Locke**: Does the Minister agree with the Eden Park Trust Board that it can bring 74 percent of the World Cup crowd into the game by train, bus, or coach, compared with 58 percent for the waterfront option; and given that the waterfront option is considerably more expensive than the Eden Park upgrade, does the Minister not think that the extra money would be better put into upgrading Auckland's rail infrastructure and bus services?

**Hon Dr MICHAEL CULLEN**: I have no idea on which basis the Eden Park board would make that claim. It may well be, of course, that what they really mean is that they cannot get as many cars arriving at Eden Park as would be available to go down to the waterfront stadium; but by deduction, therefore, the rest have to come by bus, train, helicopter, or various other means.

**Darien Fenton**: Has he received any reports on the process for selecting a venue for the Rugby World Cup?

**Hon Dr MICHAEL CULLEN**: I have, indeed. I received one today, for example, in which the stated proposal was criticised as being an abuse of the democratic process. I quote: "Rodney and I share concerns about the lack of proper consultation to date about any attempt to force parliamentary oversight into a rushed timetable." Another one said that the Public Works Act should be used to confiscate private land at Carlaw Park. The first came from Keith Locke and Rodney Hide, the second from Rodney Hide alone.

**Dr Don Brash**: Can he advise the House how the estimate for the waterfront stadium came in at exactly \$497 million, when most of the major components of that stadium cannot be estimated within the nearest \$100 million?

**Hon Dr MICHAEL CULLEN**: Clearly, as with the Eden Park stadium, for which there are no final detailed plans at this stage, any estimates are precisely that: estimates.

**Gordon Copeland**: Has any consideration at all been given to the 62,000-seat Endeavour Stadium proposal on reclaimed land in Mechanics Bay, with its 12,500 car parks, 250 bus parks, two hotels, and new railway station with four times the capacity of Britomart, all at reasonable cost to the taxpayer, for completion by September 2009; if not, why not?

**Hon Dr MICHAEL CULLEN**: I must say that almost everybody is coming forward with alternative proposals, so I expect Aunt Jemima's backyard to appear some time soon from somebody as a site for the stadium. But, seriously, if one is suggesting that one can build a project of that size by September 2009 when there are doubts about the deliverability of either Eden Park stadium or the waterfront stadium by the end of 2010, then I think imagination is starting to run well beyond reality at that point.

**Keith Locke:** How does the Government's overriding of the Resource Management Act in this case differ from the Muldoon "think big" era, when proper planning procedures were swept aside at the convenience of the Government and at the expense of local communities?

**Hon Dr MICHAEL CULLEN:** I invite them to read my exceptionally powerful speech on the second reading of the Clutha Development (Clyde Dam) Empowering Bill to understand the difference. The Clutha Development (Clyde Dam) Empowering Act overrode an already arrived-at process outcome, which is quite different from intervening before that begins to get consent, which is what both National and Labour supported on the America's Cup. In the case of Eden Park, the risk is that we may launch upon a resource consents process that does not achieve consents, and then the Eden Park Trust Board will be back here not just for the money to build the stadium, because it does not have that, but also for legislation to override the fact that it failed to get the consents for the stadium.

**Ron Mark:** Can he confirm for the benefit of all Canterbury people that if Auckland does what most Canterbury people suspect they will not be able to do, which is to make a decision—*[Interruption]*

**Madam SPEAKER:** Mr Mark, please continue, without innuendo.

**Ron Mark:** Is the Government committed to the Jade Stadium option if people in Auckland simply cannot agree?

**Hon Dr MICHAEL CULLEN:** It is clear that Jade Stadium remains a viable back-up, and its utility is that it remains a back-up through until 2008 because it is far easier to extend Jade Stadium into a 60,000-seat stadium. What I would expect is that if there is not express support from Auckland City Council or the regional council around the waterfront option, then presumably they will support the Eden Park stadium option. But I emphasise again, the Eden Park Trust Board does not have completed detailed plans and does not have the money to build the Eden Park option; it does not have final costings to build it, either.

**Rodney Hide:** In light of the Minister's answer, is the Government then having second thoughts about the stadium on the waterfront, with polls showing Aucklanders two to one against the proposal and a large number of city leaders against the proposal, or has the Prime Minister got a touch of the "Muldoons" and will ram through the stadium on the waterfront, despite what New Zealanders say or think?

**Hon Dr MICHAEL CULLEN:** Apart from the fact that the Prime Minister is much taller, slimmer, and healthier than the late Sir Robert Muldoon, the answer is no. The only second thoughts I am aware of at this stage are that on Sunday the member appeared backing Carlaw Park, and today appears backing Eden Park.

**Keith Locke:** I seek leave to table an article from yesterday's *New Zealand Herald* headed "Act now to prevent the barbarians running amok".

**Madam SPEAKER:** Leave is sought to table that article. Is there any objection? There is objection.

### **Trials—Timeliness**

**11. KATE WILKINSON (National)** to the **Minister for Courts:** Does he agree that an accused has the right to be tried without undue delay; if not, why not?

**Hon RICK BARKER (Minister for Courts):** Yes, because that is what the New Zealand Bill of Rights Act states.

**Kate Wilkinson:** How can the Minister reconcile the New Zealand Bill of Rights Act guarantee of an accused's right to be tried without undue delay with the 45 criminal jury trials in Blenheim that have been waiting for over a year and the seven that have been waiting for over 2 years?

**Hon RICK BARKER:** My staff advise me that the courthouse in Blenheim is undergoing a major refit. Blenheim has only one courthouse available at this stage. In consultation with both prosecution and defence, trials are being moved, where agreement has been reached, to Nelson, and other resources that can be deployed to the Blenheim area are being looked at.

**Kate Wilkinson:** When the Minister stated in the House that justice delayed is not justice denied, which of these was he refuting: the New Zealand Bill of Rights Act, which guarantees an accused's right to be tried without delay; the Court of Appeal's decision in the Martin case granting a permanent stay of criminal proceedings due to a 17-month delay to the proposed date of trial; the High Court decision in the Graham case last month resulting in a permanent stay of criminal prosecution because of a 22-month delay; or all of the above?

**Hon RICK BARKER:** Once again the member misquotes me. She does not quote me in total, as has been the case on a number of occasions. I say to the House that every stay of proceedings is to be regretted, and I have high expectations of the Ministry of Justice to make sure that cases are heard in a timely manner.

**Jill Pettis:** What is being done to review and improve court processes?

**Hon RICK BARKER:** This Government is implementing a massive 3-year, wide-ranging service improvement programme. Since this Government has been in office it has appointed 25 new judges. We have also appointed additional staff to support those judges. We have introduced videoconferencing. We have worked with the High Court bench to establish a national roster to ensure that resources are deployed to the best possible place. We are rebuilding courts as fast as we can—for example, I opened the Queenstown court last week. We are having a good deal of success. For example, in the criminal summary jurisdiction, which hears about 95 percent of the criminal caseload, we have reduced the number of waiting cases by 20 percent between 2003 and today.

**Kate Wilkinson:** How can the Minister justify his comments that he is doing heaps when the proposed alterations in Blenheim will not result in one single additional courtroom suitable for jury trials, when the median waiting time for criminal jury trials in Blenheim is 372 days—the worst in the country—and when in only the last few weeks there was a permanent stay of proceedings against a Blenheim drug dealer because of excessive delay?

**Hon RICK BARKER:** As I understand it, the Blenheim court will go from having one jury room and one small and completely unsuitable courtroom to having three available courtrooms, including a jury room. Of course, this means that when a jury trial is in progress, criminal summary matters can be heard, as well as Youth Court matters. This will improve the facility in Blenheim significantly.

**Kate Wilkinson:** How can the Minister reconcile the New Zealand Bill of Rights Act guarantee of the right to be tried without undue delay with his comments in the House that justice delayed is not justice denied because “it depends on who caused the delay and for what purpose.”, or “Delays in a hearing, or, alternatively, a delay in justice, may be for many good reasons.”; what can be good about delayed and denied justice?

**Hon RICK BARKER:** There is no good in denied justice, at all. The point I was making to the member, which she fails to recognise, is that delays in trials can be because the prosecution has yet to assemble all of its evidence and witnesses. A delay in a trial can be called by the defence also because it wants to review evidence, examine witnesses, and get specialist evidence. So there can be many good reasons for a delay in a trial that assist the process of justice.

**Kate Wilkinson:** What does the Minister have to say to the family of the murdered Tauranga toddler when the trial date is scheduled for nearly 24 months after the charge,

or to the two Tauranga families who have to wait 19 months for a double murder trial to start, when a 17-month delay was determined an undue delay by the Court of Appeal in the Martin case, and when a 22-month delay was determined undue by the Blenheim court in the Graham case, both resulting in a permanent stay of proceedings; or is this just the case of another two criminals being allowed to go scot-free because of excessive delays under the watch of the Minister?

**Hon RICK BARKER:** My expectations for my staff and the Ministry of Justice are that every case is to be brought to trial as soon as possible. There are reasons for delays, which are beyond my ability to comment on, and they could be for very good reasons that the member asking the questions has simply overlooked.

### **Business Law—Streamlining**

**12. MARYAN STREET (Labour) to the Minister of Commerce:** What measures is she taking to streamline business law?

**Hon LIANNE DALZIEL (Minister of Commerce):** The passage of the Business Law Reform Bill—I hope, this week—will see the removal of unnecessary compliance costs and ensure consistency between different legislative requirements. For example, the vast majority of small companies will qualify under the new “two out of three” test and will be able to produce financial statements in a simple format under the exempt company regime, thereby reducing compliance costs significantly.

**Maryan Street:** Why is the Minister not including amendments to address the concerns expressed by the Takeovers Panel during its submission to the Commerce Committee on the Business Law Reform Bill?

**Hon LIANNE DALZIEL:** I am advised that the Takeovers Panel raised concerns that the Companies Act scheme of arrangement process had been used by companies to avoid the Takeovers Code. The Government approved a Supplementary Order Paper to address some, but not all, of the panel’s concerns, but it could not proceed as it was objected to by the National Opposition.

**Maryan Street:** What will the Government do now to address the concerns of the panel, given that the Supplementary Order Paper is not proceeding?

**Hon LIANNE DALZIEL:** Tragically, the issue has now had to be referred back to officials for further work before a decision is taken by Cabinet on whether broader amendments need to be made to the Companies Act, or whether the regulation-making power in the proposed Supplementary Order Paper would suffice. It is disappointing that the select committee’s unanimous support for change did not extend to the Committee stage of the current bill.

### **Road Accidents—Young Drivers**

**13. GORDON COPELAND (United Future) to the Minister for Transport Safety:** Is he concerned that last year drivers aged 15 to 24 were involved in 142 fatal road accidents, in which they were at fault 83 percent of the time, and that the social cost of crashes in which drivers in this age group were at fault totalled roughly \$1 billion; if so, what is he going to do about it?

**Hon HARRY DUYNHOVEN (Minister for Transport Safety):** Yes, I certainly am concerned. In the interests of further developing road safety policy, the Government recently ran the See You There—Safe As programme’s process of stakeholder engagement, which I hope United Future took the opportunity to be involved in. The young driver crash rate was highlighted as an area of concern, and I have always said it is. I hope that announcements on future policy direction will be made shortly, and I look forward to the support of United Future for those policies.

**Gordon Copeland:** Why has the Government so far failed to take decisive action to tackle young driver crashes, in spite of the appalling death and injury statistics, the cost to Vote Health, and the pleas for action now from the young victims of these road crashes—if they are still alive—and their families?

**Hon HARRY DUYNHOVEN:** I think it is a little unfair to say that the Government has not taken steps. We have done a large number of things, beginning some time back with the introduction of specific measures to tackle boy racers, and the Street Talk and defensive driving courses. The Government has taken a large number of initiatives, and we have had some success.

**Ron Mark:** Noting the Minister's concerns, why has the Government not moved to make third-party car insurance compulsory, as a mechanism to make it harder for irresponsible drivers to own powerful vehicles and to misuse them?

**Hon HARRY DUYNHOVEN:** This has been an issue since I first raised it in the House in 1988. The insurance companies and Governments over that time have certainly struggled with the issue. There is a very good reason to proceed with compulsory third-party insurance, in my personal view. It is one of the issues that is currently being looked at by the Government in the process of the See You There—Safe As campaign, which has been very successful around the country. The particular initiative mentioned by the member has a large degree of support from the public.

**Hon Mark Gosche:** What progress has been made in reducing the road toll?

**Hon HARRY DUYNHOVEN:** Very good progress. Between the years 1999 and 2005—that is, the term of this Government for which we have accurate figures—the rate of road fatalities per 10,000 vehicles reduced by 35 percent. The number of fatalities in the last 12 months is at a level not seen since 1963, when several members of the House were not even born. Research shows there is an ongoing 8 percent reduction in young and novice driver crash rates. That reduction is associated with the graduated driver's-licence system, which was brought in during the fourth Labour Government, and is actually now being successfully copied by many jurisdictions overseas.

**Chester Borrows:** Does the Minister accept that the quota system for issuing traffic tickets, even though it is described as a performance target indicator, actually encourages police to sit at so-called fishing holes and issue tickets to lots of minor infringers, rather than sit at black spots and target those drivers at serious risk of causing death and injury?

**Hon HARRY DUYNHOVEN:** There is a certain amount of irony in that question being posed by the member; I think he, as a former serving police officer, would certainly agree that cutting down the average speed on the open road has actually benefited the road toll. But I certainly agree with him that we should be targeting those who are excessive offenders. For that reason there has been a real determination by this Government to make the highway patrol not only more visible but far more active.

**Gordon Copeland:** Is the Minister familiar with the call by the Automobile Association—with its 1.2 million members and associates—the Insurance Council, the Accident Compensation Corporation, and the police for defensive driving and attitudinal courses and for tighter rules around new-driver licensing processes?

**Hon HARRY DUYNHOVEN:** Yes, I certainly am, and I have been involved in discussions with those organisations over a number of years. The recent See You There—Safe As programme, which was extremely successful around the country with over 1,000 New Zealanders voluntarily participating, actually saw a considerable number of these issues raised. Members can be sure that these issues are being taken into account by the Government. I look forward to making announcements, with my

colleague the Minister for Transport, who is also the Minister of Police, on these issues in the future.

I seek leave to table two documents. One is a booklet, *Information for Stakeholder Engagement*, on the See You There—Safe As programme that we ran.

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

**Hon HARRY DUYNHOVEN:** The second is a document prepared by the Ministry of Transport on young drivers that gives a whole lot of very useful statistics on crash rates, causes, etc.

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

### **URGENT DEBATES DECLINED**

#### **Stadium—Proposed Location, Auckland**

**Madam SPEAKER:** I have received a letter from Keith Locke MP seeking to debate under Standing Order 380 the proposed waterfront stadium in Auckland. Standing Order 380 requires that the matter for debate be a particular case of recent occurrence involving ministerial responsibility, for there to be a particular case of recent occurrence, and an event upon which an urgent debate must have occurred. The purpose of the urgent debate procedure is to provide an opportunity for the House to hold the Government to account for its decisions. The announcement from the Minister for the Rugby World Cup on the stadium in Auckland is part of a decision-making process requiring input from Auckland City and regional councils over the next 2 weeks. No decision has yet been made by the Government, only an announcement that a decision is required. In these circumstances there is no particular case of recent occurrence. This does not mean the matter is not of sufficient import to require the attention of the House; it simply does not meet the requirement of an urgent debate procedure at this time. The application is therefore declined.

**RODNEY HIDE (Leader—ACT):** I raise a point of order, Madam Speaker. I am concerned about the fact that we have an issue, and there is some discretion here for having an urgent debate. The Government has made a decision in the sense that this site is its preferred option, and it has given Auckland City 2 weeks to make up its mind. We now have, it seems to me, the absurd situation where the whole country is debating the stadium, its merits, the options, and the situation, yet we are unable to have that debate in Parliament. Maybe we could word the request better for tomorrow or the next day, but it does seem to me a difficult situation for our Parliament. There is this whole debate consuming the country about what the Government is up to and what the Government has done, yet we are denied the opportunity to have such a debate in Parliament.

**KEITH LOCKE (Green):** I reinforce the points that Mr Hide has made because the debate he refers to that is taking place across the country, and particularly in Auckland, has a context of what this Parliament will decide in terms of authorising legislation, overriding the Resource Management Act, etc. The people of Auckland and the people of the country deserve to know Parliament's position on these matters. How can they make an informed decision otherwise?

**Hon Dr MICHAEL CULLEN (Leader of the House):** Your decision is final on these debates. They are not subject to challenge by points of order or, indeed, by any other form. Mr Locke has almost just counted himself out by pointing out that if a decision is made at least in one direction, and we have already had support from the National Party for legislation on Eden Park, that would be debatable by means of legislation. The fact that there is wide public debate is, I am afraid, irrelevant. There was wide public debate about the lineage of a member of the Kiwis rugby league team

only a week or so ago, which clearly did not, at least as far as I know, involve any member of the House.

**Madam SPEAKER:** I thank members for their comments.

## **NGĀTI MUTUNGA CLAIMS SETTLEMENT BILL**

### **In Committee**

#### **Preamble**

**GERRY BROWNLEE (Deputy Leader—National):** We do not wish to spend a great deal of time on the preamble to the Ngāti Mutunga Claims Settlement Bill. It sets out very clearly the process that led to this settlement. Further to that, the preamble deals with matters relating to the time from which the settlement itself will become effective. We wish to reserve the speaking opportunities we get in this debate to the more substantive clauses that we will see in the future. In particular, I point the Committee to a proposed new Part 4, which will be introduced by Mr Finlayson and seconded by Mr Tau Henare. We are of the view that the time of the Committee would be best spent discussing that particular matter this afternoon.

Preamble agreed to.

#### **Part 1 Purpose of Act, acknowledgements and apology, interpretation provisions, settlement of claims, and miscellaneous matters**

**Hon TAU HENARE (National):** I reiterate what my colleague Gerry Brownlee said. The Ngāti Mutunga Claims Settlement Bill is pretty straightforward in terms of settlement legislation. We do not want to hold up the process, but we do want to make clear our intentions of bringing forward to the Committee a new Part 4, which hopefully the Government will take a look at—we hope the Minister of Māori Affairs will push play and get a copy of it. The amendment is an honest attempt to make sure that this process runs as smoothly as possible. I will not take up too much more of the Committee's time, other than to say that the National Party is totally supportive of this legislation.

**PITA PARAONE (NZ First):** Tēnā koe, Madam Chair. In this part I want to talk specifically to references that are made to the word “principles” as it relates to the Treaty of Waitangi. I say from the outset that I have proposed a number of amendments and hope that this Committee might give some due regard to them. The stance that New Zealand First is taking on this issue should not come as any surprise to this Committee. Again I just want to take the opportunity of reiterating our concern, and that is the fact that first, there is no reference to principles stated in the Treaty, and second, while they appear in a number of pieces of legislation, none of those references actually define what those principles are. Again, that has been a concern to New Zealand First, and also the fact that it has been left up to people outside of this House and to institutions outside of this House to define what those principles are. It would be remiss of me not to take this opportunity to express our concern and also to seek their deletion from this bill.

I also reiterate a comment I made during the second reading when reporting back on comments made by claimants themselves in regard to this bill and during the course of hearing submissions from claimants. When asked about the importance of the principles of the Treaty in relation to this settlement, they did not have a view as to their importance for inclusion in this bill. But what they did say was that for them it was more important that recognition was given to the fact that a breach of the Treaty itself had taken place. So I reiterate the stance of New Zealand First and say that if this bill is passed it will be added to the list of legislation that includes those principles, when my colleague's bill for the removal of those references from legislation comes up.

**CHRISTOPHER FINLAYSON (National):** I have a few brief comments to make, and I foreshadow that I will be moving a number of amendments to the Ngāti Mutunga Claims Settlement Bill by way of introducing a new Part 4. That part will introduce a number of transitional provisions to deal with the dissolution of the Ngāti Mutunga Iwi Authority and changes consequent upon that, including the transfer of assets and liabilities, the position with taxes and duties, the requirement that the Ngāti Mutunga Iwi Authority prepare a final report, and other miscellaneous matters such as registers, the status of contracts, and other instruments and matters that would not be affected by the transfer.

It is perhaps important that I state briefly now why I am seeking to introduce those amendments. It seems to me that the Māori Affairs Committee has got it wrong on page 23 of the commentary on the bill. Mention of the transfer of the Ngāti Mutunga Iwi Authority Board to Te Rūnanga o Ngāti Mutunga begins on page 22, and sets out the arguments as to why Ngāti Mutunga wanted provisions to deal with the transfer of assets from the old board to the new governance arrangement. Page 23 of the commentary states: “The Office of Treaty Settlements advised us that amending the bill to provide for the disestablishment of the iwi authority and the establishment of the post-settlement governance entity was not feasible.” But that is not what is being proposed; in fact, that statement is simply wrong, because in July 2005 Ngāti Mutunga ratified a new governance arrangement to succeed the Ngāti Mutunga Iwi Authority. It was never seeking, by legislation, to establish the new tribal arrangement; it was seeking to do what has been done in numerous pieces of settlement legislation—to effect a transfer from the old body to the new body and to effect the dissolution of the old body.

I am trying to make the point that the new entity, Te Rūnanga o Ngāti Mutunga, was established on 21 December 2005. The establishment of that entity followed a Crown-approved ratification process that involved Ngāti Mutunga members over the age of 18. That structure was reviewed by the Crown prior to the ratification process, and was accepted as a suitable structure to replace the Ngāti Mutunga Iwi Authority and to receive settlement assets.

In proposing these amendments I am seeking not to create a new entity but to recognise that there is this new entity that has been in existence for some months, that it is the appropriate body to take part in the settlement, and that the old body—the Ngāti Mutunga Iwi Authority—could be appropriately dissolved. That is what I am seeking to do by proposing to insert a new Part 4. Although the proposed new Part 4 seems to have quite a few clauses in it, when the discussion is reduced to simple terms that is what is happening, and it is not different from the procedures that were adopted by this Committee in the Committee stage of the Te Arawa Lakes Settlement Bill. If members look at Subpart 2 of Part 4 of that bill, which deals with various miscellaneous provisions, they will see that the Te Arawa Māori Trust Board was dissolved, and that all assets and liabilities were transferred to the new body. That process is no different from what happened with Te Rūnanga o Ngāi Tahu in the 1996 Te Runanga o Ngai Tahu Act.

They are a simple set of amendments that reflect what Ngāti Mutunga wants, and I hope members of the Committee will reflect on them. It is not a question of playing party political games but of trying to achieve for Ngāti Mutunga a settlement that is appropriate and durable, and of making sure that the i's are dotted and the t's are crossed. I particularly refer Minister Burton to the report of the Māori Affairs Committee, because it seems to me that a mistake has been made in the report back. I am not seeking to do anything other than what happened in the Te Arawa Lakes Settlement Bill.

**Hon TAU HENARE (National):** I endorse what my colleague Christopher Finlayson said and set out to the Committee—that it is pretty obvious that we have the ability to help Ngāti Mutunga, in terms of the old entity, to move seamlessly into the new entity, with basically a stroke of the pen. In fact, I do not think it will cost the Government at all in financial terms. My colleague Mr Finlayson put it succinctly when he mentioned what had happened in the Te Arawa lakes settlement—moving from the Te Arawa Māori Trust Board through to the new entity, Te Arawa Lakes Trust. So I do not think that it is too hard an ask for the Government to support the amendment put forward by my colleague Mr Finlayson. I do have some misgivings about the amendments from my whanaunga, my tuakana, over there from New Zealand First about the removal of the principles of the Treaty of Waitangi. As I said in the second reading, I was not too sure that it would be good politics at all to try to remove references to the Treaty principles from what is—

**Pita Paraone:** What are they? The member might be able to tell me.

**Hon TAU HENARE:** Well, basically—I am not really here to help New Zealand First out. If the member really wants to know what they are, then maybe he should go home and do some homework.

However, I think it is a bit strange that we would remove references to the principles of the Treaty of Waitangi from a Treaty settlement bill. I certainly agree with my colleague from New Zealand First that the principles of the Treaty of Waitangi should not be in every bill, but I certainly think that references to the Treaty of Waitangi should be in what is, essentially, a Treaty of Waitangi settlement bill.

**Darren Hughes:** Except that's not National Party policy.

**Hon TAU HENARE:** That member has just come out of school, he had his first drink in the pub not so long ago, and now he knows what National Party policy is.

**Darren Hughes:** Yes, I do—better than the member does.

**Hon TAU HENARE:** Oh, I see. This is where we get the spin from the biggest spinners out. They are such big spinners, they should be on the end of a fishing pole, for goodness' sake! But I digress.

National Party policy is not to remove the Treaty of Waitangi principles from all legislation—unlike New Zealand First's policy. I know that it is hard to differentiate between New Zealand First and National—

**Pita Paraone:** Which legislation, then, does it apply to?

**Hon TAU HENARE:** This legislation is a Treaty of Waitangi settlement, where we have, basically, bipartisan support for a settlement of a breach of the Treaty of Waitangi.

**Pita Paraone:** That's right.

**Hon TAU HENARE:** Right? OK! So why would we not have a mention of the thing that has been breached in the settlement bill.

**Pita Paraone:** It is mentioned—the Treaty.

**Hon TAU HENARE:** That is all the member wants. He does not even want the principles of the Treaty—

**Pita Paraone:** No. You don't know what they are.

**Hon TAU HENARE:** Well, I ask the member what they are.

**Pita Paraone:** I just want to know.

**Hon TAU HENARE:** Oh, come on! It is too easy, because it does not have any effect, whatsoever, on what we are talking about. It is just a play on the old superannuitants, who are New Zealand First's support base, and whose numbers are dwindling ever so quickly.

**Pita Paraone:** Is that the same support base that put you in here?

**Hon TAU HENARE:** No, no. You see, in those days Māori did not get to be the age of a superannuitant, so all the people who voted for me from 1993 to 1999 were actually young people. But I digress again. All we are saying is that we think it is appropriate that we use this legislation for Ngāti Mutunga to move from the old to the new.

**Hon MITA RIRINUI (Associate Minister in charge of Treaty of Waitangi Negotiations):** I thank the members for their contributions in terms of the Ngāti Mutunga Claims Settlement Bill. I also appreciate the amendments in the name of Chris Finlayson. Those amendments pertain to a proposed new Part 4 of the settlement bill, so I will acknowledge those points when we come to that stage of the debate. But I thank the member for his contribution.

Of course, the Government values the relationship it has established with Ngāti Mutunga, its negotiators, and its people. In saying that, I point out that we have advised Ngāti Mutunga that this is an inappropriate use of settlement legislation. It is not something we have done in the past, and it is not something we want to do in the future. Previous examples of such legislation have related to statutory bodies—for instance, trust boards—or have been introduced by way of private legislation, which we have seen in a number of cases such as with the Te Runanga o Ngati Awa Bill. But Chris Finlayson's amendments have some merit. We value the relationship we have developed with Ngāti Mutunga, and, as I said, when the Committee comes to that stage of the debate I will speak to the matter in more detail. I thank the member for his contribution.

As for the amendments in the name of Pita Paraone, which seem to be part of a continuing saga, the member is well aware of Labour's position in terms of the retention of references to the principles of the Treaty of Waitangi, particularly in settlement legislation. The member asked the previous speaker, the Hon Tau Henare, what those principles were. Well, I can offer some help to the member. It is pretty obvious that the Crown acknowledges in its apology that it failed to protect the property rights of Ngāti Mutunga. As a result of that failure, Ngāti Mutunga have not participated in the development of the local economy and in opportunities at the local level. In fact, they have been observers. They have been bystanders. Those two principles alone should satisfy us that the Crown was wrong in its actions and that it seeks to rectify that wrong—not in full, only in part, but it is certainly making a genuine attempt.

At the same time, I admire the member's tenacity in continuing to promote the removal of references to the principles of the Treaty of Waitangi. We have been generous in allowing New Zealand First's legislation on this matter to go to a select committee, but I have to tell the member that after that—sayonara, ka kite anō. I needed to respond to that particular matter raised by the member, though I mean it when I say again that I admire his tenacity. I am sure that Ngāti Mutunga are listening carefully to his arguments and do not agree with any of them. Kia ora.

**CHRISTOPHER FINLAYSON (National):** First, I apologise to the Committee. I missed the boat. I thought we were still on the title, so the Minister was very generous in not boxing my ears for being slow. But I do want to say something about clause 7, because the member for Otaki raised an interesting question about the National Party's policy on the principles of the Treaty. I thought I had articulated them reasonably clearly when we debated the New Zealand First bill to deal with deleting references to the principles of the Treaty and, essentially, my friend Mr Henare has outlined them very well this afternoon.

The position is this. We say that there are some pieces of legislation—for example, the Conservation Act—that are of general application, where sections that state that the Act is to be interpreted in accordance with the principles of the Treaty of Waitangi can be deleted, because we say that they are statutes of general application and those sorts of

vague references do not necessarily help in the interpretation of the Act. I drew a distinction, however, between general legislation and settlement legislation. I think that it is very dangerous and unnecessary, in the context of settlement legislation, to delete references to the principles of the Treaty. Particularly, clause 7 of the Ngāti Mutunga Claims Settlement Bill, has, in English, the text of the various acknowledgments entered into between Ngāti Mutunga and the Crown in the deed of settlement, and the Crown acknowledges certain things.

I do not think that it is very clever, in the context of a debate in Committee or in the House, for Parliament to be deleting references in the context of a deed that has already been agreed between the settling party, in this case Ngāti Mutunga, and the Crown.

And that is why the National Party's position, which I outlined in the first reading debate on the member's very own Principles of the Treaty of Waitangi Deletion Bill, was that we would not interfere with those clauses; nor would we interfere with clauses in legislation like Te Rununga o Ngai Tahu Act 1996. But, as I said earlier, we would interfere and delete provisions that are of general application. Further, I said that if there were clauses in legislation where we thought there ought to be some kind of Treaty clause, we would draft that clause with some precision and detail, and not rely upon the generalist phrase "the principles of the Treaty of Waitangi".

So there we have it; it is not an unprincipled approach, at all. That is the National Party policy as articulated most recently in the context of the debate on that member's bill, and that is the approach we will adopt when the bill comes before the Justice and Electoral Committee. I know that we have had quite a number of submissions, and I am very much looking forward to the debate on that issue. But I thought for the benefit of the member for Otaki I should make it quite clear that everything Mr Henare said this afternoon—as we would expect—was completely and utterly correct.

**Hon TAU HENARE (National):** I want to have a crack, have a lick, at the text of the acknowledgments in English contained in clause 7: "The text of the acknowledgements in English as set out in the deed of settlement is as follows: (1) The Crown acknowledges that—(a) the cumulative effect of the Crown's actions in purchasing land in Taranaki created tensions that led to the outbreak of war;". Just that particular paragraph, that part of the English acknowledgment, rather downplays what actually happened. I suppose that it should really be saying the "out and out theft and confiscation", particularly in that part of New Zealand.

When the text talks about "the cumulative effect of the Crown's actions in purchasing land in Taranaki", I agree that, OK, some land in Taranaki was purchased—through the back door, and after confiscation and all sorts of skulduggery. As I said in my speech to the House during the second reading, the particular issues we are dealing with today, in terms of Taranaki, have to be, I suppose, the results of the worst confiscation this country has ever seen. I do not want to belittle the settlements of Tainui, Ngāi Tahu, and so on, and so forth, but I am of the opinion that the acknowledgments in this bill, although acknowledging the Crown's position, and although acknowledging that things that happened in Taranaki were dire, do not go far enough in terms of actually acknowledging what happened. I think it is important for us in Parliament that we do acknowledge exactly what happened. Yes, they were not in rebellion, but what does that really mean? Crikey, if someone came on to my property I would be in rebellion, and I would not care who knew it.

When we look at the effects on the remnants of Ngāti Mutunga of the so-called purchasing of land in Taranaki by the Crown, then I think we need to take a step back and ask ourselves whether the language used in the acknowledgment is for the wider public consumption, or is it there to tell a story. I think that an acknowledgment of what has gone on should contain the whole story—the story should be told, warts and all—so

that people in years to come can refer to the written acknowledgments of what happened, and why there was a settlement. It may not be the best settlement that could have happened, but there was a settlement, and somewhere along the line there should be some acknowledgment of what actually happened.

I will not comment on the text in Māori. I will leave that to better scholars than myself. We also move on to the text of the apology. There is nothing wrong with the text of the apology, but I do not think we can put into words an apology for what has happened. I always think that the people who produce such things have a far better time of it in looking for particular words and what they mean, because no apology could compensate for the seriousness of all that, and for the series of confiscations meted out on Ngāti Mutunga and on Taranaki.

Although I commend the Government, the Crown, and the officials who have done the job in getting this legislation to Parliament, I think there are still a number of holes in such pieces of legislation. Maybe one day we will do the job right, in terms of giving an apology, and of acknowledging the people and what actually went on. Maybe one day we will even have a list of the principles of the Treaty of Waitangi inserted in a settlement bill.

**The CHAIRPERSON (Ann Hartley):** The amendments in the name of Pita Paraone to clauses 7, 8, 9, and 10, to omit references to the principles of Treaty of Waitangi, are ruled out of order because they purport to amend the text of the deed of settlement. The clauses quote directly from the deed; I advise members to look at Speakers' ruling 110/2.

The question was put that the following amendment in the name of Pita Paraone to clause 14 be agreed to:

to omit from subclause 1(a)(i)(A), the words "or the principles of the Treaty of Waitangi (te Tiriti o Waitangi)".

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

**Ayes 7**

New Zealand First 7.

**Noes 112**

New Zealand Labour 50; New Zealand National 47; Green Party 6; Māori Party 3; United Future 3; ACT New Zealand 2; Progressive 1.

Amendment not agreed to.

Part 1 agreed to.

**Part 2** agreed to.

**Part 3** agreed to.

**The CHAIRPERSON (Ann Hartley):** There is a new Part 4 proposed by Christopher Finlayson. I need to rule on this matter. The purpose of the Ngāti Mutunga Claims Settlement Bill is to implement the terms of the deed of settlement. An amendment to transfer the assets of an iwi authority to a new entity is outside the scope of the bill and, therefore, out of order. It is a matter for the entities concerned how they regulate their business and transfer assets. If legislation were needed it would be by means of a private bill; it would not be for inclusion in a Government bill, as per Speaker's ruling 110/1. So there will be no debate on this matter; the amendment is out of order.

**Hon TAU HENARE (National):** I raise a point of order, Madam Chairperson. I actually have to disagree with your ruling, with all due respect to the office of the

Speaker and the Chair. How can the new entity be outside the scope of the bill, when the bill itself actually talks about moving from the old to the new? It is the express wish of the Crown to move from the old entity to the new entity. In fact, it was part of the negotiations that the Crown had to be satisfied that the new entity was going to meet the obligations of what the Crown wanted in terms of mandate and the whole structure of the new structure. I cannot see how this amendment is outside the scope of the legislation, when moving from the old organisation to the new organisation goes to the heart of the settlement.

**The CHAIRPERSON (Ann Hartley):** Thank you, but the point is that the amendment cannot be made within this bill; it still has to be made within a private bill. It is a well-established principle in this Parliament that matters of iwi administration are matters for private legislation. The Ngāi Tahu Claims Settlement Bill illustrated that point clearly. The bill establishing that rūnanga and providing for the conduct of its business required private legislation at the time, and the Standing Orders, by leave of the House, were suspended to allow what was intended as a public Act to proceed as a private bill.

**Hon TAU HENARE (National):** I raise a point of order, Madam Chairperson. I do not want to go on all day, but I have two options open to me. I do not think that this amendment does what you think it does. It does not establish all the administrative duties of the new entity; all it does is transfer everything from yesterday to today and give the entity a new name. The amendment does not establish by statute everything that the new entity will do. That is my first point. The second option open to me is to maybe get the big guns—the Speaker—back down here. That is no reflection on you, Madam Chairperson; please do not take it in that way. It is an important point. Here we have a Treaty settlement. We have been in contact with one side of the negotiated settlement, and, obviously, we have had a very, very short talk with the Government. I am not sure what the Government's position is on the matter yet, but I think it is important that we come to some sort of resolution here. So the options are either to come to a resolution or to call the Speaker back and get into it again.

**The CHAIRPERSON (Ann Hartley):** I appreciate the member's point, but the point is that the Committee cannot give itself permission to do something outside the scope of the bill—it cannot give itself leave. But I respect the member's position, and if the member would like to recall the Speaker at this point, then he should do so.

**Hon TAU HENARE (National):** Under Standing Order 179 a motion may be moved. I move, *That the Chair obtain the Speaker's ruling on a matter of procedure.*

Motion agreed to.

House resumed.

### Speaker Recalled

**The CHAIRPERSON (Ann Hartley):** Madam Speaker, you have been recalled to give a ruling on new part 4 proposed by Christopher Finlayson, which effectively sets up the governance of the Ngāti Mutunga Iwi Authority and Te Rūnanga o Ngāti Mutunga. What has happened is that I have ruled it out of scope, as per Speaker's ruling 110/1, because the entities themselves should regulate their business and transfer assets. If legislation is needed, I have ruled that it would be by means of a private bill, not by inclusion in this Government bill, as per Speaker's ruling 110/1.

**Madam SPEAKER:** Thank you, Madam Chair. I think the first point to make to the member, having heard the debate—and I thank Madam Chair for the summary—is to refer the member to Speakers' rulings 73/1, 73/2, and 73/3, which do relate to the procedural matter that has to be dealt with first. That is that the Speaker will not

interfere with a decision of the Chairperson on a question of relevancy, and this is a question of relevancy as to the scope. As you will note, there are a great deal of Speakers' rulings on this matter, and it is very clear. It might be of interest to the member, though, just to make a comment on the substantive matter. I do agree with the substance of the ruling, because this is essentially a private entity, and it has always been the case that private entities are the subject of private bills.

**Hon TAU HENARE (National):** I just want to add a bit of information to the issue. It is that, again, the Supplementary Order Paper does not set out to establish a new entity. That so-called entity, which is Te Rūnanga o Ngāti Mutunga, was established on 21 December 2005. So the entity is already there. The old entity has changed into the new entity, and what we are trying to do is allow the transfer from the old to the new entity, not actually use the legislation to create a new entity. That might help, and my colleague Chris Finlayson will most probably be able to help, as well.

**CHRISTOPHER FINLAYSON (National):** Thank you for your comments, Madam Speaker. I go to the part of the commentary where it seems to me that the select committee got it wrong: "The Office of Treaty Settlements advised us that amending the bill to provide for the disestablishment of the iwi authority"—and these are the important words—"and the establishment of the post-settlement governance entity was not feasible." Of course, that is not what is happening here, because the settlement entity, which is Te Rūnanga o Ngāti Mutunga, was established on 21 December 2005, and that followed a Crown-approved ratification process involving all Ngāti Mutunga members over the age of 18 years. So it is not a question of establishing it by statute—I understand exactly what the Speaker was saying in that regard—but of facilitating the transfer of assets to an entity that is already in existence.

The report goes on to state: "The Parliamentary Counsel Office advised us that amending the bill to disestablish or establish private trusts would be very unusual and could have implications for previous settlements.", but the primary point having been erroneous, the rest of that paragraph is erroneous. We are not seeking to establish a new governance entity but to facilitate the transfer of assets to an entity that is already in existence. Unless I have the wrong end of the stick, which I suppose is entirely possible, I am seeking to adopt the formula that has been adopted in other settlement statutes including, for example, Te Arawa Lakes Settlement Act 2006. I refer you, Madam Speaker, by way of example to Part 4, Subpart 2.

**DARREN HUGHES (Junior Whip—Labour):** I do not think there is any debate about what the members opposite are proposing in the sense of what the amendment actually does. I think where the disagreement is, is about the mechanism of whether this bill can be changed in this way to give effect to what the members are arguing for.

So the purpose of the bill, in clause 3, is to give effect to the deed of settlement—to the claims settlement as it has been signed—and that document does not transfer assets. Yet when we come to Mr Finlayson's proposed new clause 104, that is what is proposed—to transfer the assets of a private entity within an existing Government bill. That is the nub of the matter. It is not necessarily the merits of the argument in proposed new clause 104, but whether the mechanism is correct to be able to amend that by way of a Government bill. I refer you, Madam Speaker, to Speaker's ruling 108/4, which I think touches on that, but I think the main point is that it is inconsistent with the purpose in terms of what this Government bill gives effect to, in regard to Mr Finlayson's Supplementary Order Paper.

**Madam SPEAKER:** As I said, and to reiterate, in relation to the procedural matter as to relevancy and the fact that it has been ruled on, the Speaker will not interfere with that ruling. However, in relation to the second part, as I said, I agree with the ruling.

The wrong process has been used to try to achieve the end in this instance. I declare the House in Committee.

### **In Committee**

Debate resumed.

**Hon TAU HENARE (National):** I seek leave to have proposed new Part 4 in the name of Christopher Finlayson inserted into the bill we are debating.

**The CHAIRPERSON (Ann Hartley):** The Committee does not have that power.

**Hon TAU HENARE:** I can seek leave.

**The CHAIRPERSON (Ann Hartley):** No, it is only the House that could give that power.

**Schedule 1** agreed to.

**Schedule 2** agreed to.

**Schedule 3** agreed to.

**Schedule 4** agreed to.

**Schedule 5** agreed to.

### **Clauses 1 and 2**

**Hon TAU HENARE (National):** I am not going to argue with you, Madam Chairperson, or the Speaker, and I thank you very much for your wise comments. But I think it is an absolute and abject crying shame that the Crown never saw this situation coming. The Crown must have known somewhere along the line that such an amendment was going to come up.

We were led to believe at the Māori Affairs Committee—and I refer to page 23 of the commentary on the bill—that “amending the bill to provide for the disestablishment of the iwi authority and the establishment of the post-settlement governance entity was not feasible.” I think that was a bit of bum information. The Office of Treaty Settlements and the Government representatives must have known that the new entity was established in the year 2005, on 21 December. So we got some wrong information, and that is why we are standing here.

One of the crucial points of this settlement bill is that the whole of Parliament is in support of it. We are not trying to squeeze any more money out of the Crown. We are not trying to diddle the Crown out of whatever. We are not trying to get one over the Crown. Because some of us have been approached by the people who make up half of the settlement, I ask members to please support us in moving the assets from one entity to another, which has already been established. We did not know that the entity had already been established when we were in the select committee; otherwise, it would not have been in the commentary.

The question that has to be asked is whether the officials told members of Parliament the truth. The officials can shake their heads, but I intend to try to find out, at the next Māori Affairs Committee meeting, whether we were told the truth or whether we were led up the garden path. I am quite disappointed. We agree with the ruling given by the Chairperson and the Speaker that a new entity cannot be set up, as it states in the commentary. That is fine; we cop that—it is not a problem. But I have serious doubts as to whether we were given all the information about this issue, as it is stated on page 23 of the commentary on the bill.

The bill's title is the Ngāti Mutunga Claims Settlement Bill, but maybe it should be called the "Ngāti Mutunga Confiscation Settlement Bill". I refer back to my comments earlier about the text of the acknowledgments and apology, and I say we should call the bill what it is, not what we are comfortable with so as not to offend anybody. We are talking about the history of a people. This is a people's story concerning both the Crown and Ngāti Mutunga. It is about something that has happened, and it has taken many years to reach an agreement between the Crown and Ngāti Mutunga. So let us call the bill the "Ngāti Mutunga Confiscation Settlement Bill". As the bill reads now, Ngāti Mutunga claim there was a breach. Everybody knows there was a breach and a negotiated settlement, so let us call it the "Ngāti Mutunga Confiscation Settlement Bill". Kia ora.

**PITA PARAONE (NZ First):** Although I do not normally speak in support of the previous speaker, he did raise some valid points. It just goes to show how important settlement legislation is and also the way the text of an apology is recorded. The debate over the last 40 minutes is testament to the need to have more clarity in trying to meet the wishes of any claimant group in terms of the position the Crown takes in such matters. The fact that one party to this legislation approached some people in this Chamber—and I ought to place on the record that I do not know why they approached that particular group—quite clearly is something of concern to that claimant group. Although I accept that, in terms of the processes of the House, the Supplementary Order Paper submitted by the National Party was ruled out of order, I think all of us cannot disagree with the intent of it and that on a mere technicality we are being denied the opportunity to help to fulfil the request of a claimant group—I need to repeat, a claimant group—and that of all those who have suffered breaches of the Treaty, I suggest that this particular claimant has suffered the most. The Committee had the opportunity to provide the sort of redress that it felt would be appropriate. Sadly, I have to accept the ruling of the Chairperson, and, indeed, the Speaker.

But before I sit down, I reiterate the issues regarding the references to the principles of the Treaty. The commentary on the bill refers to a breach of the Treaty of Waitangi and its principles, yet most members of the House would agree that any reference to such principles is vague, unclear, or non-existent. Those adjectives have been used by some members in the Chamber. On behalf of New Zealand First, I am saddened that our Supplementary Order Paper has not been supported. I understand the comments of the honourable member Chris Finlayson that that part of the Act where it refers to another document, has led to this legislation. We accept that. I think that is valid, but where it helps to define the claimant group, as it does in clause 14, we think its exclusion would not remove the durability or the intent of the legislation. I just wanted to reiterate that point. Kia ora.

**CHRISTOPHER FINLAYSON (National):** This is a very sad day for this Parliament. I think we should have gone the extra mile to see what we, as a Parliament, could do for Ngāti Mutunga, particularly bearing in mind the history of the Taranaki wars. As Mr Paraone said, the incident at Parihaka is one of the real blots on New Zealand's history, and I refer to recitals (8) and (9) of the preamble. I think it is worth reading out recital (9): "On 5 November 1881, more than 1,500 Crown troops invaded and occupied Parihaka. Over the following days, some 1,600 Māori were forcibly expelled from the settlement and made to return to their previous homes. Houses and cultivations were systematically destroyed, and stock was driven away or killed. Taranaki Māori assert that women were raped and otherwise molested by the soldiers:", and two of the leaders were arrested and held until 1883. This House had no difficulty passing special legislation to provide for their imprisonment without trial.

That is a real blot on New Zealand's history. It is something so many New Zealanders know something about, and in the first reading of this bill it was the subject of a number of emotional speeches by various members of Parliament. I would have thought that the very House that could pass that kind of odious special legislation could go the extra mile for Ngāti Mutunga in the settlement legislation, especially when the settlement report from the Māori Affairs Committee, in reporting back to the House, got it wrong. Once again, I have to say the report simply is incorrect, because it proceeds on a faulty premise. What I am seeking to do is to amend the bill to provide for the disestablishment of the iwi authority and the establishment of a post-settlement governance entity. The report says that is not feasible, but that is not what I am seeking to do. So there we have it.

There was a humble attempt by me to try to go the extra mile for Ngāti Mutunga; and not for party political purposes. I was interested in the comments of Mr Paraone who said it was perhaps a bit odd or surprising that they were dealing with the National Party on this. The background to the matter was that last Monday I was sitting at Rotorua airport, and I am sure Mr Flavell will confirm this, and Mr Tuuta from Ngāti Mutunga came and sat down and we were speaking about the settlement legislation. He mentioned there was a bit of a problem with the transfer of assets, and I said for him to send me a note and I would see what we could do. That was not for party political purposes but simply because I feel very strongly that this settlement legislation is extremely important for the good of the country. I particularly recognise the serious events that occurred in Taranaki and wanted to do something for Ngāti Mutunga and for Mr Tuuta, for whom I have the highest regard.

It is interesting that the rūnunga wrote to the chairperson of the Māori Affairs Committee on 13 November setting out the various points that I have tried to make in the course of the Committee stage. I do not know whether they have received a reply, and I wonder whether the chair of the select committee will take a call and address some of those matters. It simply addresses the point that Ngāti Mutunga does not seek any parliamentary involvement in the establishment of the new governance entity Te Rūnanga o Ngāti Mutunga. This was done on 21 December 2005. But they did ask whether Parliament could assist by way of the transfer of iwi assets from the old entity to the new entity. Legislation recognising the change of ownership of assets to the new entity would simplify and expedite the task for Ngāti Mutunga in making this transition. So I was simply seeking to pick up precedent provided in the Te Arawa lakes settlement legislation, and other settlement legislation. Procedural difficulties appear to have got in the way, and that is a great tragedy because I think, in the light of that odious 1883 legislation, we as a Parliament owe it to Ngāti Mutunga to go that extra mile. I am disappointed that pettifogging procedural niceties have got in the way.

**DAVE HEREORA (Labour):** I take the opportunity to respond in some way to the concerns raised by the previous speaker, Christopher Finlayson. I note that during the debate parts of the commentary on the bill have been shared with the Committee. I think it is important that we read the whole extract from the commentary in order to give an overall picture of the issue. It particularly concerns me that there has been a claim that the Māori Affairs Committee has been given faulty advice and has set up a faulty premise in relation to the commentary, so I will attempt to rectify that issue and confirm whether that is indeed correct.

Page 23 of the commentary states: "The Office of Treaty Settlements advised us that amending the bill to provide for the disestablishment of the iwi authority and the establishment of the post-settlement governance entity was not feasible." Page 23 of the commentary also states: "The Parliamentary Counsel Office advised us that amending the bill to disestablish or establish private trusts would be very unusual and could have

implications for previous settlements. They told us that establishing a new governance entity is a private matter. Settlement legislation addresses matters necessary to achieve the settlement which cannot be achieved with certainty under normal (non-legislative) processes. Although settlement legislation has been used in association with private trusts to the extent that the trusts are made perpetual instead of being subject to the rules that limit the life of a trust, the Crown will not use government legislation to establish a legal entity to receive and manage settlement assets.”

In reading that entire part of the commentary, I find that it lines up with the rulings provided by Madam Chairperson and, subsequently, by Madam Speaker. So I find it very difficult to accept that the committee had been given wrong advice from the Office of Treaty Settlements or the Parliamentary Counsel Office. I actually think that the advice was correct, and it is in line with the rulings that have been provided this evening.

The previous speaker mentioned that the chair of the Māori Affairs Committee was to receive a letter from Ngāti Mutunga on—if I heard it right—13 November. I make a point of ensuring that I respond to those who write to us, and I can confirm to the member that although I have not yet sighted that letter I will indeed be prepared to respond accordingly. I refer now to comments made by the Hon Tau Henare and say that the committee is meeting on Wednesday, and obviously there will be some debate and discussion on that matter.

Clause 1 agreed to.

Clause 2 agreed to.

Bill to be reported without amendment presently.

## **BUSINESS LAW REFORM BILL**

### **In Committee**

#### **Part 1 Companies Act 1993**

**PANSY WONG (National):** Part 1 of the Business Law Reform Bill deals with the Companies Act with regard to reporting changes. I would like to commend the Commerce Committee, because overall, although the Business Law Reform Bill is meant to make just technical changes and to streamline various legislation, it was interesting to see the select committee go through Part 1 with a fine-tooth comb and come up with further substantial amendments to the provisions to make sure that shareholders cannot give up their right automatically to receive financial statements, even though publicly available in electronic form, but should receive notice for receiving further financial reports or concise limited versions of reports.

So throughout this bill, and also through other legislation, the Commerce Committee, under the leadership of Katherine Rich, has taken great care to ensure that the changes—even though on the surface of it they are technical—are drafted properly. Half of the provisions were amended by the committee, thus making them much more concise, so I am slightly surprised to see Supplementary Order Paper 72 in the name of the Minister being introduced to this Committee, particularly in respect of Part 3, which deals with financial reporting standards. We will take up this procedural issue, because I am dismayed to see quite a large Supplementary Order Paper that proposes changes to the latter part of the bill after the select committee had gone through the bill and made a very good effort to clarify it. We will come back to that.

Part 1 also deals with the qualification of directors, whereby people who are convicted of certain offences in other countries will be barred from taking up a

directorship in New Zealand. National supports that provision in terms of increasing globalisation, whereby companies and directors operate within international environments. It is important that our legislation catches up with these global business operations, so the provision is important in updating that..

National is supporting Part 1, because now that companies in particular can put their financial statements on websites, they can save in their printing and mailing-out costs of large sets of annual reports. Of course, one can also see the benefit to shareholders, because many of them probably receive the annual report and just file it away, without too much reference to it. So we believe that simplifying that procedure is a step in the right direction. One can see that the National Party does support sensible legislation, subject to it being brought in front of the House properly and going through the due process of select committee scrutiny. On the face of it the changes are welcome, although some of the drafting has been subject to heavy changes to make sure that when the legislation is being implemented no room is left for misunderstanding and confusion.

At this stage I register our appreciation for the support the officials gave us on this technical bill. At times debate on technical terms can be quite challenging, but the officials supported the select committee well, and we do welcome this very small step by the Government to streamline companies' reporting procedures.

**KATHERINE RICH (National):** As I rise to take part in the debate on Part 1 of the Business Law Reform Bill, I think it is worthwhile to go over a bit of the history of the bill. This bill was presented by the Minister Lianne Dalziel as a non-controversial bill. I recall her first reading speech as being very much along the lines of: "This is a technical bill, there is nothing to see here, move along quickly, these are all technical changes."

But the Commerce Committee learnt, after it received some of the early submissions, that the reality was quite different. Submitter after submitter was really very concerned about what was in the bill before the select committee made amendments. The likes of the captive insurers industry said that if the bill went through in its present form, that industry would be wiped out in New Zealand. General Electric turned up and said that if the committee made some of the proposed changes relating to insurance, it would have to rebrand its entire company in New Zealand. One of the credit union representatives turned up and said that it appreciated what the Minister was trying to do but that the bill still did not give the clarity the unions needed to have in order to know they could work together. Then one of the banks turned up and said—

**The CHAIRPERSON (Ann Hartley):** The member needs to come to Part 1.

**KATHERINE RICH:**—it worked in 100 different countries and that New Zealand was the only one that required it to hire three people for 10 days, at a cost of well over \$100,000, just to report here in New Zealand.

So we see that the changes—which have been quite major changes—made as a result of work done by the select committee have tidied up this part and made sure that it is at least in a state whereby the Committee can have a decent look at it.

I too thank the officials for giving us good advice and for walking us through the changes we needed to make. Some of the changes are common-sense ones. In 1993 not many firms used electronic means to publish their annual reports. Most firms, as many members will know, put together glossy documents at huge expense. Unfortunately, many of those documents were not read by some shareholders, but it is an important process that needs to be carried out in order to allow transparency and the free flow of information so that shareholders can be in a position to judge their investment and remain informed.

Of course, with the progress of modern technology it is quite important that we change some of our laws, so as to be able to deal with the use of electronic data. I think

this is a good change to make, because it allows many of our companies to start to distribute electronic information, which is a lot less expensive for a company than the producing of annual reports. Companies still have to go through the reporting process, obviously, but they do not have to go through the expense of printing and producing glossy documents. Documents can be sent out to shareholders in a much easier manner; it is certainly easier, a lot of the time, to get things on one's computer than it is to receive things through the mail.

So that is basically what Part 1 of the bill aims to do, and it is something that National is very supportive of. It is important to look at ways of streamlining processes for businesses in order to reduce costs. Unlike the Minister, we do not pay lip service to reducing red tape and costs. We are more than happy to support changes such as this that make it easier for businesses to transfer and distribute information and to do so in a way that is not too expensive.

It is important that nobody can opt out of receiving this information. I know we get annoyed sometimes with the amount of material coming to our in-boxes, but when it comes to information relating to a commercial firm—a firm we might have shares in—it is important that that information is transferred freely. We need to make sure that the information reaches shareholders so that they can make their minds up—hopefully, if they read it—and determine whether their investment is a good one. It is important to make sure that shareholders read the information. One can distribute all the information one likes, but that does not necessarily mean that shareholders will read it. Companies still need to go through the process to ensure that the information is distributed.

The question was put that the amendments set out on Supplementary Order Paper 72 in the name of the Hon Lianne Dalziel to Part 1 be agreed to.

Amendments agreed to.

Part 1 as amended agreed to.

**Part 2** agreed to.

### **Part 3 Financial Reporting Act 1993**

**CRAIG FOSS (National—Tukituki):** As previous speakers have said, National is speaking and voting in support of the bill. I rise to speak to Part 3 of the Business Law Reform Bill. I enjoyed my time on the Commerce Committee. It is a good, solid committee, and I note that the National Party managed to keep the quorum together, in the spirit of good faith in Parliament. I will not speak for too long, because there is obviously a lot on the Government's agenda. We may well get to the Conservation (Protection of Trout as a Non-commercial Species) Amendment Bill tonight—one never knows.

In previous speeches on this bill I have raised the issue—and I raise it again—of, in particular, the exemption power of the Accounting Standards Review Board. I have read the Minister, Lianne Dalziel's, introductory speeches. I have read the committee's explanation in the commentary. It is quite full and quite wholesome; that is fantastic. But I do see contradictions. For the life of me I cannot understand why that provision was included, particularly when we had a very good submission from the Accounting Standards Review Board, which pretty much pleaded to the committee—and had made, I believe, representations to the Minister and various other ministries—not to include this clause.

I read in the commentary that the committee, in relation to sections 24 to 27 of the principal Act, essentially rejected that submission—or, at least, the officials have written the report in that way. I will quote a small bit relating to the Financial Reporting

Act. Basically, the committee justifies the inclusion of this provision because there is existing law and process allowing an exemption. The commentary states that the committee had concerns that not including this provision would lead to weak accountability because the “if the Board thinks fit” test does not make clear the criteria the board is using, etc.

Basically, the committee expressed very little faith in the Accounting Standards Review Board. That did worry me somewhat, because I believe that it is the Minister who appoints this board. People like New Zealand’s chief accounting officer, Mr Warren, and some very high-powered individuals are on that board. I will not list them all, but looking at the names of the members of the Accounting Standards Review Board, I would tend to put my money behind them, their views, and their opinions on matters affecting New Zealand’s accounting standards than on what the Minister has taken on board. I appreciate the commentary from the committee, and I look forward to the Minister expanding further as to why that submission from the board was excluded.

We will be speaking to other parts of the bill later. As Katherine Rich noted, when this bill was first launched it was described as an omnibus, technical bill. It has five different parts; I have just been speaking to Part 3. The National Party took the bill on board in the spirit of making existing law a little bit better. But we have politicisation—we even saw it today in question time—around the takeovers provisions of this bill. Yes, I am speaking to Part 3; I will get back to it later. I just make the point that National could go hard and politicise this bill a lot more than it is. We will not, in the spirit of the intent of this bill, but I think we require many more explanations, particularly since National members recently raised similar Supplementary Order Papers during, I think, the debate on the Securities Legislation Bill and were voted down. I would be interested in an answer to that.

As I said, I will speak briefly on this. I invite the Minister to explain further why she overruled that submission from the Accounting Standards Review Board, given the weight, intellectual grunt, and commercial nous that sits on it. It is the gatekeeper of good regulation in New Zealand.

**Hon LIANNE DALZIEL (Minister of Commerce):** I am quite happy to respond to such invitations. I thank Craig Foss for raising the question of the Accounting Standards Review Board’s exemption-making power. I am well aware that the board itself did not seek this exemption-making power, as it believed that it already had this power in respect of its current arrangements.

I draw the member’s attention to Supplementary Order Paper 72, in my name, which addresses some of the concerns that the board has raised with me. I met with Warwick Hunt, the chair of the board, after he made his appearance at the Commerce Committee, and I thought we had a very constructive discussion. In the end we did not agree on the fundamental issue, which was whether to have legislative authority for the exemption-making power, but we did take on board some of the concerns he raised on the specifics. That is why we are removing the ability to make individual exemptions; the ability will only be for class exemptions. I felt that that was a very particular concern that Mr Hunt had raised.

We are replacing the exceptional-circumstances test with what I consider to be an even higher test, and that is whether the compliance with the relevant provision of the financial reporting standard would result in financial statements that are misleading or are likely to mislead. It is a very specific test that will now apply to the granting of an exemption. We are also, of course, removing the “fit and proper” test, which nobody, I think, considers to be necessary any more.

I know that this amendment has not gone the full way to meeting the concerns that the Accounting Standards Review Board raised. But I have had that conversation with

the chair, and I feel that the amendment goes a considerable way towards addressing the concerns that the board raised.

**PANSY WONG (National):** I thank the Minister, Lianne Dalziel, for providing further explanation of Supplementary Order Paper 72 in her name. National fully intends to cooperate on the Business Law Reform Bill as it was when introduced, but I want to raise a process issue about the exemption power of the Accounting Standards Review Board, which the Commerce Committee spent quite a bit of time tackling.

I commend some of the submitters for their discipline in not wanting the board to grant an exemption to certain companies or classes of companies from adherence to the standards. They wanted to ensure that when a standard is promulgated, every entity abides by it. That is, indeed, the ideal position, but the select committee, after vigorous debate, agreed to go along with the recommendation of the officials. We understand that the board has not been utilising the existing exemption power because that particular criterion is rather broad. The board can grant an exemption as it sees fit. I think the board has shown its integrity by not utilising that provision, because one can also see that for the board to grant an exemption for individual companies or groups of companies as it sees fit could result in a very subjective and non-transparent application of the law.

But in the process of debate, the select committee came up with more formalised written criteria under which that exemption power can be exercised. The Regulations Review Committee also indicated that there was a question as to whether the exemption power should be allowed at the regulation stage rather than in the primary legislation. We are, broadly, happy with the ultimate provision arrived at in the select committee.

But one is slightly concerned about the process when select committee members have agreed to, and believe they have arrived at, a position, and then—as we understand it—the Minister, Lianne Dalziel, has further conversations with the Accounting Standards Review Board and comes up with further agreements. In this case we are happy to support those agreements. But it makes one wonder about the robustness of the select committee process in general. If other submitters knew that they could suggest further amendments, they might have also wanted to do so. I want to compare that to a previous case. When we debated the Communications Legislation Bill, a class of non-profit broadcasters had an eleventh-hour negotiation with the Minister of Communications because a New Zealand First member had introduced an amendment at the Committee stage. We find that these particular behind-the-scenes negotiations completely override the select committee's position.

I take this opportunity to raise and emphasise again that the National Party has been cooperating in terms of streamlined legislation, but we are still concerned about the procedure whereby a conclusion reached at the select committee can be overridden between a bill being reported back to the House at the second reading and the Committee stage. We hope that type of process will be minimised. Otherwise, it is not fair to the submitters, who see the select committee process as a way for them to clarify their position, and it is not fair to the select committee members, who have taken their task seriously and come to a certain conclusion, only to find that further amendments have been introduced in the Committee of the whole House stage. But as we expressed, in this particular instance we concur with the Supplementary Order Paper and we agree to support Part 3 with these amendments.

**KATHERINE RICH (National):** This is quite an important part of the bill because it seeks to streamline some of the concerns that many within the business sector have seen for quite a long time. During the submission process we had two powerful submissions, one from GE Finance and Insurance and the other from Citigroup. Both those businesses, starting with GE Finance and Insurance, argued that the financial

reporting requirements, as they are, are unduly onerous. GE Finance and Insurance made the point that it was operating in about 70 different countries, and the requirement to file accounts in New Zealand as a stand-alone entity—that is, as a separate entity from its parent company, General Electric—required a lot of work for little benefit. Out of all the countries that it works within, New Zealand was the only country that required it to do this.

Likewise, Citigroup argued that it worked in over 100 different countries and territories, and that New Zealand was the only country in which Citigroup Inc. was required to file a set of stand-alone financial statements of this type in addition to its group financial statements. Producing those financial statements cost the business enormously. For example, we were told that it cost its New York office something like the time of three professional people for 10 days each just to produce the stand-alone accounts for New Zealand.

So there was an immense expense for little gain. Basically, there were plenty of other audit processes in place. These companies argued that when they work in so many other countries that do not require this specific process to take place, there was little reason for doing it in little old New Zealand. Both those companies argued that what was proposed here did not really go far enough. They argued that an exemption process was not as good as not being required to do the stand-alone accounts in the first place. So, to a certain extent, we have not solved all the problems that both those companies wanted us to solve. But I think we have gone some way towards making changes that will minimise the effects to those businesses when they seek exemptions.

It was pretty interesting, though, if one looks at the process for getting those exemptions, when the Accounting Standards Review Board comes along and says: “We don’t want this as a responsibility.” It showed, I think, a lack of consultation with the board to get it into a situation where it was happy with the changes. When one has a Crown-funded organisation come along and say: “We don’t want these new responsibilities given to us by the Crown.”, and says so in a public forum, that is pretty significant.

So in terms of the changes that are being made here, I think they do go some way to streamline some of the requirements on companies to report on their finances. I think there are probably some additional changes we could make, to make it even easier. It is hard for New Zealand to argue that it needs totally different stand-alone requirements when these international businesses work in so many different markets under so many different scenarios, and we ask them to put together additional accounts that are just totally unnecessary and go to that extent and cost them money without introducing any additional benefit.

So in terms of financial reporting, obviously it is a necessary part of the process. Governments need to know that organisations are working well and working honestly within a jurisdiction. But we need to make the process not as onerous as in other countries, because if we continue to do that we actually put people off coming here and setting up businesses in New Zealand. I think we could have done more to make some changes within this part of the process, but we have gone some way to include changes.

The question was put that the amendments set out on Supplementary Order Paper 72 in the name of the Hon Lianne Dalziel to Part 3 be agreed to.

Amendments agreed to.

Part 3 as amended agreed to.

**Part 4 Friendly Societies and Credit Unions Act 1982**

**CHRIS AUCHINVOLE (National):** I rise to speak to Part 4 of the Business Law Reform Bill, which refers particularly to the Friendly Societies and Credit Unions Act 1982. This bill allows these organisations to expand and increase their services. National is very supportive of this. Indeed, National's record in commerce tends to support moves to increase, improve, and expand commercial activities. Whereas, I guess, it would be a fair observation to say that the present Labour Government has a penchant for introducing regulation at every possible opportunity. So it is with pleasure that I rise to support something that will actually ease regulation for one specific part of the organisation. I note the applause of the Minister, and I thank her for that. It must have been a difficult thing for her to do.

The changes that are incorporated into this bill are at the behest of Government officials, lawyers, and business people. I would like to note that there is not actually a shortage of suggestions from groups of business people for changes to legislation affecting business. Quite apart from the standard representative groups comprising chambers of commerce, export and import institutions, professional bodies, and others, this Government established the Small Business Advisory Group. I can remember that being initially established, and I thought: "Yay, what a good idea!". However, the group took a while to establish. Its formation was plagued, and I am sure the Minister will agree with me, by frequent changes in portfolio. I think Minister Dalziel is the fourth Minister for Small Business in a relatively short space of time. Hopefully there will now be a period of maturity in the portfolio.

One of the frequent requests by the Small Business Advisory Group is for some relief from the ever increasing number of taxes, fees, and levies. I understand this Government has introduced, or increased, 40 different fees, taxes, and levies since taking office—40 of them—and a further four are proposed. It appears that the Minister has assiduously avoided selecting some of the group's proposals judging from the 5.3 out of 10 score that the advisory body has given to the Labour Government's performance. My colleagues earlier listed the 17 percent rise in the average cost to a firm of \$43,200 in 2003 for compliance.

I guess this brings to mind a simple fact about the attitude of this Government towards small business that I have developed a feeling about. I acknowledge that very few of the present Labour Government members seem to have been exposed to the rigours and disciplines of running a small business. I acknowledge that many of the present members on the Government benches have backgrounds, and significant backgrounds, in trade unions, which are primarily involved in regulation. I understand the need for regulation, but why so much? The reality is that regulations—

**Darren Hughes:** I raise a point of order, Mr Chairperson. I am sorry to interrupt the speaker, I know he is not given many opportunities to speak in the Committee, but this is Part 4 and it sounds very much to me like a prepared third reading speech. I just wondered whether you could give some guidance to the member.

**The CHAIRPERSON (H V Ross Robertson):** I was listening to the member and I was actually at the stage of starting to wonder myself. Would the member speak to Part 4, clauses 43 to 53.

**CHRIS AUCHINVOLE:** I have no difficulty in doing that and will be very happy to oblige the member who raised that point of order. I just thought he would be interested in the debate and the circumstances behind my considerations. To continue with Part 4—

**Craig Foss:** You've only got 2 more years of speaking!

**Darren Hughes:** You watch it!

**CHRIS AUCHINVOLE:** Indeed, that member should never cut his fingernails; he is clinging to his electorate with them. In the case of Part 4 there are a number of specific amendments that favour credit unions such as the ability to set any qualification that can be objectively determined as their common bond. This takes away the subjective judgment of the registrar in friendly societies and credit unions. This will be helpful in the event of liquidation or suspensions.

Part 4 agreed to.

### **Part 5 Insurance Companies' Deposits Act 1953**

**CHRIS AUCHINVOLE (National):** Thank you, Mr Chairman. [*Interruption*] It is quite a delight to have such splendid support, not only from this side of the Committee but also from the other side, and I thank the members for it. When we look at Part 5 we are talking about the Insurance Companies' Deposits Act. This is not necessarily an area that I have a great deal of expertise in, but from that point of view it does prevent foreign companies labelling themselves as New Zealand companies. I guess that is quite a significant thing, and it will be continued, no doubt, with other legislation that the Minister will bring about to facilitate the additional opportunity for New Zealand companies to be given true representation.

It comes back, though, to the purpose of commerce and legislation surrounding it. The question I would like to ask the Minister is—and I am sure she will be happy to respond—what, in fact, she sees as the true purpose of a commercial entity in New Zealand. Wealth creation, I have always believed, is what business is about and these regulations, for the sake of regulating, can inhibit a company's opportunity to create wealth. I was always taught that the purpose of a commercial entity—be it insurance or otherwise—is to increase the wealth of the shareholders of that company. I would like to ask the Minister whether she responds to that and agrees with it. Far be it from me to anticipate the Minister's response, but I think it is crucial to know so I again ask the Minister what she thinks is the commercial purpose of a limited liability company in New Zealand.

**Hon LIANNE DALZIEL (Minister of Commerce):** As I said, I am always happy to respond to those who ask intelligent questions; I am going to make an exception to that rule and respond to that member, Chris Auchinvole. I am making the exception because I think there is a genuine misunderstanding, as there was with the captive insurers when they came to make submissions to the select committee about the purpose of this particular provision in the legislation. It is to prevent entities from representing that they are supervised under New Zealand's insurance regulatory regime when, in fact, they are not even acting as insurance companies in New Zealand, and it is necessary to prevent damage to New Zealand's reputation internationally. Tragically, we have companies that use the word "insurance" in their name, register in New Zealand, and are not acting as insurers. They are not subject to any regulatory framework in New Zealand at all, but are enabled to operate *carte blanche* in other jurisdictions, and that has great potential for impact on New Zealand's reputation.

So this provision is to tidy that up for the captive insurers who made submissions on this. When they are carrying on an insurance business in New Zealand, for the purposes of these Acts, then essentially this bill is not designed to disrupt that process at all. They are able to continue to do that, and this amendment will not apply to them, so no action will be required on their part. There was some misunderstanding about that, which is what I think was the underlying issue that the member wanted me to respond to, and I am happy to do so.

The question was put that the amendment set out on Supplementary Order Paper 72 in the name of the Hon Lianne Dalziel to Part 5 be agreed to.

Amendment agreed to.

Part 5 as amended agreed to.

### **Schedule**

The question was put that the amendment set out on Supplementary Order Paper 72 in the name of the Hon Lianne Dalziel to the schedule be agreed to.

Amendment agreed to.

Schedule as amended agreed to.

### **Clauses 1 and 2**

**The CHAIRPERSON (H V Ross Robertson):** I call the honourable member Pansy Wong. Ni hao.

**PANSY WONG (National):** Xiexie. National will cooperate and has demonstrated throughout the process of this Business Law Reform Bill even tiny, minute steps that would improve and simplify compliance costs for the business sector. National will cooperate but will not compromise the select committee process by being a pushover or by being bullied into supporting any major changes that should have gone through a proper select committee process. No one should undermine the select committee process by using it as just a tool to push through legislation.

Recently the Minister of Commerce has made a lot of political capital about National not giving leave for her to introduce a Takeovers Panel's recommendation through emergency lobbying to get the company amalgamation and scheme of arrangement combined under the Takeovers Panel's jurisdiction. I would like to clarify our position. I also have concern about quite a few high-profile cases that seem to go through the company scheme arrangement rather than going through the Takeovers Panel. Because there does not seem to be any progress in addressing the issue, I decided to test the water and propose an amendment, knowing that it will be defeated, but none the less it will give me some guidance to see where the Minister is heading in addressing this issue during the debate on securities legislation.

I was duly delivered a lecture by the Minister, and it will be interesting to share that with the public and everyone. She assured me that when the Takeovers Panel had decided to go out to consult on that problem, its hearings were heard over only a 10-day period. The Minister said, even with her Small Business Advisory Group representation role, it is not long enough to actually qualify as the level of stakeholder input required to make the changes that need to be made.

She also suggested that during the Takeovers Panel's hearings, the commercial sector's opinion differed. There was no unanimous support: some felt it was too much to leave entirely within the jurisdiction of the Takeovers Panel, and some felt the Takeovers Panel's recommendations should be heard by the High Court in the consideration of the scheme of arrangement, and that would solve the problem. The Minister assured us at that stage that the Government believed there was a wee way to go before the issue was resolved one way or the other. But she emphasised the importance of major changes like that going through a proper process.

In fact the very responsible and diligent chair of the Commerce Committee, my colleague Katherine Rich, made all allowances and heard the submission from the Takeovers Panel. She was prepared to cooperate if those amendments were introduced and we were allowed to invite submissions, because it is quite a defined sector that deals with takeover issues. National would have heard that rigorous debate, but we are not satisfied with the fact that on the one hand the Minister emphasised the importance

of a proper process, and on the other hand we cannot hear those robust debates from the sector that have to deal with these takeovers.

I also say that the Minister might have lost a fan during this particular process because the ACT former member of Parliament, Stephen Franks, wrote an article praising the bravery of the Minister of Commerce, the Hon Lianne Dalziel, saying she had “yet to succumb to the Takeovers Panel’s emergency lobbying to get company amalgamation and the scheme of arrangement subordinated to the jurisdiction. The Minister still appears to be insisting that the proposal undergo normal legislative scrutiny”, so I think during this particular process Mr Franks might want to write another article to correct the impression.

**Hon LIANNE DALZIEL (Minister of Commerce):** I think it is worthwhile to clarify the point that the member Pansy Wong has raised, because it would not be appropriate to leave it on the record that the amendment I was proposing by way of Supplementary Order Paper 72 was in any way, shape, or form the same as the amendment that the member moved during the course of the debate on the Securities Legislation Bill. My recollection of the member’s amendment at the time was that it was based on the Takeovers Panel’s recommendation that the panel itself become the predetermining body in terms of whether an issue should be identified as being covered by the code, and whether an amalgamation or a scheme of arrangement should proceed. So the provision that the member moved during the debate on the Securities Legislation Bill is one that I would still oppose, because it has not been through an appropriate process.

We explained the Supplementary Order Paper to the Opposition spokesperson—the chair of the Commerce Committee—and she agreed to the actual provision that we were putting up.

**Katherine Rich:** I did not. You’re telling fibs.

**Hon LIANNE DALZIEL:** If the member is making statements that are unparliamentary in this House, then obviously she will have a conversation on that with one of my staff members, because that is whom she had the conversation with. I received the advice that all parties in this House were questioned over whether a Supplementary Order Paper would be agreeable to them. The reason we consulted other parties is that the Supplementary Order Paper as proposed is outside the scope of the bill.

If the National Party had just said no, and that it was not interested in proceeding with this measure, we would not have taken it to the Business Committee. We were surprised when we were told at the Business Committee that the National Party was not going to allow it to proceed, but that is fine. That is in the nature of the way that things happen in this Chamber, and I just have to accept that, because the measure is outside the scope of the bill. So nobody is saying that this measure could have proceeded in the same shape as was proposed, or even in the shape that the member had submitted it on the Securities Legislation Bill. It could not have proceeded under that proposal either, because to do that, too, would have been outside the scope of that bill.

All the Government had proposed to do was to develop a regulation-making power that would enable more information to be provided to shareholders when confronted with a situation such as an amalgamation or a scheme of arrangement, and it would have enabled a set of criteria to be established. In consultation, through a proper process of regulatory impact analysis, with the key stakeholders, it could have established the criteria the court would have to take into account in determining whether such an arrangement would proceed.

So the mechanism of an amendment—a Supplementary Order Paper—to the bill that was before the House was a quick fix to something that everyone had agreed on. Let me

just read from the Commerce Committee's report: "Some submitters suggested various changes that are beyond the scope of this bill. For example, the Takeovers Panel recommended amending the Companies Act to remove a possible loophole regarding the application of the Takeovers Code. We would support additional measures being brought forward to address the Takeovers Panel's concerns at least in part." Well, that is what the Government did. I am sorry, but that was a unanimous report of the select committee, and I took it on its face value as meaning that members were prepared to proceed. All members had to do, which is ultimately what happened, was to say that they were not prepared to let it proceed, whether or not that was on procedural grounds or whatever other grounds.

We needed unanimity, essentially, in order to have something included in the bill that was outside its scope. We put our hands up; we say that we give up. We will refer the matter back to our officials and we will do some more work on it.

**KATHERINE RICH (National):** After hearing that speech I think we are all sitting here thinking that that is the level of truth we have come to expect from that Minister. She is telling porkies again, or in this case—

**The CHAIRPERSON (H V Ross Robertson):** The member cannot use that word in this House. It has been ruled out by Speaker Hunt in 2003.

**KATHERINE RICH:** I withdraw.

**The CHAIRPERSON (H V Ross Robertson):** Thank you.

**KATHERINE RICH:** Let us just go through some of the exaggerations, the first one being my agreement to the Supplementary Order Paper. That is quite wrong; I certainly gave no agreement. In fact, when discussing the Supplementary Order Paper, I pointed out that this was outside the scope of the Business Law Reform Bill and, based on what went on in the Commerce Committee, it was unlikely to receive our support because of that.

Let us also remember that the Minister was given the opportunity by me to take back the issue to the select committee process, so that some consultation could be done—so that the business community could have some say—not just some eleventh hour, back-door amendment as the Minister has attempted to introduce in the Committee stage here today, but a proper process whereby people could have a say about the change. Let us remember that not one single submission was received on the issues raised by the Takeovers Panel, because no one had any idea that it was to be suggested.

The Minister gave her word that the Business Law Reform Bill would be compact and would contain a certain number of issues, and I recall her official telling me that there would be no introduction of any other non-negotiated clauses within the law. The Minister has gone back on her word, and that is why she is playing politics with this. She has gone back on her word to make sure that the Business Law Reform Bill had some collegiality and some mutual agreement.

This was an omnibus bill, and I think that this side of the House approached the bill with some collegiality. We worked hard on it in the select committee process, given that many of the submitters were quite gobsmacked at some of the changes suggested. Members will remember that Lianne Dalziel told the House that this was a technical bill, and that there was nothing to see here and that people should move along quickly, but, of course, submitters who came along to the select committee had a totally different view and they raised some very important concerns. So the issue here is that the Minister has gone back on her word. She attempted to introduce something at the eleventh hour that was not part of the initial bill.

The officials actually reminded us that it was outside the bill's scope and, although the Minister wanted to pretend that there was a tsunami of businesses wanting to take advantage of the loophole, she obviously had not read some of her own officials'

advice. They said that in the 5 years since the code was introduced it appeared that schemes of arrangement and amalgamation had been used only three times to avoid the provisions of the code, and I quote: "Officials do not consider that the floodgates will open if no action is taken at this time." So from the perspective of this side of the Committee, we think that it is important to have due process. I say to the Minister that if she is to make such a dramatic change that affects the business community, she should take the time to consult and not be so arrogant as to suggest that she can just introduce something in the Committee stage, when nobody has had any chance to have a say on it, and pretend that Armageddon is just around the corner if she does not have the opportunity to do that.

So let us just introduce a few facts into the debate. It is a shame that the Minister has tried to play politics with this change, because there was a lot of collegiality when it came to this Business Law Reform Bill. The Minister has thrown that out of the window by playing politics and by stretching the truth so far that it is barely recognisable. In terms of this Committee's view, yes, we were sympathetic towards some of the concerns raised by the Takeovers Panel, but we have to have a proper process. We have to give New Zealanders and New Zealand businesses the opportunity to have their say, and not introduce back-door legislation that has not been consulted on at all. But that is what we have come to expect from this Minister. She wants to do things the easy way, without doing the hard yards. The Takeovers Panel had not done enough of its own consultation. In fact, it received only about 10 submissions on its ideas, and four of them said that they did not want it to do it. So there was hardly consensus before it got to the select committee stage. The Minister told me that there would be no additional issues introduced in the bill, and she went back on her word.

Clause 1 agreed to.

The question was put that the amendments set out on Supplementary Order Paper 72 in the name of the Hon Lianne Dalziel to clause 2 be agreed to.

Amendments agreed to.

Clause 2 as amended agreed to.

The Committee divided the bill into the Companies Amendment Bill (No 2), the Dumping and Countervailing Duties Amendment Bill, the Financial Reporting Amendment Bill, the Friendly Societies and Credit Unions Amendment Bill, and the Insurance Companies' Deposits Amendment Bill, pursuant to Supplementary Order Paper 73.

Bill to be reported with amendment presently.

House resumed.

The Chairperson reported the Ngāti Mutunga Claims Settlement Bill without amendment; and the Business Law Reform Bill with amendment, and that the Committee had divided it into five bills.

Report adopted.

## **GEOGRAPHICAL INDICATIONS (WINE AND SPIRITS) REGISTRATION BILL**

### **Third Reading**

**Hon JUDITH TIZARD (Minister of Consumer Affairs):** I move, *That the Geographical Indications (Wine and Spirits) Registration Bill be now read a third time.*

This bill repeals and replaces the Geographical Indications Act of 1994, which was passed following negotiation of the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs agreement). This is a multilateral agreement that sets basic standards of intellectual property protection, which include geographical indications. Geographical indications, as defined by that agreement, identify that a good has originated from a place and has a certain quality, reputation, or other characteristic that is essentially attributable to its geographical origin. World Trade Organization members were given the flexibility to choose how to give effect to those obligations. A number of international developments since the 1994 Act was drafted, however, mean that the Act is now out of date.

Geographical indications are collective rights, which means they are not owned by any group or individual. No matter who applies for a geographical indication, once it is registered it can be used by any producer, large or small, who falls within the geographical indication region, and who complies with the requirements of this Act.

A robust and up-to-date intellectual property rights regime is an essential part of an innovative, growing economy, and well-defined, enforceable intellectual property rights help provide incentives for this innovation and creativity. Geographical indications form part of that intellectual property system, so, for producers of wines and spirits, geographical indications can be a marketing and branding tool that, alongside trademarks, creates recognition for their products. Geographical indications can also support regional efforts to establish and develop a quality geographical label from which all producers in the area can benefit.

Geographical indications also help consumers to have information about a wine or a spirit communicated to them quickly and efficiently. They can help consumers make informed choices regarding the origin and authenticity of the product. As the reputation of New Zealand wines is growing worldwide, consumers here and overseas are increasingly interested in particular New Zealand wine regions and their products. This bill will put in place a robust and efficient process of wine and spirit geographical indication registration, a system that is based on voluntary registration for both New Zealand and international wine and spirit geographical indications and that is consistent with our international obligations.

The bill limits registration to geographical indications for wines and spirits only. The TRIPs agreement accords two levels of protection for geographical indications. The first is a minimum level that applies to all goods, and requires Governments to provide measures to prevent geographical indications from being used in a misleading or confusing manner. The second is a higher level that applies to wines and spirits only. The second, higher level of protection requires Governments to provide measures to prevent the use of a geographical indication on a wine or a spirit that does not originate from the area indicated, regardless of whether any use misleads or confuses consumers. The protection given to registered geographical indications by the bill is specifically tailored to meet New Zealand's obligations under the second level of protection.

The registration mechanism provided in the bill is voluntary, and complements rather than replaces existing legal mechanisms that apply to geographical indications. Unregistered geographical indications for all products—wines, spirits, and other products—will continue to be covered by the Fair Trading Act 1986 and the common law tort on passing off. This bill does not seek to reinvent the wheel, so it does not seek to create a whole new set of infringement provisions and penalties. Instead, a breach of the bill will be treated as a breach of the Fair Trading Act, and the penalties available under that legislation will apply. That makes sense, given the important role of geographical indications in consumer information.

The bill contains a new definition of a geographical indication, to ensure that only those geographical indications for wines and spirits that meet the standards of the TRIPs agreement are able to be registered under the Act. In order to meet the definition, a term must indicate that a wine or spirit originates from a defined area and has a particular quality, reputation, or other characteristic of a wine or spirit that is essentially attributable to its geographic origin. Getting these decisions right will be important both for the industry and for New Zealand as a whole, and the Government has listened closely to concerns expressed by the wine industry about the decision-making mechanisms in the bill. The Registrar of Registered Geographical Indications will be able to seek advice from those with the relevant skills and knowledge in determining whether a term is a geographical indication, and, in particular, will have the power to convene an experts committee. The bill provides for mandatory wine or spirit industry involvement in that committee, to ensure that all proper expertise is brought to the table.

The TRIPs agreement establishes a balance of rights and obligations for the protection of geographical indications. This balance includes certain limitations of, and exceptions from, geographical indication protection, and the bill incorporates all the limitations and exceptions provided by that agreement. For example, terms that are common descriptions, or that are considered generic in the New Zealand market, will not be protected—a spirit name such as vodka, for example. Similarly, the bill also clarifies the relationship between trademarks and geographical indications. New Zealand has obligations under the TRIPs agreement in respect of trademarks as well as geographical indications, and it is important that pre-existing rights within New Zealand are not unfairly restricted. Consistent with New Zealand's position internationally on this issue, the bill implements a "first in time, first in right" principle for determining which has priority. That means that in most cases where a trademark already exists, it will prevent the registration of a later-filed geographical indication, and vice versa. In very limited circumstances, the bill allows for the potential for a later-filed geographical indication to be registered despite a pre-existing trademark having priority, or for the two to coexist. There is also provision in the bill that geographical indications identical in name or sound but relating to different geographical areas can be allowed. As registration is not compulsory, the bill introduces an exception, ensuring that unregistered identical geographical indications remain unaffected by the bill.

As I have already noted, the bill enables the registrar to establish an experts committee to provide advice to the registrar. The bill also stipulates that each committee must include the Surveyor-General and a member of the New Zealand Geographic Board, if their expertise is required. The registrar may then appoint as members of the committee any other people whom he or she considers appropriate. In response to concerns raised by New Zealand WineGrowers about the composition of the committee, the Government moved to accommodate that organisation's views. The changes made by the Supplementary Order Paper included an amendment to the composition of the geographical indications committee that required that someone with knowledge of the wine or spirits industries always be part of the committee. This shows that the consultation with the industries was wide, and they have expressed their general support for the bill. The Government has continued to engage with industry representatives, and we have done our best in this bill to accommodate their concerns.

The bill provides for a modern, efficient, voluntary registration process for wine and spirit geographical indications, which will provide legal certainty for producers without stifling innovation. The bill will also help consumers make informed choices about the wines and spirits they buy, and where they originate from. It does so in a manner that ensures that New Zealand continues to meet its obligations under the TRIPs agreement, but without, we hope, adding unnecessary red tape for anyone, particularly producers.

This bill forms part of this Government's commitment to our burgeoning wine industry and our emerging spirits industry. It is also part of the Government's wide-ranging reform of intellectual property law in general.

**TIM GROSER (National):** National supports the Geographical Indications (Wine and Spirits) Registration Bill. The process in the Foreign Affairs, Defence and Trade Committee was very extensive, as the Minister Judith Tizard has outlined, and on most matters it has been a very collegial process with very few differences between us. There is one point of remaining difference. Whether it is a small point or a large point will simply depend on the way in which practice evolves, and I will come to that presently. But I do not want that to obscure the underlying large measure of agreement here. The whole field of intellectual property law is really crucial to an objective that is shared right across the House, which is to transform our economy by getting higher value out of the great resource base of this country. Protecting the intellectual property of that resource base is an absolutely essential prerequisite to that process.

Nevertheless, there is not a high level of public understanding of this issue. I was giving a speech earlier this afternoon to a group of folk who are involved in the export and agriculture industries. When they asked me whether I could stay for a little longer, and I explained that I was required here to speak on geographical indications, I do not think a single member of them immediately understood what I was talking about. That was fair enough, because the term itself is a pretty forbidding one.

But although we have been slow as a country—and I do not exclude myself from that in any respect—to understand the power of this issue and the importance of it, I think we are amending that process in a constructive way. We have done this as we have moved forward, particularly in agriculture, in an increasingly sophisticated way. I would like to pay tribute to the increasing sophistication of not just the wine industry, which is the central industry involved in this particular case, but agriculture industries right across the board in the course of the last 20 years. For example, 90 percent of our lamb exported in 1970 was in carcass form; the figure is less than 5 percent today. So we are getting the message. We are heading in the right direction, and having the right legal frameworks around intellectual property law is certainly a part of it.

Like the Minister, I commend the New Zealand wine industry for having built itself up. I would say, frankly, that the stick played as much part as the carrot in this process. I remember very well that during the CER negotiations the New Zealand wine industry was absolutely convinced it could not export and saw CER as a great threat. But to its great credit it made adjustments, and we are now looking at exports worth a fraction under \$500 million a year. That is a success story that I think will serve future generations of New Zealanders extremely well.

I will just pick out one or two of the key provisions of the legislation. The first one is the central point about clause 6 using the existing definition in article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs agreement). It is very important that domestic legislation that enables international treaties simply mirrors the exact provisions of those agreements, if at all possible. I remember once being on a dispute settlement panel between India and the United States, where a very small difference in wording became a crucial issue for the arbitrators, such as me, to make a judgment on. International lawyers are capable of making a great deal out of very little in these situations. I think it is appropriate that the amended clause 6 brings the wording into a unified form that is completely consistent with the wording of the TRIPs agreement.

I draw attention to clause 16 and the strange term “homonymous geographical indication”—and these are not closet homonymous geographical indications; they are right out there in the open. This is a very complicated process. I am pleased we have got

a balanced approach here whereby we will recognise them. These are geographical indications that have the same spelling as, or sound the same as, geographical indications for a wine with a different geographical origin.

There have been some very bitter cases over the history of this issue. I particularly remember a small village in Switzerland that actually had the same name, Champagne, as the region of Champagne in France. A bitter bilateral dispute between the European Union, representing France, and Switzerland ensued, and that small village, which had been producing sparkling wine since the 15<sup>th</sup> century, was forced to retract its use. That caused a lot of pain and emotion and upset on the part of that small community. But under clause 17 we have a procedure that I think is fair and reasonable. Subclause (2) requires the Registrar of Registered Geographical Indications to take into account the need for “equitable treatment of the producers ... and (b) the need to ensure that consumers are not misled.” So I think we have a sensible middle path through that.

I am also pleased that the bill deals with the quite important issue of geographical indications that have fallen into disuse. “Into disuse” has several different meanings in the context of geographical indications. In particular, there is the issue about the point at which a geographical indication becomes so widely used that it is generic. That is an issue that is actually very important to New Zealand. Although this particular legislation relates only to wines and spirits because the Uruguay negotiations gave this higher level of protection only to wines and spirits, we have had to approach this issue from the perspective that this may become a template for geographical indications in other agricultural industries.

This is a key negotiating objective of the European Union. It is called, in the jargon of negotiations, extension, and to put it in common-sense terms it simply would mean that if the European Union succeeded in its negotiating objective, the same provisions that we are considering here that will give effect to a higher level of protection would apply to other agricultural products—and, potentially, other products as well. For our most important goods export—tourism is our largest foreign exchange earner but dairying is our largest export earner, in the more conventional sense of an export—this is absolutely crucial, because many of the products that our dairy industry produces use terms that, in our view, have become generic.

But this is a highly contestable area. On the one hand there are generic words like “cheddar”, which originally was a particular type of hard cheese developed in the English village of Cheddar, but which is now used right around the world and can no longer be considered to be a geographical indication in terms of the origin of the product. As a product of the colonial process, and as in many other countries in Latin America, and the New World more generally, many industries in New Zealand have adopted the terms that were used when the same product was originally being produced in Europe. So this is potentially a very significant issue. I think we have a way through that makes sense.

In the time available I want to touch on the one remaining difference of opinion, which is the procedures in, in particular, clauses 51 and 52. Clause 31 sets out that the registrar shall be an employee of the ministry. A definition at the beginning of the bill makes it clear that that ministry could change, but at the moment we consider it to be the Ministry of Economic Development, and we have no problem with that. Obviously, the registrar must be an official. But the difference between the National Party position and the Government position on this relates to the non-mandatory nature of the geographical indications committee. In the language of clause 51, the registrar is the person to make the decision as to whether he or she will use the expertise of the industry to make decisions about a geographical indication. Clause 51 states: “The Registrar may, if the Registrar thinks fit, establish a ... committee”.

We think this is a mistake. The industry had quite strong views on that. The point here is that the drawing up of a geographical indication is not a matter of pure science. It is not a matter of simply putting in place cadastral boundaries and including everything that comes from there—that comes from the Wairarapa, for example. It is not as straightforward as that. It is much more complex, and at the end of the day the decision involves a high level of subjectivity. We do not believe that the official, no matter how well intentioned she or he may be, will have the requisite level of knowledge in every case to make an informed decision. So we put on notice our concern, and we may have to come back to it at a future date. Thank you.

**R DOUG WOOLERTON (NZ First):** New Zealand First supports the Geographical Indications (Wine and Spirits) Registration Bill. In speaking to the bill I want first of all to give credit to people in the sorts of occupations that Mr Groser and Mr Hayes held in their former careers—our trade negotiators all around the world. There are not a lot of them. [*Interruption*] Well, there are quite a few, and they do a marvellous job on our behalf. They are essential, because we have just had a recent occurrence when our English friends, on the release of the Stern report, talked about food miles and all sorts of things that people in our exporting markets bring up as essentially non-tariff barriers. I am sure that in the diplomatic world formerly inhabited by Mr Groser the phrase “non-tariff barriers” and crudities like that would not be countenanced in any shape or form, but I am not there, I am here, and to me that is exactly what they are.

I commend the people in the industry who have brought this bill together for turning something that is an essential requirement of the economic union in Europe to our advantage. They are saying that if we are required to do something over there, then, in turn, if it is fair enough to be done there it should be done here, and we can use some of these things to our advantage. One hopes that in the future some products in New Zealand, in the wine industry in particular, are just as famous as Champagne and other areas in Europe. I know that people have worked diligently, long and hard, and at great expense to make our wines superb and make them the equal of anywhere in the world. It would be nice if they took the added step—which I know would take years to accomplish—to establish over a period of time regions in New Zealand just as famous as those in the old countries.

I know that in the Committee stage Mr John Hayes attempted to introduce a Supplementary Order Paper, which Mr Groser has alluded to, that makes it compulsory for industry personnel to be on the committee that the registrar is required to call if he needs its expertise. But we in New Zealand First, as I have said before, are satisfied by the assurances of the Minister and the Government that this person will call together a committee and we do not think it is essential that that be put into legislation. In fact, I do not think it should be included, because those sorts of clauses in a bill quickly go out of date and it is not uncommon to have to come into this House to correct provisions like that from time to time. We try to do things specifically but in more general terms nowadays, if I can put it that way.

I can well understand that in the world that Mr Groser and Mr Hayes were previously in, lawyers make a lot of very fine points—and get well paid for it, I say to Mr Chauvel—about words and sentences and they argue for ages as to what they will mean. My humble experience has been that no matter how tight and prescriptive we try to make legislation, lawyers will still do that. I would sooner leave the industry and the registrar, with due respect, a bit of room to move. I for one would worry if the industry is defined just as those people who sell and trade in wine. I suggest that the farmers and the vintners who make the wine will have more to say, and perhaps because I come from farming stock I would put just as much, or more, trust in the farmers and the

people who make the wine than I would in the industry, or in, perhaps we could say, the purveyors of the wine who, in a cruder term, clip the ticket on the way through.

I cannot speak on any bill related to the wine industry without bringing to mind a colleague who is no longer here, Gerry Eckhoff, who was from the ACT party. He was with me on the Primary Production Committee. His family did rather well out of the wine business. When Mr Hayes and Mr Groser talked about the characteristics of a region and the characteristics that that brought out in a wine, I could not help but recall the raptures that Gerry used to go into when it came to a wine. I do not blame him, because they made millions out of it. As far as he was concerned there were magical things in the make-up of wine. Being of a more pragmatic nature, although I can understand how that can be, I think that if the registrar is able to call on the pragmatism of farmers, the commercial expertise of the people who sell the wine, the people involved in the registration, and the Government, I think it is a pretty good mix and we do not need to go into the magical properties of a particular wine or a particular region. I think they will be understood by the people that the registrar can call together on what is called an experts committee.

I do not think I need to take any more of the time of the House. The bill is rounded out pretty well and I congratulate the people who took part in the deliberations. I thank them for that, particularly, as I said at the beginning of my little speech, the people who have turned a requirement into something that is an advantage for New Zealand. That I applaud.

**KEITH LOCKE (Green):** The Green Party supports this bill. In fact, we think this bill should be a model for other legislation that requires the labelling of other food products in New Zealand across the board. It is disappointing that although the Government is at the head of the world in this particular area of labelling—geographical indicators for wines—it is near the back of the pack when it comes to other food labelling and is behind Australia by disassociating itself from the food-labelling regime that was implemented across the Tasman. Unfortunately the parties in this House, including the Labour Party, did not go down the track of supporting the food-labelling bill put up by my colleague Sue Kedgley, much to their shame and in stark contradiction to the good approach that Labour is taking in this bill. As Tim Groser mentioned earlier on, even though the World Trade Organization and the international trading bodies gave particular prominence to international agreements on geographical indicators for wines and spirits, this is just the first step down that road for food production in general, and he is right when he says that matters will go further down that road. We should lead the way and not be at the back of the pack in relation to other food products, including dairy products, which he mentioned in his speech.

I think the same concept applies to wines as applies to other food products, because the whole point about geographical indicators on wines and spirits is that consumers get an idea of the producing nation and a feeling for the product. I was in Ireland a month ago and went around the wine shops there. They have the bottles labelled by country, and on looking closely one often sees a little description of the area where a wine comes from. New Zealand wines stand out on some of the shelves. They are gathered together, and within those groups there are Marlborough wines and Hawke's Bay wines, with their geographical indicators on their labels. Sometimes the person who runs the shop provides a description of the area in written form.

I think that concept is very positive. If we think back a few years to a time when more of our wine came from overseas than it does now, we remember that part of the attraction was that it came from particular areas of southern France and Italy where we had a feel for the climate, spirit, and culture of the people—like how they trod on the grapes. The feel for the region was part of the attractiveness of the wine. Now, that

applies to New Zealand wines. We try to get across to consumers in France, Britain, and other countries a bit of a feel for our regions, too—regions like Marlborough and the Hawke's Bay—by getting people interviewed and articles put in magazines, so that we are seen as quality producers from a region that produces quality wines.

That situation applies to other products as well as wine, which is why I think the Government is a bit silly to hold back on labelling other food products. Perhaps if we export kūmara from Dargaville, we may want consumers to get a feel not only for New Zealand kūmara but also for Dargaville and for what goes on there—a feeling for the culture behind the production of that food product. Instead, unfortunately, the Government has turned it round the other way and says that if we have labelled products for export to America and the Americans prefer to support a local product, then somehow we will be discriminated against. That is very negative thinking. We should think in a positive way about getting brand identification as a country, and as regions within that country, for particular food products, whether they be Dargaville kūmara, Nelson apples, or whatever they may be. I think that is the way things will go and is the way to counter the problem referred to by the previous speaker of the “food miles” argument being used against New Zealand products.

When the “food miles” argument came out a month or so ago, both the trade Minister, Phil Goff, and the co-leader of the Green Party Russell Norman, explained that when one is talking about the contribution to climate change and the depletion of resources in the world, one has to look at the total resource and energy input into a product. New Zealand does have an advantage in a lot of pastoral agriculture by virtue of having grass-fed animals, not grain-fed animals, etc. So the net resource use may be in our favour. But having said that, I say people have a perfect right to buy locally and to encourage the local economy. That will be a natural reaction as time goes by. It is a natural reaction in New Zealand, which we do promote with the Buy New Zealand Made campaign, etc. In order to overcome that, if we want to get our products traded into other markets, we have to promote their quality and promote a feeling for the people in the regions that produce those products.

We should not accept at all the sorts of arguments that were raised by Labour and others against Sue Kedgley's bill about food labelling. They said the safety of all food products can be guaranteed by the official bodies. But that is not necessarily the case, because the safety of particular ingredients, pesticides, or whatever else is often a question of debate, and we would not necessarily totally trust the relevant agency on that. But quality and preference are more subjective areas, and we want to train the consumer to prefer New Zealand products, based on an understanding of the regions of origin of those products. That is the reasoning, essentially, behind this bill in relation to wines and spirits.

On the question of the committee that will be set up to look at the registration of geographical indicators, the alteration of such a registration, or the removal of one from the register, I take Tim Groser's point about the bill. He is worried about the qualification that the registrar may, if the registrar thinks fit, establish a committee. I think it should be a more general procedure, but the Green Party did not put forward an amendment in the Committee stage on that. However, I did put forward an amendment to try to get clearer representation from the wine and spirits industry, and it was very supportive of my amendment. I tried to get a representative of New Zealand Winegrowers, of the Distilled Spirits Association of New Zealand, or of some other industry body on that committee. That would have covered the point raised by the previous speaker that the industry does change. My amendment covered that point, but unfortunately it was not passed.

As things have gone on, the changes to the bill made in the Foreign Affairs, Defence and Trade Committee and the Supplementary Order Paper introduced in the Committee stage have both pluses and minus to them. In the bill as reported back, clause 52(4) provided: “The Registrar may appoint as members of the committee any other persons who the Registrar considers appropriate, including a representative of the wine or spirits industry in New Zealand.” That was actually a plus. Even though now it is a “must” in terms of the registrar looking at representation in that respect, clause 52(2)(c) now states that each committee must include “1 or more persons who, in the Registrar’s opinion, have appropriate knowledge of the wine or spirits industry, as the case may be.” I think “appropriate knowledge” could mean somebody from outside the industry who has done a bit of reading on it. That term is too vague, and I think that is why, when the Minister spoke, she could say only that her change had general support from the industry, or support in general. The industry wanted the provision to go further than that, and my amendment would have fitted that.

**TE URUROA FLAVELL (Māori Party—Waiariki):** I raise a point of order, Mr Speaker. Kia ora tātou katoa. It has been a privilege this afternoon to listen to some of the debate, and one reflects on one’s performance in the House. I just mention at this point, as it is close to the dinner break, that I have waited this afternoon in respect of the time given—

**The ASSISTANT SPEAKER (H V Ross Robertson):** Is this a point of order?

**TE URUROA FLAVELL:** Yes. I prepared my speech for this afternoon, knowing that we have 10 minutes in which to make sure that we nail home our points. I seek leave of the House for my speech to be deferred until after the dinner break. I ask whether that can be considered.

**The ASSISTANT SPEAKER (H V Ross Robertson):** The member is perfectly entitled to ask. The House is the master of its own destiny.

**DARREN HUGHES (Junior Whip—Labour):** Maybe I could assist the member. I seek leave for the sitting of the House to be suspended until 7.30 p.m.

*Sitting suspended from 5.58 p.m. to 7.30 p.m.*

**TE URUROA FLAVELL (Māori Party—Waiariki):** Tēnā koe, Mr Assistant Speaker. Kia ora tātou. Firstly, I acknowledge and thank the House for allowing me to have my full allocation at this point in time. In doing the research for this bill I note that within the customary rohe of Ngāti Te Whatuiapiti and Ngāti Te Upoko Iri exist the Ngātarawa blocks. Ngātarawa borders the ancient riverbeds of Ngā Rauru on the western edge of the Heretaunga plains, and for those people who are listening, I say that this is Kahungunu turf, Kahungunu territory. The blocks form the subject of claim 596 taken to the Waitangi Tribunal by one Irimana Heemi Totoru Matenga, a claim that suggests there are irregularities in the passage of these blocks through the Native Land Court. But the Ngātarawa name is most probably most strongly associated with the stories connected to a good wine—indeed, as the Ngatarawa label professes, “Life times told in wine”.

With the inevitable passing of this bill, the name Ngātarawa may now indicate that a particular wine from this region will be of high quality because of the fact of its geographical origin. The geographical indication of Ngātarawa will be an advantage in marketing the wine or spirit. That will be a great achievement for one of New Zealand’s winemaking dynasties, the Corban family—descending from a family, I understand, who left Lebanon in 1891 equipped with over 300 years of winemaking traditions. This family of grape-growing businesspeople has crafted over time a respected boutique wine company during the last 105 years of viticulture.

The Ngatarawa label comes with a distinctive fourth-generation pedigree. The location's specific naming rights that the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs agreement) classifies as a category of intellectual property would identify most likely Ngatarawa as a label founded on heritage on the taste of a classic wine for a discerning wine-tasting public.

The concept of pedigree is, however, also useful to review in the context of other developments that relate to ownership and protection of intellectual property. One wonders, when in early September the Waitangi Tribunal appeared at Waipatu Marae in Hastings to hear the Ngāti Kahungunu submission on the Wai 262 claim, whether the pedigree of Ngatarawa informed the discussions. Wai 262 is a claim to rights in respect of matauranga Māori, or Māori knowledge in indigenous flora and fauna. In the hearings at Waipatu the tribunal heard about the call to actively protect the exercise by Ngāti Kahungunu of tino rangatiratanga and kaitiakitanga in regard to Ngāti Kahungunu cultural knowledge of names and locations, such as Ngātarawa, or indeed, Te Mata, Awatere, or Kaitangata, are very important, obviously. My colleague Dr Pita Sharples reminds us in the Māori Party that names are very important in Kahungunu territory, with Ngāti Kere's proud reputation for the longest name in the world, Te Taumatawhakatangihangakoauauātamateapōkaiwhenuakitanatahu.

**Hon Member:** Well done!

**TE URUROA FLAVELL:** The member missed it—check the *Hansard*! The statement of claim suggests that the Government has breached its obligations and failed to protect Ngāti Kahungunu cultural knowledge, by adopting international instruments without either consulting or obtaining permission from Ngāti Kahungunu. The debate on this bill has made frequent references to the World Trade Organization's TRIPs agreement. The bill has been justified as necessary to more closely align geographical indications with the rights and obligations under the TRIPs agreement, yet the explanatory note of the bill acknowledges “there has been no strong interest on the part of New Zealand producers to register geographical indications.”

It would seem, then, that the impetus for this Government bill is merely to be TRIPs agreement compliant, not because producers see a need for it, and this is despite the Government and Governments overseas being advised repeatedly that the TRIPs agreement is unworkable, undesirable, and not in the national interest. The key block is tied up in the very intention of intellectual property rights legislation, which is to harmonise such laws globally. In doing so, the global intervention reduces the capacity of nation States to develop higher standards.

A view put forward by indigenous peoples around the world is that ultimately local and indigenous communities should be able to rely on domestic law and look to global forms only when it takes standards to a higher level or is strongly in the national interest. This is what the United Nations Draft Declaration on the Rights of Indigenous Peoples does. It takes the standard to a higher level. Article 29 states: “Indigenous peoples are entitled to the recognition of the full ownership, control, and protection of the cultural and intellectual property.” The TRIPs agreement does not take the debate to a higher level. It is not necessary and it ignores Māori rights and interests. Indeed, my research indicates that it is a waste of resources and time.

The Māori Party has stood in this House and made the point that we will always oppose international agreements that are signed without due consultation with tangata whenua. We will also oppose international agreements that have no capacity or will to protect Māori rights or interests. So when we went back to the people of Ngāti Poporo of Ngāti Kahungunu, they confirmed that either unwittingly or unknowingly tupuna names of Kahungunu were being liberally sprinkled around the vineyards of the Hawke's Bay. The debate in the Committee stage of the bill heaped praise on our

entrepreneurial viticulturists, the long-term strategic interests of the nation's economy, which the geographical indications work recognises.

But where is the value if in implementing the TRIPs agreement we trample over the histories and traditions of tangata whenua to get there? How was tino rangatiratanga of hapū and iwi in relation to their own cultural heritage rights and taonga protected through this bill for the people of Ngāti Kahungunu, for Ngāti Kōata, the peoples of Tūranga-nui-a-kiwa?

Part of the discussions emerging from Wai 262 has been that protocols should be developed for dealing with persons outside the collective, wishing to gain access to knowledge and taonga. They should include sanctions and penalties for infringement. The Māori Party applauds the initiative of the Lebanese cousins, Alwyn and Brian Corban, who have contributed so significantly to the winemaking enterprise of Aotearoa. We also congratulate the initiative of the Yugoslavian descendants of Ivan Yukich, who have established the legacy of Montana Wines Ltd. We see in both the Corban clan and the Montana pioneers the international history of viticulture being successfully transplanted in Aotearoa.

In doing so, we fully support the purpose of this bill being to “contribute to the development and continual growth of, and innovation in, the wine and spirits industries in New Zealand by providing a suitable legal framework for the registration of geographical indications.” But the crux of the issue for us, the Māori Party, will always be about how such enterprises can succeed and also enable the ownership, control, and protection of their cultural and intellectual property to be in the hands of tangata whenua.

Another couple of international winemakers, American people, Brianne and Gary Fisher, recently established their vineyard in the heart of the Ngātarawa triangle. They have chosen to name their vineyard Paritua, in their words as a tribute to the Paritua Stream that meanders gently through our land. It is a name that also acknowledges their connection to the land and the people of Aotearoa. Not far from there is the Te Mata Estate vineyard, the oldest winery in Aotearoa. Te Mata, of course, is also etched in the tribal landscape as the body of Kahungunu rangatira, Te Mata o Rongokako. Tangata whenua takes seriously the obligations as tangata kaitiaki to exercise tino rangatiratanga over their cultural knowledge, their mautauranga, their indigenous flora and fauna. It is a submission of the Wai 262 claimants that the Government should wait for the findings of the Waitangi Tribunal as to how a solution to the vexed issues of intellectual and cultural property can be arrived at. The Māori Party cannot support this bill while these discussions are still very much alive.

As the Ngāti Kahungunu submissions asked the tribunal, we also ask this House to what extent the Crown has an obligation to protect mautauranga Māori cultural knowledge; to what extent the Crown has breached any obligation it may have, including adopting international instruments. Until these questions, and many more that would arise from consultation with tangata whenua, are able to be heard, and a full response accorded them, tangata whenua will be denied the exercise of the right to develop on our own terms. To this we can never agree.

A party vote was called for on the question, *That the Geographical Indications (Wine and Spirits) Registration Bill be now read a third time.*

**Ayes 111**

New Zealand Labour 50; New Zealand National 45; New Zealand First 7; Green Party 5; United Future 3; Progressive 1.

**Noes 3**

Māori Party 3.

Bill read a third time.

**PROPERTY LAW BILL**

**First Reading**

**Hon CLAYTON COSGROVE (Associate Minister of Justice):** I move, *That the Property Law Bill be now read a first time.* At the appropriate time I intend to move that the Property Law Bill be referred to the Justice and Electoral Committee for consideration. Property law governs a wide range of private and commercial property transactions in the day-to-day life of all New Zealanders. The law applies when people create, dispose of, or control property interests, including land. Commonly, the types of dealings affected are residential or commercial transfers, mortgages, and commercial leases. It is important that the law is up to date, clear, and accessible to all people.

The Property Law Bill is significant legislation that updates the general property law rules contained in the Property Law Act 1952, and it includes in legislation for the first time some common law rules. The current Act contains a collection of outdated and piecemeal provisions added over many years and expressed in obscure language. The Act has been in force for over 50 years, and some provisions date, without redrafting, from the conveyancing ordinance of 1842. Some provisions of the Act do not work well with other legislation that applies to property interests. The Property Law Bill will improve the operation of the existing law and make it easier to understand. That will be of benefit to a number of members opposite. It will also ensure that related statutes work together effectively.

The Law Commission in 1994 completed a major review of the current Act and recommended a new Act to make rules more accessible and easier to understand. The Law Commission report, which contained a draft bill, was well received by interested parties when it was published. As the Prime Minister explained in her formal statement to Parliament in February this year, the Government is committed to implementing a number of old Law Commission reports that modernise key areas of law such as property law and succession law. I am grateful to the Law Commission for its assistance in preparing a property law bill for introduction. I particularly acknowledge Justice Blanchard, the author of the Law Commission report, for his invaluable contribution to the Property Law Bill.

The bill is based largely on the recommendations of the Law Commission report. It restates and clarifies the existing Act and includes some rules currently found in the general law or other Acts. There are a large number of small reforms to the rules that collectively will improve the effectiveness of the law. The bill ensures that law relating to property is clear, accessible, and effective, so that it better meets the present and future needs of people such as property owners, lessees, and mortgagees. The bill provides certainty in property dealings and protects people's property rights—for example, by determining the priority of creditors when there are several securities over the same land.

The Law Commission considered that the provisions governing mortgages and leases most needed reform. A number of small reforms to the law of mortgages will clarify and reform the rules that apply. For example, the bill extends and describes in more detail the notice requirements for mortgagees, such as banks, and will require them to notify other interested parties, such as a friend or relative who guaranteed a mortgage loan, when exercising their rights over properties after borrowers have failed to pay loans. Currently, a mortgagee who sells a mortgaged property after a borrower has defaulted on a loan must take reasonable care to obtain the best possible price for the borrower. Under the bill this duty extends to other interested parties, such as a guarantor.

Other examples of the reforms in this bill include codifying the law governing the cancellation of commercial leases of land and relief against cancellation for lessees. The bill also codifies the rules for the cancellation of an agreement for the sale and purchase of land where a purchaser is in possession. One specific reform proposed in the bill removes a commercial lessee's liability for unintentional damage to leased premises when the lessor is insured. The Law Commission expressed concern that lessees can be liable under a lease covenant for repairing premises damaged through their negligence even though the lessor is protected by insurance that is directly or indirectly paid for by the lessee. This is a significant change from the existing law and will be a matter of specific interest during the select committee consideration of the bill.

Clearly, the Law Commission reported back some time ago. Some of its recommendations have been superseded. Other reforms that do not originate from the Law Commission report are also necessary to address issues that have arisen since 1994 because of inconsistencies or overlaps with provisions in new or amended legislation. Property law is of practical, day-to-day significance for individuals and businesses in New Zealand. Clear property rules are vital to the operation of society, and this bill ensures that our property law is up to date to better meet people's needs and protect their property rights. I commend the bill to the House.

**Dr RICHARD WORTH (National):** It is always a pleasure to follow the previous speaker, whose knowledge and depth of legal skill is profound and widely admired. I must say I was disappointed on this particular occasion that he did not draw to the attention of the House what truly are the salient features of this most important legislation. With a crowded gallery and, I am pleased to say, a crowded House, I say how important it is that we are gathered together to look at one of the most significant pieces of legislation to come before the House. Significant, one may ask? Why? Well, I respond to that simply by saying that in the life of this Parliament, in terms of numbers of pages this is in fact the biggest bill the House will have to deal with. More important than that, it is also one of the most important bills.

The previous speaker omitted to say—but I now say—that the law of property is very complex; one needs only to look at legal texts on property to see that that is determinedly so. National supports this bill. We could do nothing else but that; it is important and critical legislation. As the previous speaker said, it replaces the Property Law Act of 1952 in reforming and codifying certain aspects of the law relating to real and personal property. The microphones in this Chamber are selective in what they pick up, and I was disappointed that the Minister in his comments did not respond when I asked him a question as to the difference between real and personal property, because that is a critical difference in this legislation. Real property is concerned with land, and personal property is concerned with non-land issues.

The work that provides the basis for this bill was done by Peter Blanchard, who was a commissioner with the Law Commission. He completed that task in 1994. It is quite shameful, actually, given the importance of this legislation, that the Government has

delayed its introduction until this date, 14 November 2006. There was no good reason for that, apart from indolence and inefficiency on behalf of the Crown.

The report on which this work is based was well received by parties when it was published in 1994—[*Interruption*—]and what we see here, as Mr Brownlee has just affirmed, is that the bill generally follows, very closely, the text of the bill in the commission's report. Some changes have been made to accommodate refinements in policy and developments in statute and case law since 1994, and some proposals have not been carried forward, including proposals on the release of assignors from liability, the appointment of receivers in respect of mortgaged land, mortgagee sales of goods through the registrar, and of course this very important topic of waiver of contingent conditions in agreements for sale and purchase.

I summarise the comments of other speakers by saying that the 1952 Act contains rules of general law relating to the creation and control of property of all kinds, including land. These rules underpin a vast range of activities and transactions in the day-to-day life of New Zealanders. They are therefore—and I do not think it overstates it to say this—fundamental to the workings of our society. The 1952 Act, the Law Commission noted, was basically a collection of miscellaneous rules. It was not a code but more a repository for legislative supplements or corrections to judge-made law.

As the previous speaker said, the Act is over 50 years old, and it was itself very largely a compilation of provisions introduced many years before, some of them dating way back to the earliest pieces of legislation such as the Conveyancing Ordinance of 1842. So this legislation—the old legislation, the 1952 Act—is long overdue for revision. One needs to look only at the many pages this bill comprises to see how far-reaching the changes are in terms of amending old statutes, like 1267 52 Hen. 3, the Statute of Marlborough. Another statute that Mr Finlayson is well familiar with, an important statute we studied together at law school, is 1289 18 Edw. 1, the Statute of Quia Emptores, which, if my Latin is still with me, roughly translates as “because they are purchasers”. As I said, there are a raft of statutes dating over a time frame of 1267 to 1851—English statutes that were part of our property law in New Zealand.

So what is this bill all about? Well, it includes a number of complex, technical, general property rules. I suppose it is right to say that the provisions governing mortgages and leases were the most in need of reform, and in this bill a large number of reforms are proposed to clarify and reform the rules governing mortgagees in possession, mortgagees in breach of their duty—in the exercise of power of sale—and mortgagee sales. Just to take an example, the procedural requirements for mortgagees, relating to notices to mortgagors of the exercise of the mortgagees' powers, are to be extended and dealt with in more detail. Now, mortgagees in possession will be required to account to mortgagors for income received from the mortgaged property. The bill also contains detailed and helpful instructions for the application of income, and the priority of distribution for the proceeds of sale received by a mortgagee of a mortgaged property.

I would like to pick up, perhaps, in the short time available to me to look at this complicated legislation, a couple of issues that may be mainstream issues. The first is in the area of mortgages, because a large number of small reforms to the law of mortgages will collectively be of advantage. I pick as one topic, by way of illustration, the covenants implied in mortgages over land. Those have been updated and drafted more clearly in plain language. So that concerns the area of mortgages.

There are big changes in the areas relating to leases. The bill codifies the law relating to the cancellation of leases by lessors, and relief for cancellation. At the moment, the current law is, of course, split between Imperial law, this English law—like the Landlord and Tenant Act of 1730—the rules of equity, and the current Property Law

Act 1952, depending upon which covenant is breached. So that concerns the world of leases, and we similarly see that there are significant changes in covenants, conditions empowered, and powers implied in all leases of land.

I am sure other speakers will talk about the right to distrain, because one of the changes that is being made in the legislation is that the right to distrain has been abolished. That was a right to seize goods for unpaid rent. It is appropriate that that be abolished, because there is already a process for the enforcement of judgment debts in the District Courts Act and District Court Rules, and in the High Court Rules. The distress for rent provisions have already been abolished in relation to dwelling houses. There are a whole lot of changes relating to sales of land, and to the assignment of what we used to call choses in action, which are now called things in action.

Then there are some special powers of the court, where the substance of the old law has been re-enacted, but in considerably more detail. Those of us who exercise constituency responsibilities will often be troubled with people who come to talk about the removal or trimming of trees, or the removal or alteration of structures injuriously affecting a neighbour's land.

These, then, are significant aspects of important legislation. National commends this legislation, but criticises the Government for its indolence and delay in not advancing it in a more timely manner.

**PITA PARAONE (NZ First):** Tēnā koe, Mr Speaker, tēnā tātou. On behalf of New Zealand First, I say from the outset that we too will be supporting the Property Law Bill. This bill is very significant because of the fact that property law is complex. It is important that any bill such as this recognises that complexity. The bill covers a wide range of issues pertinent to commercial and private property.

Any law should be readily accessible and updated. The importance of this bill lies in the fact that it has been some 50-odd years since the whole issue of property law has been addressed. On the suggestion of the Law Commission—albeit some time ago, back in 1994—this bill is a product of that concern. As I said, the principal Act has been in existence since 1952, and since then much water has passed under the bridge, so to speak. So it is important that such a major Act is updated to meet present and future needs.

Some concerns were expressed by the previous speaker. Giving due support to this bill at this stage will ensure that it is referred to a select committee, where the very concerns that have been expressed can be addressed, not only by people from this House but by the wider community, particularly those who are involved in property law.

This bill will provide certainty in regard to a number of issues, particularly mortgages—for example, in terms of mortgagees in possession. During the halcyon days of Māori development, there was a department known as the Department of Māori Affairs, which had the responsibility of providing housing for Māori people. At least 200 Māori families every year could be guaranteed they would move into their own homes. Part of that process, unfortunately, from time to time required the Crown to re-enter properties, due to non-payment of the mortgage by the mortgagee. I know from personal experience that there were times when we tended to forget our responsibilities as mortgagees in possession. I have no doubt that this bill will certainly address those concerns, albeit I am sad to report that the Department of Māori Affairs does not exist any more. It no longer provides for the housing of our people, in spite of the poor record of Māori homeownership in this day and age.

I also want to acknowledge that one group, or one type of property, is exempted from the provisions of this bill: Māori customary land. I am glad that such Māori land is exempted from this legislation. Māori land is usually customary land and therefore a

whole raft of different rules apply to it, much of which is determined and controlled by the Māori Land Court.

Having said that, albeit in a short contribution to this debate, I just reaffirm New Zealand First's support for this bill. We look forward to the opportunity to be part of the discussions when the submissions on this bill are heard by a select committee.

**NANDOR TANCZOS (Green):** I rise just to give a very short speech on behalf of the Green Party in relation to this Property Law Bill, and to indicate that the Green Party will be supporting this bill going to a select committee.

I understand from the debate, and from the explanatory note of the bill, that it sets out to replace the 1952 Act. That replacement was proposed, as has been stated by other speakers, by the Law Commission in its report *A New Property Law Act*, and I understand that the bill largely follows the proposals set out in that report. The text of the bill was included in that commission report, and the explanatory note notes some exceptions to it. It states: "Proposals not carried forward in this Bill include proposals on release of assignors from liability, appointment of receivers in respect of mortgaged land, mortgagee sales of goods through the Registrar, and waiver of contingent conditions in agreements for sale and purchase." I am not a lawyer, so am not in a position to give the kind of erudite speech that my learned colleague Mr Worth gave—

**Hon Clayton Cosgrove:** Yours is far better!

**NANDOR TANCZOS:** Thank you, Mr Cosgrove. Really, the Green Party's support for the bill is reliant on the fact that it follows the recommendation of the Law Commission report. That body has done a lot of very important and worthy work in relation to law reform. Mr Palmer, I think, has described this bill as uncontentious but with important reforms. So it is right that we support it going to a select committee. That will give an opportunity to go through in some detail the provisions of it. It is a pretty weighty bill.

I guess I was relieved, as a non-lawyer, to see that one of the important objectives of the new Act is to set out rules of property law accessibly and in a way that can be readily understood. I think that is important. When Mr Worth mentioned that one of the things that the bill does is abolish the right to distrain, I looked at that clause, because I thought it was important in terms of making the law more readily understood. Apparently, the right to distrain is abolished. Clause 264 states: "Right to distrain abolished—(1) The right to distrain for rent or other amounts payable under a lease or for a rentcharge is abolished. (2) A provision in a lease or in an encumbrance securing a rentcharge that purports to give any person the right to levy distress for rent or other amounts payable under the lease or for the rentcharge has no effect." Clearly, the bill has put this matter into plain English and made it accessible to the ordinary person. I think that is a worthy thing.

**TARIANA TURIA (Co-Leader—Māori Party):** Tēnā koe. Tēnā tātou te Whare. Last Friday at Te Herenga Waka Marae, at the Victoria University of Wellington, Ahorangi Wīremu Parker was remembered in a memorial seminar marking 20 years since his passing. Wīremu Parker had a particular association with this House. It was the Māori members of Parliament who recommended to the Cabinet of 1943 that he be appointed New Zealand's first Māori news broadcaster. He was well known as a skilled and expert broadcaster, and covered in the course of his career the return home of the 28<sup>th</sup> Māori Battalion in 1946, and the poroporoaki to Tā Apirana Ngata at his death in 1950. From 1967 Parker worked alongside Te Kapunga Koro Dewes and Professor Hirini Moko Mead, teaching Māori at the Victoria University of Wellington. He was a respected academic, a skilled Māori language expert, a kaumātua, an adviser, and an editorial consultant.

So it seemed apt in considering the Property Law Bill to turn to his words from 1978 included in a collection of essays commemorating the silver jubilee of Queen Elizabeth II. He stated: "For ever so long, land has been central in Maori thought. The source of his physical sustenance, of his very blood from time immemorial, the object of deep emotional attachment in song, poetry and oratory, the prized heritage of tribe and [whānau], and lay at the very core of a people's mana. Land was for ever." Parker's comments, in *The Substance That Remains*, indicate the strength of association that tangata whenua attribute to being Māori and the inherent relationship with the land. The two are inseparable.

And so it is that when we read in clause 8 of the Property Law Bill the statement that this bill applies to all land in New Zealand, we consider the guardianship, the custodial rights, the stewardship, the ancestral relationship that tangata whenua have with land. Yet, curiously, that statement is later qualified with a rider that this bill "does not apply to Māori customary land". The Māori Party will be seeking responses during the select committee consideration of this bill as to the inherent contradiction in this one clause as to whether Māori land is marginalised or detached from the whole.

We understand that a fundamental protocol of statutory interpretation is that the specific overrides the general. In effect, this means that the specific rules pertaining to Māori land are contained within Te Ture Whenua Maori Act 1993, and that these specific provisions prevail over the general provisions in the Property Law Bill. Notwithstanding this qualification, we know it to be reasonable to state that approximately 220 pieces of legislation have been passed in this House that have had the intent or effect of taking or weakening Māori land and property rights in some way or another. We can only assume that the devil is in the detail with this bill, as well.

The Property Law Bill seeks to replace the Property Law Act of 1952 by restating, revising, reforming, and codifying particular aspects of the law relating to real and personal property. The Law Commission's report *A New Property Law Act* suggested that the 1952 Act was largely a compilation of many outdated and miscellaneous rules, some dating back even to one of New Zealand's earliest pieces of legislation, the Conveyancing Ordinance of 1842. This infamous piece of legislation was passed to facilitate the transfer of real property from Māori to settlers and missionaries. It specified protocols around the buying, selling, leasing, and mortgaging of land through introducing the deed system. Some Māori called it the beginning of the end in initiating a path of land alienation that made land vulnerable for exploitation and fragmentation. The 1952 Act is therefore well overdue for revision.

Around the same time, in 1953, the Maori Affairs Act brought together related legislation connecting Māori land to the system of property law. Some 25 years later, in 1978, the Government of the day consulted the Māori Council about the adequacy of the legislation, and the council's conclusions were reported to the Minister of Māori Affairs, the Hon Ben Couch, in a report entitled *Wāhanga Tuatahi*. The recommendations that were made in this report eventually became Te Ture Whenua Maori Act in 1993. It should be noted for the record that the bill introducing that Act came during the term of a National Government.

I have taken the time to provide a brief background to both the Property Law Bill and Te Ture Whenua Maori Act because the relationship between the two is vital. During the course of the deliberations of the legislative review committee of the New Zealand Māori Council, it issued a statement in 1980 that identified the importance and relevance of land to Māori: "Maori land has several cultural connotations for us. It provides us with a sense of identity, belonging, and continuity. It is proof of our continued existence not only as people, but as tangata whenua of this country."

It is proof of our tribal and kin group ties. ... It is proof of our link with the ancestors of our past, and with the generation yet to come. It is an assurance that we shall forever exist as a people, for as long as the land shall last.”

The Māori Party comes to this new bill, the Property Law Bill, with these words in mind. It is vital that the relationship between the Property Law Bill and Te Ture Whenua Maori Act 1993 is understood. This bill is not the place to seek changes or provisions of a specialist nature. If such provisions were to be found in this bill that could engender conflict with the existing provisions of Te Ture Whenua Māori if passed into law, the provisions of Te Ture Whenua Maori Act 1993 must prevail. As a case in point, the Property Law Bill applies to transactions relating to Māori land but, as an overriding requirement, those transactions must be carried out in compliance with Te Ture Whenua Maori Act 1993 or other applicable statutes. We will be watching out at the select committee to ensure that there is nothing in this new bill that appears either to make Māori land vulnerable to sale or to threaten the kotahitanga of whānau.

There has been some suggestion that the tribalisation of whenua Māori may be an aspiration Māori want to explore in further depth. The fragmentation of Māori land under the introduced system inherent in individual land title has not served Māori well in the past or even today. The system of shares and shareholders fragments and disrupts tribal ownership. It may well be that tribalising land, and building on developments such as the whenua tōpū trusts available under section 216 of Te Ture Whenua Maori Act 1993, are ideas outside the scope of this bill, but they certainly are not outside the realms of possibility.

The Māori Party considers that general property law relating to mortgages, leases, deeds of settlement, and suchlike does and will continue to inform Te Ture Whenua Maori Act. As such, the reforms to clarify and codify the law relating to mortgagee sales, cancellation of leases by lessors, purchase breaches, and the creation and delivery of deeds will inevitably be of interest to Māori lawyers, to property owners, to mortgagors, to purchasers, and to trusts. We will be looking particularly to see that the provisions in Te Ture Whenua Maori Act relating to matters of interest in this bill are sufficient on their own to protect Māori land and Māori landowners. If indeed such analysis comes up wanting, we will be asking whether changes are needed to Te Ture Whenua Māori Act to better protect Māori land and Māori landowners.

Our fundamental interest in supporting this new Property Law Bill at its first reading is in providing an opportunity for the people to have access to the debate around issues of such consequence. Our overriding concern will be watching to see what sort of impact the changes proposed to general property laws in this bill will have on how the law is interpreted in relation to Te Ture Whenua Maori Act for Māori land and Māori landowners.

From the burying of the placenta of newborn children, the placement of our whenua with the whenua, through to the burial of the dead, Māori are, in every sense, tangata whenua—people of the land. The spiritual and ancestral connections we have as tangata whenua are vital to our ongoing identity. As the late Ahorangi Wīremu Parker reminds us, land is forever. It is with this in our mind, therefore, that the Māori Party takes a particular interest in the Property Law Bill as affecting values and concepts that are core to our life as tangata whenua. Tēnā koe.

Bill read a first time.

Bill referred to the Justice and Electoral Committee.

## HUMAN TISSUE BILL

### First Reading

**Hon RUTH DYSON (Minister of Labour):** I move, *That the Human Tissue Bill be now read a first time.* At the appropriate time I intend to move that the bill be referred to the Health Committee for consideration. It gives me great pleasure to speak to the first reading of this bill. The Human Tissue Bill provides a framework for regulating the collection, storage, and use of tissues and organs, primarily from the deceased. It also regulates trading in tissue, export and import of tissue, and the use of tissue for non-therapeutic purposes—for example, audit, research, and post-mortem.

Once enacted, the legislation will repeal and replace the Human Tissue Act 1964. The current regulatory framework for human tissue spans a number of Acts and regulations. This creates confusion, and there are gaps in the framework that regulates the use of human tissue. Increasingly, issues are raised that either fall outside the scope of the current arrangements or are subject to varying interpretations. The ministry's 2004 review of human tissue and tissue-based therapies raised a number of issues. The new bill aims to address concerns raised during public consultation, including a lack of clarity around the informed consent requirements for the collection and retention of tissue; the role of family members in giving consent for the collection and use of tissue from a person who has died, and the lack of individual autonomy in the area; a lack of clarity in relation to the donor status on the national register of drivers' licences—many people think the register records consent, when it records only an indication of wishes—and New Zealand's organ donation rates, which are low compared with other OECD countries.

The new bill will clarify the consent framework for organ and tissue donation. In addition, non-legislative initiatives are currently being undertaken that aim to improve organ donation rates. For example, the primary focus of Organ Donation New Zealand, set up last year, is the improvement of organ and tissue donation processes in the intensive care unit environment. Since early last year welfare assistance, in the form of income and childcare assistance, has been available to living donors who altruistically donate kidney or liver tissue for transplantation purposes.

The new bill aims to address the concerns raised during the human tissue review. It also provides a more comprehensive and modern regulatory framework for the collection and use of tissue and organs from deceased people. The objectives are to ensure that the autonomy and dignity of the individual from whom tissue is collected is recognised and respected, and that the cultural and spiritual needs of New Zealanders are recognised and respected. Further objectives are to ensure there is clarity for clinicians and the public around the consent process, clear mechanisms for the use and management of human tissue for non-therapeutic purposes, and consistency with regulations in other related areas.

The bill includes a broad definition of human tissue and covers any material, including human cells from whole bodies and body parts through to blood, foetal tissue, and human stem cells. It specifically excludes any material covered under the Human Assisted Reproductive Technology Act 2004. The bill will ensure the safety and quality of the non-therapeutic use of human tissue through standards prescribed or approved by regulation. It also enables regulations to be made with regard to the export or import of human tissue, if that level of monitoring is considered necessary. The bill contains additional requirements for schools of anatomy, including licensing of such schools, given the invasive nature of anatomical examination and the need for public confidence in the process.

The bill repeals Part 3A of the Health Act 1956, which regulates trading in blood and controlled human substances, and replaces that Act with similar but extended provisions that cover, for example, trading in all human tissue. The sale and purchase of human tissue, including blood, will as a general rule be prohibited.

The bill makes informed consent the fundamental principle underpinning the lawful collection and use of human tissue from deceased people. It specifies who may give consent for the collection and use of human tissue. The primary consent will be of the deceased, if formally recorded before he or she dies, or of someone nominated by the deceased person on his or her behalf. In the absence of formally recorded consent to donation by the individual, or by his or her nominee, the decision can be made by the immediate family. The bill provides for decision making by a senior, available next of kin of the dead individual if the immediate family is unable to agree.

There was considerable support for the deceased's wishes to be the primary consent, from a broad range of people during consultation on the human tissue review. This approach is consistent with a health consumer's right to informed consent, as expressed in the Code of Health and Disability Consumers' Rights, and the existence of appropriate consent would be sufficient for organ or tissue donation to be lawful. However, in practice, there may be a number of reasons why donations should not proceed. The organ or tissue may be unsuitable for donation, the family may be aware that the person had changed his or her mind since recording consent, or the immediate family may be distressed by a decision to proceed with donation.

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, as in research approved by an ethics committee, for example.

In general, the bill does not cover consent for the collection and use of tissue from living people, because that is already covered under existing legislation and common law. However, the bill does close an existing regulatory gap in relation to tissue taken from living people. It will include a requirement for informed consent for the analysis of tissue taken from living people where the Code of Health and Disability Consumers' Rights does not apply, and where the analysis is for the purpose of obtaining genetic or other information about a particular condition or trait of the donor.

The Human Tissue Bill gives recognition to a national organ and tissue donor register. Such a register will support the consent framework in the bill. To ensure that the design of the register is aligned with the consent framework in the bill, work on the register will not proceed until the Health Committee has completed its consideration of the bill. The bill requires medical practitioners, donor agencies, and others involved in the collection and use of tissue to take all reasonably practicable steps, including checking the register, to ascertain whether consent has been given.

International evidence is inconclusive regarding the impact of registers on organ and tissue donation rates. Evidence points to increased public awareness, improvements in processes around donation, and improvements in coordination between agencies as being most likely to lead to improvements in donation rates. A register could potentially have a positive impact by promoting discussion about donation amongst families, and by driving improvements in the governance and clinical processes around donation. Without an integrated approach, however, the establishment of a register could reduce donation rates by failing to register sufficient numbers of people, and there is a risk that families may interpret the absence of registration as meaning a "No" to donation, and decline to donate. I encourage the Health Committee to examine carefully the

international evidence in this area, to ensure that New Zealand has an effective and integrated system that is designed to maximise organ and tissue donation.

In May a member's bill in the name of Dr Jackie Blue, the Human Tissue (Organ Donation) Amendment Bill, had its first reading and is currently before the Health Committee. As both bills propose to legislate in the area of organ donation, I recommend that they are considered in tandem. The key differences between the two bills are that the Government bill is much broader in scope and has a more comprehensive consent framework than the member's bill. The Government bill aims for a balance between respect for the wishes of the deceased person and the cultural and spiritual needs of his or her family, whereas the member's bill does not acknowledge the needs of the deceased person's family.

I propose that the Human Tissue Bill be considered by the Health Committee. I believe that this bill is a significant and logical step forward in the development of legislation for the human tissue sector. The bill repeals outdated legislation, and provides a comprehensive framework for regulating the collection and use of tissue from dead human bodies as well as the trading in tissue, export and import of tissue, and the use of tissue for non-therapeutic purposes. In addition, the bill closes gaps in current regulations around the use of tissue from living people. I commend this bill to the House.

**Dr JACKIE BLUE (National):** I will take a short call on the Human Tissue Bill. National will be supporting this Government bill to go through to a select committee. The Government's Human Tissue Bill proposes to replace the Human Tissue Act 1964, which has become out of date. As has already been outlined by the Minister, the Government bill is broader than my own member's bill, which is now waiting to be considered by the Health Committee.

This bill does differ from my bill in some respects. Both bills provide a consent process and an organ donor register. The current driver's licence, requiring one to tick a box, does not give informed consent in any real sense of the word. The bills differ on how families can intervene in organ donation. The Government bill makes provision for family members to override the donor's wishes in exceptional situations; my member's bill does not.

To date, 42 submissions have been received on my member's bill, and it is clear that the organ donor register and the issue of whether a family can veto a donor's wishes are both a source of contention. Interestingly, the main objections to a voluntary opt-on register are from intensive care doctors and some transplant surgeons, who feel that a register would be overly bureaucratic and expensive, and that it would not increase the number of donors. The doctors also consider that families, when asked about donation, do not object in the vast majority of situations, and do not support the donor's wishes being paramount.

A number of individual submitters had either received an organ or had a family member who had been a donor. There were also submissions from groups and organisations representing individuals who had diseases that could result in the need for an organ donation. Individual submitters and organisations were supportive of the member's bill, and the sentiment regarding the family being unable to veto the donor's wishes.

Internationally, countries are taking on organ donor registers, and some countries are going further by basing their registers on presumed consent. Our organ donor rates in New Zealand are dreadfully low and need to be boosted. What we are doing currently is not working. New Zealand faces an increasing demand for organs because of end-stage renal disease as a result of diabetes, and end-stage liver disease as a result of the hepatitis B and hepatitis C diseases. We really have to get this situation right.

This bill has to be right, and for the right reasons. It is entirely appropriate that these two bills be heard together at the Health Committee, which will hear all submissions and evidence. National will be supporting this bill going to a select committee. Thank you.

**BARBARA STEWART (NZ First):** On behalf of New Zealand First I rise to support the Human Tissue Bill going to a select committee. It is a very important bill, which does need to be discussed by the general public. We really must have their input into a bill such as this.

The bill deals with a very complex area that is shrouded by emotion, at a particularly difficult time for a family—a grieving family. Earlier in the year New Zealand First supported Dr Jackie Blue’s organ donation bill, which focused solely on organ donation. We were looking forward to having public input and discussion on that very important issue, because we recognise that this whole area does need to be addressed. Dr Blue’s bill has been incorporated, in part, into this bill, and we look forward to having the Health Committee work on this very important issue, along with its work on Dr Jackie Blue’s bill.

The Human Tissue Bill also regulates trading in tissue, the export and import of tissue, and the use of tissue for non-therapeutic purposes. Regulations are definitely required and safeguards must be in place.

We have to acknowledge that our organ transplant rate in New Zealand is among the lowest in the world. The human tissue donation rate is an international problem; it is not a problem that only New Zealand has. I know that we are second to last in the world, according to recent statistics that I have read, and that is not a place New Zealand usually occupies in any health matter. We know already that many people believe in recording their wishes through the driver’s licence system, yet there is actually no link between Land Transport New Zealand and any health database. We must wonder why that process has been followed, when any decision actually made and recorded on a driver’s licence cannot be accessed in any way. That process really does need to be stopped, as it does not mean anything at all.

The informed consent process is important, as we know that people may want to specify which organs they wish to donate, and whether those donations are for use by others, for medical education, or for research. It is really important that people are aware of the entire issue. With the increasing need for organs, particularly as a result of the predicted increase in diabetes and obesity in the future, it is absolutely essential that the whole area of human tissue donation is clarified for the benefit of everyone. The Health Committee, over the years I have actually been on it, has received petitions on this subject, and action is definitely required. Along with that is the need for education and increased donor awareness, and it is to be hoped that publicity will result in increased human tissue donations. We must acknowledge, too, how essential it is to respect cultural values. I read a recent press release by Andy Tookey, who is disappointed in the family veto that this bill allows. There will no doubt be further discussion about that during the select committee’s deliberations.

Human tissue donation is an issue that has been left in the too-hard basket for many, many years. It is a very complex issue, but now, after the bill goes through the select committee process, we will have legislation that should serve the organ donation needs of New Zealanders. Evidence from overseas has shown that legislation does not necessarily increase in any way the rate of organ donation or human tissue donation, but New Zealand First agrees with the Minister that an integrated process is necessary to develop a register and to close gaps in the Human Tissue Act 1964.

We look forward to working further on this bill. We acknowledge that public discussion is required, and we are very pleased to support the bill.

**SUE KEDGLEY (Green):** I suspect that this legislation will be one of those coming before the House that will have widespread cross-party support—at least for consideration of the bill. The Green Party is absolutely delighted to be supporting this bill. We have wanted New Zealand and our Parliament to look at this issue for many years. As the previous speaker said, we have had some petitions before previous Health Committees, and we really believe that it is long, long overdue for us, once and for all, to resolve this issue and, hopefully, to improve significantly the organ donation rates in New Zealand.

It is really just as well that we do have this bill before Parliament, and that we are looking at ways to improve our organ donation rates significantly, because all of the experts are telling us that the number of people needing donated organs inevitably will explode in coming decades. As obesity and the incidence of diabetes increases, the number of people needing renal dialysis, and eventually kidney donations, is likely to explode, as it is, of course, for those with hepatitis B and C. I saw a programme the other day that said an estimated 40,000 New Zealanders had hepatitis C, and the number is growing. The number of people needing organ donations is likely to explode.

In the United States the number of people waiting for kidney organs has more than doubled over the past decade. The average person there is waiting more than 3 years for an organ, and now the authorities are debating whether to set up a rationing system. I was reading an article just a couple of days ago that stated that the young would be given priority, which no one would object to, but older patients over the age of 70 or 79 would no longer be accepted for organ donation. Those age levels are currently being debated. So that is the reality that is happening around the world. There is an extreme demand for organs, such that rationing is being examined and imposed around the world.

The Greens are extremely keen to try to encourage the availability of greater numbers of people to be donors in New Zealand. We would also like to see the focus being on the human donation of organs, rather than on what some people are looking at, xenotransplantation—namely, growing organs in genetically engineered pigs and then transplanting those organs into humans. We feel there are significant—indeed, extreme—risks with transplanting organs from animals into humans. Therefore, we think that the way to avoid this is to increase significantly the rate of human donors available.

The statistics speak for themselves. It was extraordinary that last year in New Zealand only 29 people became donors after they died, which was the lowest number in more than a decade and despite the fact that more than a million people have said yes to organ donation on their driver's licence. We all know that that the organ donation statement on a driver's licence is essentially meaningless; it does not provide informed consent. People sign their driver's licence, but in fact I do not think that information is even collected on a register. Certainly, it is not provided to people. No computer database of information is provided to families when they are considering whether to donate an organ from a deceased person. So we do need to update the driver's licence system in relation to organ donation. This bill proposes to do that, and we welcome that.

Another statistic that is extraordinary is that there were 104 possible donors last year—I think only 34 were donors—but 35 families were not even asked whether they would consider allowing the donation of an organ from their deceased family member. We have wrestled with this issue for many years, and it is quite clear that the present system is not working. There is no reason why New Zealand should have such a low level of organ donors, when more than a million people have indicated they are very happy to be donors. We urgently need a better system.

One of the interesting things about overseas research is that 95 percent of families—that is what the research finds—agree to organs being donated from a dead relative, if that person had stated a wish to be a donor. The problem is that many of the families are not aware whether the person wished to be a donor, and that is the issue we hope to address when we look at this legislation in the Health Committee. This legislation will be alongside Jackie Blue's bill, which Green members are very pleased to support.

The Green Party comes to this issue with an open mind. We are happy that we will be considering this Human Tissue Bill alongside Jackie Blue's bill. We will be listening very carefully to the submissions, and we will support what we believe is the best system. We know that many people, like Andy Tookey, strongly favour the requirement that if someone has indicated that he or she wishes to be a donor, that overrides the wishes of the family. On the other hand, we know that doctors who are confronted with this situation believe that this is unworkable and unenforceable. But it is possibly the case that this Human Tissue Bill will do what it says it hopes to do, which is to strike a balance between the rights of the grieving family, and the organ donor's informed consent. The Green party is very pleased the bill is finally before the Health Committee, at long last, and that we have the opportunity to resolve this issue.

As previous speakers have said, there are very important cultural considerations around this issue and they need to be respected. I think the Human Tissue Bill does acknowledge the absolute requirement to take into account cultural and indeed spiritual sensitivities around organ donation. So these are important issues that we will need to consider, as well.

Green Party members do have real anxieties about some aspects of the bill—the trade in organs, and the research into organ donation without consent, which I think the bill allows in some cases. We have extreme concerns about that, and will be opposing those sections of the bill. We are also very concerned about the importing and exporting of tissue. So we do have very significant anxieties about those sections of the bill. But we come to this legislation with an open mind and with great delight that this Parliament is dealing, finally, with what is a huge and important issue. As all experts are telling us, there will be a huge explosion of people requiring, in particular, donated kidneys and livers, but also cornea, lungs, and other organs for transplantation. We are pleased that Parliament is finally addressing this important health issue.

**TARIANA TURIA (Māori Party—Te Tai Hauauru):** Tēnā koe, Mr Speaker. Tēnā tātou katoa. As a nation it appears that we have one of the lowest organ donation rates in the world, yet currently about 400 people are on the organ waiting list, 80 percent of whom need kidneys. We also know that Māori both donate and receive proportionally fewer organs than non-Māori. These figures are of grave importance to our survival, and to our right to live a healthy life with our well-being assured.

But the bill we are discussing today is of an entirely different nature. A key distinction we must make is the difference between the donation of tissue from a person who is alive, and the donation of tissue from a person who is deceased. The purpose of the Human Tissue Bill is to help ensure that the collection and use of human tissue from dead bodies is conducted within the context of a consent framework.

The issue of consenting to tissue donation is best understood by Māori as the difference between life and death. The transfer of organs from one person to another is a major issue for tangata whenua. Indeed, such organ transplantation is critical to the retention of whakapapa—an issue of vital concern to our well-being. As such, we were quite surprised that a recent survey on Radio Waatea confirmed that 79 percent of Māori believed that Māori should be donors. It is our duty and responsibility, they said, to do all we can to uphold the sanctity of human life. I remind the House that it was Grant Kereama who donated a kidney to the Tongan rugby player and All Black, Jonah

Lomu—perhaps New Zealand’s most famous donor recipient. It was an act of selfless giving by a friend to a friend, and it shows that it can be done.

I return to the hub of the issue: the difference between human tissue donated by a person while that person is alive, and human tissue donated by a person who has passed on. The value of considering organ donation as an option to support the life of a loved one cannot be underestimated, but there is also a very strongly held set of beliefs that must be respected in understanding the relationships between the realm of the living and the realm of the dead. In essence, never the twain shall meet. The spiritual beliefs of tangata whenua around death and dying cannot be smoothed over, rushed through, or minimised, for the purpose of expeditious lawmaking. The beliefs and practices emerging from our values are a living and vibrant aspect of our culture, and they have particular relevance to the passage of this bill.

A paper by Greg Lewis and Neil Pickering published in the *NZ Bioethics Journal* explains such concepts: “Maori belief offers fundamental reasons for not donating organs. These include the adverse impact that organ donation may have upon donors and their whānau, and the adverse impact that receiving a donated organ may have upon recipients and their whānau.” The deep-seated views held within our whānau about the relationship between the living and the dead cut to the very heart of our spiritual and cultural world view. The House is not the place to enter into negotiations about either spiritual or cultural philosophies, values, and attitudes. Suffice it to say that the concept of the circle of life is one that has universal application, but special recognition for tangata whenua. In essence, to fail to return an individual whole to Papatūānuku, the Earth Mother, fails therefore to accord due respect to the sacred value of whakapapa.

The Human Tissue Bill states that human tissue donation will occur only with proper recognition and respect for the autonomy and dignity of the individual from whom tissue is collected, the spiritual and cultural needs of those in close relationship with the person who has died, and the cultural, ethical, and spiritual implications of the collection and use of human tissue. The problem is that for Māori the consistent message we have received is that this bill would not even get to first base, given its flawed assumption that Māori will accept the notion that organ donation between the dead and the living is appropriate. The circle of life demands that all life is derived from the earth, and returns to the earth complete.

These spiritual concerns surrounding human tissue are also influential in other cultures, and are clearly reflected in the consent rates amongst Māori, Pasifika, and other peoples, in the context of posthumous donation. We must contrast these very low donor statistics with the growing ethnic diversity our population is experiencing in Aotearoa. Statistics New Zealand advises us that Māori, Asian, and Pacific populations are all projected to increase their share of New Zealand’s population. In light of increasing ethnic diversity, issues that cut to the very core of cultural beliefs amongst Māori, Pasifika, and other ethnic populations must be taken seriously, and the key to change is always through education. If we as a nation are truly of the view that the collection and use of human tissue is necessary to advance medical education, investigation, research, or any other purpose, then we are honour-bound to discuss these issues fully as a nation, and this is where the hope must lie. As a nation we need to have that debate.

For Māori, there will be many varied questions, including what measures might be needed to safeguard the process of removing and transplanting organs for whānau Māori. There will be many other issues, neither appropriate to raise in this forum nor, indeed, restricted to the discussion within one’s own whānau, hapū, and iwi. That there will be questions is, however, undeniable. The Māori Party believes that our communities need time to discuss the issues involved. They need information that is

effective and appropriate for such discussion, and the discussions need to be undertaken in ways that can indeed engender the trust and confidence of all concerned.

The issue of informed consent is critical. Any information that is about making a choice needs to be specific to the needs of the particular audience. We need to prepare fully for such discussions, so that we guarantee that the information process is capable of responding appropriately and sufficiently to issues of protection, informed consent, control of information and medical process, access to information, and medical care. I ask whether sufficient regard has been given to exploring the risks.

Communities need to be engaged in a very real way. Having a few token “others” on a committee, or writing submissions, is not enough to constitute proper engagement. Those consulted require comprehensive information and relevant statistics in order to discuss and make decisions. It is not inconceivable that, in future, a whānau or hapū may well weigh up all the determining factors and conclude that they may indeed derive some benefit from the donation of human tissue and, as such, it should be up to them to decide. This debate has already been taking place where there are whānau and hapū members who believe, in fact, that our bones are probably more important than our organs. If the Government is indeed committed to the use of human tissue after the donor’s death, then we would like to see some due regard accorded to investing in education—such as a nationwide series of hui—on this issue.

Finally, the Māori Party wants to place on record its concern at the proposal in this bill that the wishes of an individual can override the collective process of whānau decision-making. The bill says that formal recorded consent for organ tissue donation is required from the individual; or, under clause 32, from the person or persons nominated to give consent after the individual’s death; or, if those persons are absent, from whānau or a senior next of kin. That does not sit well with our party. No individual stands alone. Our kaupapa, our tikanga as tangata whenua, describe an individual person or body not as merely his or her own but as a connected and vibrant manifestation of whakapapa, the ancestral line. The link, the chain of whakapapa, is therefore of significance to the whānau as a whole, and decisions to sever such a link have implications for the well-being of the whānau, past, present, and future.

There is nothing more certain in the cycle of life than the inevitability of death. The Māori Party will not be supporting this bill because it has been a strongly held view at the hui we have been to, where this issue has been discussed, that we will oppose the bill in light of our kaupapa, our tikanga, and our world views. Tēnā koe.

**STEVE CHADWICK (Labour—Rotorua):** I am pleased to take a call on this Human Tissue Bill. I have been very involved with this issue from my previous role at Rotorua Hospital, where we dealt with the issue of organ donation and the desperate need for organ donors for our Māori population.

I want to acknowledge the role of Andy Tookey, who brought a petition to the Health Committee, and he has been mentioned by other members. I think he made a very significant step in the history of Organ Donation New Zealand, and the Health Committee took great note of the issues of organ donation, the falling rate of organ donation, and some of the cultural sensitivity issues that Tariana Turia has raised tonight.

The Health Committee made several recommendations to this Government and I am really pleased that so many of our recommendations have been picked up. This was the last piece of the puzzle that I tried to begin to get leverage on with a member’s bill until I went to meet the intensivists at Auckland Hospital. They said to me—and this was about an opt-on link, with informed consent at the time of getting one’s motor driver’s licence—that whereas those of us who were benevolent said: “Yes, take every workable part and use them for anybody who is desperate for these organs or tissues.”, the time of

death and dying in intensive care was not the time to confront a family with organ donation issues.

The intensivists said that they would not take any notice of an informed consent given on a motor vehicle driver's licence. I thought about that matter long and hard and then dropped my intention to have a member's bill. I congratulate Jackie Blue on picking it up again, because the issue is not resolved. But at the time I was doing that work, in 2004, the Ministry of Health was going around and having extensive consultation in the community on this proposed bill. I felt very heartened about that, as a member's bill is always too small to deal with such a significant and very large issue that will have financial implications.

The Ministry of Health went around several iwi groups and had many, many consultation meetings. I went to one in Rotorua and heard some of the expressions we have heard from the Māori Party but, oddly, there is always another side. I met several families who said: "If we are involved primarily with our general practitioner and our primary health organisation, and we understand how they take our organs when we are declared brain-dead, what those organs are used for, and that procedure, kai te pai, we do not feel quite so frightened about this."

Then I had a very dear friend die of a benign brain tumour. Her family went through exactly the issue of what they were going to do with mum's organs. Seven people have benefited from her organs, and that family today—a Māori family—feel absolutely delighted that although they lost their mother, seven families have benefited from the sensitive way in which the intensivists carried that family through making the decision about organ donation.

I believe that this bill is a comprehensive and integrated approach to dealing with organ donation, the use of tissue from the deceased, the opt-on provision, and the linking of motor drivers' licences with the organ donation register, which will only flag to intensivists that a family has had that discussion and that the patient has agreed to be an organ donor. It will help the intensivists, but it will not necessarily mean that they will override the wishes of the family. I think that will be a very interesting issue for the Health Committee.

I agree, and so does the Minister, that along with this bill we have to have other effective mechanisms for raising public awareness, not only on the issue of keeping ourselves healthy but also about why we need to be looking at this exponential rise in the need for organ donation. It is about an integrated approach. I applaud the Ministry of Health for its very considered and consultative approach. We can always criticise those who go out and consult, then find pockets in our community who did not even know that this was in the pipeline.

The bill integrates several Acts around organ donation and the collection and use of human tissue. It has been 20 years in the asking, and I am really pleased that in our time in Government we will be considering this bill. There will be healthy debate and I am sure that the intensivists, the very ones concerned about the timing of the discussion on donation—harvesting, as we call it—will be involved in the procedure of coming before the select committee. It is a great bill and I am really pleased to see it here.

This bill follows on from the Coroners Bill, in which we learnt about the need for cultural sensitivity and education on the care of the deceased and the need to involve the family so as to uphold the family's wishes for the deceased. I think it is absolutely timely that this bill follows the Coroners Bill.

I find it a comprehensive bill, with a scope far bigger than what a member's bill could ever hope to address because of the financial implications involved. I look forward to the deliberation of the select committee. I am sure that with Sue Kedgley chairing the committee it will come up with a very sensible outcome.

**Hon PETE HODGSON (Minister of Health):** I want to make just a few remarks, given that I did not speak earlier when the bill was introduced. My colleague the Hon Ruth Dyson did speak, and I thank her. It has been an interesting debate. I have enjoyed listening to the views of all members of Parliament.

I thank the National Party for its work, and in particular Jackie Blue for the introduction of a member's bill. It was good of her to acknowledge the contentious issues that surround the rights of a family to override a donor's wishes. I think it is something that will be before the select committee for a while, and Jackie Blue has done this House a great service in the attention that she has placed on this issue.

I thought that Barbara Stewart's contribution was pretty useful. I think the select committee needs to look very carefully at the relative importance of a register on one hand and of education and awareness on the other hand. The select committee will probably adduce quite a lot of evidence from offshore, for example from Western Australia, where a lot more emphasis has been placed on education awareness than we have and where there is a much better donor rate than in other parts of Australia. We probably need to be careful that we do not assume that a register by itself will work.

I thought that the contribution from the Green Party was pretty useful when it pointed out that in the US, the land of the free, they are going in for the possibility of an age limitation, quite understandably, because they are facing similar issues to those that we face, and that we will face to a greater and greater extent.

In respect of the contribution from the Māori Party, I thank Tariana Turia for giving the House her views on a Māori perspective, but I wonder whether the legislation as introduced allows for the tikanga that she speaks of to be exercised none the less. It seems to me that it does not preclude it.

Finally, I say to the select committee that the Government looks forward to a quite open debate, and we are open to any suggestions the select committee might have to improve this legislation, or, indeed, to advice offered to the Government on things other than a legislative way forward—whether about education, awareness, or whatever. I think the House is united on the idea that we do need to improve organ donation rates in this country, and if the select committee has any wisdom it wishes to proffer, then I, for one, would be pleased to receive it.

Bill read a first time.

Bill referred to the Health Committee.

## **SOCIAL SECURITY (LONG-TERM RESIDENTIAL CARE) AMENDMENT BILL**

### **In Committee**

#### **Part 1 Amendments to principal Act**

**ANNE TOLLEY (National—East Coast):** When it became evident earlier that we would get to this bill on the Order Paper I went looking for the bill to speak on it tonight. I looked for the bill as reported back from the Social Services Committee, and I flicked through it and could not understand why it had not been changed or amended. Then, of course, I remembered that this bill was the one for which the Government could not get the numbers to the select committee in order for it to be amended. The senior Government whip had left the committee early, thinking that everything was OK, and Lynne Pillay was late, so the Government did not have the numbers to pass the amendments that had been agreed to at the select committee. The bill before us is the original bill, without the National Party's minority report.

We are opposing this bill and in a way that is unfortunate, because there is much in this bill that we do support. In particular, in Part 1, we support eligibility for the disability allowance so that people in the community who receive the residential support subsidy will still be eligible for a disability allowance for the things that the residential support subsidy does not cover, like some medical costs, medicines, and related services. We also support the change to backdate the residential care subsidy from 28 days to 90 days to cover the time that it takes for people to have their financial assessment undertaken.

However, that is where our support comes to an end. For us the most important part of this bill is the maximum cap, and we have to oppose that. A number of submitters told the select committee that the Government's imposition of the maximum cap is removing choice for people. They said that whether or not they pay for the services themselves or the State subsidises them, they have no choice, because the services must be provided at a certain cost. The providers came to the select committee and said the maximum cap obliterates any options for those who want to provide residential care to make any choices about where they site those facilities. For instance, if they wanted to build a premium facility on Oriental Parade, they could not do so, because the cost of the land would be too great and the maximum cap would reduce their ability to get any sort of return on their investment.

So the effect of the maximum cap reduces choice for people who want to go into, or have to go into, long-term residential care. But, more important, again this Government is reducing everything down to the lowest common denominator, so that all these facilities can be built only in average or less than average geographical locations in cities and towns in order to maintain any sort of return on investment based on what the Government will pay for basic care.

Some members on the select committee said the providers could charge a bit extra for this and that, but when we read the fine print we see they are not able to charge extra for the basic services. If they add on services for things like an en suite bathroom, Sky TV, or newspapers, and other extras, they are able to charge. But the basic fee that will be paid by the Government under this bill will be the same at a similar cost, whether or not the people are paying for it themselves. That is not right. People should have the ability to choose a premium facility. If they have worked hard and saved for their retirement and want a bit of extra, they should be entitled to purchase that, rather than have nanny State say: "No, this is the only standard you're allowed. We control that, and you'll have to do what we want, regardless of your ability to pay." National does not think that is right, and that forms one of the major reasons why we oppose the bill.

I want to mention the Supplementary Order Paper put forward by my colleague Dr Paul Hutchison. He will be bitterly disappointed that he is not here tonight to speak to his amendment. Currently, people can have up to \$150,000 worth of assets and be eligible for a subsidy to receive residential care in a facility of their choice. The subsidy pays for accommodation and care in a single room. However, district health boards currently refuse to pay elderly people their subsidy if a person chooses to use his or her asset to purchase an apartment within a rest home. The district health boards refuse to pay the subsidy, despite that person satisfying all financial eligibility criteria. This policy can lead to bizarre situations for elderly couples, where one partner has to move out of their apartment into a single room next door in order to receive the subsidy that the person is legally entitled to.

That does not make sense for a couple who may well have been together for 50 or 60 years. The effect of the bill, without Dr Hutchison's amendment, would be to separate that couple in order to satisfy some bureaucratic machinations. That is inhuman. This amendment would change that and allow that couple to remain together. The

Supplementary Order Paper is worthy of support. It is humane and it recognises that just because people may well be incapable of looking after themselves, or looking after their partner, that does not destroy the partnership they may have enjoyed for many, many years. So I ask the Committee to support Dr Hutchison's Supplementary Order Paper when we come to vote on it tonight.

**METIRIA TUREI (Green):** I would like to speak to Supplementary Order Paper 74 in the name of my colleague Sue Bradford, who, like National, wants to make some changes to this bill. The issue is around the question of district health boards whose contracting practices mean that if there is another arrangement in place then the partner of a person in long-term residential care would not be able to stay in the hospital part, because he or she would also have a contract to occupy the premises.

I would like to reiterate some of the concerns that my colleague Sue Bradford talked about during the second reading of this bill. She said it was a real concern that people will be in this situation and that we consider it unacceptable, when one partner of a couple becomes ill to the point that he or she needs full-care services and would otherwise be eligible under the income and asset-testing regime, for that person not to be able to stay with his or her partner in a licensed occupied unit because he or she is forced to move to another part of a residential complex. The inflexibility of the district health board arrangements, and in some cases the provider's arrangements, have caused real problems for these families and these people. She was particularly concerned, too, to note that the district health boards' standard age-related residential care services agreement actually states in clause 14 that one must not be a party to any other arrangement—for example, a licence to occupy, or a similar arrangement—that results in one effectively receiving payment to a subsidised resident, and it goes on. There is a Government aged-persons strategy in place, which sets out a priority and concern for keeping elderly people together in their own home wherever possible, and the way these arrangements are set up directly contravenes that strategy.

We do not want to see providers being able to engage in double-dipping, but that is no reason why someone who would otherwise be eligible for a residential care subsidy and who happens to live in an appropriate-level apartment or unit as part of a whole complex should not be able to receive that without having to move away from his or her partner. We are aware that the Government intends to do something about this. The Minister has agreed that he will work with district health boards and providers to sort out these arrangements, but we are concerned that the law should reflect that requirement. We urge the Committee to support the Supplementary Order Paper that will make those changes. I know that National is proposing Supplementary Order Paper 63 in the name of Dr Paul Hutchison, which is very similar, but we have some concerns about it. We think that ours is clearer and sets out the specifics around the contracts in a more coherent and cohesive way. We will therefore not be supporting the National Party amendment, even though it goes to the same issue. Rather, we urge National to support our amendment, because it is clearer, more specific, and more explicit about the problems this issue raises.

It is generally a good bill. The Green Party is generally in support of its provisions, but on this matter there is a hole that people are falling through right now and if we can find a way of fixing that right now, then we should do that rather than wait until later. That said, work is being done, and we look forward to seeing it come to fruition if our Supplementary Order Paper does not pass tonight.

**SANDRA GOUDIE (National—Coromandel):** I would like to make a contribution to the debate on this part, because I think it is extraordinary that we would want to split up elderly couples who have been together for years and years. I know that my own parents would find it absolutely devastating if that were to happen to them. Every

member in this Chamber should take a moment to reflect on and consider the situation of their own parents who may be living in accommodation of their choice, such as an apartment or an ordinary little house, in a retirement village.

Those are lovely situations, and they provide a form of security, safety, and peace of mind for the older people who live in them. I know that that is the sort of place my parents will be looking to retire to in the future, when they can no longer look after the property they live in now. When they cannot do the lawns or the garden and when they become less able to move around as easily as they currently do, they may then take an apartment in a residential care facility or retirement village. But if they are then required to split up because one has to go into hospital care, and the other one is told that, no, he or she cannot stay in the apartment the couple had together, then where does he or she go to? That partner does not get the same support as the one requiring hospital care.

I think we should be supporting Supplementary Order Paper 63 in the name of Dr Paul Hutchison, to ensure that we do not split up elderly couples who have been together for many, many years. It is a gross breach of their human rights to do that. Dr Paul Hutchison has proposed a very good Supplementary Order Paper, the explanatory note of which states: "Currently, someone can have up to \$150,000 worth of assets and be eligible for a subsidy to receive residential care in a facility of their choice. The subsidy pays for accommodation and care in a single room. However, DHBs currently refuse to pay an elderly person their subsidy if that person chooses to use their asset to purchase an apartment within a rest home." We support choice, and I think we should be supporting choice. The explanatory note goes on to state that in that instance: "The DHB refuses to pay the subsidy despite that person satisfying all financial eligibility criteria. This policy can lead to bizarre situations for elderly couples, where one partner has to move out of their apartment, into a single room next door in order to receive the subsidy they are legally entitled to." Is that not just a bit bizarre? Is it not bizarre that those people have to move out of their apartment and move next door to their partner, just so that they can be entitled to receive the subsidy? How stupid is that?

That reminds me of residential villages, retirement villages, and apartment situations that cannot even provide home-care services. I think that is stupid as well, because sometimes those services are far more effective than what one might otherwise be able to get. I think the ability to contract for the provision of home-care services within a retirement village should also be considered. I know that is a little outside the parameters of what we are discussing here, but we really need to think about what we are doing to provide services for our older citizens, knowing full well, of course, that those situations are likely to increase as our population ages.

So what does Dr Paul Hutchison's Supplementary Order Paper do? It proposes a new clause 8A, "Funder's liability in respect of persons whose assets are equal to or below applicable asset threshold". It states: "Section 141 is amended by adding the following subsection: '(5) The funder's liability arising under subsection (2) is not affected by the fact that a person to whom this section applies occupies or will occupy a dwelling or room within a rest home or hospital (as those terms are defined in the Retirement Villages Act 2003) under an occupation right agreement (as also defined in that Act).' "

We know that the other issue to do with retirement villages relates to rates rebates, and that many of the older folk who are paying a proportion of the rates are not necessarily able to claim a rates rebate. However, I wonder whether, if they send to the council an account that clearly shows the proportion of the rates paid, there is a fair chance that some action may be taken to their benefit. What does Sue Bradford say in regard to that? The Greens are now saying that although they sympathise with National—that what National is saying is correct—they do not support Dr Paul

Hutchison's Supplementary Order Paper, because they have one of their own and they think it is better than his. Well, is it?

**Metiria Turei:** Yes.

**SANDRA GOUDIE:** Well, I beg to differ from the member on that, and of course I would. After all, Dr Paul Hutchison is a fine young man who has proposed an eminently sensible Supplementary Order Paper—

**Darren Hughes:** She won't agree to it, you can guarantee that.

**SANDRA GOUDIE:** Well, why not? Perhaps the member would care to take a call. I see two members who are dying to get on their feet and say something about the very important issue of protecting the marital status of our older people and their right to stay together. If members would like to get up and take a call, that would be absolutely fantastic.

Elderly couples who are entitled to an aged residential care subsidy are being prevented by district health boards from receiving their subsidy if they choose to own an apartment within an aged residential care facility. That is a fact. So what are we going to do about it? What is this Government going to do about it? Will it support Dr Paul Hutchison's Supplementary Order Paper? Perhaps Government members—each and every one of them—would like to take a call. That would be interesting. Perhaps the Minister would like to take a call and give us an explanation. Should I be filibustering for the benefit of those members? Should we carry on here? Should I let them have the call? OK, they can have it. Perhaps they may like to take a call, give us an explanation of their view of Dr Paul Hutchison's Supplementary Order Paper, and say whether they really do support splitting up elderly couples who have spent all their lives together.

The Government wants to split up elderly couples who are in their twilight years. Just because it has a policy in regard to district health boards—a bit of paperwork and bureaucracy—it does not want to let elderly couples be together, even if one partner moves out and lives in the room next door to a partner who is in hospital care. This Government is not supportive of keeping elderly couples together; it wants to split them up. Why would it want to do that? Perhaps the Minister may like to take a call to give us an explanation of that.

**Hon PETE HODGSON (Minister of Health):** I could not turn down the opportunity to take a call. I will explain to the Committee why the Government will be voting against the Supplementary Order Paper in the name of Dr Paul Hutchison, but before I do, let me respond to an earlier comment made by Anne Tolley.

She said that her party was opposed to capping on the grounds that it made it more difficult for a rest home to be built in a well-to-do area, or alongside the seashore, or wherever it might be. I say to the member that there is plenty of choice here. If the member wishes to leave the Chamber, set up a rest home, and have private residents in her rest home, she can charge whatever she likes—the Crown has no interest in what she charges. If, however, she decides to put out her hand for a taxpayer subsidy, she is required to provide a certain level of service for that subsidy. If, in addition to that, she wants a private payer to receive the same service, she must not charge that private payer any more than what we pay her in the taxpayer subsidy. The reason for that is that if two people are living in the same rest home—*[Interruption]*—I did not mutter a word while that member was making her contribution, if that is what one can call it—one of whom is funded by the taxpayer and one of whom is self-funded, and both are getting the same service, somehow or other it seems reasonable that both should pay the same amount. That is the fee cap. Of course, one can buy on top of that; it is a free world.

In respect of Dr Paul Hutchison, we have had some talk about a couple who have been living together for 60 years, and have lived for the last 5 years, say, in an apartment in a retirement village. The acuity of one of them reaches a stage whereby he

or she needs to move to rest home care. People are saying that the couple is being split unreasonably and unnecessarily, and that Dr Paul Hutchison has a fix. Well, let us look at what Dr Paul Hutchison's fix does. A rest home provides hotel services and additional services. Indeed, an apartment is a hotel service, if you will, and one can purchase a series of services on top of that. What Dr Paul Hutchison's amendment does—let us be generous and say it does it unwittingly—is allow the owner of the retirement village to double-dip, once from the married couple and once from the taxpayer. Is that a good idea? I do not think it is. So we will be voting that Supplementary Order Paper down.

Alternatively, Sue Bradford has come up with a Supplementary Order Paper that acknowledges that double-dipping is occurring, acknowledges that double-dipping is a bad idea, and seeks, with some carefully worded language, to try to address that. I say in sadness that I have had lots of legal advice on the Green Party's remit, and we were hoping to support that Supplementary Order Paper, but my advice is that it does not get us there. I will say, however, that district health boards want to get there, anyway. They are very happy to say to people who own retirement villages that if they can put a split between the hotel services and the other services provided in their rest homes, then the district health boards will pay for the other services. They will do that.

That actually leads to another point. In considering the case of a person who has moved 100 metres from an apartment to a rest home—we are trying to avoid that, and we seem to think that is a good idea—can we please spare a thought for a couple who have been together for 60 years and who live 100 metres in another direction, in an ordinary suburban street outside that retirement village. When we start thinking that way, we start to realise that the future—[*Interruption*] The member's colleague put her finger on it: the future lies in quality home-based support services, so that those people, even though they are eligible for rest home care, can choose to live at home because they will be more comprehensively supported there than they are at the moment. This is called restorative home-based care. It has been piloted in this country. We have the results of the pilot and it appears to be working.

In summary, Labour will be voting against Dr Paul Hutchison's Supplementary Order Paper because it is dumb. We will be voting against the Green Party's Supplementary Order Paper more in sadness, because it does not quite get us there. I say to the Green Party and to the Committee that I am very happy to take it upon my shoulders to work with the district health boards to progress this issue, anyway, and that we need also to think about people who are not in apartments in retirement villages but live 100 metres on the other side of a retirement village. Once one starts thinking that way, then one realises that restorative home-based care is the way to go.

The question was put that the amendment set out on Supplementary Order Paper 74 in the name of Sue Bradford to clause 6 be agreed to.

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

#### **Ayes 9**

Green Party 6; Māori Party 3.

#### **Noes 108**

New Zealand Labour 50; New Zealand National 45; New Zealand First 7; United Future 3; ACT New Zealand 2; Progressive 1.

Amendment not agreed to.

The question was put that the amendment set out on Supplementary Order Paper 74 in the name of Sue Bradford to clause 8 be agreed to.

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

**Ayes 9**

Green Party 6; Māori Party 3.

**Noes 108**

New Zealand Labour 50; New Zealand National 45; New Zealand First 7; United Future 3; ACT New Zealand 2; Progressive 1.

Amendment not agreed to.

**The CHAIRPERSON (Hon Clem Simich):** The amendment set out on Supplementary Order Paper 74 in the name of Sue Bradford to insert new clause 8A is out of order because it is inconsistent with a previous decision of the Committee.

The question was put that the amendment set out on Supplementary Order Paper 63 in the name of Dr Paul Hutchison to insert new clause 8A be agreed to.

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

**Ayes 45**

New Zealand National 45.

**Noes 72**

New Zealand Labour 50; New Zealand First 7; Green Party 6; Māori Party 3; United Future 3; ACT New Zealand 2; Progressive 1.

Amendment not agreed to.

The question was put that the amendments set out on Supplementary Order Paper 69 in the name of the Hon Pete Hodgson to Part 1 be agreed to.

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

**Ayes 70**

New Zealand Labour 50; New Zealand First 7; Green Party 6; Māori Party 3; United Future 3; Progressive 1.

**Noes 47**

New Zealand National 45; ACT New Zealand 2.

Amendments agreed to.

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

**Ayes 70**

New Zealand Labour 50; New Zealand First 7; Green Party 6; Māori Party 3; United Future 3; Progressive 1.

**Noes 47**

New Zealand National 45; ACT New Zealand 2.

Part 1 as amended agreed to.

**Part 2** agreed to.

**Schedule** agreed to.

**Clause 1** agreed to.

**Clause 2 Commencement**

The question was put that the amendment set out on Supplementary Order Paper 69 in the name of the Hon Pete Hodgson to clause 2 be agreed to.

Amendment agreed to.

Clause 2 as amended agreed to.

**Clause 3** agreed to.

Bill reported with amendment.

Report adopted.

## **EVIDENCE BILL**

### **Second Reading**

**Hon RICK BARKER (Minister for Courts)** on behalf of the **Minister of Justice**: I move, *That the Evidence Bill be now read a second time*. This bill was introduced in May 2005 and referred to the Justice and Electoral Committee for consideration. I thank the select committee for its work in considering this bill, which is over 200 clauses long and covers many technical areas of evidence law. In particular, I thank the subcommittee of Russell Fairbrother as chairperson, Chris Finlayson, Richard Worth, and Nandor Tanczos, who have been considering the bill with their specialist adviser, the Hon Robert Fisher QC.

The committee has recommended a number of amendments to the bill to enhance its operation. The bill's proposals are generally based on the 1999 report of the Law Commission, which spent 10 years reviewing the law of evidence. The purpose of the review was to make the law of evidence as clear, simple, and accessible as is practicable, and to facilitate the fair, just, and speedy judicial resolution of disputes. I will now comment on some of the amendments recommended by the Justice and Electoral Committee. The recommended changes cover issues relating to both the trial process and the rules governing the admissibility of evidence.

Clause 6 sets out the purpose of the legislation: to help secure the just determination of proceedings and specify how the just determination of proceedings is to be attained. The Justice and Electoral Committee has recommended the inclusion of two additional matters in clause 6. The first of these matters is to specify that the purpose of the bill is to enhance access to the laws of evidence. The bill brings together the current mosaic of statute and case law into one comprehensive scheme. The second additional matter is a reference to the importance of the New Zealand Bill of Rights Act 1990. I consider that these additional matters will enhance the bill. The reference to the New Zealand Bill of Rights Act requires legal practitioners to have regard to the rights in that Act. The committee recommended that some provisions in the High Court Rules be included in the bill. It was considered that these matters were more appropriately dealt with in legislation. Consolidating the laws of evidence so they are in one location is consistent with the objectives of the bill.

The committee recommended that clause 8 be amended. The amendment expressly requires a judge to take into account the right of a defendant to offer an effective

defence when considering whether the probative value of evidence is outweighed by the risk that the evidence would have an unfairly prejudicial effect on the accused. The committee considered this amendment would give more emphasis to the rights in section 25 of the New Zealand Bill of Rights Act 1990.

The committee recommended changes to clause 31, which included an amendment to clause 31(2) to limit the scope of rebuttal evidence for which previous statements are admissible. The committee considered the exception in the bill, as introduced, to be unworkable and too broad. The committee also recommended that clause 31(3)(b) be amended so that a previous statement of a witness is admissible only if that witness cannot recall the information it contained. The amendment to clause 31(2) was supported by many of the submissions provided by the law practitioners, and the effect of the change is supported as it provides greater clarity. The effect of the amendment to clause 31(3) is to make it clear that the rules governing the ability of a witness to refresh his or her memory is dealt with in relation to the use of documents whilst giving evidence, which is covered elsewhere in the bill. These amendments are agreed to.

The committee recommended that clause 40 be amended to provide that no evidence can be given, and no questions can be put, relating to the sexual reputation of a complainant in sexual matters. The committee considered that any reference to a person's sexual reputation was irrelevant and should not be admitted. The drafting is also amended to be more consistent with the drafting of the Law Commission in respect of evidence of sexual experience with a person other than the defendant. This approach was supported in the submissions.

The definitions of a "legal adviser" and "professional legal services" are also amended. The term legal adviser has been simplified now and includes reference to a lawyer as defined under the Lawyers and Conveyancers Act 2006. The committee recommended an amendment to allow clients to claim privilege in respect of legal advice or advice concerning intellectual property from professionals in Australia. There is also an amendment to have an Order in Council process to recognise other countries whose lawyers and patent attorneys can be recognised for the purposes of privilege. These amendments have come about as a consequence of the public submission process. There were concerns expressed that privilege should be extended to cover overseas legal advisers to ensure that legal advice provided to overseas clients continues to be protected against discovery. This was particularly the case for patent attorneys whose everyday practice had a significant international component.

The committee sought to amend clause 72 to provide further guidance as to when a person may give evidence about jury deliberations. The committee considered that evidence about jury deliberations should be allowed if the judge is satisfied that the circumstances are so exceptional that there is a sufficiently compelling reason to allow that evidence to be given. Evidence regarding a jury's deliberation has, in general, been inadmissible. The committee's approach was to strike a balance between maintaining the sanctity of jury deliberations and ensuring that jury deliberations remain robust and do not lead to miscarriages of justice in extreme situations. However, the committee was of the view—which is a view that I share—that such evidence should be admissible in exceptional cases where there are compelling reasons to allow that evidence to be given.

The committee was also unanimous in recommending that the bill include a provision that would require a regular review of the workings of the Act to see whether it is working effectively, or whether certain provisions require amendment. It was considered that such a review should take place every 5 years and that the body charged with reviewing the Act should be the Law Commission. I agree with this recommendation.

The bill draws together common law and statutory provisions relating to evidence in one comprehensive scheme. The bill will replace most of the existing evidence law on the admissibility and the use of evidence in court proceedings. Evidence law is largely judge made, comprising decisions that are made in response to the circumstances of particular cases. The statutory provisions dealing with evidence are contained in a number of statutes and they have been reformed on a piecemeal basis, responding to issues as they arise. Resulting complexity and inconsistency in law of evidence results in undue legal argument, expense, and delay in proceedings to accommodate arguments over issues of admissibility. The Evidence Bill brings the current mosaic of statute and case law into one comprehensive scheme. I commend the bill to the House.

**CHRISTOPHER FINLAYSON (National):** Perhaps it is a sad reflection on me, but I have to say that working on the Evidence Bill has been the most enjoyable parliamentary experience I have had to date. As I say, maybe it is a sad reflection on me. I want to begin by acknowledging the excellent chairmanship of the subcommittee by Russell Fairbrother and to say how much I enjoyed working with him, with Nandor Tanczos from the Green Party, and with my great colleague Dr Richard Worth. The Minister was kind enough to mention the work of the subcommittee and also the work of the special adviser. I thought it was a very good idea to have a subcommittee of the Justice and Electoral Committee to focus on this bill, and I thought we worked pretty well. I also want to acknowledge—and I will say more about this at the third reading—the huge contribution made by the members of the New Zealand Law Society who appeared before the subcommittee, members of the Criminal Bar Association of New Zealand, and officials from the Ministry of Justice.

For someone who has practised law for 25 years, working on the law at the beginning stages of the process was a most enjoyable and challenging exercise, and as we come to the Committee stage there is much I will have to say about particular provisions, some of which the Minister has mentioned in his second reading speech. In my speech I want to address some of the key issues that we had to face and I particularly refer to five matters.

The first concerns bringing rules that had originally been prepared and promulgated by the Rules Committee across to the bill. The Rules Committee is a body established under section 51C of the Judicature Act 1908 and it is responsible for the practice and procedure of all the courts of New Zealand. In order to regulate the procedures of the courts—particularly the High Court—it makes High Court Rules. These are brought before the Regulations Review Committee, then take effect as regulations. Sometimes, however, the Rules Committee goes beyond its ambit to regulate the practice and procedure of the court and sometimes it makes evidential rules. Perhaps this is not surprising, but we have brought together in this legislation various clauses that originally appeared as rules of the High Court.

I particularly refer, for example, to the new clause 22A, which refers to the code of conduct for experts in civil proceedings, and to clause 18B, which allows hearsay in documents relating to applications, discovery, or interrogatories in civil proceedings. We felt that these sorts of rules properly belong in the Evidence Bill rather than in the High Court Rules and that they have to receive their imprimatur from the Evidence Bill.

A second very interesting issue that arose and was the subject of a great deal of work by Hugo Hoffmann, parliamentary counsel, concerned clause 26, which deals with improperly obtained evidence. We spent some time debating whether the Judges' Rules should somehow be incorporated into this clause. The Judges' Rules were originally promulgated by judges in England and brought out to the colonies many years ago. They deal with circumstances where judges will rule that there has been some

unfairness in the obtaining of evidence, such as to mean that that evidence should not be received.

Try as we might, we had great difficulty finding out what the current Judges' Rules are, given the passage of the New Zealand Bill of Rights Act. Indeed, we asked several people who appeared before us, we looked up texts, but we could never find a definitive, up-to-date set of the Judges' Rules. So our initial inclination was to try to incorporate in the body of clause 26 what we understood to be the Judges' Rules, as set out in that well-known criminal text *Adams on Criminal Law*. But that gave rise to a great deal of concern that, in actual fact, we might be enacting superfluous material.

So at the end of the day we think it would be a very good idea—and it is referred to in the commentary, and it is very important that I read this into *Hansard*—if the judges, or the Chief Justice in particular, were to issue a practice note of current guidelines on the issue of Judges' Rules and that it is agreed that this will be issued before the commencement of the Act. It is wholly unsatisfactory that practitioners defending criminal cases, when dealing with issues of improperly obtained evidence, may know that there are Judges' Rules in existence but no one knows exactly what they are or what their scope is. So the Chief Justice will issue a practice note dealing with the existing Judges' Rules prior to this legislation coming into force.

The third issue I want to touch on concerns clause 54. We actually spent quite some time looking at the issue of the privilege for communications with ministers of religion. There was a school of thought that said this privilege should no longer subsist, but that the general law of confidentiality should deal with communications between a minister of religion and a penitent, for example. But at the end of the day there had been no submissions on this clause and we decided that we would not make any changes to it, although there is a school of thought that says that, as drafted, it is rather narrowly based and does not take into account other forms of spiritual guidance that people may seek in the course of their daily lives.

The fourth issue I wanted to deal with very briefly concerns clause 79, which deals with the questioning of witnesses and the ordinary way of giving evidence in criminal or civil proceedings. I particularly want to focus on civil proceedings, because the traditional way in which one gives evidence these days in a civil proceeding is to file what is called a written statement, or brief of evidence, in advance of a trial. The person giving evidence will read that evidence out and then be subjected to cross-examination.

The New Zealand Bar Association made a very powerful submission to the committee about the desirability of going back to the old practice of viva voce evidence being given by witnesses in civil proceedings because of the abuses that occur with briefs of evidence that, largely, are prepared by lawyers for their clients. There have been occasions where I have seen people read out briefs of evidence and they did not understand what they were saying or they could not pronounce the words. So we have added a new subclause (2) to clause 79 specifying that any statements made have to be the personal statements of the maker and must not contain statements that are otherwise inadmissible under the legislation.

The fifth issue, which was touched on by the Minister, concerns periodic review of the legislation. This is post-legislative review. We decided that, given this is the first time in 100 years that there has been a comprehensive reform of the Evidence Act, we have to make sure that there is a mechanism in the legislation to allow for periodic review, and the Minister has summarised it perfectly well. The idea is that there be a regular review by the Law Commission, with the first one to take place as soon as practicable after 1 December 2011, and then on at least one occasion during each 5-year period after that date. We chose the length of 5 years for the first period to ensure that

the law could become known by practitioners and that the rules could be developed by the courts. Then, in 5 years' time, we will look at it again.

In conclusion, the subcommittee worked very well and I again pay tribute to the chairmanship of Mr Fairbrother. There were good submissions and excellent discussion over many hours. I believe that the resulting work product is very good. I very much look forward to the Committee stage, when we can go through the bill, part by part, and look at some of the matters that I have glossed over rather superficially in this second reading. At the end of the day I believe that this reform will improve the quality of civil and criminal litigation in New Zealand. The reform is overdue, but I am delighted that it is finally occurring.

**TE URUROA FLAVELL (Māori Party—Waiariki):** Kia ora, Mr Deputy Speaker, kia ora tātou katoa. One of our favourite sayings, which this House may well have heard on a number of occasions, is “Nāu te rourou, nāku te rourou ka ora te iwi”—through a united effort, our people will prosper. As we see it, the Evidence Bill does exactly that. It brings together decades' worth of volumes of judicial decisions and reforms, all relating to the concept of evidence, and draws them into one comprehensive scheme.

I see that the bill also follows the recommendations of the Law Commission, a body that has earned considerable credibility for its ability to provide independent and systematic review, reform, and development of New Zealand law. In 1989 the Law Commission was asked to examine the statutory and common law that governs evidence given in proceedings before courts and tribunals, and to make recommendations for reform. In that regard I want to mihi and acknowledge the current Law Commission: the Rt Hon Sir Geoffrey Palmer, Dr Warren Young, Helen Aikman QC, and the Hon Justice Edward Taihākūrei Durie, of Ngāti Kauwhata and Rangitāne.

The Law Commission is honour-bound, in making its recommendations, to “... take into account te ao Māori (the Māori dimension) and shall also give consideration to the multicultural nature of New Zealand society;”. I give that context to explain that because of that transparent and explicit commitment to consider te ao Māori, the 10 years of research and consultation undertaken by the Law Commission on the Evidence Bill therefore give its recommendations all the more weight. We also acknowledge the role of the Māori advisory committee, which assists in facilitating consultation with Māori on the identification of projects to advance te ao Māori, and to encourage the reflection of te ao Māori in the work of the commission.

With such a strong basis for examining the relevant statute and case law about evidence, I ask members to let me turn to some of the detail of the bill in the time we have left—and, obviously, we will not cover all of it. As members may or may not know, I am not a lawyer. But the Evidence Bill promotes some key concepts that the Māori Party totally endorses. There are concepts such as promoting fairness to parties and witnesses, protecting rights of confidentiality, and avoiding unjustifiable expense and delay.

We are rather intrigued by the proposal for facts to be established by the application of logical rules. Well, what sort of evidence could any court hear without it being logical? That is the question we would ask. This is where the revelation from the Law Commission is so startling. The Law Commission report states that the reforms proposed by the code will not achieve their purpose unless they are accompanied by a change in approach on the part of practitioners and the judiciary. In other words, the radical reform must be that practitioners are now to apply common sense to determining what is relevant, and what should be included. What sort of sense did they apply before? That is the question we ask.

**Christopher Finlayson:** You'd be surprised.

**TE URUROA FLAVELL:** Ha, ha! In line with this new common-sense approach, it was very heartening to see the amendments proposed by the Justice and Electoral Committee, which are exactly that. Firstly, the hearsay rule is amended to provide that a party that intends to offer hearsay evidence must give written notice to the other party, setting out why the evidence is being admitted, its applicability, and the circumstances that provide a reasonable assurance that the statement is reliable. We believe that that is very sensible. Secondly, there is the removal of clause 33(3)(f), which refers to a person's reputation for being untruthful. It is common sense, we would have thought, that a person's reputation is irrelevant, and should not be considered, when assessing the veracity of his or her evidence. Thirdly, clause 40 is amended to provide that no evidence can be given, or questions put, relating to the sexual reputation of the complainant in cases involving sexual matters. The committee considered that any reference to a person's sexual reputation is irrelevant and should not be admitted.

The Māori Party also supports the recommendation from the select committee that provides for judges to recognise the rights affirmed in section 25 of the New Zealand Bill of Rights Act 1990. I think it is important to revisit some of those fundamental rights: the right to a fair and public hearing by an independent and impartial court; the right to be tried without undue delay; the right to be presumed innocent until proved guilty according to the law; the right not to be compelled to be a witness or to confess guilt; the right, if convicted of an offence, to appeal according to the law to a higher court against the conviction, against the sentence, or against both; and the right, in the case of a child, to be dealt with in a manner that takes account of the child's age. Those are basic fundamental rights—the rights of a democratic justice system. We are also very interested in the new restrictions that have emerged on the right to remain silent so as not self-incriminate, which is to be available only to those who face prison sentences.

Debate interrupted.

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