

# LEGISLATIVE ASSEMBLY

Tuesday 29 October 2002

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**Mr Speaker (The Hon. John Henry Murray)** took the chair at 2.15 p.m.

**Mr Speaker** offered the Prayer.

## ASSENT TO BILLS

Assent to the following bills reported:

Crimes (Administration of Sentences) Further Amendment Bill  
Parliamentary Electorates and Elections Amendment (Party Registration) Bill

## WATER CONSERVATION

### Ministerial Statement

**Mr YEADON** (Granville—Minister for Information Technology, Minister for Energy, Minister for Forestry, and Minister for Western Sydney) [2.17 p.m.]: Many honourable members would be aware that the Victorian Premier, Steve Bracks, has announced that water restrictions will be introduced for the city of Melbourne from Friday. Victoria joins the vast majority of New South Wales that is already drought declared and living under water restrictions. In fact, my colleague the Minister for Land and Water Conservation has informed me that water restrictions have been introduced in many areas, including Broken Hill, the Central Coast, Bourke and the North Coast. Water is being carted into the townships of Tyalgum, Byrock, Coolabah and Tibooburra, representing support from the New South Wales Government of about \$5,000 for each town each week.

Sydney's water storage levels are now at 69.7 per cent of capacity. Under Sydney Water's drought response management plan, voluntary water restrictions will be introduced when the water storage levels reach 65 per cent. That means that residents in Sydney, the Blue Mountains and the Illawarra will be asked to adopt such measures as not using sprinklers or watering systems between 10.00 a.m. and 6.00 p.m., not hosing down hard surfaces like driveways or paths at any time of the day, and using a bucket for car washing rather than a hose. Water restrictions will become compulsory when water supply levels for the region reach 55 per cent.

The drought in rural New South Wales has made many people conscious of the way they use water, but we should adopt measures to conserve water only when times are tough. We live in the largest city on the world's driest continent, so we should not wait for water restrictions to be introduced before we adopt water conservation measures. We should use water wisely 365 days each year. That does not require radical lifestyle changes but commonsense measures. People have shown that they can make those changes. For example, after the recent fire at the Prospect filtration plant people were asked to reduce their non-essential water use. Water use the weekend after the fire was 146 megalitres less than the previous weekend. That is the equivalent of 146 Olympic swimming pools.

I congratulate the people of Sydney, the Illawarra and the Blue Mountains on that great effort and I encourage them to continue with it. Government and business are not immune from the important water conservation message. Sydney Water has already repaired more than 4,000 kilometres of pipes this year, saving an estimated 22 million litres of water a day. It is estimated that by 2005 more than 50 million litres will be saved each day by extending this proactive inspect and repair program. Businesses and local councils are also working with Sydney Water and, together, are helping to save more than 2.5 million litres of water each day. With government, business and residents working together we can attempt to delay as long as possible the introduction of voluntary or compulsory water restrictions.

**Mr HUMPHERSON** (Davidson) [2.22 p.m.]: The Opposition supports any initiatives to conserve Sydney's water supply. Water in our major catchment storages is reaching critical levels, and all measures should be taken to monitor water use and to urge householders across Sydney to utilise as little water as possible. I encourage all citizens to minimise their water use. They should endeavour to minimise evaporation by watering gardens in the early morning or late evening; they should wash their cars on lawns, using a minimal

amount of water. People should obviously stretch their water usage as far as possible. The Government does not have a proud history in water management. The Government's slow response to the cryptosporidium outbreak some years ago led to an appalling water supply crisis. The residents of Sydney—Sydney Water customers—were forced to respond and to take personal responsibility for their water supply. I remind the House that the Government promised to reduce per capita water usage in Sydney and, as a result, increased water charges. It reaped a \$40 million windfall but failed to meet that commitment.

## **HORSLEY PARK NEWCASTLE DISEASE OUTBREAK**

### **Ministerial Statement**

**Mr AMERY** (Mount Druitt—Minister for Agriculture, and Minister for Corrective Services) [2.24 p.m.]: I inform the House that the virulent Newcastle disease was diagnosed late last week in a layer flock on a small poultry farm in the Horsley Park area of Western Sydney. Before I give more details about this incident, I must stress three important points in relation to this poultry disease. First, it poses no risk to human health; second, to limit the possible spread of the virus the diseased birds were destroyed on the weekend quickly and humanely in accordance with industry procedure; and, third, the current emergency has been contained rapidly and efficiently.

The disease was first suspected last Tuesday on an egg-laying farm which housed 7,550 mixed-age hens. By Friday the Australian Animal Health Laboratory advised that the virulent Newcastle disease virus has been isolated from tissues samples. Later that day a meeting of the Consultative Committee on Exotic Animal Diseases agreed that virulent Newcastle disease of Australian origin was the cause of the Horsley Park outbreak. New South Wales Government veterinary authorities had already undertaken swift quarantine and investigative action at the farm. There are approximately 19 other poultry farms within a three-kilometre zone around the infected property. So far no spread of Newcastle disease is evident.

I remind the House that Newcastle disease is a highly contagious viral disease of domestic poultry, caged and aviary birds and wild birds. I emphasise that there is no risk to consumers from eggs or poultry products sourced from infected flocks. On Saturday destruction of the diseased birds was undertaken by lethal injection under veterinary supervision. On Sunday morning the dead birds and 26,000 eggs from the property were transported in sealed trucks to the Eastern Creek waste disposal facility for burial. That action was undertaken after consultation with the Environment Protection Authority and Waste Services New South Wales. The property will be decontaminated this week and nearby farms will be monitored for three weeks.

I acknowledge the rapid and efficient containment of the situation by officers of NSW Agriculture, the Moss Vale Rural Lands Protection Board, the private veterinary fraternity, the State's poultry industry and the New South Wales Rural Fire Service. I congratulate those involved. The Australian Quarantine and Inspection Service has suspended the export of poultry and poultry products and has contacted authorities and overseas posts about the Horsley Park outbreak. My department, together with industry and Federal authorities, is considering a compulsory vaccination program for all Sydney Basin poultry. Under the cost-sharing arrangements for exotic animal disease outbreaks, the New South Wales Government could contribute about \$25,000 to managing the situation. I am sure honourable members will agree that this is a small price to pay to maintain the State's reputation for producing the highest standard of wholesome, nutritious food and fibre products, particularly in the poultry industry.

**Mr ARMSTRONG** (Lachlan) [2.27 p.m.]: I thank the Minister for Agriculture for his announcement, which addresses a problem that has, unfortunately, been recurring regularly in New South Wales for some years. Only about two years ago an outbreak of virulent Newcastle disease occurred in the Mangrove Mountain area of New South Wales. This was the largest outbreak ever to occur and involved the biggest poultry kill in Australian history. Repeated outbreaks followed. The Opposition is extremely alarmed that a Newcastle disease outbreak has now occurred at Horsley Park, a new area for the disease. I am disappointed by the Minister's announcement today: he talked about a cure but did not mention any attempt on the part of the Government to trace the origins of this outbreak. Is it an extension of the previous outbreak or a completely new outbreak? If it is the latter, the large New South Wales poultry industry expects, first, the Government to trace the disease accurately, and, second, the Minister to explain how he is trying to solve this continuing problem.

In the past 12 months literally tens of millions of dollars have been put into the chicken and egg industries. Some of the world's best technology for egg layers and meat-producing chickens has been introduced into this State. The production of poultry meat is, of course, the fastest growing meat consumption industry in

this country, and we have an enviable reputation throughout the world for hygienic, quick-growing poultry. New South Wales cannot afford to have Newcastle disease flaring up from time to time. The Minister must try to find out its origin and implement management processes to prevent a recurrence of it. The problem of Newcastle disease threatens a high-employment industry that has received a great deal of private investment and is important to our future exports.

## **POLICE INTEGRITY COMMISSION**

### **Report**

**Mr Speaker** announced the receipt, pursuant to section 103 of the Police Integrity Commission Act 1996, of the report entitled "Annual Report 2001-2002".

**Ordered to be printed.**

## **INDEPENDENT COMMISSION AGAINST CORRUPTION**

### **Report**

**Mr Speaker** announced the receipt, pursuant to section 78 of the Independent Commission Against Corruption Act 1988, of the report entitled "Annual Report 2001-2002".

**Ordered to be printed.**

## **MINISTRY**

**Mr WHELAN:** On behalf of the Premier I advise the House that in the absence of the Deputy Premier, Minister for Planning, Minister for Aboriginal Affairs, and Minister for Housing for family reasons, the Premier will answer all questions relating to his portfolios.

## **PUBLIC ACCOUNTS COMMITTEE**

### **Report**

**The Clerk** announced the receipt of the report entitled "Case Studies and Issues in the Private Financing of Public Infrastructure and Services", dated October 2002.

## **PETITIONS**

### **Planning Control Reform**

Petition requesting reform of planning controls by gazettal as a legal document, oversight by the Department of Planning, public benefit assessment of variations, and a ban on development-related donations to political parties and elected officials, received from **Ms Moore**.

### **Coffs Harbour Radiotherapy Unit**

Petition praying for increased funding for establishment of a radiotherapy unit in Coffs Harbour, received from **Mr Fraser**.

### **Sutherland Hospital Kiosk**

Petition praying that the House ensure preservation of Sutherland Hospital kiosk, received from **Mr Kerr**.

### **Mental Health Services**

Petition requesting urgent maintenance and increase of funding for mental health services, received from **Ms Moore**.

### **Queanbeyan District Hospital**

Petition requesting that Queanbeyan District Hospital be upgraded, received from **Mr Webb**.

### **School Bus Safety**

Petition praying that seats and seatbelts be provided for all students on school buses, received from **Mr Debnam**.

### **Richmond Regional Vegetation Management Plan**

Petitions seeking extension of the exhibition period of the draft Richmond Regional Vegetation Management Plan, received from **Mr Fraser**, **Mr George** and **Mr D. L. Page**.

### **Underground Cables**

Petition requesting that the House ensure that an achievable plan to put aerial cables underground is urgently implemented, received from **Ms Moore**.

### **Old-growth Forests Protection**

Petition praying that consideration be given to the permanent protection of old-growth forests and all other areas of high conservation value, and to the implementation of tree planting strategies, received from **Ms Moore**.

### **Circus Animals**

Petition praying for opposition to the suffering of wild animals and their use in circuses, received from **Ms Moore**.

### **White City Site Rezoning Proposal**

Petition praying that any rezoning of the White City site be opposed, received from **Ms Moore**.

### **Graffiti Controls**

Petition requesting further legislative changes to reduce graffiti on private and public property, received from **Ms Moore**.

### **Companion Animals Legislation Obligations**

Petition asking that the House ensure that State Government authorities and local councils meet their obligations under the Companion Animals Act, received from **Ms Moore**.

### **Homeless Services Funding**

Petition asking that homeless services funding be increased urgently and maintained until no longer needed, received from **Ms Moore**.

### **Cronulla Police Station Upgrading**

Petition praying that the House restore to Cronulla a fully functioning police patrol and upgrade the police station, received from **Mr Kerr**.

### **Surry Hills Policing**

Petition seeking increased uniformed police foot patrols in the Surry Hills Local Area Command and installation of a permanent police van or shopfront in the Taylor Square area, received from **Ms Moore**.

## **PUBLIC ACCOUNTS COMMITTEE**

### **Report**

**Mr Tripodi**, as Chairman, tabled the report entitled "Delegation by the Minister for Health", dated September 2002, and associated transcripts.

**Report ordered to be printed.**

## QUESTIONS WITHOUT NOTICE

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### INDECENT ASSAULT OFFENDER PRISON SENTENCE

**Mr BROGDEN:** My question is to the Attorney General. The Office of the Director of Public Prosecutions has told the parents of two young girls aged nine and 12 who were repeatedly sexually molested over a two-year period that it will not appeal a pathetic sentence of weekend detention for the offender. Will the Attorney General exercise his authority and lodge an appeal? What will the Attorney General do to give this family justice and send this offender to gaol?

**Mr DEBUS:** This matter was raised in the *Parramatta Advertiser*, if I am not mistaken, on 16 October.

**Mr SPEAKER:** Order! I call the Deputy Leader of the Opposition to order.

**Mr DEBUS:** That is a measure of the genuineness of the kind of question that the Leader of the Opposition is asking at the present time. I have received a report from the Director of Public Prosecutions about this matter. He advises that the matter did not proceed as a matter of aggravated sexual assault, as newspaper items suggested and as the Leader of the Opposition again suggests.

**Mr SPEAKER:** Order! The Deputy Leader of the Opposition has already been called to order.

**Mr DEBUS:** And it could not proceed on that basis because there was not sufficient evidence to do so. It proceeded, therefore, on the basis of a charge of indecent assault.

**Mr SPEAKER:** Order! The Deputy Leader of the Opposition will cease interjecting.

**Mr Brogden:** Point of order: These people want justice, not technicalities.

**Mr SPEAKER:** Order! There is no point of order. The Leader of the Opposition will resume his seat.

**Mr Brogden:** Why don't you answer the question?

**Mr DEBUS:** Just sit down.

**Mr SPEAKER:** Order! The Leader of the Opposition knows that he did not take a point of order. His was a disruptive tactic, and the Chair does not view it favourably.

**Mr DEBUS:** The explanation that I have given is the reason that the charge was less than that which has been alleged, and why in consequence the punishment was less than had been sought by those who had expected that the charge would be aggravated sexual assault. I am also told that the family was consulted about this decision and that they were given reasons and advised about the effect of the change in the charges. The Director of Public Prosecutions did that. On 4 September, in announcing the Government's proposed sentencing reforms, the Premier indicated that child sexual assault laws would be reformed.

**Mr SPEAKER:** Order! The Leader of the Opposition will remain silent.

**Mr DEBUS:** I can confirm that the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill imposes a standard minimum sentence of 15 years for the offence of sexual intercourse with a child under 10 years.

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

**Mr DEBUS:** The bill also deals with assaults with intent to have sexual intercourse with a child under 10 and increases the maximum penalty for that offence.

**Mr Tink:** Point of order: Just explain why you will not appeal the decision.

**Mr SPEAKER:** Order! There is no point of order. The honourable member for Epping once again is creating a disturbance in the House. If he wishes to take a point of order, he should do so in the proper manner.

**Mr DEBUS:** Those proposals of the Government will, of course, be law by year's end. In the meantime, for the record, I point out that no Attorney General since 1987—not Peter Collins, not John Dowd—

**Mr Brogden:** You have the power. Use your power. You are running away from your responsibility.

**Mr DEBUS:** Were you the Attorney General? No, you were not. No Coalition Attorney General has ever appealed against a matter of this nature. The Leader of the Opposition is a disgrace.

### MANSLAUGHTER LAW REVIEW

**Mr COLLIER:** My question without notice is to the Attorney General. What is the latest information on the Government's review into manslaughter?

**Mr DEBUS:** I thank the honourable member for the question.

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

**Mr DEBUS:** I can confirm to the House that the Government has appointed former Supreme Court Justice the Hon. Mervyn Finlay, QC, to conduct a review of the law of manslaughter. Former Justice Finlay was a justice of the Supreme Court for 11 years and sat on the Court of Criminal Appeal. More recently, he was the Inspector of the Police Integrity Commission. He is a highly respected and learned lawyer, with particular expertise in the criminal law, who brings considerable intellectual force to the difficult question of whether the law of manslaughter should be reformed. The principal question to be considered in the review is whether the Crimes Act should be amended to include a structured scheme of manslaughter offences and penalties.

Specifically, the Government seeks advice as to whether there should be different grades of manslaughter offences with standard sentences to reflect the different circumstances and culpability involved. This will involve consideration of the feasibility of creating statutory definitions of categories of manslaughter. The review will examine the relevant provisions of the Crimes Act 1900 and the common law concerning manslaughter. The common law pertaining to manslaughter is not straightforward. It deals with such a wide range of fact situations and conduct that it is impossible to describe a "typical" offence of manslaughter. Chief Justice Spigelman said recently in the case of *Whyte*, in quoting a memorandum of a Chief Justice of as long ago as 1901, that the judge:

... in fixing the punishment [for manslaughter], has to discriminate between widely different degrees of moral culpability, and to weigh an infinite variety of circumstances and situations.

In the matter of *Regina v Blacklidge* Chief Justice Gleeson, when he was the Chief Justice of New South Wales, observed:

Of all crimes, manslaughter throws up the greatest variety of circumstances affecting culpability.

Nonetheless, the Government believes that it is appropriate to ponder through this review whether several categories of manslaughter can be created, each reflecting differing levels of culpability. It is open to former Justice Finlay to have regard to any recent domestic and/or international developments in the law of manslaughter that may inform its deliberations. Honourable members would recall the tragic circumstances surrounding the death some weeks ago of the unborn child of Renee Shields and Ben Allan. The child died following Renee's vehicle being struck from behind by another car. One can only imagine the feelings that have been stirred in this young couple as result of that tragic day.

Upon learning of this matter in September, I said that the Government would expand the terms of reference of its proposed manslaughter review to include an examination of whether the provisions of the Crimes Act concerning manslaughter should be amended to allow a charge of manslaughter in circumstances where an unborn child dies. We are now honouring that commitment. The examination of the provisions will involve an assessment of the adequacy of the operation and effect of section 20 of the Crimes Act concerning child murder. The provision states that a child shall be held to have been born alive:

If it has breathed, and has been wholly born into the world whether it has an independent circulation or not.

This element of the review will also include, but not be restricted to, consideration of whether it would be necessary to establish that an offender knew that the mother was bearing a child, and whether New South Wales should legislate to introduce the offence of child destruction. The questions to be addressed in the review are

important. The terms of reference will soon be announced, and submissions called for. With the appointment of former Justice Finlay, the public interest will be well served by what I know will be his professional and sensitive conduct of the review.

### **BRIGALOW BELT SOUTH BIOREGION ASSESSMENT PROCESS**

**Mr SOURIS:** My question without notice is directed to the Minister for the Environment. Following the recent addition of 350,000 hectares to the National Parks estate, already overrun with noxious weeds, feral animals and fire hazards, will he guarantee that the Government will not lock up any productive forest within the Brigalow South Bioregion, such as Pilliga, Goonoo, Lincoln and Bega?

**Mr DEBUS:** Those matters are the subject of deliberations about which the honourable member is thoroughly aware. I take this opportunity to point out the hostile nature of the question. I refer not to any hostility towards me but towards National Parks. His comments were similar in content to those made on the weekend by the shadow Minister, who said that there are better uses for the funds required to manage the parks. The shadow Minister said that the announcement of these splendid new parks for the Western Division was putting parks ahead of people.

**Mr SPEAKER:** Order! I call the honourable member for Oxley to order. I call the honourable member for Myall Lakes to order.

**Mr DEBUS:** The Leader of the National Party and the shadow Minister for the environment fails to understand that funding for these new national parks has not come just from the Government of New South Wales, but that two-thirds of it came from John Howard's Government. I take the opportunity to point out that the Government is spending \$35 per hectare per year on the management of our national parks. We will apply that level of expenditure to our new parks. The previous Coalition Government spent \$15 per hectare per year towards the management of parks.

**Mr SPEAKER:** Order! I call the honourable member for Coffs Harbour to order.

**Mr DEBUS:** That is sufficient demonstration of the seriousness with which the two sides of this Parliament approach managing national parks.

### **COMMUNITY HARMONY**

**Mrs PERRY:** My question without notice is to the Premier. What is the latest information on efforts to maintain community harmony in New South Wales?

**Mr CARR:** Five days after the Bali bombing a young man rang a radio program and said his younger brother, a victim of the bombing, would "want everyone out there to know, let's not blame all the Muslims in our country for this thing that has happened, it's a terrible thing that has happened, but let's find the right people and let's blame them, let's chase them to the end of the earth, but let's not start blaming innocent people." The caller was Trent Thompson. His younger brother was Clinton, a member of the Coogee Dolphins, who was killed in the Sari Club.

Of all the appeals for tolerance and harmony after the Bali bombing, that strikes home because it is the voice of someone whose family was touched by that tragedy speaking out, invoking the voice of his deceased brother, for community harmony. He cut right through to the truth of what this bombing means for the social harmony of the Australian community. He understands—and he is also coping with his terrible loss—that we must maintain the harmony that is a feature of Australian life. I am pleased to say that political leaders from all sides of politics have made the same appeal. The Prime Minister, the Minister for Police, the Commissioner of Police and I have made it.

I repeated my appeal for tolerance following an attack on the home of the Imam at the Rooty Hill mosque, Dr Ahmed Shabir. I rang the Imam and assured him and his young family that they should not feel alone. They should not feel isolated. The Minister for Agriculture and the honourable member for Londonderry visited the mosque last Friday. They reported to me on their visit and the message sent to the Imam and his congregation that the Government and the people of the State deplore attacks such as these. In the words of the special prayer composed in the wake of the Bali attack by Rabbi Raymond Apple of the Great Synagogue, a great advocate of community harmony:

Acts of torture and terror, wherever carried out, no matter by whom or for whatever motive, cannot be tolerated.

It is not just bombings and killings; smashed windows, abuse, spitting and graffiti are all points on the broad spectrum of terror, by no means equally serious, but all directed at the same target, the rights and dignity of the human person. It is appropriate to point out that for about a decade synagogues in Sydney from time to time have been subjected to such attacks. Therefore, the seeds of intolerance and hatred should never be allowed to take root in this democracy of ours. That is why the Commissioner of Police and the Minister for Police resolved that there should be heightened patrols of mosques, Islamic community centres and schools. We should remember not only that Muslim Australians deserve to have their human rights vigorously protected, but that good Muslims all over the world suffer from radical Islamists and their extreme activities. The Muslims of Indonesia suffer from the economic instability that events such as occurred in Bali brings to their trade. The Muslims of Afghanistan suffered under the Taliban from totalitarian oppression.

Muslims everywhere suffer when the name of an old and humanist religious faith is besmirched by the actions of a dangerous few. Let no-one forget that one of our own Bali victims was a Muslim as well. Behic Sumer is missing, presumed dead. He travelled to Bali with his two brothers, Ali and Ertan, who are both recovering in hospital from burns. Again, personal tragedy highlights the insanity of this bombing. In the modern world of instant communications, immigration and multiculturalism, we are all "us". The death of a fellow Muslim in Bali proves just how redundant the sectarianism and intolerance of the fanatics really are. Services were held at mosques around Australia, including the Lakemba and Gallipoli mosques. The Muslim people of New South Wales grieved with the rest of their fellow Australians because they see themselves as Australians. For that, they deserve the respect and protection of fellow Australians.

In this spirit, the New South Wales Government has put in place plans to maintain community harmony. Two weeks ago I directed the Community Relations Commission [CRC] to set up a community harmony reference group chaired by the CRC Chair, Mr Stepan Kerkyasharian. That reference group met on 21 October and included the New South Wales Commissioner of Police, Mr Ken Moroney, and representatives from the Department of Education and Training, the Department of Community Services and the New South Wales Anti-Discrimination Board. Sydney's Islamic, Jewish and Sikh communities are also represented on the group. The group will help the New South Wales Government promote and maintain community harmony. It will ensure a co-ordinated, rapid response to any local community relations issues that may arise. A similar reference group was set up in the aftermath of the 1991 Gulf War, and another one was set up after the September 11 attacks.

There is a bilingual hotline to handle incidents of harassment or violence in the community. Yesterday afternoon CRC Chair Mr Stepan Kerkyasharian and Commissioner of Police, Ken Moroney, met with the Islamic community leaders to look at strategies to deal with the attacks. Next week I will be visiting a school attended by students from the Islamic faith. Through measures such as these, we will continue to work hard to maintain a community harmony that is one of the sources of pride we all feel in this modern Australia of which we are part. This is a hard-won harmony; we have fought for decades to win it. It is harmony that we will not allow to become another victim of the situation that has already claimed victims enough.

#### **JOINT STANDING COMMITTEE UPON ROAD SAFETY CHAIRMAN**

**Mr J. H. TURNER:** My question is directed to the honourable member for The Entrance as the Chair of the Staysafe committee. Given that he has compromised the Minister for Transport, and Minister for Roads and undermined his campaign to reduce the road toll by describing speeding as the Australian way, why will he not resign as chair of the Staysafe committee and apologise for his irresponsible statement?

**Mr McBRIDE:** I have no intention of resigning.

#### **IVAN MILAT BREACH OF PRIVACY ALLEGATION**

**Mr CRITTENDEN:** I direct my question to the Minister for Corrective Services. What are the latest developments involving mass murderer Ivan Milat and related matters?

**Mr AMERY:** I should begin by asking those who think they have heard everything to listen. As honourable members know, Ivan Milat has the dubious distinction of being the first inmate in the 70-bed high-risk management unit within Goulburn gaol, which is commonly known as the supermax prison. He is rightly classified as an extreme high-risk inmate. Honourable members will recall that on 20 February 2001 Milat informed prison authorities he had ingested razor blades, stationery staples and a small chain from a pair of nail clippers. He obtained razor blades by dismantling disposable razors that are provided to all prisoners for shaving. Milat was given immediate medical attention and was X-rayed—all at public expense.



Milat told prison staff that he had taken precautions to ensure that the razor blades did not hurt him, which suggests that he wrapped them in material such as an adhesive tape. In other words, he wanted it only to appear that he was damaging himself. He claimed that this was part of a campaign to have an appeal heard by the High Court of Australia. Apparently he was upset about access to a gaol library and legal material, but the Department of Corrective Services believes that Milat may have had another more sinister motive. It appears his real agenda was to be moved to a medical facility or another prison from which he might attempt to escape. Milat's attempt to manipulate the gaol system did not succeed.

It is well known that those X-rays were discussed in this Chamber on 6 March 2001 and that they made their way into the public arena. That is a fact. In relation to Milat, for obvious reasons there is a clear case to be made for the public's right to know. However, it may come as a surprise to honourable members that Milat believes that, as a result of those X-rays becoming public, his personal rights have been impinged. He also believes he has been the subject of a major injustice—unbelievable as that may seem. We all must ask why it is that one of Australia's worst serial killers is so easily offended by the actions of authorities.

Milat is making a habit of being easily offended. As reported in the *Sydney Morning Herald* last month, he complained about air quality at the supermax. He said that he was having difficulty breathing, due to a flaw in the airconditioning—some of us would like to think of other circumstances in which he would have difficulty breathing—and was grabbing at his face in desperation, causing alleged minor abrasions. It will be no surprise for honourable members to hear that no other prisoner complained about air quality at the supermax. It is equally not surprising that the provision of an electric fan and the offer of medical help did nothing to please this inmate. Let me remind all honourable members that Milat requires special measures whenever he has to be moved within the prison system, for example, the use of ankle chains, handcuffs and a security belt to which handcuffs are secured. Any transfer between facilities requires extra lead and follow-up cars for additional security.

It is also worth noting that prisoners lose certain rights when they are sentenced to gaol for serious crimes: for example, visits are restricted to certain times of the day and on certain days of the week; they lose access to social security benefits; if incarcerated for more than one year they lose the right to vote in State elections and if incarcerated for five years they lose the right to vote in Federal elections; they lose the right to employment; and they are subject to random drug testing. Many would argue that they should lose more privileges. I will return to the subject of Milat.

**Mr Armstrong:** You are just giving him more kudos.

**Mr AMERY:** I am pleased to acknowledge those supportive comments from the Opposition. In May 2001 Milat formally complained to the New South Wales Ombudsman about his X-rays being made public. I am pleased to indicate to the House that on 17 July the Ombudsman found no prima facie evidence and said that he did not intend to take the matter any further. As a result of being rejected by the Ombudsman, this inmate began what is known in the system as jurisdiction shopping. In September 2001 he appealed to the New South Wales Privacy Commissioner, Mr Chris Puplick.

**Mr Tink:** Point of order: Why waste Parliament's time by making a mass murderer even more notorious by this display? Why glorify him? Why take it any further? Why give any more attention to his antics? Ignore him! Do not play into his hands.

**Mr SPEAKER:** Order! There is no point of order. The honourable member for Epping will resume his seat. This is the second occasion on which the honourable member for Epping has contravened the standing orders. The Chair will not extend any further latitude to him.

**Mr AMERY:** I think the honourable member's so-called point of order was a minute too early. In September 2001 Milat appealed to the New South Wales Privacy Commissioner, Mr Chris Puplick. Members of this Chamber would be interested to hear that it now appears likely that the Privacy Commissioner is taking up his case—I am not kidding; this is true. If the Privacy Commissioner takes up the case, and champions the call of this inmate, he may inadvertently bring the role of the Privacy Commissioner into disrepute. He could see himself playing a key role in handing over \$40,000 in compensation to this unrepentant mass murderer under the Privacy and Personal Information Protection Act.

Everyone in this Chamber would agree that Milat's crimes were so barbaric and heinous that they will remain in the public's mind forever. Any suggestion of implementing a process that would pay Milat \$40,000

should be rejected. I believe Milat does not have any privacy considerations; he gave away his right to privacy when he became Australia's most notorious serial killer and when he swallowed razor blades in an attempt to manipulate authorities. Any group or individual who tries to argue, however sincerely, that Milat has been disadvantaged is mistaken and misguided. I, and I am sure all members of this House, would urge the Privacy Commissioner to reconsider taking up Milat's case. This man deprived seven innocent young people of their right to life. It would seem that he swallowed the razor blades in an attempt to set up an escape scenario from a lower-security facility.

The families of Milat's victims are the people who have the right to feel aggrieved. I appeal to the New South Wales Privacy Commissioner to exercise commonsense and to show some compassion to the families and friends of the victims of that person. In addition, I have asked the Corrective Services Commissioner, Ron Woodham, to examine the rights to privacy of prisoners in New South Wales. When a serious offender's plot to avoid serving hard time is uncovered, it is in the public interest to know how that attempt was foiled. That information would also deter other prisoners from taking similar action. I have asked Mr Woodham to clarify this issue. If it is determined that we need to legislate to ensure that prisoners such as Milat do not get financial compensation, I would be more than pleased to take that proposition to Cabinet.

### **OASIS LIVERPOOL DEVELOPMENT INDEPENDENT COMMISSION AGAINST CORRUPTION INQUIRY**

**Mr O'FARRELL:** My question is directed to the Minister for Local Government. Now that the Independent Commission Against Corruption [ICAC] has determined that allegations surrounding the Oasis-Obeid-Australian Labor Party bribery scandal are serious enough to warrant examination in public hearings, will the Minister explain on what basis the Labor Mayor of Liverpool, George Pacuillo, has resumed full duties, after initially standing aside because of the ICAC investigations?

**Mr WOODS:** That matter is for the mayor and the council to determine.

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

**Mr WOODS:** I remind honourable members that under the Local Government Act a councillor can take leave of absence with the approval of his or her fellow councillors. That was the case at Liverpool. Under the Act I do not have the power to deal with individual councillors, as the honourable member for Ku-ring-gai knows. However, changes were made to the Act in June.

**Mr SPEAKER:** I call the honourable member for Ku-ring-gai to order for the second time.

**Mr Brogden:** You are supposed to set the standard.

**Mr WOODS:** It would be good if the Leader of the Opposition listened to this, because he continually puts his foot in it when commenting on these matters. On a number of occasions he has asked for a council to be sacked and for a quick inquiry. The requirements of the Act have been explained to him time and again, yet he refuses to either understand it or to listen to the explanations.

**Mr SPEAKER:** I call the Deputy Leader of the Opposition to order for the second time.

**Mr WOODS:** The Leader of the Opposition's lack of experience and unwillingness to have regard to the Act show that he is incapable of handling these matters. The changes made to the Act in June enable me to suspend or sack individual councillors on the basis of an interim or final report from the ICAC; and, in fact, the Opposition supported those changes. However, I must wait for any report from the ICAC before acting. All honourable members know that if the ICAC recommends that I take action I will consider that recommendation.

### **PUBLIC EDUCATION FUNDING**

**Mr TRIPODI:** My question without notice is directed to the Minister for Education and Training. What is the latest information on public education funding in New South Wales?

**Mr WATKINS:** Yesterday the honourable member for Ku-ring-gai did himself and public education a grave disservice. He continued that disservice today with his urgent motion.

**Mr SPEAKER:** I call the honourable member for North Shore to order.

**Mr WATKINS:** Yesterday on the airwaves the honourable member for Ku-ring-gai proclaimed New South Wales public education to be second rate. He was almost breathless in his denigration of this great system and he questioned the outcomes produced by public schools despite all the published data that shows that our public schools are achieving literacy and numeracy results equal to the best in the world.

**Mr SPEAKER:** I call the honourable member for Ku-ring-gai to order for the third time. I call the honourable member for Lane Cove to order.

**Mr WATKINS:** The honourable member for Ku-ring-gai said that our public schools were not performing, despite the fact that in the Higher School Certificate merit lists about half of the highest achieving students were from public schools.

**Mr SPEAKER:** The honourable member for Lane Cove will cease interjecting.

**Mr WATKINS:** He said that large class sizes were causing an exodus from public schools; but he should know that class sizes in non-government schools are larger than they are in the public system. He said that spending on education was 22 per cent of total government expenditure, despite the fact that a cursory glance at this year's budget papers reveals that it is now 23.7 per cent. Basically, he spent most of yesterday proclaiming that public education was not up to scratch. He is wrong and his motives are grubby. Today I will correct the record. Most importantly, I send a very clear message to the students, the parents and the staff in the public education system that the Government acknowledges the fine work that is done in our public schools, day in and day out.

The Government does not accept that over the next few months the political debate around education should be at the expense of public education—at the expense of the hard work of teachers and their students. In short, the Government will continue to work hard to build on this great public education system, to increase its strengths and deal with its weaknesses. The Government believes in, and will support, a first-class public school system, because that is what a responsible government should do.

I refer specifically to public education funding in this State compared with that in other States. Since the release of the final chapter of Professor Tony Vinson's report into public education there has been a great deal of discussion about how New South Wales funding compares with that of other States. The figures reproduced in the Vinson report for 1999-2000 come from the Ministerial Council for Education, Employment, Training and Youth Affairs, [MCEETYA]. Over the past couple of weeks New South Wales Treasury has been analysing the data. Treasury's analysis reveals that for the past three years New South Wales' low ranking as compared with other States occurred for a simple reason—the comparisons were not valid.

Let me explain. Treasury advises that Victorian, Queensland and Australian Capital Territory figures include between \$1,000 and \$1,500 per student that other States simply do not include. It is a round-robin payment; that is, Treasury gives the money to the Department of Education and Training and it simply comes straight back to Treasury. That payment includes costs such as payroll tax and user cost of capital. New South Wales figures do not include those costs. In order to make a fairer and more accurate comparison, New South Wales Treasury has recalculated the MCEETYA figures on the same basis for each jurisdiction. So we should compare each jurisdiction with the same criteria. That has been done using consistent criteria and the percentage rate used by the Productivity Commission for user cost of capital.

Treasury's recalculation shows that in 1999-2000 New South Wales spent \$8,274 per student and not the \$6,900 reported by MCEETYA. In summary, in 1999-2000 New South Wales spent \$8,274 per child in government schools, which is above the national average. That is more than Victoria, South Australia and Queensland—those jurisdictions with which we are most commonly compared. The most recent MCEETYA figures—for the year 2000-01—are yet to be formally published. However, I understand that certain parts of those figures have been released. I believe that the Commonwealth Government is planning to release those figures in full later in the year. However, they are available to States and Territories. That is why New South Wales Treasury has been able to analyse them as well, in the manner that I outlined earlier.

**Mr O'Farrell:** Point of order: My point of order relates to relevance. Whilst the Minister is on the subject he might like to explain how, for the last seven years, New South Wales MCEETYA officials have been responsible for the comparability of Australiawide figures. However, up to this point not one complaint has been lodged by New South Wales. Six months before the next State election the Government is now challenging those figures. It is a rort. This is the first time the MCEETYA issue has been raised. The Minister has never raised this objection at a MCEETYA meeting.

**Mr SPEAKER:** Order! There is no point of order.

**Mr WATKINS:** The analysis of 2000-01 figures showed that New South Wales spent \$8,571, which was above the Australian average of \$8,429 and also above the Victorian figure of \$7,804 and the Queensland figure of \$8,151. That is significantly more—\$1,373 more—than the figure that will be reported by MCEETYA. The obvious question that arises is: What action is being taken to ensure that MCEETYA figures are correctly reported? Yesterday I wrote to MCEETYA requesting that the full set of 2000-01 data be amended. I forwarded a copy of the Treasury analysis to assist in that task.

Last Thursday the Treasurer and I met with Professor Vinson to alert him to the Treasury analysis. We also assured him that the Treasury analysis had no bearing on the value that the Government places on his report. We told him that we would treat his report with regard. That is why I have asked the Public Education Council to consider it carefully. I conclude by referring again to the shadow Minister. I want it to be clear that the Opposition's hypocrisy is under attack—not anyone or anything else.

**Mr SPEAKER:** Order! I call the honourable member for Lane Cove to order for the second time.

**Mr WATKINS:** Yesterday the honourable member for Ku-ring-gai spent all day bagging the Government about funding for education. That was his theme. However, at his press conference he let the cat out of the bag. At his press conference he said:

We—

that is, the Opposition—

believe it can be done [improving public education] so within the existing budget. It's all about priorities. It's all about intent.

The honourable member's statement was clear and unequivocal. He said that a Brogden government would not increase funding for education if it was elected in March next year. The question remains: Exactly what will Opposition members be reprioritising?

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

**Mr WATKINS:** What will Opposition members be reprioritising to fund the hundreds of millions of dollars of promises that they have been making?

**Mr SPEAKER:** Order! I call the honourable member for Lane Cove to order for the third time.

**Mr WATKINS:** What is their malicious intent in relation to the public education system? They should come clean and tell the teachers, students and parents of New South Wales. I seek leave to table the Treasury analysis of MCEETYA data.

**Leave not granted.**

### SEVEN HILLS SPORTS HIGH SCHOOL

**Mr MERTON:** My question without notice is directed to the Minister for Education and Training. Will the Minister explain to students in Western Sydney the inequity of a commitment of just \$80,000 for the establishment of the Seven Hills Sports High School while at the same time he is committing more than \$5 million to establish Matraville Sports High School to service the eastern suburbs?

**Mr WATKINS:** Funding measures are in place to support new schools. Quite clearly, the Government allocated funding for the revitalisation of inner city schools. I have had discussions with the sports high school to which the honourable member has referred, and those discussions are ongoing.

**Mr SPEAKER:** Order! I place all members of the Opposition on three calls to order. It is extremely difficult for a Minister to provide an answer when four or five members of the Opposition interject as he concludes each sentence. The Leader of the Opposition might think that is rather humorous. However, some of the bad behaviour of members of the Opposition has its genesis in the behaviour of the Leader of the Opposition.

**Mr WATKINS:** We are in the middle of the greatest budget allocation for education—recurrent and capital spending—in the history of this State. We have a magnificent public education system. Despite the knocking and constant criticism from members of the Opposition we will strengthen that system, which we value. I have been in discussions with the school to which the honourable member has referred. That school, which is in its early days, is already taking wonderful steps forward in the provision of education in that area. We will continue to support the school.

**Mr MERTON:** I ask a supplementary question. Following the Minister's answer, would he explain to the people of Western Sydney when he proposes to give students and parents at Seven Hills Sports High School a fair go?

**Mr SPEAKER:** Order! That is not a supplementary question.

**Mr Merton:** Point of order: This question arises directly from the answer given by the Minister. It is a reasonable supplementary question seeking further information about when students and parents at Seven Hills Sports High School will be given a fair go.

**Mrs Chikarovski:** To the point of order: The Minister said in his answer that he was in discussions with the school. The honourable member for Baulkham Hills clearly asked when those discussions would be completed. That question obviously arises from the answer given by the Minister.

**Mr SPEAKER:** Order! The Minister answered the supplementary question when he answered the original question. Therefore, the question is not a supplementary question.

### REGIONAL AIRLINES

**Mr BLACK:** My question is directed to the Minister for Transport, and Minister for Roads. How is the State Government assisting regional airlines?

**Mr SCULLY:** Air services are in many ways the lifeblood of rural communities. Air services allow residents in country New South Wales to conduct business in Sydney, allow professionals such as doctors, barristers and judicial officers to serve in rural centres and, more importantly, allow families and friends to stay in touch. We are all aware how tough the past two years have been for regional airlines. Country Labor members, together with the honourable member for Northern Tablelands, the honourable member for Port Macquarie and the honourable member for Dubbo, continue to remind me of the problems that their communities face regarding the continued viability of regional airlines.

The statistics paint a bleak picture. In the 2000-01 financial year 1.4 million passengers travelled on regional airlines to Sydney. In the last financial year there was a 30 per cent decrease in passenger numbers. Deniliquin lost its service to Sydney in 2000, followed by Cowra, Forbes, Young, West Wyalong, Cootamundra, Gunnedah, Singleton, Scone, Coonabarabran, Kempsey and Maitland in early 2001. Casino, Nyngan and Brewarrina lost their air services in the wake of the Ansett collapse. That makes 15 centres cut off from Sydney in less than two years.

**Mr George:** Point of order: The Minister did not mention Casino.

**Mr SCULLY:** I just did. Following the initiatives that the Government implemented some time ago to improve the viability of regional airlines, I can inform honourable members that we are now able to take further steps. Although the Federal Government has primary responsibility for air services, I asked the Department of Transport what additional initiatives we could take to assist the viability of smaller air routes. I am pleased to announce to the House that the Government will extend the single-operator protection to all routes with fewer than 50,000 passengers, we will waive licence fees for all routes with fewer than 50,000 passengers and we will extend the licence period for all operators from three years to five years. This will protect a further six centres—Orange, Lismore, Griffith, Lord Howe Island, Moree and Taree, all of which are currently served by a single operator—from competition, giving long-term certainty to operators on smaller routes and peace of mind to country residents.

Abolishing the licence fee is only a modest contribution to improving viability, but I think protection against competition is a significant initiative on the part of this Government. I will continue to call on the Federal Government—as I know will Country Labor and independent members—to do more to ensure the

viability of regional and rural air services. The Federal Government must address the increases in airport charges following the sale of Sydney airport: the \$10 per ticket Ansett levy, taxes on the sale and purchase of new aircraft, and Civil Aviation Safety Authority charges for compliance checking. I ask Country Labor and independent members to continue to put pressure on the Federal Government and to inform their electors that this Government is fair dinkum about doing its bit to protect the viability of regional airlines.

**Questions without notice concluded.**

**CONSIDERATION OF URGENT MOTIONS**

**Television Black Spots Funding**

**Mr MARTIN** (Bathurst) [3.33 p.m.]: My motion concerning the television black spots program is urgent because at this very moment the Federal Government is working stealthily to get rid of Telstra. The Liberal and National parties are employing blackmail tactics to ensure the sale of Telstra, claiming that it is the only way to fund this program. The Estens inquiry—it is a sham; the final report has undoubtedly been written already—will deliver everything that Richard Alston wants. He will be able to advise Federal Cabinet that Telstra services in the bush are great and that the sale should proceed. If we do not unite and put pressure on Richard Alston and the Federal Government to extend funding for the black spots program beyond 2003, the people in the bush will miss out.

**Public Education**

**Mr O'FARRELL** (Ku-ring-gai) [3.34 p.m.]: My motion is urgent because, as we speak, parents in this State are making decisions about where to enrol their children next year. My motion is urgent because, judging from recent trends, most of those parents will choose to enrol their children in non-government schools. My motion is urgent because we should consider in this Chamber, not through a prepared answer during question time but in a free-ranging debate involving honourable members on both sides of the House, why parents reject free education in favour of fee education. My motion is urgent because, despite the claims of the Minister for Education and Training in this place today, all is not well in education in New South Wales.

My motion is urgent because the House and the public need to understand why for the first time in 7¼ years the New South Wales Government has objected to the figures on public education compiled by the Ministerial Council on Education, Employment, Training and Youth Affairs [MCEETYA]. My motion is urgent because it will allow the Minister for Education and Training to come to this Chamber to explain why in 7¼ years neither he nor his predecessor, the current Minister for Land and Water Conservation, objected to the way in which those figures were collected or published. Debate on my motion would give the Minister for Education and Training the opportunity to come into this Chamber and explain to Labor backbenchers that, under the MCEETYA arrangement, his officers are responsible for collecting comparative figures between the States.

The Department of Education and Training has produced the figures that have been published for the past seven years. The Minister for Education and Training should come to the House to explain why, at the eleventh hour with only five months to the next State election, the Treasury has produced a new set of figures that shows—surprise, surprise—that the New South Wales Government is spending more on education than ever before. My motion is urgent because the Minister should come to this place to explain to me how 7¼ years after electing as Premier someone who set education as his chief priority—he wanted to be known as the education Premier—total expenditure on education as a proportion of total budget outlays has fallen from 25 per cent to 23 per cent in this State. How is that consistent with the Minister's claims today?

My motion is urgent because New South Wales has the largest number of students per teacher in the nation. My motion is urgent because the Minister for Education and Training must do more than announce a \$5 million pilot project to examine the worrying trend in class sizes in years K to 3. Why is the average class size 17.7 in New South Wales when it is 17.1 across the nation? My motion is urgent because this is supposed to be the premier State and we are supposed to have the education Premier yet according to every set of figures published parents are voting with their feet and passing over public education for private education.

My motion is urgent because I am happy to debate hypocrisy in this Chamber. My children attend public schools. I am happy to debate these matters—unlike members opposite who send their children to non-government schools. There is no hypocrisy on my part. I have always believed in education choice and I acknowledge, as shadow Minister for Education and Training, that there is no real choice if the public education

system is underperforming. My motion is urgent because Parliament needs to know what parents do not like about public education and what this Government is doing about it. The front page of yesterday's edition of the *Sydney Morning Herald*—

**Mr Ashton:** Point of order: If the Opposition were serious about education the honourable member for Ku-ring-gai would not be sitting at the wrong end of the front bench.

**Mr SPEAKER:** Order! There is no point of order.

**Mr O'FARRELL:** My motion is urgent because since 1996 enrolments in New South Wales government schools have decreased from 760,000 to 745,000 even though enrolments in education as a whole increased by 42,600 during that period. My motion is urgent because I want some answers from the Minister for Education and Training. Despite a 42,600 increase in the number of students in New South Wales public schools, why have 15,400 students left public schools? I am happy for the Minister to be judged by the public, which is what is happening now. Finally, I want the Minister to explain why he can say, "My intention is to slow the drift, stop it and turn it around." What has his Government done for 7¾ years?

**Question—That the motion for urgent consideration of the honourable member for Bathurst be proceeded with—put.**

**The House divided.**

*[In division]*

**Mr SPEAKER:** Order! There has been a problem with the pairing arrangements. I will call off the division and order the bells to be rung again.

#### **Ayes, 49**

Ms Allan	Ms Harrison	Mr E. T. Page
Mr Amery	Mr Hickey	Mrs Perry
Ms Andrews	Mr Hunter	Mr Price
Mr Aquilina	Mr Iemma	Ms Saliba
Mr Ashton	Mr Knowles	Mr Scully
Mr Bartlett	Mrs Lo Po'	Mr W. D. Smith
Ms Beamer	Mr Lynch	Mr Stewart
Mr Black	Mr Markham	Mr Tripodi
Mr Brown	Mr Martin	Mr Watkins
Miss Burton	Mr McBride	Mr West
Mr Campbell	Mr McManus	Mr Whelan
Mr Collier	Ms Meagher	Mr Woods
Mr Crittenden	Ms Megarrity	Mr Yeadon
Mr Debus	Mr Mills	
Mr Face	Mr Moss	<i>Tellers,</i>
Mr Gibson	Mr Newell	Mr Anderson
Mr Greene	Mr Orkopoulos	Mr Thompson

#### **Noes, 34**

Mr Barr	Mr Humpherson	Ms Seaton
Mr Brogden	Dr Kernohan	Mrs Skinner
Mrs Chikarovski	Mr Kerr	Mr Slack-Smith
Mr Collins	Mr Maguire	Mr Souris
Mr Cull	Mr McGrane	Mr Stoner
Mr Debnam	Mr Merton	Mr Tink
Mr George	Ms Moore	Mr Torbay
Mr Glachan	Mr O'Farrell	Mr Webb
Mr Hartcher	Mr Oakeshott	
Mr Hazzard	Mr D. L. Page	<i>Tellers,</i>
Ms Hodgkinson	Mr Piccoli	Mr Fraser
Mrs Hopwood	Mr Richardson	Mr R. H. L. Smith

**Pairs**

Mr Gaudry  
Ms Nori  
Dr Refshauge

Mr Armstrong  
Mr Rozzoli  
Mr J. H. Turner

**Question resolved in the affirmative.**

**TELEVISION BLACK SPOTS FUNDING**

**Mr MARTIN** (Bathurst) [3.52 p.m.]: I move:

That this House:

- (1) expresses its concern about the issue of television black spots; and
- (2) calls on the Federal Government to pledge funding for the program beyond next year.

The Federal Government is trying to blackmail the people of country New South Wales. I refer to the sham inquiry—the Estens inquiry—into country services provided by Telstra. That little National Party junket was set up by the Federal Minister for Communications, John Anderson, to deliver to the Coalition and Federal Cabinet a report that will enable the Federal Government to go ahead with the full privatisation of Telstra. No-one, not even those on the other side of politics, is convinced that the Estens inquiry is anything other than a sham. It has not taken submissions at public hearings.

**Mr Fraser:** Point of order: The honourable member for Bathurst has been speaking for almost two minutes about the Estens inquiry. The motion moved by the honourable member has absolutely nothing to do with that inquiry or Telstra. I ask that the honourable member be directed to speak to his motion and to refrain from commenting about Telstra.

**Mr SPEAKER:** Order! The first part of the motion refers to television black spots, which obviously has some connection with Telstra services. There is no point of order.

**Mr MARTIN:** The television black spots program is to be funded from the sale of more of Telstra. The implication of the Federal Government is that continuation of its funding of the program will be reliant upon a further sale of Telstra. The Federal Government has purposely tied the funding of the television black spots program to that further sale. We argue that there is no need to sell Telstra, and that the Federal Government can fund the program well into the future from the profits of Telstra—which continue to be \$3 billion or \$4 billion. Telstra will remain a very profitable organisation, particularly if left intact and under government control.

Last week I supported a motion moved by the honourable member for Murray-Darling reinforcing Labor's argument. It is significant that National Party members scurried from this Chamber, leaving their beleaguered leader to deliver a one-sentence resume of the submission that they had put to the Estens inquiry. Later the honourable member for Murrumbidgee staggered into the Chamber in order to decide whether he could make a contribution, but he had been usurped by one of the Independents who remained in the Chamber. The Independents were keen to put their arguments on the matter. It is blatant blackmail for the Federal Government to tie television black spot funding to the sale of Telstra.

**Mr Fraser:** What did Peter Andren say?

**Mr MARTIN:** Peter Andren agrees with what I am saying. Peter Andren can speak for himself—and in that regard he would outdo the honourable member for Coffs Harbour. Today Labor is launching a campaign to force the Minister for Communications, Richard Alston, to commit to untied funding of a continuing television black spots program beyond that already announced. Some New South Wales communities are adversely affected by television black spots, including Brewarrina, Portland, which is in my electorate, Hartley, which is on the edge of my electorate, Tottenham, Hillston, Mudgee, Peak Hill, Tullamore, Narrandera, Eugowra and Telegraph Point. In addition, some Sydney areas, such as Coogee and East Hills, have television black spots. There are plenty of areas in which government will need to continue funding to eliminate television black spots.

In some country areas, particularly isolated areas, television is a form of both communication and recreation. In isolated areas it provides a form of communication and entertainment that should be available to



all the people of New South Wales. The people of Tottenham have hazy television pictures that are almost intolerable. The quality of their reception cannot be compared with the reception enjoyed by people living in coastal and other areas of the State that do not have black spots. People in isolated areas do not have the luxury of being able to hop on a train and travel from one suburb to the next or into the city to take in the many forms of entertainment provided not only in the cities but in bigger regional centres. So, whilst we might take television for granted, people in isolated areas certainly do not—particularly those who are housebound. Therefore, the matter we are debating today has a social side to it.

The current television black spots program allows only local government or community organisations to apply for television black spot funding. No allowance is made for individual householders to make such an application. One of the hidden traps of the program is that those who apply for black spots funding find that there is an ongoing cost each year to service equipment, and that cost ranges from \$7,000 to \$10,000. If it were not for local government, many such programs would not be ongoing. Richard Alston has before him a challenge to immediately guarantee that country communities will be able to access black spots funding beyond 2003. We need that commitment now—before a decision is made to wrap up the Estens inquiry. The honourable member for Coffs Harbour can argue for as long as he likes that there is no correlation between this motion and the sale of Telstra. I suggest he talk to his constituents. He will take another spurious point of order just to delay proceedings.

**Mr Fraser:** Point of order: I draw attention to the fact that a Minister is not at the table or in the Chamber, as required by the standing orders of the House.

**Mr SPEAKER:** Order! The Leader of the House is now present.

**Mr MARTIN:** What will happen when the current analog system is phased out in favour of digital television? Will country communities be left in the dark again? Country people should not be disadvantaged. It is outrageous for Richard Alston to blackmail them with the sale of Telstra. Television is an important link to the rest of the world. It provides information and entertainment. Country people who have poor television reception are becoming the information poor of Australia. People who have poor television reception also experience Internet problems. Telstra services in country areas are not up to scratch.

The hypocrisy of the inquiry has been exposed. Unreliable telephone services and mobile black spots make it difficult for country people to stay in touch with each other, let alone the rest of the world. Television, therefore, becomes an important part of community life. Country people deserve the same standard as anyone else in Australia. Local news programs are very much the lifeblood of bush communities. They allow families to keep in touch with what the local council or the local member of Parliament is doing. People living on farms out of town watch local news programs every day. The Federal Government, by not committing to this funding, is saying that it is not important for country communities to be informed.

After a long day's work I enjoy nothing more than watching Prime news from Orange or WIN television to catch up with what is going on around the electorate. But some families in my electorate are not so lucky. Hartley, just outside Lithgow, part of which is in my electorate and part of which is in the Blue Mountains electorate, experiences terrible television services. Families in Portland, a very important part of the community just outside Lithgow, also have trouble with their television reception. We must send a message to the Federal Government and Senator Alston: They cannot hide behind the sham of an inquiry and deny people in the bush. National Party members should support this motion, which I commend to the House.

**Mr PICCOLI** (Murrumbidgee) [4.02 p.m.]: I apologise to the honourable member for Strathfield for inconveniencing him by asking him to sit at the table. God forbid that the Coalition use the standing orders to inconvenience the other side of politics in this House! I know the Government has never done that to us. It is unfortunate that we are again debating Federal issues. I understand, particularly following the Cunningham by-election, that the Federal Labor Party is completely irrelevant in the political context.

**Mr Martin:** Point of order: The matter before the Chair has nothing to do with the Federal Labor Party or the by-election in the seat of Cunningham. I would have thought that would have been quite clear, even to the honourable member for Murrumbidgee.

**Mr SPEAKER:** Order! The honourable member for Bathurst has a right of reply. He may raise the matters referred to in his point of order in his reply.

**Mr PICCOLI:** The Speaker allowed the honourable member for Bathurst latitude in his contribution. Plenty of State Government issues need to be debated in this House. The fact that the honourable member for

Bathurst uses this House to debate Federal issues is a reflection on the inadequacy of the Federal Labor Party. I understand the pressure that the Leader of the Federal Opposition is under following the Cunningham by-election. Perhaps members of the Government are also under pressure from the Greens in their electorates. I do not blame them for raising Federal issues which may result in a press release. I understand that the honourable member for Bathurst is a little frustrated because of how State Government issues impact on his electorate. I have contacts in the honourable member's electorate who tell me that he is a little bit frustrated. It is a little bit different to being the mayor: he does not have his hands on the reins like he did in local government. I am not surprised that the honourable member for Bathurst uses this forum to raise Federal issues.

Enough of these distractions. It is important that people in country and rural New South Wales have access to television services. I am sorry that the honourable member for Bathurst was not magnanimous enough to thank the Federal Coalition Government for improving television services throughout country New South Wales. More money can always be spent. But the Federal Government has allocated funds to the end of 2003 to reduce the number of black spots. If that has not occurred then I am sure the Federal Government will increase that funding. The Federal Government has taken great steps to improve SBS coverage in my electorate.

Television coverage in country New South Wales is all about quality of life. Telecommunications have been in the news, and they are also important to the quality of life in New South Wales. Improved quality of life in country New South Wales means that businesses will be established, people will move in and young people will stay, which is very important for the future of country New South Wales. However, these are matters for the Federal Government, which has addressed them appropriately and adequately. I am sure there is more to come.

This is the New South Wales Parliament. We should debate the serious issues facing regional New South Wales. The Premier rolls out the honourable member for Bathurst and honourable member for Murray-Darling every couple of days to move motions for urgent consideration on matters completely irrelevant to the New South Wales Parliament. We should use this forum to move motions of urgent consideration relevant to this State. For example, today the motion for urgent consideration raised by the honourable member for Kuring-gai related to why so many people are taking their children out of the public education system. In question time the Minister for Education and Training referred to the record Education budget.

However, it is a record budget matched by a record number of people leaving the public education system. That should suggest serious problems within the system. Yet those opposite refuse to talk about those problems. They use the time of this House to debate Federal issues when we should debate State issues, such as those affecting the electorates of Bathurst and Murray-Darling: water reforms, native vegetation, regional development and hospitals. The state of our country hospitals is the most important issue to country New South Wales, but I have never heard the honourable member for Bathurst move a motion for urgent consideration to debate it.

The honourable member for Bathurst moves motions for urgent consideration to debate Federal issues only. However, I do not blame him for that because the Federal Labor Party is in disarray. It does not know what it stands for. The Federal Coalition Government has a great record for improving telecommunication services and television coverage. The Federal Coalition Government has done a lot for country New South Wales. The honourable member for Bathurst wastes opportunities to debate State matters. I did not plan to speak for so long because the motion is a waste of time. In these last few weeks of sitting prior to the election, I hope that the honourable member for Bathurst takes the opportunity to move motions of urgent consideration to debate State issues rather than Federal issues. He should give his Federal colleagues a ring and ask them to raise Federal issues.

**Mr BLACK** (Murray-Darling) [4.09 p.m.]: At the outset I state how pleased I am to support the motion moved by the honourable member for Bathurst, particularly after the incredibly shallow and brief contribution made by the gadfly from Murrumbidgee. Let me examine some of the issues that have been raised to get through to the Opposition that this is a matter of great concern to regional and rural New South Wales. The television black spots program was established by the Federal Government in 1999. Unfortunately, funding for the program was tied to the sale of Telstra. The Federal Government has tried to blackmail the people of country New South Wales by saying that unless they support the sale of Telstra their television reception will not be attended to. Ask the people of Hillston, Brewarrina and Tottenham, who regularly watch snow instead of the news, what they think about the threat that unless they support the sale of Telstra, the quality of television reception will not be addressed!

The Networking the Nation Program is due to wind up in 2003. Country Labor is launching a campaign to convince the Minister for Communications, Information and Technology and the Arts, Senator Richard Alston, to extend funding beyond that date. I know that at least 16 communities are still waiting for funding to

be approved. Richard Alston is a disgrace: I do not think anyone who lives in the bush would disagree with that statement. Country Labor will continue to campaign on this matter so that country people will not continually be blackmailed into not opposing the sale of Telstra under the threat of television services being withheld. The gadfly from Murrumbidgee mentioned SBS services. Balranald does not receive SBS, nor does Euston, Hillston, Ivanhoe, Wilcannia or Cobar, to mention only a few from the list of towns in New South Wales that are deprived of those services.

The gadfly from Murrumbidgee did not mention channel 10, but there are many towns in country New South Wales that do not receive channel 10. They include Euston, Hay, Ivanhoe, Wilcannia, Cobar, Bourke and Wentworth. Many country areas do not receive channel 9 telecasts or national channel 7 services. At present the local government conference is being held in Broken Hill. Yesterday the greatest bushie Premier in living memory, Bob Carr, addressed the conference. The Leader of the Opposition was a member of a panel with three others—the Hon. Duncan Gay, Marsha Isbister and myself—on a telethon to raise funds for a 50-metre municipal heated indoor pool. Interestingly, the Leader of the Opposition, John Brogden, stated on the program—and his words are recorded for posterity—that that was the first time in his life he had been to Broken Hill.

Let me examine the reasons why the National Party does not care about Broken Hill. It was a Federal Coalition Government that established the Australian Broadcasting Authority rule of one licence only for Broken Hill, the same as Mount Isa. Until recently the rule precluded the possibility of a second commercial service operating in Broken Hill. Currently Broken Hill's television services are provided through the Southern Cross television network, formerly Spencer Gulf Telecasters [SGT], as part of its coverage of Port Lincoln, Whyalla, Port Augusta, Port Pirie and Broken Hill. That is the type of coverage Broken Hill has; no other service has been provided.

When the Farmhand program was televised last Saturday night, Broken Hill residents were unable to watch that program free-to-air. The Leader of the Opposition has made the extraordinary statement that next year, at a cost which he estimates to be \$522,000—but which will be much more if it ever eventuates—he will take the Parliament to Broken Hill. That \$522,000 could be better spent by improving television services in Broken Hill. The estimate of the Leader of the Opposition is \$522,000, but to get the Parliament to Broken Hill will involve hiring charter aircraft. A 747 would be needed for Country Labor and its ally, City Labor—the only real coalition in this place—a 737 would be needed for the Liberal Party, and a tiger moth would be needed for what is left of the National Party.

The Leader of the National Party does not like to fly, so he may be required to walk to Broken Hill or something equally ridiculous. The bottom line is that money needs to be spent on providing improved television reception in the bush. The residents of Broken Hill wait with great expectation for a certain commercial television service because they want to see Sydney news for a change. Let us get our facts straight about this matter. There are real telecommunications black spots in the bush, and we are in the business of fixing them.

**Mr GEORGE** (Lismore) [4.14 p.m.]: At times one wonders what goes on in this House and it is certainly an experience to take part in this debate. The honourable member for Bathurst has claimed that the social impact of Telstra policies should not be borne by country people. I point out that it is the impact of the policies of the New South Wales Labor Government that is causing many social problems that are being experienced around the State. Country people should not be disadvantaged. There have been black spots in the Lismore electorate, but I supported the application to the Federal Government of those who experienced the problem. Their application was approved and in most cases the problem has been resolved.

As the local member of Parliament, I was only too happy to get together with Mr Ted Brown, who experienced this problem and got the whole community together to compile a submission. He made an application through the Federal member for Page, Ian Causley, who was successful in having the matter resolved. If the honourable member for Bathurst cannot achieve a similar result in his electorate, perhaps he should approach his Federal member to see what he can do. Apparently he is not making the necessary applications, but he will need the community to get behind him. Talking about the social impact of Telstra policies, I point out that in Bonalbo local residents have sought approval for the construction of a mobile phone tower under the Networking the Nation Program. I quote from a letter received by the Bonalbo/Upper Clarence Lions Club Inc., which had complained about being unable to get into the critical area to have the tower erected. The letter stated:

The NSW State Parliament is expected to pass, in coming months, legislation to transfer some national parks to local aboriginal groups. The preferred site for the Bonalbo service, because it provides far superior coverage to alternative sites, is located in one of these parks. The wait for the coming legislation and the time required for subsequently handing over the site and then negotiating its use with the prospective new owners indicates that the Bonalbo service is now unlikely to become operational until the second half of 2003.

The honourable member for Bathurst has said that country people should not be disadvantaged. In the case I have referred to the Carr Labor Government is delaying the construction of a Telstra tower because it will not give approval to run power over 150 metres into the national park. The honourable member for Bathurst, the mover of the motion, not the Coalition, brought Telstra into this debate. Country people are being disadvantaged by the New South Wales Government. In this instance it is a Telstra problem, but I can assure the Minister for Agriculture, who is at the table, and the honourable member for Bathurst, that it is their Government that is holding up progress.

Earlier today a notice of motion was given by the honourable member for Hornsby, who highlighted exactly the same concerns in other areas of this State. The construction of Telstra mobile phone communication towers is being delayed because the New South Wales Government does not want to upset the Greens. That is what we are all being told. The Minister for the Environment must change the legislation to provide the necessary authority so that services can be provided to the country areas. That will do more than black spot funding to meet the concerns of country people. If State members of Parliament join with their communities to compile proper submissions, they will probably obtain approval for black spot funding in the same way as funding was approved for the area to which I referred on the North Coast through the efforts of Ian Causley.

**Mr E. T. PAGE** (Coogee) [4.18 p.m.]: The motion expresses concern about black spots and calls on the Federal Government to pledge funding for the program beyond next year.

**Mr George:** Has Coogee got one?

**Mr E. T. PAGE:** It is amazing how ignorant some people are. A black spot is an area of poor or non-existent television reception from the potentially available local commercial and national television services. The Department of Communications, Information Technology and the Arts has stated:

The Department's vision is that Australia will continue to develop world-class communications, information technology, sport and cultural sectors that will build on the creativity of our people and the opportunities provided by new technologies, to enrich the economic, social and cultural wellbeing of all Australians.

Key activities of the Department include:

- ensuring the telecommunications, broadcasting and radio-communications sectors meet the needs of all Australians and are internationally competitive.

That is not true. Many parts of Australia do not have that service and, therefore, have what is termed a "black spot". The Federal Government has a responsibility to provide proper television broadcasts, yet we do not receive them. Parts of my electorate have poor television reception, as do many country areas. The Federal Government, in an endeavour to meet its responsibility, set up the television black spots program, from the proceeds of the partial sale of Telstra, as part of its \$120 million television fund initiative. That is why Telstra is relevant to this debate. Under that program the Government aims to assist communities to fix between 200 and 250 analog television reception black spots. Funding of up to \$25,000 per television service will be made available for the cost of purchasing and installing analog terrestrial transmission equipment.

The Commonwealth Government is responsible for providing proper telecommunications services but will not fulfil its responsibility to make sure that everyone has satisfactory reception. However, it is prepared to contribute some funding to eradicate black spots and the residual cost will have to be met by other means. It is ambiguous for the Federal Government to say that it is its responsibility and then to tell people that they will have to pay a large proportion of the fee. The Government has said that if communities want more work done on black spots they will have to agree to the sale of Telstra. It is blackmail for the Government to say that if the sale of Telstra is opposed, nothing will be done about black spots in the bush—and that is the area that is strongly opposed to the sale of Telstra.

A member of the National Party asked, "Where are these black spots?" There are such areas in my electorate of Coogee. At Bondi Junction, Clovelly and South Coogee people cannot get proper reception. The area in which I live cannot get Sydney reception; my television aerial focuses on reception from Wollongong. To suggest that we should not be talking about black spots because they are only in National Party electorates is incorrect. People in my electorate are concerned about poor television reception. The Federal Government should spend money to fulfil its responsibility to enable people in my electorate to have satisfactory television reception. We should not have to make special arrangements to pick up a signal from Wollongong. I would prefer to have my television reception from Sydney rather than Wollongong, because Sydney is my area of operation.

**Mr MARTIN** (Bathurst) [4.23 p.m.], in reply: It is easy for me to reply to contributions by members on the other side of the House, because there was precious little in them. The honourable member for Murrumbidgee gave his normal type of contribution: he was unprepared and his heart was not in it. Most of what he said was irrelevant. The so-called heavyweights of the National Party were missing. However, the honourable member for Murrumbidgee claimed that Federal matters that have no significance to the people of New South Wales are raised in this House. This is a Federal matter and it is of concern to the people of this State. I can think of others that have been raised by Country Labor during urgent motions.

**Mr Fraser:** Aluminium smelters?

**Mr MARTIN:** I will talk with the honourable member for Coffs Harbour about smelters any time he likes; he can come up to my patch. There are matters like the drought, regional air services, trade negotiations, and tariffs. They are all matters that have been raised on this side of the House, but the honourable member for Murrumbidgee claimed such matters are irrelevant. I would like to hear him try to convince the people of New South Wales of that. Of course they are not irrelevant and the Government will continue to raise them. Today we are talking about telecommunications black spots. No member opposite, except perhaps the honourable member for Lismore, who mentioned mobile phone towers, got anywhere near the problem. That was a red herring because members opposite do not want to debate this matter. The challenge for them is to go and talk with John Anderson and their Federal counterparts and tell them to back off on the sale of Telstra. If they do not they will dud the people in the bush.

The Federal National Party members are rolling over and talking about wonderful infrastructure programs that they want financed from the sale of Telstra. Last week in this House the supposed Leader of the National Party backed off quickly on this issue. The New South Wales National Party does not want to rattle the cage of John Anderson or Warren Truss, because it is rolled by the Liberal Party's shadow Cabinet on every matter. The same thing happens in Canberra. The Coalition does not want to have this debate. The real test for members opposite is to exert some influence on the Federal Government to support the people of New South Wales, both city and country, by saying, "Hands off Telstra". The continuing commitment to the television black spots program and to dealing with mobile phones problems and the broadbanding of Internet services should not be left to some private organisation that would get the benefit from the sale of Telstra.

Any such organisation would meet its commitments under some sort of community service obligations charter that would be forgotten in a couple of years. That work should be carried out using Telstra's substantial profits, which should be used for the good of the public. Many communities still do not have black spot funding and members on this side gave eloquent reasons for that. It might seem trivial to members of the National Party that someone in Tottenham, perhaps an aged lady who is housebound, cannot get any television reception. She may have failing eyesight and have trouble reading. What is she to do? She may want to listen to her radio, but she probably gets a fuzzy radio signal.

This is an important matter because radio and television are sources of information. It is important that we send this message to the Federal Government before the sham Estens inquiry is wound up. I am sure that the Minister for Fair Trading, who is at the table, knows what the recommendation of the inquiry will be. I am sure it will be, "Mr Prime Minister, things are beautiful in the bush with Telstra, you have carte blanche to go ahead and sell the rest of it." The National Party will roll over: it will not have the guts to stand up to John Howard and the Liberals. This motion is important and relevant to country New South Wales, as are many other issues raised on this side of the House. What is not relevant to country New South Wales is the National Party.

**Motion agreed to.**

## **BREAST CANCER AWARENESS**

### **Matter of Public Importance**

**Mrs SKINNER** (North Shore) [4.29 p.m.]: As this is Breast Cancer Awareness Week, October is Breast Cancer Awareness Month, and yesterday was Breast Cancer Awareness Day, I raise the important matter of breast cancer awareness. Many of my parliamentary colleagues and others have attended functions and activities. For me those functions have included attending a pink ribbon breakfast yesterday. Over the weekend the functions included marches, gatherings and a display in the Domain. In the year 2000 breast cancer was the second most common new cancer for the New South Wales population overall has been the fifth biggest cause of cancer deaths in New South Wales.

In the past 10 years the number of women in New South Wales diagnosed with breast cancer has increased by almost 20 per cent. Fortunately, the mortality rate from this cancer has fallen by almost 25 per cent. That figure reflects the success of breast cancer screening, a matter to which I will refer again later. There are grave concerns about the number of women who are not being screened and about the lack of access to breast cancer screening. I want to refer first to an issue I learned about at the breakfast I attended yesterday. At that breakfast the Federal Minister for Health and Ageing, Senator the Hon. Kay Patterson, outlined a new approach to the treatment of breast cancer in women: multidisciplinary care.

I was somewhat surprised by that statement. I thought it was such a natural thing that it would have happened automatically, but apparently that is not the case. I entirely endorse this new approach to the treatment of women with breast cancer. It fits in comfortably with Coalition policy, which acknowledges the benefits of a team of people providing co-ordinated treatment and support. Multidisciplinary care will also add to the comfort and well-being of patients. There is a greater need for liaison across all levels of government and with non-government providers to ensure that people obtain access to the broadest range of services, including acute and non-acute care, community and family support.

The national breast cancer pilot project revealed the benefits of multidisciplinary care. It established that multidisciplinary care helps women with breast cancer, particularly those living in rural areas. It brings all those involved, including patients, together with a team that is linked to specialist centres that use teleconferencing or video conferencing, if necessary. It might also involve surgeons, medical and radiation oncologists, pathologists, radiologists, nurses and possibly social workers, psychologists, psychiatrists, physiotherapists, plastic surgeons and geneticists, depending on the woman's condition. Breast cancer is still a major issue for women. I believe that multidisciplinary care is a step in the right direction towards improving outcomes for women who have breast cancer.

I return to an issue I raised earlier, the number of women being screened. Honourable members will recall BreastScreen New South Wales, a program that commenced in 1991 when the former Coalition Government was in office. Even though I was not a member of this House at the time, I was involved in that program as I was a member of the New South Wales Women's Advisory Council, which took a great interest in it. That program, which has widespread support across the community and from all political parties, offers mammograms to women every two years to detect breast cancer early. Part of the increasing incidence of breast cancer is likely to be explained by the earlier detection of cancers through mammographic screening. That is supported by evidence that breast cancer tumour size has decreased in women aged 40 to 59, coinciding with a steep increase in screening rates in those age groups.

One thing about which I am gravely concerned is the fact that the number of women having mammograms for the first time is only 54 per cent of the target population. Statistics refer to the number of women going back for rescreening. I have mammograms regularly; I go back every two years. The screening centre that I attend is good at sending me reminder notices. Women are not taking advantage of the available opportunities. I urge all women over 50 years of age to have a breast screen and to have a rescreen every two years. Those with family histories of breast cancer need to have a screening at an earlier age. Breast screening can save lives; it has been proven that early detection of tumours saves lives. That is why mortality rates are dropping.

I want to spend some time talking about the interesting statistics in the report of the New South Wales Chief Health Officer, which was released only a couple of weeks ago. These statistics show the new cases of breast cancer that are detected by each area health service. Incidence rates for women aged 50 to 69, the screening years, were highest in the Northern Sydney Area Health Service, which is in my electorate. That might reflect the fact that more people like me are having mammograms, or it could reflect the fact that the incidence of screening of women between those ages in other parts of the State needs to be increased.

The tables to which I am referring demonstrate that breast screening rates were higher than the State average in the Northern Sydney, Hunter, Illawarra, Northern Rivers, Mid North Coast, New England and Greater Murray area health services and that rates were lower than the State average in the Central Sydney, South Eastern Sydney, South Western Sydney, Western Sydney, Wentworth, Macquarie, Far West and Mid Western area health services. There is nothing to explain why that is happening. Perhaps a better education campaign is needed to inform people about the importance of starting breast screening when they reach the age of 50, or earlier if they are at risk. The highest screening rate in the State was 67 per cent and the New England Area Health Service had the lowest rate at 44 per cent, which is not a good figure.

The target rate for women in the population in this age group is 70 per cent, so we are a long way off target. A number of my parliamentary colleagues who are in touch with their local communities, particularly in rural areas, have raised with me their concerns about access to breast screening. My colleague the honourable member for Burrinjuck, who will also speak in the debate on this matter of public importance, will raise those widespread concerns. The honourable member for Wagga Wagga, who is in the Chamber, and other honourable members have raised this issue with me on a number of occasions. We must ensure that women in rural New South Wales have access to breast screening and rescreening.

At the pink ribbon breakfast I attended yesterday the Hon. Phillip Ruddock launched the hospital services directory project. Hundreds of women who attended that breakfast were given a video display of what it involved. It is a marvellous project developed by the Commonwealth Government that enables doctors, women and anyone with access to the Internet to go through the directory and find out what services are available and where, no matter where they live. That is a terrific asset not only for patients but also for general practitioners and others in the multidisciplinary team charged with the responsibility of caring for individuals. It is a way to overcome some of the totally inappropriate treatments that some women have been forced to undergo.

There has been no real choice for women living in country New South Wales. Far too many of them have had mastectomies because they do not have access to radiotherapy or chemotherapy. They believe it is quicker to have their breast removed than to have treatment that has been demonstrated to be effective in dealing with breast cancer. I refer again to the importance of regular screening and the provision of sufficient resources so that everyone has access to breast cancer treatment and screening.

**Ms MEGARRITY (Menai)** [4.39 p.m.]: It is an honour to participate in this debate about breast cancer and breast cancer awareness. I commend the honourable member for North Shore for bringing this very important matter to the attention of the House today. It is a cold, hard and sad fact of life that breast cancer cannot be prevented. Hence awareness, and I believe courage, are critical to fighting the battle against it. The 2002 report of the New South Wales Chief Health Officer revealed that in the year 2000, breast cancer was the most common cancer among women, constituting 29 per cent of all cancers. Cancer is the second most common cause of disease burdening both sexes after cardiovascular disease, accounting for just under one-fifth of years of healthy life lost due to premature death, disease or injury.

The incidence of breast cancer has increased by 19 per cent in the past decade, but I guess we can derive some comfort from the fact that the mortality rate has declined by 24 per cent in association with the two-yearly breast cancer screening program targeted at women aged 50 to 69 years. Awareness and courage, to which I referred earlier, come into the equation in the early detection of the disease, which is facilitated by regular screening and prompt, appropriate medical treatment. My family was shocked in 1972 when my mother, thanks to a general practitioner [GP] with excellent diagnostic skills, detected a problem. To our relief, surgery revealed that her tumour was non-malignant.

However, a couple of years later she again experienced pain and became concerned. Unfortunately, her GP had retired in the interim and a less enlightened physician told her repeatedly that she was being neurotic and that the pain could be due to lesions from the first operation. In those days—it was the early 1970s—there was no real community awareness of breast cancer; it was not talked about. My mother, like so many of her generation, did not want to question professional people such as her doctor but she finally sought a second opinion. This time the tumour was found to be malignant and a mastectomy was performed.

An operation such as that and the related physical therapy that follows have a profound effect on the patient. Bouts of subsequent radiotherapy seriously burned my mother's skin and caused painful shingles. She endured course after course of physically devastating chemotherapy in an attempt to thwart the relentless march of the cancer to other organs of her body. My mother waged a long, fierce physical and psychological battle but died in May 1983. My father and all of our family can only ponder on the potential outcome if there had been early detection and treatment of my mother's second breast cancer incident.

We applaud not only the more recent advances in medical treatment but the programs that offer emotional support and gentle exercise regimes, such as the YWCA's excellent Encore Program, which helps female survivors of breast cancer surgery to recover. Generous funding for the program was previously provided by the Avon company. This funding has expired, but I was delighted to learn earlier this month that the Minister for Health had advised the executive director of the YWCA that NSW Health will contribute a total of \$268,000 per annum from 2002-03 to fund this excellent program across the State.

The community also applauds the unique partnership between David Jones, BreastScreen New South Wales, and the Royal Hospital for Women to provide breast screening, bone density assessments, blood tests and blood pressure monitoring on the intimate apparel floor of David Jones' Elizabeth Street store. This partnership is the first of its kind in Australia. David Jones has funded and constructed the fully equipped consulting rooms, known as the Rose Clinic. Don Grover, the David Jones Stores Director, said in May this year when the initiative was announced that the aim of this innovative partnership was to encourage more women to have regular breast screening and bone density scans. He said:

We have noticed that sales in our prosthetic fitting department are consistently increasing. It's the only area where we wish our sales weren't growing.

David Jones sells a lot of women's clothing and accessories and its sales staff obviously fit many prosthetics nowadays. In the past such things were not discussed. I am reassured as a woman and a member of Parliament that retailers are taking a lead and making such partnerships possible. As the honourable member for North Shore said, I hope that women take advantage of this opportunity and have regular screenings. I urge them to be courageous: it takes courage to be tested as one may fear the outcome. However, I can testify that ignorance is not bliss and that diseases such as breast cancer have a way of making us take notice. We must make sure that that does not happen too late.

Medical science and support services, family support and programs such as Encore can contribute to patients' mental health and wellbeing. I am sure that a patient's mental attitude is critical in the fight against cancer as only the patient knows what he or she is going through. I commend all those involved with the breast cancer awareness activities this week, this month and in previous years. Such campaigns can only contribute to greater awareness of this disease. The display in the Domain, comprising outlines in pink, blue—representing those men who suffer from breast cancer—and white, was particularly striking and a physical reminder of this disease with which many deal on a daily basis.

I commend the honourable member for North Shore for raising this matter of public importance and congratulate all who will speak in this debate. Many honourable members who concur with the sentiments expressed will not be afforded the opportunity to participate. I stress the importance of early detection: I urge women to have regular breast screenings and to take the results as they find them. We can only hope that the women and men afflicted with breast cancer will receive the treatment, support and encouragement they need not only to survive but to go on to lead fulfilling lives, free from fear of the disease recurring.

**Ms HODGKINSON** (Burrinjuck) [4.47 p.m.]: I join the honourable member for Menai and the honourable member for North Shore in stressing the importance of breast cancer awareness. However, before I address this issue I place on the parliamentary record the sympathies of the constituents of Burrinjuck for the families and friends of victims of the Bali bombings. Breast cancer is the most common form of cancer among women in Australia today. Last Sunday I attended a breast cancer memorial service at St Nicholas Church in Goulburn. It was a sincere and sombre ceremony attended by pink-beribboned ladies and blue-beribboned gentlemen. Breast cancer has obviously devastated many lives but people refuse to give up and are striving to defeat this dreadful disease.

In New South Wales one in 11 women will develop breast cancer by age 75. Some 10,000 women are diagnosed with breast cancer in Australia each year and about 2,600 will die of the disease—some 900 of them in New South Wales. The average age at which breast cancer is detected is 64 years, and early detection is the key. Residents of Burrinjuck can access private screening services in Goulburn and mobile services provided by BreastScreen New South Wales and BreastScreen Australian Capital Territory. BreastScreen New South Wales, which operates out of Wagga Wagga, serves areas such as Tumut and Gundagai. BreastScreen Australian Capital Territory operates a mobile mammography unit that visits locations in Burrinjuck closer to the Australian Capital Territory, including Crookwell, Goulburn, Boorowa, Harden and Yass.

There are concerns in some parts of Burrinjuck about access to screening—which the honourable member for North Shore mentioned—particularly in Boorowa and Harden. BreastScreen Australian Capital Territory currently visits Harden and Boorowa once a year. This is a vital service. The New South Wales Central Cancer Registry shows that Boorowa Shire has the second highest incidence of breast cancer in the Southern Area Health Service, with a standardised rate of 64 cases per 100,000 people.

The rates are: Goulburn 42.7, Harden 45.1, Queanbeyan 49.4 and Yass 47.8, which are all much lower than Boorowa. The 2001 census shows that Boorowa has 491 women aged over 45. It is disturbing that only 250 to 300 screenings are carried out in both Boorowa and Harden each year. Screening is recommended for women



over 40, but it is highly recommended for women aged between 50 and 69. NSW Health figures show that the rate of death from breast cancer has fallen from about 75 per 100,000 in 1989 to just over 50 per 100,000 in 1999. There is no doubt that that is due to early detection as a result of breast screening. NSW Health estimates that the number of deaths could be reduced by 30 per cent if all women between the ages of 50 and 69 were screened.

It has been suggested that a permanent mammography unit be set up at Young hospital using a surplus screening unit from BreastScreen Australian Capital Territory. The mobile screening service would then be cut back to a biennial visit. But the cutback of mobile screening services does not have popular support in Boorowa or Harden. For a start, Boorowa has no public transport, and that is a problem in many country communities. Many of the elderly in Boorowa would have difficulty accessing screening if they had to travel to Young. In response to representations by me, local government and my colleague the honourable member for Lachlan, the Minister for Health recently announced that the mobile service would continue on a temporary basis for two years. I ask that the Minister commit to permanently maintaining at least the existing level of services.

Each State and Territory has an agreed screening target of a 70 per cent participation rate for women between the ages of 50 and 69. No State or Territory has reached that target. The NSW Health figures show that the Southern Area Health Service achieved a screening rate of only about 54 per cent between October 1999 and September 2001, which is below the average of about 58 per cent for rural health services. Three other area health services have a worse track record than the Southern Area Health Service. Those are the Far West, Macquarie and Mid Western area health services. Those area health services combined occupy the western third of New South Wales. In all of those areas access to screening and public transport are obviously significant factors.

The figures relating to screening in Boorowa and Harden indicate the necessity for more education to create a greater awareness of the need for screening. More should be done to increase the number of women being tested for breast cancer. It is a fundamental mistake to scale back services when the Government should be encouraging more women to use them. I commend the honourable member for North Shore for raising this matter of public importance today.

**Mrs SKINNER** (North Shore) [4.52 p.m.], in reply: I commend the honourable member for Menai and the honourable member for Burrinjuck. I am sorry that other members could not speak on this important matter. The quality of this debate has demonstrated that all honourable members are capable of very good things if they do not enter into politics when discussing such issues. I extend my condolences to the honourable member for Menai in relation to her mother, although I am sure it is far too late. I was certainly unaware of it. I hope that the honourable member for Menai is having her breasts screened regularly because people are at risk when there is a family history of breast cancer.

I have previously told this House that I sat with my best friend when she died from cancer, which started as breast cancer. I am passionate about trying to educate women about the need to be tested, because breast cancer is easily avoided. It is important that all men and women fight this disease. My male colleagues on this side of the Chamber, and I am sure those on the other side of the Chamber, wanted to speak to this matter of public importance. I want priority given to providing women, no matter where they live, with access to screening and consequent treatment. The figures cited by the honourable member for Burrinjuck from the report of the Chief Health Officer indicate that women in remote areas have the most difficulty, and that issue needs to be addressed.

We must ensure that the area in which women live is not an impediment to their accessing not only screening but also treatment, so that they can join other women who are increasingly beating this insidious disease. The Coalition is committed to encouraging all women over 50 to have a mammogram every two years and ensuring that access to such screening in rural communities and other areas is improved. To that end, this matter will be a very important aspect of Coalition policy and commitment during the next few months. I commend to the House this very important issue. I thank my colleagues for their contributions to this debate.

**Discussion concluded.**

## **BUSINESS OF THE HOUSE**

### **Bill: Suspension of Standing and Sessional Orders**

#### **Motion by Mr Aquilina agreed to:**

That standing and sessional orders be suspended to permit the introduction forthwith and progress up to and including the Minister's second reading speech of the State Revenue Legislation Amendment Bill, notice of which was given this day for tomorrow.

**STATE REVENUE LEGISLATION AMENDMENT BILL**

**Bill introduced and read a first time.**

**Second Reading**

**Mr AQUILINA** (Riverstone—Minister for Land and Water Conservation, and Minister for Fair Trading) [4.56 p.m.]: I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment Bill contains amendments to the Duties Act 1997, the Land Tax Management Act 1956, the Petroleum Products Subsidy Act 1997, the Stamp Duties Act 1920 and the Taxation Administration Act 1996. I will deal with the amendments to each Act in turn. The Duties Act 1997 is the product of an inter-jurisdictional project to rewrite stamp duties legislation. This project resulted in substantial changes to most forms of stamp duty to provide improved levels of uniformity between the States. Although many provisions relating to mortgage duty are uniform, agreement was not reached in relation to the treatment of mortgages over property in more than one jurisdiction.

Revenue offices in other States have undertaken a review of mortgage duty, and have developed a model for apportioning duty between the States on the basis of the property used as security at the time advances are made. Adoption of the model in the bill represents a change from the current New South Wales mortgage duty provisions which apportion duty on the basis of the property used as security at the time of execution of the mortgage, subject to credits for duty paid in other States. The model is currently used in Victoria, Tasmania and Queensland. A similar scheme is already in place in South Australia and Western Australia. The Territories do not impose mortgage duty.

The model includes provisions intended to keep compliance costs to a minimum. For example, the model adopts a list of common reference points at which time the value of the property used as security is determined. The same point is used in each State to determine the value of the property for the purpose of apportioning duty. The model also simplifies the method of stamping mortgages by providing for the optional stamping of a single written statement, covering all mortgages in the package. The same statement can be used in each State, resulting in a reduction in the cost of compliance. To further avoid delays, the model allows mortgages or statements to be stamped prior to an advance being made.

Liability to stamp duty has historically been determined by the law in place at the time of execution of the document. Under the new model, all advances and further advances under mortgages that have been executed since mortgage duty was introduced in 1975 will be chargeable with duty under the new provisions. This approach will result in administrative savings and a reduction in compliance costs.

The bill also extends a number of concessions and exemptions from mortgage duty. Where a loan is refinanced, a duty concession applies to the new mortgage that is taken to secure the amount of the balance outstanding. The concession effectively puts the mortgagor in the same position as if the refinancing had not occurred by deeming the new mortgage to be stamped to the same extent as the earlier mortgage. A refinancing is generally identified by reference to "the same property" and "the same borrower". The current provisions, however, identify circumstances where the borrower or borrowers under the new mortgage are not required to be identical to the original borrower, for the exemption to still apply. These only apply where the borrowers are natural persons and are usually where there has been a death or divorce.

However, loans to corporations can also involve changes to the borrowers over time. It is consistent with the existing exemption to allow members of a corporate group to retain the benefit of stamp duty paid on an earlier mortgage after refinancing. The bill provides that, where the borrower under the earlier mortgage is a corporation, related bodies corporate are taken to be "the same borrower" for the purposes of the refinancing exemption. The bill provides for another exemption in relation to mortgage duty. Employees who borrow from their employer to participate in an offer to acquire shares in their employer may be asked to enter into a mortgage to secure a loan to finance the share offer. These are usually small amounts where the mortgage duty involved is only \$5. In many instances the duty would not be paid, as neither party would be aware of the liability to duty. The bill will exempt these types of mortgage documents where the total advance does not exceed \$16,000.

To enhance Sydney's position as a global financial centre, an exemption from marketable securities duty has been provided for a range of public unit trust mergers. The exemption will allow trusts whose

administrative costs are high to merge with larger or growing trusts without incurring a duty liability. Managers with unnecessary numbers of New South Wales trusts will be able to merge them to achieve better economies of scale and competitiveness without the additional cost of duty.

Chapter 2 of the Duties Act imposes duty on dutiable transactions, which are a specified list of transactions in the nature of transfers. If there is a contract for sale, duty is payable within three months of the execution of that contract. Where no contract is entered into, duty is payable within three months of the transfer. Where an agreement for the sale or transfer of dutiable property is cancelled, the purchaser under the agreement is entitled to a refund of duty—subject to certain limitations to prevent abuse of the provision. However, in cases where there is no contract, the Act currently does not contain any such provision for reassessment and refund of duty where a transfer instrument has been cancelled and the dutiable property has not been transferred.

The bill provides that where duty has been paid on a transfer document and the transfer of dutiable property does not proceed, the Chief Commissioner of State Revenue must reassess and refund the duty upon surrender of the transfer document to the Chief Commissioner. The Duties Act provides for nominal duty to be paid on transfers of land arising from conversion of company title to strata title. This concession recognises that, while there is a change in legal ownership of the land—from the company to the individual shareholders—there is no change in the ultimate beneficial ownership of the property. The bill clarifies and strengthens this provision to apply concessional duty to all forms of conversion of title, provided the appropriate duty was paid on the original acquisition.

The Duties Act contains land-rich provisions that treat certain transactions over units in a unit trust as if the transaction were a dealing in the land directly. The provisions exclude unit trusts that are essentially publicly owned and traded. The definition of "public unit trust scheme" is therefore vital in determining which unit trusts are excluded from the tax base. The present definition does not clearly recognise unit trust schemes that are only accessible to wholesale investors—being superannuation and managed funds. The bill will clarify the definition and therefore exclude from the tax base trusts that have, as majority unit holders, public trusts. The bill will also clarify the definition to remove references to the Commonwealth Corporations Act so that the definition more clearly and directly identifies the type of arrangements that fall within the concept of a public unit trust scheme.

In determining whether a company or unit trust is land rich, the Duties Act includes land owned by subsidiaries as land owned by the parent entity. This is achieved by a notional winding up of the subsidiary so that the land and other assets of the subsidiary are included in the parent's balance sheet in place of the shares in the subsidiary. There is an argument that the current provisions effect a double counting of the value of the shares, which could be used as a mechanism to avoid the land-rich provisions. The bill will amend these provisions to confirm that, when calculating the value of land owned by an entity, the proportionate value of land owned by a subsidiary is substituted for the value of the shares or units held by the parent entity.

The Duties Act does not bind the Crown in any capacity. Purchases of dutiable property by Crown bodies of any jurisdiction are therefore not subject to duty. In the past, this was the consistent policy position of all Australian States. However, most jurisdictions now impose duty on purchases by Crown bodies of other States. The bill will align the New South Wales position by binding the Crown in any capacity—to the extent that this is within the legislative power of the Parliament. Exemption has been retained for the New South Wales Crown unless other legislation expressly provides for liability. Duty is imposed on transfers of specific items of dutiable property, including certain business assets. This includes intellectual property, which comprises business names, trading names, trademarks, industrial designs, patents, registered designs and copyright.

It is becoming increasingly common for sales of businesses to include separate consideration for the value of web sites, databases and domain names, that is, Internet addresses. Copyright may subsist in the matters contained on web sites and databases, which are therefore dutiable property. However, the domain name does not fall within any of the specified categories of intellectual property. It is anomalous that a web site can comprise dutiable property, whereas the right to maintain an address for that web site is not dutiable property. The non-dutiability of domain names causes difficulties in apportioning consideration between the different items of property that are being sold. The bill will add domain names to the list of matters comprising intellectual property for the purposes of determining dutiable property.

The Duties Act contains a provision to ensure that ad valorem duty is not paid more than once on what is essentially the same transaction. The bill amends this provision to clarify that this extends to a declaration of trust where duty has been paid on an earlier declaration of trust of that same trust. For land tax purposes, a special trust is defined as a trust in which none of the potential beneficiaries is regarded as owner, and includes a

discretionary trust. The effect is that where the trustee of a trust is the only person who is liable for land tax on trust land, the trust is not entitled to the tax free threshold—currently \$220,000—and instead pays the flat rate of tax of 1.7 per cent of the land value of trust land.

None of the beneficiaries is liable to pay land tax on trust land. In contrast, beneficiaries of a fixed trust are assessed on their respective interests in the trust. This method of taxing special trusts ensures that owners of land are not able to establish multiple trusts to hold various interests in land, and claim multiple tax-free thresholds. It also simplifies the assessment process by avoiding the need to tax both the trust and the beneficiaries. The bill clarifies the definition of special trust by replacing the existing definitions of special trust and discretionary trust with a definition which would apply the special trust provisions to any trust in which no person other than the trustee is deemed to be an owner.

The bill also includes a specific exemption for trusts that are created for the benefit of a person with an intellectual or physical disability, or an under-age person, and retains exemption for charitable trusts and trusts created by a will. A trustee of a fixed trust will be required to notify the Chief Commissioner of the beneficiaries of the trust, and to allow the Chief Commissioner to classify a trust as a special trust if the trustee does not do so. The bill closes a loophole in the current legislation which allows the exemption for a principal place of residence to be claimed where one of the joint owners of a home is a special trust, and the trustee is a natural person.

Under the current legislation, land used and occupied as the principal place of residence of an owner is exempt from land tax provided the owner, or all of the owners in the case of jointly owned land, is a natural person. The legislation does not allow an exemption where the owner-occupier is an owner simply in his/her capacity as a trustee. Under the current provisions an owner-occupier could own 1 per cent of a home in his or her own right, and 99 per cent as trustee of a special trust and still be eligible for the exemption. The bill closes this loophole by removing eligibility for the exemption where a special trust has an interest in the land.

The Petroleum Products Subsidy Act regulates the payment of subsidies under the zoning scheme that applies along the New South Wales-Queensland border. The subsidy scheme allows petroleum wholesalers and retailers located in northern New South Wales to compete on an equal footing with their Queensland counterparts, who receive a subsidy from the Queensland Government. The bill removes or modifies a number of provisions that have become redundant as a result of the transfer of responsibility for payment of off-road diesel subsidies from the States to the Commonwealth, in conjunction with the introduction of the GST in July 2000. In addition, the bill strengthens certain administrative and enforcement provisions. For example, the bill makes it an offence to sell or consume subsidised petroleum products in contravention of the legislation unless the relevant subsidy is repaid to the Chief Commissioner within a specified time frame. Sellers of subsidised fuel other than service stations will be required to include details of the amount of the subsidy on their invoices.

The bill makes it an offence for purchasers to falsely represent that they are entitled to purchase subsidised fuel. The maximum penalties for these new offences is 100 penalty units, or \$11,000, which is the same as most of the penalties for existing offences. The bill replaces detailed and onerous record-keeping requirements that are currently set out in the regulation with a general record-keeping requirement. In addition, the bill transfers from the regulation to the Act certain provisions relating to subsidy claims, the maximum subsidy payable and the Chief Commissioner's powers of investigation. New South Wales currently pays an average of \$3.3 million per month in zone subsidies, of which about \$1.2 million per month is for on-road diesel and \$2.1 million is for motor spirit. The amendments contained in the bill will minimise the risk of revenue loss due to fraud by sellers and consumers.

The Revenue Laws (Reciprocal Powers) Act 1987 was part of legislation introduced in each State and Territory and the Commonwealth to enable the enforcement of the taxation laws of each jurisdiction by means of the exchange of information and the conduct of investigations. At the time of its introduction, the reciprocal powers arrangements applied common provisions to all tax investigations by and on behalf of other jurisdictions. Since then, the Taxation Administration Act has adopted common provisions for each New South Wales taxation law in relation to investigations by New South Wales tax officers. However, the two Acts are not entirely consistent. In addition, there is some overlap between the information disclosure provisions in the two Acts. Until now, the two Acts could not be merged as the reciprocal powers provisions also applied to some revenue laws that were not, at the time, under the administration of the Office of State Revenue.

This problem has now been resolved by the transfer of the administration of betting tax and gaming machine tax to the Office of State Revenue. Incorporating reciprocal powers for tax investigations in the

Taxation Administration Act will eliminate the inconsistencies and overlap between the two Acts, and would be consistent with the arrangements in place or being adopted in other jurisdictions. The Office of State Revenue currently undertakes compliance audits and investigations in relation to State taxation laws and other matters under the Office of State Revenue's administration, such as the first home owner grant. Undertaking compliance audits on behalf of other agencies would provide an opportunity for improved efficiency and effectiveness of the Office of State Revenue's operations, as it would involve joint audits for State taxation purposes as well as for compliance with other laws. It would also send a strong message about agencies working together to improve compliance levels.

There are potential benefits for efficiency and effectiveness in allowing different government agencies to co-operate in compliance audits. The bill therefore authorises the Chief Commissioner of State Revenue to enter arrangements with other public authorities for the exercise of investigative and audit functions under non-tax laws. The bill will also authorise the Chief Commissioner to exercise such functions in conjunction with an investigation under a taxation law. The exercise of this function would, of course, be subject to the other public authority being authorised to make such arrangements. I table a summary of the bill for the assistance of honourable members. I commend the bill to the House.

**Debate adjourned on motion by Mr R. H. L. Smith.**

**Pursuant to sessional orders business interrupted.**

### **PRIVATE MEMBERS' STATEMENTS**

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#### **TRIBUTE TO Mrs ELAINE AND Mr HAROLD COX**

**Mr HUNTER** (Lake Macquarie) [5.15 p.m.]: I wish to pay tribute to Elaine and Harold Cox, two fine Australians who lived their lives to the fullest while helping their local community and providing for their family. I acknowledge that Elaine and Harold's daughters, Helen Bell and Lindsey Allison, are in the gallery to witness this tribute to their parents. Elaine Cox passed away on 4 February this year aged 72. On the following Friday, 8 February, the Morisset Uniting Church was filled to overflowing with people from all walks of life who came together to celebrate Elaine's life. I was honoured to be able to join with Elaine's family and her many friends in speaking and paying tribute to her at the church service. Helen said of Elaine on the day:

The people here today represent mum's broad range of interests. She always gave 100 per cent to anything she was involved in, whether it was as a wife and mother, in paid work, her various volunteer activities or just having fun. Many of you will also know that in order to fit everything in she gave 0 per cent to the things that didn't interest her, like housework. That is one of her many legacies to me.

Her volunteer work was with the South Lake Carers, Meals on Wheels and many other organisations. Harold and Elaine were pillars of their local community.

Helen pointed out that Elaine had been very active in the church congregation, and had worked hard in helping to build the church in Morisset. Elaine was born in Barmedman, New South Wales, in 1929. Her father, Fred, sold farm machinery. Her father, her mother, Ethel, and her brother, Keith, lived in various towns in the Riverina. Her mother died in 1945 and her father died in 1948. Around 1945 Elaine began a relationship with Harold Cox, who was born in Campbelltown in 1927, the son of Stan and Isabel. The family lived in Cowra, Barellan and later in Cootamundra, where Harold joined the army. Harold's father spent three years in Changi prison camp. It was a hard time for the family. Those years influenced Harold to hate conflict and injustice.

Lindsey pointed out that her mother and father were married in 1950. They spent some time in Sydney, then moved to a small farm at Dora Creek. Harold began working at Morisset Hospital where he was involved with the union movement. The injustices he saw staff endure resulted in his being instrumental in the formation of the Morisset branch of the Australian Labor Party. He remained a member until his death in 1992. Elaine was the President of the Morisset branch of the Australian Labor Party until she had to retire from that position due to ill health. Elaine worked at Morisset Hospital and at Toronto High School as a clerical assistant. She also worked at Morisset High School until her retirement in 1989. It was in 1972 at Toronto High School where a young, fresh-faced Jeff Hunter remembers first meeting Elaine Cox. I have recollections of Elaine as a very stern but very fair administrative assistant at the school.

Harold and Elaine cared very much for the local community in which they lived. Unfortunately, in late 1997, Elaine was diagnosed with cancer. She undertook chemotherapy in 1998, in 1999 and again in 2000,

and following the treatment she continued to enjoy her life as much she had beforehand. She remained positive about her health and made it clear that she was living with, and not dying from, cancer. Helen told me that her mother always hoped that eventually she would get well but, unfortunately, that did not happen. Throughout 2001 Elaine battled to stay healthy and in October she ceased having treatment. She admitted herself to hospital in December last year because she felt she was unable to look after herself. She remained in hospital until her passing, except for Christmas last year, which was spent at Lindsey's home. At the funeral service Helen said:

I will remember her as someone who made the very most of life, but accepted adversity without fuss or complaint, who simply got on with it. She had a strong sense of justice, and unbounded enthusiasm for life. I will especially miss her unconditional love and support.

Helen said that her partner, Kerry, described Elaine as "a genuine, classy woman", to which Helen added, "She sure was." As I said at the beginning of this tribute, Elaine and Harold Cox were two fine Australians. Vale Elaine and Harold.

### WERRIS CREEK RAILWAY STATION 125TH ANNIVERSARY

**Mr CULL** (Tamworth) [5.20 p.m.]: I inform the House that between 5 and 7 October, the long weekend, Werris Creek celebrated its 125th anniversary as the first railway town in New South Wales. Werris Creek is a small village located between Quirindi and Tamworth. It was created by the New South Wales Government in 1877 as a major rail depot and junction for the Great Northern Railway, which connected the northern line, the north-western line and the western line. This happened at a time when the interior of New South Wales was being opened up. The railway provided new opportunities to develop inland regions by providing a cheap and efficient transport system. Rail came to Werris Creek in the 1870s when the line went through to Tamworth. In 1877 Parliament decided to build a branch line from Werris Creek to Gunnedah. When the line was established it created the need for a station.

The platform for the new station, which is still the centre of attraction today, was built in 1879. The station was to be a remarkable building that could easily grace a city—a monument to railway confidence and bureaucratic power, yet a lonely citadel in the middle of the bush. The main station building is a very grand building, sumptuously decorated. It was a celebration of the railway bureaucracy at the time rather than a reflection of the importance of the town. A momentous decision was made in 1917 when the Government decided to make Werris Creek the northern headquarters of the railways mechanical branch. This marked the beginning of a boom time for the junction towns. In 1913 approval was given for the extension of a lengthy cross-country line to be built from Werris Creek to Binnaway, which would effectively join the northern line to both the western line and the southern line.

To this day Werris Creek has a proud history associated with the railways. Many of the residents of the town have played an important role in servicing and developing the rail industry. With the rationalisation and centralisation of rail services in the 1980s and 1990s, Werris Creek station became underutilised. The old 105-foot turntable has rarely been used and the old grand refreshment room has become little more than a store room. In April 1998 most of the first floor offices above the station, where once 70 or 80 people were employed, were empty and many of the ground floor office spaces were left vacant. Although Werris Creek station is still a branch line terminal for the north-west line, the building is now just a shadow of its former glory. The station is now a monument to the proud railway system that is long since past and the residents of Werris Creek are now the custodians of the history of the development of rail in New South Wales.

The 125th anniversary celebrations marked the beginning of a new age for rail in Werris Creek when the Australian railway monument project was launched. It will play a key role in the town's future prosperity. Following prolonged agitation by the Werris Creek community, the State Rail Heritage Unit presented a visionary concept to restore the station complex as a monument to the railway town. The project was not only intended to restore the station complex to its original glory but also to honour railway men and women who gave their lives serving the railway industry of our nation. The Australian railways monument promises to be a total memorial and educational entity to the history of rail and its contribution to the making of this nation. Several of Australia's foremost rail historians and museum developers have been contacted to ensure that the monument project progresses.

I congratulate the members of the 125th anniversary committee on their efforts in planning the celebrations for the long weekend. It was a great weekend, with much reminiscing of past times when the Werris Creek supported a vital rail infrastructure. I also congratulate the members of the Australian Railways Monument Committee for their dedication and commitment toward the planning of this monument, particularly

Chris Halley and Keith Moore for their untiring work. I look forward to the completion of this world-class facility in the future. I commend the project to the House. I seek the support of both sides of the House for the continual development of the monument. I look forward to the day of its official opening.

### **NEW SOUTH WALES FIRE BRIGADES FIREFIGHTERS STATE CHAMPIONSHIP**

**Ms SALIBA** (Illawarra) [5.25 p.m.]: I draw the attention of the House to the New South Wales Fire Brigades Firefighters State Championship, which took place in Wollongong between 19 and 25 October. The event was hosted by the Unanderra Fire Brigade under the leadership of Captain Peter Quin. On Sunday 19 October Commissioner Ian MacDougall attended the opening ceremony of the championship at which the Parliamentary Secretary Assisting the Minister for Police, and the Minister for Emergency Services, and honourable member for Newcastle, Bryce Gaudry, officiated. It was a terrific afternoon, and it was great to see so many fire brigades from throughout New South Wales, other States of Australia and New Zealand participating in championship events. Activities on the Sunday began with a procession of all the brigades carrying their banners as part of the official opening. Later in the evening there was a candlelight procession along Flagstaff Road into the local stadium. The procession was followed by a number of firefighting demonstrations. The evening concluded with fireworks, which my family and I really enjoyed.

It was good to see the fire brigades together, practising their skills and taking the opportunity to engage in competition. One of the activities was the urban pumper collector and ladder drill exercise, whose object was to extinguish a fire in a second-storey building. Another activity was ladder practice, which was meant to assess the fastest brigade to run up a ladder, ascend and strike a target. The hose reel and ladder exercise involved brigade members pulling a cart and ascending a ladder. A number of activities took place throughout the championship. I congratulate the organisers not only for holding a great event but for providing firefighters with an opportunity to socialise, brush up on their skills and practise their firefighting expertise without fear of loss of life or property. Unfortunately, the outbreak of fires in southern Queensland and northern New South Wales prevented a couple of brigades from being present at the championship. I hope that they will have the opportunity to attend the next State championships, which will be held in Wollongong.

It was great to see so many schools involved in the firefighters championship. Schools were encouraged to attend the events during school hours. I hope that, as a result, a few of the schoolchildren will become firefighters in the future. The competition winners were the Nowra and Balgownie teams. In my eyes, the real winner was the Unanderra Fire Brigade, located in my electorate. The men and women who hosted the function went to a lot of trouble to organise the championship. They organised a great event. I acknowledge the hard work they do protecting the community. Assistant Commissioner Royce Atkinson, the Director of the Championships, attended the event. It was good to see the upper echelons of the Fire Brigades supporting its members and taking part in some events. This week's edition of the *Illawarra Mercury* published a photograph of Commissioner Ian MacDougall running with a hose under his arm. I do not know whether he was part of a management team but it was great to see him and others involved. I commend firefighters for the work they do in New South Wales. I particularly commend the firefighters of the Illawarra region.

### **NRMA BOARD**

**Mrs CHIKAROVSKI** (Lane Cove) [5.30 p.m.]: As with most members of this House, many of my constituents are members of the NRMA and they are concerned about what is happening with that organisation. The NRMA has an 83-year history in this State and the Australian Capital Territory. It is an icon. It helps millions of motorists. Each year approximately three million calls are made to the NRMA. As we all know, if our car does not work we call the NRMA. The organisation has two million paid-up members and it should be run by a board that has their interests at heart. Clearly, the divisions on its board have meant that the directors have been distracted from their primary responsibility: the members. During the past year 12 directors have resigned, yet members still do not have a board that they can feel confident about. However, I should not generalise. Some directors have worked hard for the NRMA and continue to do so. They work on board committees, go to community forums to talk with members, and publicly champion a range of measures to improve the safety of motorists, cyclists and pedestrians.

Now the NRMA is facing a barrage of attacks from the outside, from people who have made it clear that they will continue to harass the organisation until they get their way. The NRMA was forced to hold a special general meeting two weeks ago to deal with two removal motions. That meant sending information and voting forms to every one of its two million members and booking the Convention Centre at Darling Harbour, with all the attendant costs. The company planned for 1,500 members to attend—way more than the number of

people who attended the meeting that voted on demutualisation—but more than that turned up. Many who attended did not have the company's interests at heart. There was shouting and catcalling from the floor, speakers were interrupted and the suggestion from the chairman, Ross Turnbull, to have a minute's silence to remember the victims of the Bali bombing was greeted with indifference by some people. It was embarrassing. When it was clear that all the people who had turned up could not be accommodated safely and in a way that allowed them to participate in the meeting it was adjourned, on the best legal advice possible.

Everyone who attended the meeting was entitled to vote. If they had not been allowed their democratic right the NRMA would have been in breach of the law. But one does feel a little suspicious about the motives of some of the people who attended when they arrived in busloads just 15 minutes before the meeting started. It was well-known that registration would open two hours before the meeting started, so it was curious that so many people arrived so late. The NRMA spent \$4 million organising that meeting, on the basis of a requisition with just 100 signatures—100 signatures, out of two million members. At present there is a sense of irresponsible anarchy about people putting pressure on the NRMA. This week the company is fighting the latest requisitions in the courts, and with good reason. More requisitions mean more members' money goes down the drain. It is disturbing that such a tiny group of people can cause so much trouble and instability.

The new president, Ross Turnbull, has called for an end to this instability. Rather than this continuing saga of serial requisitions, meetings that waste vast amounts of money and a half-board election next year, he has proposed having an election for every place on the board in early 2003. It will be a fresh start, one that the organisation deserves. Every board member will retire and immediately there will be a full-board election. Members can then vote on every director's position. That process is clean, commonsense, democratic, financially responsible and enfranchises the silent majority. Two million people count on the NRMA and the directors should put their interests first. I agree with Ross Turnbull on this; I believe that most members agree on this plan. Enough of the nonsense, enough of the self-serving, the disruption and the power plays. Let the NRMA have a board where all directors care about the company and the members.

My constituents remain concerned about the direction of the NRMA. A number of NRMA members have made it perfectly clear to me that they believe that Mr Turnbull's plan to ensure a full-board election is the only way in which the organisation will have a fresh start. It is not in the interests of the people of New South Wales, it is not in the interests of members and it is not in the interests of motorists who rely on the services provided by the NRMA for the continuing and divisive actions that are causing the board so much concern to continue. I repeat: 12 directors have resigned in the past year and still there is no stability on the board. This problem can be solved only with a complete board election and new directors; the membership should decide who is on that board. That way we will finally get some stability back in the NRMA, and the NRMA will focus on what it is supposed to do: look after its two million paid-up members and the three million people who call it each year. It is their right to have an organisation that functions correctly, and it is only through a new board election that they will get it.

#### **LIVERPOOL ELECTORATE SOUTH AMERICAN COMMUNITY**

**Mr LYNCH** (Liverpool) [5.35 p.m.]: I draw to the attention of the House the activities and achievements of the South American community in south-western Sydney, particularly in Liverpool. Some citizens and residents in Liverpool have come from various parts of South America and Latin America, including Argentina, Uruguay, Chile, Peru, Bolivia and Ecuador amongst others. Quite a number of those communities have spawned soccer clubs and social clubs. In Liverpool there are Spanish language newspapers and radio stations, and several cake and coffee shops serve not only excellent empanadas but a range of Latin American sweets and delicacies that are a constant challenge to the diets of Anglo politicians.

I draw attention to a number of functions that I was recently invited to attend. These functions were held at the time of the respective independence days of the various countries. Independence came to South America at the beginning of the nineteenth century, and it was independence from Spain. There are interesting comparisons between those histories and that of Australia. Both South America and Australia were colonies in an empire in which the metropolitan power was a European country, extending its tentacles to the southern hemisphere. Of course, there are a number of significant differences, not the least of which was the 100 years time gap in attaining independence. Of course, one other major difference, which I often comment upon at functions I attend, is that those South American countries had the very good sense to pursue their independence struggles to their logical conclusion and to proclaim republics. Australia, regrettably, has not yet followed that fine example.

However, those functions are not simply about proclaiming the independence of various South American countries. They are also an opportunity to showcase the cultural traditions and heritage of the various



communities concerned and to celebrate their achievements in Australia. That, of course, becomes a celebration of the extraordinary multicultural diversity that is now south-western Sydney. Those events are obviously significant for the various communities, but they also have a broader importance for our area as a whole. One of the reasons that south-western Sydney and Liverpool are such great places to live is this cultural diversity. One of the communities that contributes very greatly and very positively to this is the South American community.

On Saturday 24 August a Uruguay Independence celebration was held at the Uruguayan Social and Sporting Club. The club is located at Hinchinbrook, which is within my electorate. I had the pleasure of attending that function, which was compered by the club president, Geraldo Roderiguez. Also present was Uruguay's Consul. The club was full and a good night was had by all. That celebration is an annual event and is one of many that I have the pleasure of attending at the club.

On Sunday 25 August I attended the Uruguayos Unidos function, held at Fairfield showground. That festival is held each year and many thousands attend it. Uruguayos Unidos regularly raise quite substantial sums for charitable purposes and really do excellent work. This year it raised money for educational equipment and medical equipment. Uruguayos Unidos means Uruguayan United and that event certainly manages to achieve that. I had the pleasure of meeting President Nicola Capvilla and Secretary Elena Malmierca. I discussed with them the organisation and the direction in which it was heading. Marta Aquino, a commissioner with the Community Relations Commission as also present at the well-attended and successful event.

I should mention another successful and well-attended event: the celebration of Chilean Independence Day on Sunday 15 September at Fairfield Showground, which was organised by the Colo Colo Sport and Social Club. I should explain that Colo Colo is the name of a famous Chilean soccer club. The formal part of the event featured speeches by various politicians as well as the club's President, Oscar Helmut Aguilar. The Chilean Consul, Jorge Canellas, a frequent visitor to south-west Sydney, was also present. There were excellent displays of folklore and traditional dancing. The final function to which I refer is the celebration of Chilean National Day on Sunday 22 September at Fairfield Showground. That event was organised by the Cobreloa Sporting and Social Club. I was the guest of club's President, Jorge Gahona. The Chilean Consul was also present at that event.

All those events celebrated the histories of various countries of origin. They also celebrated the history of achievement in Australia of various migrant communities. In a sense, what these communities are doing is a traditional Australian thing. Leaving aside the indigenous inhabitants of this country, Australia is a nation of migrants. We have all come here, one way or another, in the past 200 years. The South American community is one of the components of that community. South Americans bring something positive to Australia and they make a great addition to our community. In essence, they are profoundly Australian. Those who want to narrow the definition of "Australian" to make it ethnically specific do not understand the great cultural diversity of south-western Sydney.

### **HORNSBY HEIGHTS PUBLIC SCHOOL HALL**

**Mrs HOPWOOD** (Hornsby) [5.40 p.m.]: Last Saturday I officially opened Hornsby Heights Public School fete. I gladly attended the fete to view the many activities and to meet the principal, staff, parents and friends who work tirelessly to make the day a success. There were stalls of all varieties. The principal, who told me of the long hours that he had worked over past days to ensure that events ran as smoothly as possible, proudly showed me various areas around the precinct. Hornsby Heights Public School, a wonderful school, provides many facilities for its students. However, one glaring omission was the absence of a school hall.

In a recent communication it was pointed out to me that for many years the school has been working hard to have a hall constructed within the school grounds. Numerous fetes and other fundraising events have been held to finance the project. The fete last Saturday was one such example. There have been numerous discussions and correspondence about the hall between many people, including representatives of the Department of Education and Training, the Department of Public Works and Services and the local council. Functions involving the school body require fine weather or the hire of facilities away from the school. For example, every year the end of school year presentation is held at Abbotsleigh Girls School in Wahroonga. Building a hall in the school grounds would provide many benefits for the school and local community groups.

Students present outside performances, and that presents a safety issue in the event of major storms. The Department of Education and Training, with the consent of the school, managed to sacrifice school land for the purpose of building a hall. The land subdivision and subsequent sale was a long drawn out process which

cost the school community a lot of effort. The sale was originally expected to raise more than the required funding for the building work. When the land was put on the market its sale was still expected to produce a comfortable level of funding to enable the building works to proceed.

Due to the time taken for the land sale it now appears as though the funds that have been raised will be insufficient to finance the building of the hall. The land sale, which was completed earlier this year, raised \$685,000. As a result of the bureaucratic process that was undertaken to reach that point an amount of only \$570,120 is available to the school. A 15 per cent project management fee seems to be an excessive charge. Since 1992 the parents and citizens association has raised \$111,000 towards the building of a school hall. Given the efforts made by Hornsby Heights Public School over the last 10 years, it is disappointing that that goal is still a long way off. The school is grateful for recent cabling and paving improvements, but its goal to build a hall does not appear to have been noticed by the Government.

This is a great opportunity for the Government to spend minimal additional capital funds to complete a longstanding capital project. The longer the process takes the more the school will have to work to chase the ever-increasing amount that is required to build a hall that is so wanted by the school community. Students, teachers and parents at Hornsby Heights Public School should be given permission to build their school hall and to alter the code plan to suit specific usage requirements. The Department of Education and Training should meet the shortfall in funding. The school community, which has worked extremely hard for many years, has sacrificed school land to realise the construction of an essential building. It should be assisted by this Government to build the hall.

When I attended the fete on Saturday, it was obvious to me how hard the school community had worked, how much it wants a hall to complete its school precinct, and the extent to which students, parents and the community would use such a hall. The Government should consider increasing the funds that have already been raised by the school. The community wants to build the hall, and to alter the school hall code to suit its purposes. It would be reasonable for the Government to accede to the school's request, given that the school already has in its possession the majority of required funds.

#### **RANKIN PARK CENTRE FOR REHABILITATION AND AGED CARE**

**Mr MILLS** (Wallsend) [5.45 p.m.]: May I ask members a rhetorical question: Did you know that the walking frame that is widely used in aged care rehabilitation had its origins in Newcastle? That fact was revealed in a book entitled *Anatomy of an Artwork*, which was launched yesterday by a local artist. The launching of that book, of which I have a copy, was part of the reopening celebrations of the Rankin Park aged care and rehabilitation unit. The Hunter strategy announced by the former Minister for Health, Dr Refshauge, for rebuilding health facilities provided \$5 million for the refurbishment of Rankin Park rehabilitation unit on the John Hunter Hospital campus to provide better facilities for rehabilitation and aged care medicine.

For the past two years the rehabilitation unit was run from Newcastle hospital, and aged care was scattered around the district. It was with a sense of great joy that the refurbished building was reoccupied by patients about two months ago. The refurbished building is a first-class facility. I express thanks to the workers who cleaned up the old building and got rid of the asbestos. The architectural design of the refurbished building is of high quality. A beautiful and comfortable place has been created in which specialist aged care and rehabilitation services are being provided to people in the Hunter. We have an ageing population so it is essential that we invest in services such as this.

People must be able to move back into the community, be with their families and live as independently as possible after their recovery from illness. The Carr Government has a strong commitment to providing those services. It is also committed to improving health facilities in the Hunter region. Under the Hunter strategy the Government has already committed over \$30 million to projects including the Mater Institute, the new John Hunter Hospital emergency department that opened last week, the new drug and alcohol detoxification unit at Belmont, the parentcraft unit at Wallsend in the refurbished Lowrey Lodge building, and planned improvements to local hospitals under the Newcastle strategy. We are now getting our fair share of health funding for the Hunter. It is rewarding to see that investment coming to life in buildings such as Rankin Park.

Yesterday the celebration was attended by the Chief Executive Officer of Hunter Health, Professor Katherine McGrath. She and I unveiled the plaque and declared open the refurbished unit. We changed the official name of the unit to the Rankin Park Centre for Rehabilitation and Aged Care. Helen Kruse, the service manager of the Rankin Park unit introduced Cath Chegwiddden, artist and author of *Anatomy of an Artwork*. Cath

presented books to Helen Kruse and to Dr Michael Pollock, Clinical Director of the Rankin Park unit. Pippa Robinson was also present at the celebration. Her job is to organise artworks at all units for which the Hunter Area Health Service is responsible. She is doing a great job in adding that dimension as new and refurbished buildings come on stream.

The area health service recognises the importance of artwork in the healing process. The Rankin Park aged care and rehabilitation unit provides medical care and rehabilitation to around 350 aged and younger working aged adults in the Hunter each year. Many of those people are receiving rehabilitation following strokes or the amputation of limbs, and people in the younger age group are receiving rehabilitation following complex sporting or motor vehicle accidents. Staff from the urban aged care assessment team, Rankin Park Day Hospital and the community dementia unit have joined the rehabilitation people in the refurbished Rankin Park unit.

Local artist Cath Chegvidden was commissioned to create artworks for the Rankin Park unit. She has created five arched panels depicting each decade of the building's existence, another eight supporting panels and a beautiful poppy banner more than three metres high that is hanging in the stairwell. Cath interviewed many current and former staff while researching her artwork and uncovered many stories that she wanted to ensure were not lost. Consequently, Cath wrote a book, and Hunter Health supported its publication. Proceeds from its sale will go to the Rotary project to create an Alzheimer's resource centre in the Hunter. I am pleased to be giving a copy of the book to the Parliamentary Library today.

I congratulate Cath on her wonderful artwork and her dedication to the community. This book is special because it captures not only some amazing stories but also the history of the development of health services in the region, exploring the integral role that Newcastle has played in developing health care in this State. For example, occupational therapist Margaret Mort, who worked at the unit in the 1960s, developed methods of lifting patients and designs for mobility aids that are still used today. The walking frame concept, for instance, had its inception at Rankin Park. [*Time expired.*]

#### OXLEY ELECTORATE FISHERIES

**Mr STONER** (Oxley) [5.50 p.m.]: The Sydney-centric Labor Government has mismanaged fisheries in my electorate of Oxley, and similar problems are apparent throughout coastal New South Wales. The fishing industry is one of the great primary industries in this State, contributing enormously to the economy both directly and indirectly through associated industries, such as tourism and hospitality. No-one would argue that commercial fishing must be sustainable. The industry has shown that it not only supports this concept but is prepared to work with the government of the day to achieve that aim. History has shown that commercial and recreational fishing can coexist in a sustainable manner. Indeed, I am told that studies, such as recreational catch surveys of the Macleay and Richmond rivers and Lake Macquarie—including a report by Gary Henry—have revealed that commercial fishing has little impact on recreational fishing and that in some areas the recreational catch is much greater than the commercial catch.

That has certainly been the case in the three major estuaries in the Oxley electorate: the Hastings, Macleay and Nambucca, where commercial fishermen have targeted species, such as mullet, eels and prawns, that are mostly not targeted by amateurs. With this in mind, the ideal policy position would be to ensure that commercial and recreational fishermen happily share a sustainable resource. But guess what? Eddie Obeid, the Minister for Fisheries, has got both groups offside. He has totally closed the Hastings and most of the Camden Haven estuaries but left the Macleay and Nambucca rivers open to commercial fishing. He has not bought all licences of Hastings and Camden Haven fishermen but told those holding remaining licences that if they want to earn an income they will have to fish elsewhere.

That means that professional fishermen are putting more pressure on open estuaries such as the Macleay. Neither the amateurs nor the professionals are happy about the situation. A commercial fisherman told me that it is like having 100 cows on 200 acres, closing 150 acres and putting 75 cows on the remaining 50 acres. It is unsustainable and simply will not work. Commercial fishermen also say that increased travelling costs force them to work the open estuaries harder to make a living. To compound matters, the open estuaries have no full-time NSW Fisheries officers as Labor closed the Fisheries office on the Macleay at South West Rocks. Both fishing groups are not happy, Eddie.

Fishermen are also fuming about the lack of fairness and transparency in the process leading to the decisions about the so-called recreational fishing havens. A number of questions must be answered. Why was only an all-or-nothing proposition put to the so-called consultation meetings? That is, the area would be totally

open to commercial fishing or totally closed—there would be no coexistence as most wanted. Why were environmental impact statements ignored? Why did NSW Fisheries keep secret documents such as those I have mentioned relating to the impact of commercial fishing on recreational fishing? Why were aquaculturalists such as eel farmers told to stay out of the recreational fishing areas debate and informed that they would be given permits subsequently to take stock from recreational areas?

Why were recreational fishing representatives contacted after submissions had closed and told to put them in quickly? Why were proposals to allow limited commercial fishing, which were supported by recreational anglers, rejected out of hand? Why was a consultant on a retainer from the Australian Fishing Tackle Association used to prepare information—such as the vastly overstated estimate of the number of recreational anglers—that was utilised in the decision-making process? Why is New South Wales dragging its feet in relation to a national survey on the fishing industry? These and other questions must be answered in an open and transparent manner if the community is to be convinced that the Government did not predetermine the closures and that public consultations were not a thinly veiled attempt to hoodwink the public. I challenge the Minister for Fisheries to answer these questions and to support a great, decentralised primary industry that has served rural and regional New South Wales well for centuries.

### OATLEY VILLAGE FAIR

### LUGARNO LIONS SPRING FESTIVAL

**Mr GREENE** (Georges River) [5.55 p.m.]: Traditionally at this time of year I comment on two important local functions: the annual Oatley Village Fair and the Lugarno Lions Spring Festival. On 19 October I had the great privilege of welcoming the Premier to Oatley to open the village fair. The Premier was greeted by the fair's organiser, Chairman Bryan Pirie, and the President of Oatley Lions, Geoff Ingram. It was a beautiful Saturday morning and after opening the fair the Premier moved among the crowd, the largest at the fair in recent years. He was very well received by those in attendance. The Premier spoke to stall holders and to the many children who came to meet him. He asked a couple of children about the books they were reading at school and was most impressed and pleased when a year 1 student reported that he had read 140 books. The Premier also met two school principals, Robyn Caffrey of Oatley Public School and Sue Lowe of Hurstville Public School. He spoke to representatives of the fledgling Georges River Community Bank and spent some time discussing with Jim Munro from that organisation its plans for the area.

I was also pleased to join the Premier in watching a demonstration by young skateboarders from Frontside Skate, a group that provides facilities around my electorate, such as mobile skateboarding ramps, for skateboarders, rollerbladers and cyclists. After the Premier departed, I walked around the fair and listened to a performance by the Georges River College Band. There was a very good audience as the band enjoys a fine reputation in the area. I also listened to an outstanding performance by the band from Marist College Penshurst, my old school, and had a quick discussion with the principal, Brother John McDonnell. Members of St George Lions also attended in support of their Oatley colleagues, as did Wendy Cornish, who is a great community worker. I must declare an interest here because in Wendy's raffle I won \$50 worth of fruit and vegetables from Mick and Maria's at Oatley, which was a great prize.

The Lugarno Lions spring festival on 22 September was undoubtedly the biggest event they have ever organised, and I congratulate them on it. Traditionally it is held at Gannons Park, which is the size of about eight football fields. Two-thirds of the park was covered with fund-raising stalls of local community groups, the car show and amusement rides. Col Bryant was responsible for organising the committee that oversaw the event. This year the car show was under the chairmanship of Graham Gorman. Lugarno Lions has a fine tradition of working in our community. It was no use me driving to the Lugarno spring festival at Gannons Park, which is about 600 metres from my house, because the crowd was so big that I could have gone only 15 metres to park my car. I take this opportunity to congratulate the Oatley, Lugarno and St George Lions on their great work in our community. Their festival and community fairs are a great way to bring community organisations together to raise funds. The festival raised more than \$20,000 for Lugarno Lions and the individual organisations that participated on the day.

### KURNELL

**Mr KERR** (Cronulla) [6.00 p.m.]: I wish to discuss the way in which facilities at Kurnell in my electorate have been neglected. Recently a book was published by Tony Horwitz entitled *Into the Blue—Boldly Going Where Captain Cook Has Gone Before*. A chapter in the book is about Botany Bay, where the truly great

navigator Captain Cook landed at Kurnell, the birthplace of modern Australia. Captain Cook should be honoured and remembered. His courage and endurance has been an inspiration to all of us. The book states:

Even the south Sydney district encompassing Cook's landing site had joined in the purge. Councillors suggested removing the captain from the shire's logo, which they declared "outdated" and a "symbol of the invasion of our country." The proposed new emblem, a dancing dolphin, would, in the words of one councillor, give the district a fresh image as "friendly, approachable, progressive and environmentally sensitive."

This gesture, like the rewriting of the national anthem, was a minor masterpiece of Orwellian doublethink. A metropolis that had virtually exterminated or expelled its original population, and polluted a place Cook described as a botanical paradise, could now proclaim itself a champion of Aborigines and the environment. The council had also fingered a culprit for its wrongs: Cook, the invader, yesterday's man, to be airbrushed from public record like a disgraced Soviet commissar.

Kurnell should be improved, and all honourable members should work to ensure that we are proud of the original birthplace of modern Australia.

**Mr McMANUS** (Heathcote—Parliamentary Secretary) [6.03 p.m.]: I speak not only as Parliamentary Secretary for Health but also as a regional member of Parliament to generally support the views of the honourable member for Cronulla about the upgrading and protection of Kurnell, the landing place of Captain Cook and the birthplace of the shire. I listened carefully to the arguments about the dancing dolphin being the big change that was going to take place. The decision was taken not only by the present council but by the previous Liberal council. I understand that one of the candidates in the electorate of Miranda at the coming State election, Councillor Schreiber, was mayor at the time and tried desperately to blame last year's incumbent mayor, who has now indicated an intention to run as an Independent in the Cronulla electorate. The air has to be cleared about where the blame lies. It is fair that blame should lie where it belongs. This mistake was not simply of the one council but of a series of councils.

#### DEPARTMENTS AND AGENCIES RELOCATION

**Mr TORBAY** (Northern Tablelands) [6.05 p.m.]: I call on the State Government to set up a panel to determine which Government departments and agencies could be relocated to regional areas. In light of technological advances and the rolling out of advanced technology such as broadband to the regions, the opportunities for relocations have considerably increased. It is easy to point to rural health, education, agriculture, forestry, land and water conservation, State and regional development, environmental agencies such as the Environment Protection Authority and other instrumentalities as being more suitable to be based outside Sydney. However, there is no reason why information technology services and similar hi-tech government agencies which do not depend on a metropolitan address should not be just as easily located in regional areas.

I believe that an impartial panel made up of appropriately skilled people—not politicians—capable of undertaking an objective analysis could advise both the government and opposition of the day. Their brief would be to nominate those departments and agencies which could be relocated and to select the regional centres with the necessary services to accommodate them. Considerable savings in city rents could balance any relocation costs. Relocating government departments and agencies out of Sydney would provide a stable income base in areas affected by the fluctuations of rural industries. It would increase the skills base of the local area, create a requirement for training services to build further skills, develop a critical mass for the delivery of services, create jobs for bright young people who want to live and work in their local areas and attract young people to live in the regions.

The reason most young people leave regional areas is to find jobs in the big metropolitan cities. There is then a greater likelihood they will marry and remain in the city because their work and lifestyle have been established. That applies across many careers and professions, not only the medical profession, which has been well identified in many studies as a major barrier to attracting more doctors, specialists and allied health care workers to live and practice in country areas. The narrowness of the regional economic base has been identified by many experts, including Professor Tony Sorensen of the University of New England, as a major drawback to regional economic growth. He points out that ongoing globalisation heralds great opportunities in traditional areas of primary production through diversification, emerging lifestyle services such as tourism, retirement and the environment, niche manufacturing and processing activities as well as an expanding demand for education.

However, if the regions are to participate fully in the global economy and take advantage of these emerging opportunities they require properly targeted assistance, an adjustment of thinking in regard to regional growth and recognition of the enormous diversification that has already occurred. Government can accelerate

the process of change not only by taking a lead through its rhetoric but by ensuring its public servants are in touch with the issues at a grassroots level. The large regional centres and other centres offer many lifestyle advantages attractive to young people who can no longer afford to buy their own homes in Sydney. Sydney is choking on its population explosion and the demands on its ageing infrastructure. I have often said that Sydney's problems offer solutions to the regions.

As well as relocating departments and agencies, the Government should also remove payroll tax in regional areas to encourage business and industry to expand in those regions. It is an iniquitous tax which acts as a disincentive to growth and I know of several businesses in my electorate which will not consider taking on more staff because of it. I would also urge the State Government to put pressure on the Federal Government to introduce a zonal taxation system to promote growth in areas suffering population and economic decline. There is already a precedent as we have had zonal taxation for individuals in Australia for more than 50 years. The proposal from the National Farmers Federation and the Institute of Chartered Accountants would replace the current system with one which would encourage private sector job creation in areas—for the most part rural or regional—currently suffering population and economic decline. It would offer tax benefits to companies investing in selected enterprise zones.

With the public sector leading the way by example, and the private sector offering incentives to invest and create jobs, I believe we can reposition the rural regional economies to take advantage of the opportunities offered by the new global economy. Creating thriving regions will benefit the entire State not only in economic terms but social and community services would enjoy the flow-on effects. I urge the Government to consider setting up the panel I have suggested to make recommendations on the most suitable departments and agencies for relocation to suitable regional locations as a first step in this process.

**Mr McMANUS** (Heathcote—Parliamentary Secretary) [6.10 p.m.]: I congratulate the honourable member for Northern Tablelands on his enthusiasm in presenting matters on behalf of not only his electorate but the constituents of rural New South Wales. Quite often he advocates in this Chamber the needs of rural and regional New South Wales. I am one city-based member who appreciates his actions. Much of what the honourable member has said is particularly meritorious. I am a member of a Government that believes the relocation of many services—as it has done over a number of years—has been very advantageous to the economy of the State and to the young people who need jobs in regional centres. I will ensure that the Ministers responsible for services that can relocate to rural New South Wales are aware of the matters raised by the honourable member. I will be just as enthusiastic to advise the Ministers that the Commonwealth Government has a role to play in those matters, and that it should be doing so.

**Private members' statements noted.**

**ASSENT TO BILLS**

Assent to the following bills reported:

Agricultural Industry Services Amendment (Interstate Arrangements) Bill  
Farm Debt Mediation Amendment Bill  
Surveying Bill  
Totalizator Agency Board Privatisation Amendment Bill

*[Mr Acting-Speaker (Mr Mills) left the chair at 6.11 p.m. The House resumed at 7.30 p.m.]*

**CRIMES (SENTENCING PROCEDURE) AMENDMENT (STANDARD MINIMUM SENTENCING) BILL**

**Second Reading**

**Debate resumed from 23 October.**

**Mr HARTCHER** (Gosford—Deputy Leader of the Opposition) [7.30 p.m.]: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill is one of the most significant bills for the Parliament to debate in the lead-up to the March 2003 election. If ever a bill was presented for political purposes it is this bill. It is with this bill that the Government hopes its fortunes can be revived in time for March 2003 on the crucial issue of law and order and the maintenance of public security. The genesis of the bill in the short-term follows the Coalition's announcement on the June long weekend when the Leader of the Opposition promulgated the first stage of the Coalition's compulsory sentencing policy. At the time that policy created a furore in the ranks of the Government.

The initial reaction of the Government was to attack the compulsory sentencing policy. The Premier said that it was inflexible and rigid and that it would not do anything for anyone. The Attorney General was also on the attack and the Australian Labor Party rejected it. The honourable member for Liverpool informed the House that the Caucus had met and rejected the concept of mandatory sentencing. The Australian Labor Party put itself in a position where it would not support any system of mandatory sentencing. That was back in June and July, but the world has changed a lot for the Government since then. The Government now is conscious that the Coalition's compulsory minimum sentencing legislation proposals are enormously popular. Indications are that it has about 80 per cent community support, and the Government is desperate to play catch-up.

The President of the Bar Association said in its recent annual report that the law and order option is upon us: the Coalition has a policy of minimum sentences without discretion and the Government has a policy of minimum sentences with discretion. That is a good statement from the Bar Association because that is our policy: no discretion, no excuses, no ifs, no buts. We say that the minimum sentence will apply, and we have announced for which crimes it will apply. The Government's policy is for so-called minimum sentences with discretion. But pause and think: Is that not what we have already? We already have a system whereby the courts have discretion. We already have a system whereby the courts cannot go beyond the maximum sentence but can go all the way down to any penalty beneath that maximum. What does the Government's bill do? It continues that practice. It continues to allow the courts to have the discretion to impose lesser sentences. The Government does this in two ways.

First, in schedule 1, item [1], section 21A (3), Mitigating Factors, the bill lists 13 factors that can be taken into account in determining the appropriate sentence. The factors include saying sorry or, as expressed in legal terms, "the offender has shown remorse for the offence". The Government has what we call "13 excuses". Offenders can commit a crime and face the penalty but if they can find one of the 13 excuses then a lesser sentence can be imposed upon them than that which should be prescribed under the minimum sentencing guidelines or under the table in the Act. The Opposition ran a successful campaign, which received good media and good public opinion, which we called "the 13 excuses". I am sure the people of New South Wales will hear a great deal more about the 13 excuses in the lead-up to the March 2003 election. The second avenue of escape for the Government from its alleged toughness on crime by imposing minimum sentences is section 54C. This section, which could only be described as a gem, states:

Court to give reasons if non-custodial sentence imposed

- (1) If the court imposes a non-custodial sentence for an offence set out in the Table to this Division, the court must make a record of its reasons for doing so.

The court has the power re-enacted, expressly stated, in statute, in the words of the Act to impose a non-custodial sentence. It is there in black and white, the court can do it. But it should only do it when it makes a record of its reasons for so doing. However, subsection (2) of section 54C states:

- (2) The failure of a court to comply with this section does not invalidate the sentence.

If the court decides that it will impose a non-custodial sentence—in other words, not send an offender to gaol at all—and the court does not give any reasons for that non-custodial sentence, the sentence still stands. That is a mockery. It is a nonsense in legislation to even make a pretence that this bill will impose "standard" minimum sentences—the Government was desperate for a word to differentiate itself from the Opposition—when the court is expressly allowed not to send people to prison at all. Further, the court is empowered to take into account 13 factors—the widest set of mitigating factors possible, a complete range, any one of the factors or a combination—to impose a lesser penalty. No-one in New South Wales will be deceived; no-one will believe that this bill changes the law in a substantive way. This is not minimum sentencing; it is simply a government disguise. The Government is not changing the law in New South Wales and it has no intention of doing so. It has every intention of trying to muddy the waters so that the people of this State are confused on polling day about which political party is offering minimum sentencing. Let there be no doubt about it.

The 2003 election campaign will be fought on a number of issues: the Government's competence; the Premier's arrogance; the declining state of our schools, hospitals and public transport; poor planning; and the Oasis corruption scandal. Attention will also be drawn to the low number of police officers in this State—we have barely the number we had in 1995—the ongoing increase in crime and the very poor crime clean-up rate. About 95 per cent of property crimes in my electorate are not solved. We will hear a lot more about that before the election. It will also be obvious that the Coalition has a clearly enunciated policy that imposes minimum sentences for crimes of violence and that the Government does not. It has introduced what is often described as a Clayton's bill. The Government's pretence that that is not the case stretches its credibility beyond belief. When introducing the bill, the Attorney General said:

In great contrast, the mandatory sentencing scheme proposed by the Opposition is a system that imposes the same penalty on all offenders, no questions asked.

Yes, we are happy to own up to that. The Attorney continued:

The Leader of the Opposition peddles a legal system in which the facts of any particular case simply do not matter, where a sentence will be decided more often behind closed doors by the prosecutors, and not in open court by a judge.

I will put aside the fact that he runs a vast system of plea bargaining in this State that has been exposed repeatedly as wreaking severe injustice. It has been so bad that he has had to urge the Director of Public Prosecutions to lodge appeals, which occurred in the case of the girls who were gang raped after being picked up at Beverly Hills railway station. The Opposition's policy provides that sentences will be set by Parliament and everyone will know what they will be. The minimum sentence will be prescribed by the Parliament just as the maximum is now set, and everyone will know the ceiling and the floor. The judge may hand down a sentence between the two, but he or she will not be allowed to hand down a sentence outside those parameters. Under the Opposition's legislation a minimum sentence will mean just that; under the Government's legislation it will be subject to section 54C and all the 13 mitigating factors. The Attorney General went on to say:

The Leader of the Opposition insists on pursuing those shallow and sensational proposals in full knowledge that they go against the weight of well-respected and considered legal and sociological opinion both in Australia and around the world.

We will put our 80 per cent public approval up against the Attorney General's so-called learned opinion. Let the public be the judge. If the Attorney General were so confident about that learned opinion, he would not be trying to fool people with his standard minimum sentencing bill; he would say that the Government's system involves judicial discretion and compulsory minimum sentencing and let the people side. However, six months out from polling day, he has been caught out by the Opposition's proposal. He has introduced his own legislation and rejected and overturned the wonderful decision that the honourable member for Liverpool forced through caucus. What a travesty for the member for Liverpool!

**Mr ACTING-SPEAKER (Mr Lynch):** Order! The Deputy Leader of the Opposition will return to the bill.

**Mr HARTCHER:** I will gladly return to the subject. The Attorney General went on to say:

An offender with a long criminal record who cold-bloodedly plots and plans his crime will receive the same sentence as a young impetuous offender.

The Attorney General knows that is not true. The Opposition's legislation imposes minimum and maximum sentences—there is a range—and he understands that. A person with a long criminal record will certainly get a longer sentence than a young, impetuous offender. However, that young, impetuous offender will receive at least the minimum sentence. In exercising discretion about a sentence between the minimum and the maximum, a judge will ensure that a person with a long record gets a longer sentence than a person without a record. The Opposition's legislation will ensure that everyone knows that if a person is convicted he or she will face a guaranteed minimum sentence.

The Attorney General went on to say that the Leader of the Opposition said obscene results would never occur in cases involving mercy killings because the offender would not be charged with murder but with manslaughter. That is clear and the Opposition makes no bones about it. Members on this side do not expect people who have been subjected to persistent sexual abuse or physical assault or those in extraordinary or special circumstances to be charged with murder. We expect that the Director of Public Prosecutions would exercise appropriate discretion in laying the charge and would make it manslaughter rather than murder. The Attorney General today announced an inquiry into categories of manslaughter. If the evidence indicates that a person was a victim and acted in self-defence against sexual assault or physical violence, he or she would not be charged.

It is absurd to pretend that people suffering from the so-called battered wife syndrome would be caught by the Opposition's legislation. The Attorney General has not been able to present any statistics to this Parliament about how many people would be caught. It is a rhetorical device that he has used on many occasions. However, when he has been pushed on the issue, he has had no figures to support his statements. Let us see what figures he produces tonight to indicate how many battered wives might be caught by the Opposition's legislation.

The Attorney General's ignorance about criminal justice was revealed today during question time and on Mike Carlton's radio program. He was unable to confirm that the Crimes Act provides that, in cases of indecent and sexual assault, the fact that the victim is under the age of 16 is of itself an aggravating circumstance. He was



not aware of that and he was caught out on Mike Carlton's program. I was almost embarrassed for him, and I hope I am not in that situation again. He did not know the law and he was caught out. He was not aware of the facts of a case and he showed no sympathy for the stepmother and father of two young girls. His answer did not convey any sympathy or concern. In this House and in the media he defended the imposition of an 18-month weekend detention sentence on a repeat offender who for two years sexually molested two young girls aged nine and 12. The Attorney General has advocated so-called standard minimum sentencing, but when real-life circumstances were brought to his attention involving little children who were tragically and obscenely abused, he offered no remedy and displayed no sympathy. The Attorney General's second reading speech continued:

The trauma for victims does not stop there. Under the Coalition's proposal there will be increased numbers of outright acquittals as a result of the reluctance of juries to convict.

He has produced no statistics or evidence to support that statement. He has the resources of his department, the Bureau of Crime Statistics and Research, the Judicial Commission of New South Wales and everyone else who could provide him with the figures indicating how many juries would not convict under compulsory minimum sentencing legislation, but he has produced nothing. He is insulting the intelligence of juries; he is saying that they are so easily swayed by the potential penalty that they will not convict. When he reflects upon that statement the Attorney General will realise that he has insulted the community. Juries comprise members of the community and the community wants this legislation. That is why he is introducing his own little version of it. If this policy were not so overwhelmingly popular, he would not be raising the issue in Parliament. He has contradicted himself by saying that juries will not convict under this legislation.

The Attorney General's legislation contradicts everything he has said about guidelines over the past two years. We have heard him speak about the necessity for guidelines in this House and in the media and we have seen legislation introduced to provide sentencing guidelines for the court. He said that that was the way to ensure that community standards were upheld and that criminals faced appropriate consequences for committing crimes. He has scrapped those guidelines because they have not worked and has introduced minimum sentencing legislation. That is the very policy he rejected in June.

The Attorney General and the Premier should hang their heads in shame. But in defence of the Attorney I will say on the record that there is in the community a well-founded belief that this legislation came about as a result of the Premier's will; that the Attorney was not part of the process by which this legislation was formulated; that it was formulated not in his department but in the Cabinet Office; and that the decision to proceed with it came from the Premier, aided and encouraged by the polling of the General Secretary of the Australian Labor Party, Mr Roozendaal; that something needed to be done on minimum sentencing; that it was the Premier who took the proposal to Cabinet, not the Attorney; and that it was the Premier's office that drafted the legislation, not the Attorney.

Let the Attorney stand in this Chamber tonight and deny that this legislation came about as a result of the Premier. Let the Attorney say that it was his initiative. Let him say that he put up the minute to Cabinet, and that he did not have his arm twisted in so doing. Let us hear the Attorney say that he argued for this proposal in Cabinet. Let us hear him say that he introduced it to caucus, argued for it in caucus, and did not have to rely upon the Premier to get it through caucus. Let the Attorney say that. Or will we give him the benefit of the doubt and say that he has been forced into this position by the Premier and by Mr Roozendaal, desperate to ensure the re-election of this Labor Government?

The Coalition has made its position clear. We are concerned about the lenient sentences imposed upon so many offenders. For example, the maximum sentence for murder is life imprisonment, but the most common non-parole sentence is 14 years, and 22 per cent of criminals received gaol terms of 10 years or less. That is, under the present Government, less than one in 10 murderers received the maximum gaol term of life imprisonment. The maximum sentence for aggravated sexual assault is 20 years, but under this Government the most common non-parole sentence is three years. No wonder Government members are trembling as they realise that these figures are sinking into the public consciousness. No wonder they are bringing legislation before the Parliament—as a last resort, and only when dragged to do so. Twenty-eight per cent of offenders received gaol terms of two years or less, only 1 per cent received the maximum gaol term—and 55 per cent of criminals convicted of this offence had prior offences.

For sexual assault—rape—the maximum sentence is 14 years. But the most common sentence is 18 months imprisonment. So much for the protection of women under this Government! No wonder the Attorney was quite bland and quite unconcerned this afternoon in his response to a question about the sexual assault of two little girls and the 18-month weekend detention their assailant got. The Attorney had nothing to say in

support of them. He did not care because under his Government the most common sentence for sexual assault is 18 months imprisonment. One in five offenders received gaol terms of 12 months or less; that is, 20 per cent were imprisoned for a period of 12 months or less for sexual assault.

For serious drug trafficking the maximum sentence is life imprisonment. But the most common sentence is six years imprisonment—for serious, major drug trafficking. We have all heard the Premier, in the eloquent mood that he adopts as he stands in this place and looks all statesmanlike at the cameras, say, "These people deserve life!" Well, they do not get life under this Government, under this Premier or under this Attorney. Not one offender received a minimum sentence of more than 10 years.

The Government's law and order record is a disgrace. It is even more disgraceful when considered in the light of the specific circumstances of some cases. Take the tragic case of Constable Peter Forsyth, who was killed in the execution of his duty. As he attempted to prevent a drug deal taking place he was stabbed through the heart. The killer received a sentence of 20 years gaol. What happened? In the Court of Criminal Appeal the sentence was reduced to 13 years gaol—13 years for killing a police officer in the execution of his duty! There was no statement from the Attorney on that sentence.

Let us look at the tragic case of Constable Affleck, who died in the execution of his duty, deliberately run down by an absconding criminal. What did that killer get? The same—13 years imprisonment. That is what a police officer's life is worth under this Government. Mark Evans was killed by rock throwers, who took rocks up onto an overhead bridge to throw down at Mark Evans as he drove his truck under them. They got sentences of 2½ years and 5½ years respectively. Did the Attorney General appeal those sentences? Nothing was done. No wonder the Premier demanded action from the Attorney General. No wonder the Premier forced this legislation upon the Attorney.

The Coalition has announced its policy. Murder in the first degree—which are serial murders, murder for the second time, terrorist murders, murder with robbery, murder with sexual assault, murder for contract, and murder exhibiting exceptional depravity—carries a maximum of life imprisonment and a minimum of 25 years imprisonment. All other murders are murder in the second degree, and will carry a maximum penalty of life imprisonment and minimum sentence of 15 years. For aggravated sexual assault in company, the Coalition announced a penalty of a maximum of life imprisonment—which the Government has adopted—and a minimum of 15 years. Under a Coalition government aggravated sexual assault will carry a penalty of a maximum of 20 years imprisonment and a minimum of 10 years. For serious assaults on police the Coalition has announced its minimum penalty. For serious drug trafficking we have announced a minimum penalty of 10 years imprisonment.

The Coalition is determined to break the cycle of crime in this State. We are determined to ensure that criminals who commit serious crimes, especially crimes of violence, go to gaol, and go to gaol for a long time. We are proud of our policy. It has received enormous public support. We do not hide behind 13 excuses. The Premier and Labor will give criminals 13 excuses to get out of gaol early. What a travesty! Rather, the Coalition acknowledges the fact that to protect the community we must ensure that serious criminals go to gaol, and that they stay in gaol. We therefore reject the thrust of the bill. But we believe it can be improved. Accordingly, I give notice that in Committee we will move amendments to delete the power to impose mitigated sentences, and also new section 21A (3), which lists the 13 ways in which offenders can get mitigated sentences.

We will move also to delete proposed section 54C—that famous provision which would enable everyone to get out of gaol free. I table those amendments. As a courtesy, I gave a copy of them to the Attorney General this afternoon. Law and order is a concept which is at the very heart of a rational, civilised society. The preservation of law and order is the primary responsibility of government. The maintenance of law and order is one of the key functions of government. Under this Government, law and order has deteriorated, crime has risen, the clean-up rate for crime has dropped, and criminals have been given lenient sentence after lenient sentence. That will change on 22 March 2003.

We will go to the people, and we will win on a platform of tough sentences for serious crimes. We will ensure that there are no excuses. We will ensure that people convicted of serious crimes pay the penalty and go to gaol for at least the minimum period prescribed by law. We have made it quite clear that we will ensure that the legislation passes very early in our term of office post-2003. The legislation is a masquerade and a smokescreen. The Government has nothing to be proud of. As I said, the Premier twisted the Attorney's arm to introduce the legislation. The Coalition will not oppose the second reading, not because it believes the bill is worthwhile but because it upholds the principle of minimum sentencing. However, the Coalition will seek to

improve the bill by deleting proposed new sections 21A (3) and 54C. The bill is a law and order measure forced upon the Government by the preparation for polling in 2003, but it is in vain. After 7½ years the people of New South Wales know how poor law and order is in this State, and they will pass judgment accordingly.

**Mr BROWN** (Kiama) [8.01 p.m.]: I support the bill, so eloquently introduced and second read by the Attorney General but, unfortunately, rejected by the shadow Attorney General on behalf of the Opposition. It is a great shame that we are debating this very important bill because the Opposition opposes it in favour of mandatory sentencing. One would think that we are living a century behind the times when one hears the drivel, misinformation and scare tactics of the Opposition. The Coalition was in power for seven years from 1988 to 1995, but it did not push this policy on behalf of the conservative elements in our society. Not only did the Coalition not want to push this disgraceful mandatory sentencing regime, but it also voted against the establishment of the Wood royal commission, which resulted in major reform to the police service of this State, and cleaner and safer streets.

It is hypocritical and shallow for the Opposition to talk about law and order, law reform and safer streets. The last time mandatory sentencing was enforced in New South Wales it was met with public outcry. Consequently, the Parliament abandoned the policy in 1884—118 years ago—after one year of operation. The Liberal and National parties are living in the Dark Ages. We know that mandatory sentencing does not result in less crime or cleaner streets. The shadow Attorney General did not explain why the Coalition supports mandatory sentencing, other than to say that 80 per cent of the people surveyed like it. It is a sad reflection on the Coalition if it is prepared to introduce policy on that basis.

The Coalition will not introduce the policy because it will result in cleaner and safer streets but because 80 per cent of people surveyed like it. The Opposition's policy offers false hope of protection. It is redundant before its implementation, and it is far more expensive than proven alternatives. Mandatory sentencing was abandoned in the Northern Territory. New South Wales continues to lead the country in policy, but the Coalition wants to make us as laughing stock by introducing mandatory sentencing, which can result in weird outcomes.

In the United States of America an individual was sentenced to 25 years imprisonment for stealing a slice of pizza. In the 1999 case of *Riggs v California* a homeless man was sentenced to 25 years imprisonment under the same legislation for stealing a bottle of vitamins from the supermarket. The majority of the United States Supreme Court dismissed the appeal because it was unable to overturn the will of the Californian Legislature. It is interesting to note that the present Chief Justice of the United States Supreme Court is no slouch when it comes to penalising criminals. His observation of mandatory sentencing is that it is a good example of the law of unintended consequences.

Why does the Coalition persist with its policy of mandatory sentencing? Many other quotes from distinguished jurists show that mandatory sentencing does not impact on levels of crime, and that it leads to perverse outcomes. It transfers sentencing decisions from an accountable, open court to lawyers and others. It does not deter crime, and it costs more. It offers illusory and expensive solutions. I support the bill because it makes sentences more consistent and it makes judges more accountable to the community. I also support it because it gives judges flexibility, unlike the Coalition's mandatory sentencing regime. Not all crimes are the same. Judges should be given flexibility to either increase or decrease a standard minimum sentence due to aggravating or mitigating circumstances.

The function of a criminal system in any civilised society is to ensure that judicial discretion is preserved. This will ensure that the criminal system is able to recognise and assess the facts of individual cases. It is interesting to note a report from the Law Council of Australia which concluded that mandatory sentencing laws imposed unacceptable restrictions on judicial discretion. They are an ill-conceived means of addressing crime rates and have resulted in unjust sentences when applied in other jurisdictions. The Commonwealth Senate Legal and Constitutional Committee recently stated that mandatory minimum sentencing is not appropriate in a modern democracy that values human rights, and that it contravenes the Conventions of the Rights of the Child. These views are confirmed from numerous other international sources.

The injustice that will flow from the proposals of the Leader of the Opposition for mandatory sentencing can be well demonstrated by giving some examples. Under the mandatory sentencing proposals an offender with a long criminal record who cold-bloodedly plots and plans his crime will receive the same sentence as a young, impetuous offender. The Coalition proposes a system whereby a victim who has been subjected to prolonged physical or sexual abuse finally snaps and turns on the abuser and kills that person, or the loving, elderly husband who assists in the mercy killing of his terminally ill wife, will receive the same sentence

as an armed robber who kills in cold blood in the course of carrying out that evil crime. The potential for unjust and grotesque results is self-evident. The new sentencing regime is found in proposed new division 1A.

The regime sets a standard non-parole period for a number of specified serious offences set out in the table in the bill. The bill requires the court to set a non-parole period for the offence as set out in the bill unless the court finds reasons for setting a non-parole period that is longer or shorter due to aggravating or mitigating circumstances. It is a logical and sensible approach to policy that takes into account many different circumstances, not a simple blanket approach. The bill will also establish the New South Wales Sentencing Council, which will advise the Attorney General on sentencing matters. The Sentencing Council is based on similar models in the United Kingdom and North America. The council will give the community, as well as particular victims of crime, a stronger voice in the sentencing of criminals.

Functions of the Sentencing Council, other than of advising the Attorney General on offences suitable for non-parole periods and their proposed length, include advising and consulting with the Attorney General on offences that are suitable for guideline judgments and the submissions to be made by the Attorney General on an application for a guideline judgment; monitoring and reporting annually to the Attorney General on sentencing trends and practices, including the operation of standard non-parole periods and guideline judgments; and, at the request of the Attorney General, preparing research papers or reports on particular subjects in connection with sentencing.

The council has been well thought out. It will consist of 10 members, one of whom will be a distinguished retired judge who will chair the council, one who will have experience in law enforcement, and three others who will have expertise and experience in criminal law or sentencing, including one prosecutor and one defence lawyer. Another member will have experience or expertise in Aboriginal justice matters, and four members, two of whom will be victims representatives, will represent the general community.

A number of crimes obviously will not be covered by this bill. However, by the use of guideline judgments that are given by the Court of Criminal Appeal, the Government's commitment to consistency for those crimes will continue, and I applaud the efforts being made by the Attorney General in this regard. Only recently the Attorney General filed applications in the Court of Criminal Appeal for guideline judgments with respect to the offence of assaulting police, the offence of driving with a high-range prescribed concentration of alcohol, and for taking account of other offences in sentencing. The bill follows the judgment of the High Court in *Veen v The Queen (No. 2)* by Chief Justice Mason and Justices Brennan and Dawson by inserting a new section 3A, which sets out the purposes for which a court may impose a sentence upon an offender.

The purposes are to ensure that the offender is adequately punished for the offence; to prevent crime by deterring the offender and other persons from committing similar offences; to protect the community from the offender; to promote the rehabilitation of the offender; to make the offender accountable for his or her actions; to denounce the conduct of the offender; and to recognise the harm that has been done to the victim of the crime and the community. If the Opposition has its way, its amendments would have the effect of destroying the purposes of sentencing. Mandatory sentencing will not give effect to each of the purposes of sentencing. I heard the shadow Attorney General explain the effect of the proposed amendments, and they do not address the purposes for which a court may impose a sentence.

His amendments would be contrary to the objects of the bill—but that does not surprise me, considering the quality of the thought given by the Opposition to this debate. Crime is a very complex social phenomenon. Governments cannot effectively deal with crime by introducing mandatory sentencing, which is a simplistic and silly proposition that has been advanced by the Liberal Party. Crime is driven by greed, poverty, poor family life, early childhood abuse, poor education, lack of personal responsibility, mental illness, drug addiction, revenge, opportunity, despair and, in the worst cases, sheer unimaginable evil. They are the issues that need to be tackled from the ground up, but the Opposition is too busy beating its chest about mandatory sentencing, which proves that it is not serious about making the streets safer.

In contrast, this Government is considering how to better support families and protect children, and build more resilient communities. Recently the Premier referred to a 24-year study in the United States of America which shows that for every dollar invested in services to help families with young children, within three years \$4 was saved in child protection, health, education and justice systems. By the time children had reached adulthood, \$7 had been saved. Numerous international studies have shown that money invested in combating crime and changing behaviour is money well spent. I support this Government's \$117.5 million Families First Program, which aims to help families with young children. The funds will assist in the provision of early childhood nurses, family support workers and in implementing the transition-to-school programs, which are being pioneered in this State. I am proud that the Labor Party has introduced the Families First Program.

I support the Better Futures Program, to which \$8.6 million has been allocated to target children between the ages of nine and 18 years who are at risk of dropping out of school, leaving home, and disengaging with their families and communities. A whole host of other smaller programs are in operation around the State, such as the Plan-It Youth Program, which targets kids who are at risk of leaving school by giving them a mentor and trying to keep them involved; the Communities First Program, which operates in Warilla in the Kiama electorate; and the Reading Recovery Program, which ensures that students who are falling behind in their reading ability are able to obtain one-on-one tuition to keep them up to speed with their class and prevent them from feeling disengaged.

This debate is about issues much bigger than merely mandatory sentencing, but the Opposition is trying to simplify matters and cloud the real work that needs to be done in preventing crime in this State. I look forward to hearing the comments made by other Government speakers during debate on this bill. This legislation will be the defining point between the Opposition and the Government. It represents the difference between the Government's well-thought-out plan and the Opposition's ill-conceived, poll-driven and ineffective plan. I support the bill.

**Mr BROGDEN** (Pittwater—Leader of the Opposition) [8.15 p.m.]: If the Labor Party got one thing right in the speech made by the honourable member for Kiama, it was that this legislation will be a defining point between the Liberal-National Coalition and the Labor Party at the next election. The difference comes down to a very simple point. Premier Bob Carr's legislation, this bill, will allow judges to have 13 excuses to let criminals out of gaol early. It will give judges 13 trapdoors through which to trade beneath the minimum sentence and—worse than that—section 54C will allow all legislation to be wiped away and replaced by non-custodial, non-gaol sentences to be imposed in respect of serious crimes. The Parliament and the people of New South Wales recognise that this bill is nothing other than catch-up politics. The tragedy is that the Labor Government cannot even get it right.

When the Coalition released its policy on compulsory minimum sentencing a line was drawn in the sand. The Coalition said to the people of New South Wales, "We are sick and tired of weak sentences from the courts." Under the current system of sentencing a judge in one court delivered a 40-year minimum sentence to a vicious, ugly, gang-rapist, and one week later the same justice system, in another court and by another judge, delivered a 12-year minimum sentence to a man who murdered Senior Constable James Affleck, a police officer who was killed in the line of duty. During one week under Premier Carr and Labor, the New South Wales justice system imposed a sentence of 40 years on a gang-rapist—which was the right sentence, an adequate and tough sentence. But seven days later, under the same Government and in the same justice system, a non-parole period of 12 years was imposed on somebody who murdered a police officer who was performing his duty.

That is the level of inconsistency that is driving the people of New South Wales to the point of despair and causing them to lose faith in the justice system. The level of inconsistency in sentencing is simply no longer acceptable. The Coalition has proposed a policy of compulsory minimum sentencing—no excuses, no parole, and no opportunity for the judges to trade beneath the minimum. What has the Government proposed in its legislation? The bill provides for 13 so-called mitigating circumstances. The point is very clear: With the Liberal-National Coalition, people will get compulsory minimum sentencing, but under the Labor Party in government, they will get Clayton's minimum sentencing. The people of New South Wales will see this legislation as a black-and-white policy difference and as a defining point between the two major parties at the next election. In examining the 13 mitigating factors, I will concentrate on three of them. Item [2] in schedule 1 provides a substitute for section 21A. In subsection (3), "Mitigating factors", the bill states:

The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows...

- (e) the offender does not have any record (or any significant record) of previous convictions.

In other words, a murderer, a gang-rapist, a drug lord or a person who commits an assault can turn up in front of the justice system in New South Wales with this legislation under his or her arm and say, "It was my first time." That person should remember this: to the person whose daughter has been murdered, to the person whose sister has been gang-raped and to the person who is the victim of a drug lord, there is no room for first-time excuses, there is no room for first-timers to get a free ride. However, that is what this bill allows. New section 21A (3) contains the following mitigating factor:

- (f) the offender was a person of good character.

A person of good character would not have murdered or raped in the first place! This ridiculous bill allows rapists, gang-rapists, drug lords or murderers to front up to a judge in a court in New South Wales and say, "I may have murdered", "I may have participated in a gang-rape", or "I may be a drug lord", and then say "But I

went to the right school, I have good parents, I dress the right way and I have some character references, so how about trading beneath the minimum or how about letting me walk free?" Next May a Coalition government will proudly introduce a bill that will make a difference; there will be no mitigating circumstances. New section 21A (3) continues:

- (i) the offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other matter,

Under that provision a gang-rapist, a murderer or a drug lord can turn up to a court in New South Wales and say, "I'm sorry, I didn't mean to participate in that rape. I am now remorseful" or "I'm sorry, I didn't really mean to kill that person. How about trading beneath the 20-year minimum?" Under a Liberal-National Coalition there will be no excuses, there will be no parole, there will be no ifs, there will be no buts. When we say "compulsory minimum sentencing" we mean "compulsory" and we mean "minimum". The people of New South Wales are sick and tired of inconsistencies.

**Mr Maguire:** They've had a gutful.

**Mr BROGDEN:** As the honourable member for Wagga Wagga said, they have had a gutful. Time and again we see results handed down by our courts that display inconsistency. For every 40-year sentence for a gang-rapist, between 10 and 15 weak sentences are delivered across the board by our courts. Evidence of weak sentencing was mentioned in this House today with respect to a case involving a nine-year-old girl and a 12-year-old girl, both of whom had been sexually molested over a period. Their decision to go through the harrowing court processes delivered what? A gaol sentence for that molester, that animal? No! He received a sentence of 18 months weekend detention. While those two young girls go about their daily lives, scarred forever, the current justice system has allowed a repeat offender to walk free five days a week and go to gaol only on the weekends.

That is an example of a justice system that is falling down. The Attorney General could not work out what the real charge was and sought to castigate the Opposition—indeed, he called me a liar. He did not know whether the charge was aggravated or non-aggravated indecent assault; he had to slide out the back door and correct the record on radio this afternoon. To my knowledge, he has not had the guts to correct the record in this House. He has not appealed that sentence. A future Coalition Attorney General will exercise his or her authority to appeal cases in which the Director of Public Prosecutions has failed to do so. The Coalition believes that elected representatives can respond—and, indeed, will respond—when there is gross injustice.

The Carr Government's bill contains 13 mitigating factors—13 excuses—that will result in judges running a hole through it, every day of the week, in every court in this State, because they will look for mitigating circumstances to let rapists, murderers, drug lords and violent criminals under the bar. They will do that on many occasions, and that is unacceptable. The bill fails to address community concerns in the manner in which the Coalition's policy will address them. We have listened to communities, we have attended public meetings, we have sat across the table with victims of crime and their brothers, mothers, sons, daughters, fathers and loved ones. When we listened we heard only one thing: they demand justice, not revenge. We believe that justice will be served through a regime of compulsory minimum sentencing.

Compulsory minimum sentencing will also act as a serious deterrent to people who wish to commit crime. Why? Because if they look at a court system operating under a Liberal-National Coalition government they will see that when we say sentencing is compulsory and minimum, it is compulsory and it is minimum. When a person is thinking about committing a crime he or she will think twice, because under our bill the gaol time they will cop will act as a genuine deterrent. They must take that into consideration. In contrast, the Government's bill allows a person to engage a clever lawyer, pay a lot of money, put on a good suit, get a couple of character references and slip under the bar. That is no longer acceptable to the people of New South Wales.

The pathetic attempt at catch-up politics by the Premier and the Labor Party will be apparent and transparent to the people of New South Wales in March next year. There will be a very clear policy distinction between a tired, arrogant Government, with a Premier more concerned about strutting the international stage, and a fresh, rejuvenated, united Coalition that is listening to the people and responding with policies that will make a difference. The victims of crime do not deserve to be treated in the way in which they have been treated in the past. For many members of Parliament, and many members of the Coalition, the journey to this point has been a personal one.

I have sat with the honourable member for Wagga Wagga, in his office, and spoken to the mother of Janine Balding. I have met mothers whose sons have been murdered and mothers whose children have been molested. I have been genuinely touched by their sadness. I have looked into the eyes of a mother who lost her

son in a violent murder. She knows that no act of revenge will ever bring her son back. That is why our policy is not based on revenge but on simple justice. The Premier has, in his usual disingenuous manner, sought to criticise one feature of our policy. He believes that a flaw in our policy of compulsory minimum sentencing—the unfortunately named "battered wife" case—would require a murder charge and, therefore, a compulsory minimum sentence. The Premier could not be further from the truth. The reality is that under our law, and under our practices, a jury can return a verdict of manslaughter on a murder charge. If a woman who has been the victim of sexual or physical abuse in a relationship for many years kills that partner in an act of rage, in a moment of passion, in a moment of aggression—

**Dr Kernohan:** Or self-defence.

**Mr BROGDEN:** —or self-defence, as the honourable member for Camden correctly pointed out, and is charged with murder, the jury can return a verdict of manslaughter. I have enormous faith in the people of New South Wales. I have enormous faith that a jury of my peers will, on the balance of evidence, make a determination that a woman is a genuine battered wife or that a person has retaliated after years of sexual abuse as a child, and that that person should be convicted not of murder but of manslaughter.

Under our policy, there will be no compulsory minimum sentence for manslaughter. Under our policy, a jury could return a manslaughter verdict in the case of a battered wife and that person could walk free. If that is what justice dictates, I have every confidence that any jury in this State will make that decision. No attempt by the Coalition to amend this legislation will change the right of a jury to return a verdict of manslaughter in a case of murder. In addition, the Director of Public Prosecutions clearly has the power to charge somebody in a battered wife case with manslaughter, or he can alter the charge during court proceedings if he believes that the evidence leads to that conclusion. In five short months the people of New South Wales will have a black and white choice—between a Labor Clayton's sentencing bill and a Liberal and National Coalition genuine compulsory minimum sentencing policy that will restore the community's faith in the justice system, deliver real justice and, where necessary, genuine punishment to violent criminals in New South Wales.

**Mr NEWELL** (Tweed) [8.30 p.m.]: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill has raised a degree of heat and passion from both Government and Opposition members. I support the bill not as someone with a legal background but as someone who is concerned about recent sentences that have been imposed. I will give honourable members some examples of sentences that have shocked my community in the Tweed. The Government has amended this bill in response to community concerns. Opposition members have indicated that they will attempt to amend some of the provisions in this bill in Committee. Opposition members said that they would not oppose the second reading of the bill, but they indicated that they propose to move various amendments to it during the Committee stage. The bill contains many provisions that have been embraced by the community. Opposition members attacked the Government for proposing certain changes to the bill—for example, the 13 aggravating or mitigating circumstances that may be taken into account when judges are imposing standard minimum sentences.

My constituents are quite comfortable with those provisions. We do not want to see anyone involved in a mercy killing put into the same category as someone who has committed an aggravated and despicable crime. Judges must be able to apply some degree of leniency. Recently judges have imposed minimum sentences without giving the community any explanation, which has upset the community. I refer to recent cases in which offenders have been given reduced sentences—something that we are trying to overcome through this legislation. Some of the crimes that have concerned and upset residents in the Tweed electorate include a violent murder of a wife by her husband or partner; a case of deliberate, calculated and despicable domestic violence; and a hit-and-run charge that resulted in a lenient sentence. The judge gave the community no explanation for imposing such a lenient sentence. Another case that comes to mind involved a child who was killed in a manner that horrified the community. The community was subsequently outraged at the sentence that was imposed.

This bill contains new or substantially amended provisions that outline the purposes of sentencing. New section 3A includes the purposes for which a court may impose a sentence on an offender. That new section clarifies for members of the community what occurs when a person is sentenced. I referred earlier to the aggravating and mitigating factors that are to be taken into account by judges when imposing sentences. Opposition members have raised these issues in an attempt to gain the support of the community at the forthcoming State election. However, as I said earlier, members of the community accept the sentencing provisions that are listed in this bill. Opposition members want to include provisions in the bill that will ensure that judges consider all 13 aggravating or mitigating circumstances in an attempt to obtain lighter sentences.

Opposition members are completely misrepresenting the facts. The bill sets standard non-parole periods for a number of serious offences. Offenders are eligible for parole only after they have served a minimum

sentence. The list of 20 indictable offences has received favourable comment from the community. I have had nothing but positive feedback on the standard sentences that will apply. The establishment of the New South Wales Sentencing Council will go a long way towards allaying some of the fears that are held the community in relation to the handing down of sentences. A new 10-member sentencing advisory body will be established to advise and consult the Attorney General on offences that may be appropriate for benchmarking and/or guideline judgments. The new body, which will have an advisory role in relation to sentencing reform, will be chaired by a retired senior judicial officer. Its establishment follows the examination of similar bodies in the United Kingdom and North America.

The establishment of the Sentencing Council is a particularly good move. It will oversee minimum sentencing practices, ensuring that gaol terms are not ratcheted downwards and that courts do not persist in their attempts to rewrite the statutes in this regard. The bill also requires judges to explain sentences fully. These explanations will be taken into consideration during appeals and will clarify judicial determinations for the public, thus making the court process more open, understandable and people friendly.

I have received nothing but positive feedback about the indictable offences that will attract standard sentences. I am sure that honourable members on both sides of the House have had similar experiences—although some may be a little reluctant to admit it. The community has embraced the changes outlined in this bill. Although there has been some angst about its practical effect, there is no doubt that the bill—which enjoys the support of the Government and I believe of the Opposition, although its members are like hounds baying for blood in the run-up to the State election—is an attempt to inform the public. I am sure that people can see through Opposition members' claims. The community has already accepted some of the changes; it understands that the Premier is tough on crime and is prepared to do the hard yards and amend existing legislation. I commend the bill to the House.

**Mr WEBB** (Monaro) [8.42 p.m.]: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill addresses an important issue in our society, which prioritises law and order issues. The bill has an interesting history. The Government is reacting to the concerted long-term effort on the part of the Deputy Leader of the Opposition in particular and the Coalition as a whole to return some sense and truth to sentencing in New South Wales. I strongly support the Leader of the Opposition, who eloquently explained our position earlier tonight. He related the history of the Coalition's stance on this issue and pointed to the many anomalies in sentencing. We had evidence again today of how those anomalies affect our community and lead to ridiculous sentencing decisions. The National Party, of which I am a proud member, clearly supports the Coalition's stance on this matter. I state at the outset that, while we do not oppose the bill, we certainly have some reservations about its content.

This bill is clearly a reactive measure aimed at political gain rather than solving the problems that have been evident in our society for some time. What could be regarded as good governance in this State—I hasten to add that I am not referring to this Sydney-centric Labor Government—is more often than not the result of an effective and tenacious Opposition. Although it is frustrating to be in Opposition, my Coalition colleagues and I have worked hard to challenge, question and oppose the Government. That is our task. In spite of Labor members' rhetoric, tonight we are debating a very important issue. The effectiveness of this Opposition is nowhere more evident than in the bill before the House. Backflips in the law and order area have unfortunately become the hallmarks of this Government. The talk is tough but the exemptions give the lie to its rhetoric.

The Government's 13 excuses to get out of gaol early make a mockery of this bill. People charged with particular offences can claim that they did not cause substantial harm, they did not plan the crime, they were provoked, they were acting under duress, they are first-time offenders, they are of good character, they are unlikely to reoffend, they may be rehabilitated, they have said sorry, they did not realise they were doing wrong, they have pleaded guilty, they have given a pre-trial disclosure or they have assisted the police in their investigations. Those mitigating circumstances are taken into account throughout the criminal and judicial processes. It is simply absurd that this bill will allow the judiciary to take such factors into account and—I return to the words of the Leader of the Opposition—that serious criminals will get off. Offenders may also use the provisions in new section 54C—which we wish to delete from the legislation—to secure a sentence that is less than the prescribed minimum or be charged with a lesser offence. That will not force people to understand and accept the consequences of their unlawful actions.

We obviously support the consideration of aggravating circumstances but believe they should be taken into account throughout the process. I am sure this happens already. I am also sure that victims expect such factors to be considered in sentencing. The punishment must be appropriate to the severity of the proven crime, but the Government has not communicated this message to the community effectively. It has been unable to



enforce provisions regarding prisoner rehabilitation within the system. We believe the Opposition's legislation would deliver more effectively the objectives stated in new section 3A, such as protecting the community from the offender and rehabilitating the offender. We believe stronger sentences must be common and accepted as a solution to many of society's problems.

There is clearly a crisis in our gaols. Crime, especially petty crime, is out of control in many areas, and Coalition members have outlined clearly their approach to this problem. We cannot afford to be soft on premeditated, deliberate, violent, horrendous criminal activity. The Opposition's policy in this area is much stronger than that of the Government and sends a clear message to the community. We must do what we can to prevent crime but we must also be seen to punish offenders properly. The Coalition's tough compulsory sentencing policy has broad community support and the State's Premier and chief law officer, although they ridiculed it, have at least considered it seriously and largely adopted our proposals. I thank them for that at least. It is interesting to note that the Law Society of New South Wales, the New South Wales Bar Association and the Council for Civil Liberties oppose the bill. The Opposition does not oppose the bill but we certainly want the ridiculous 13 mitigating circumstances removed, together with new section 54C. I support wholeheartedly the amendments foreshadowed by the Deputy Leader of the Opposition tonight. We are determined to break the cycle of crime in our community.

We are resolute that police activities within our communities will be fully supported. That is why we have sought to introduce heavy penalties for those who wilfully kill police officers on duty. We need tough sentences for serious crime such as murder and rape. Under a Coalition government the community will be protected by the strengthening—not the weakening—of various provisions of our criminal code. We support the call by the community for strong sentences that act firmly as deterrents and keep offenders locked away. We do not want soft mitigating circumstances to be taken into account. The judiciary should not be allowed to give criminals light parole periods or soft sentences. We know full well that members of the community demand strong, well thought out legislation to support their right to be safe in their homes and communities.

**Mr McBRIDE** (The Entrance) [8.51 p.m.]: I support the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. Whilst I have been a member of this House I have continually heard debate about sentencing. I am not a lawyer, but I am disappointed that individual court cases have been dragged before this House. We have abused the people concerned and the court system by the use of this process to push a political barrow. That happened again today. For hundreds of years the system of the separation of powers between the Parliament and the judiciary has worked effectively. We have continually discussed individual cases and the House has sought to decide appropriate sentences. On a number of occasions I have been an observer in court. When I read the media reports of those court cases I thought they were different cases altogether. The media picks out the sensational, salacious and titillating parts to sell newspapers. The media has no interest in publishing the facts of a court case. The media wants to push an agenda and make the case a media event.

This year a particular case was raised in question time in this Chamber and certain allegations were made. After investigation it was found that most of the information had been blown out of proportion; it was inaccurate, false or fabricated. I am concerned that if this legislation is not passed, court cases will be raised continually in question time in this Chamber and become the subject of political battles. That is not good for anyone and, importantly, it is not good for the community. This legislation is an appropriate tool to bring some sense into the debate. The overview of the bill states:

The principal objects of the Bill are:

- (a) to establish a scheme of standard minimum sentencing for a number of serious offences, and
- (b) to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters.

The reforms are aimed at promoting consistency and transparency in sentencing, and promoting public understanding of sentencing.

The New South Wales Sentencing Council will comprise representatives of the law and the community. The Minister will get the best possible advice from the council in relation to sentencing matters. At the moment the public has little or no understanding of the sentencing process. Members of the public and parliamentarians must be confident that the judiciary is delivering justice. The overview continues:

The Bill sets standard non-parole periods for a number of serious offences. (A non-parole period is the period of a sentence of imprisonment during which the offender must be detained and cannot be released on parole.) Under the Bill, the sentencing court is to set the standard non-parole period as the non-parole period for an offence included in the proposed scheme unless the court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period.

The Government says protocols should be in place so that standard non-parole periods can be increased or reduced, depending on the circumstances. A court that increases or reduces a standard non-parole period must make a record of its reasons for doing so. In that way the process will be accountable. The court must also identify in the record of its reasons each factor to which it had regard. We want consistency and transparency in sentencing and this bill will provide that. The overview also provides:

The Bill also specifies the purposes of sentencing, and indicates specific aggravating and mitigating factors that a court is required to take into account when determining the appropriate sentence for offences generally.

The Bill also reforms the law dealing with sexual assaults on children by:

- (a) increasing the maximum penalty for sexual intercourse with a child under 10, or attempted sexual intercourse with a child under 10, from 20 to 25 years, and
- (b) removing two redundant offences dealing with homosexual intercourse with a child under 10.

It is all very well to have proper sentencing procedures in place for people who commit crimes, but we should deal with the community before criminal acts are committed. Sentencing is possibly the most complex and politically charged of all public policy areas. We have to work out how to control crime and, more importantly, how to prevent it. The Government has introduced a number of outstanding initiatives to prevent crime. I am continually frustrated when constituents come to me as their local member and ask, "What are you going to do about crime?" They forget to look at how to stop or reduce crime. Youth justice conferencing on the Central Coast is a good initiative.

People continually complain about the behaviour of young people. Representatives of the Wyong community, local government and the police looked at ways of stopping young people from committing crime instead of waiting until they did so and then worrying about what to do with them. Youth justice conferencing evolved from that. In 1997 the Government introduced new laws to deal with juvenile crime. Minor offenders may be given formal warnings or cautions issued at the police station in the presence of parents or guardians. For more serious offenders, they come face-to-face with their victims in a conference. For example, the victim could be the neighbour whose front fence was defaced by graffiti, the shop-owner whose windows were smashed or the single parent whose car was stolen for a joy ride.

The conference is a confronting experience. The undertakings that follow could include an apology to the victim, compensation for damage, an agreement to attend counselling, or an even better option, returning to school. Conferencing encourages young offenders to accept responsibility for their crime. It puts responsibility for preventing reoffending back on to parents and families. It gives the victims of crime a voice.

Two of the people who set up that scheme on the Central Coast were Kevin Pierce, a barrister with Aubrey Brown and Partners, and Paul Dixon, a police officer associated with The Entrance patrol. I have spoken to them about that program. It is clear that such programs are incredibly effective in dealing with young people. Both told me of their amazing experiences through being involved in the conferencing process and with the young people and their victims. They said that young people confronted with the issues and the victims, and in a process involving their parents, had to publicly accept responsibility for their acts, and that this brought about a tremendous improvement in their behaviour. Off the top of my head, I cannot give the ratio of successes, but it was substantial. It was formalised as government policy in 1997.

Another government initiative was the Drug Summit. About three years ago the Government undertook a successful experiment in policy-making with the New South Wales Drug Summit. Many people were sceptical about that. Many Opposition members were incredibly cynical about it. But the Drug Summit engaged the whole community. On these issues we must involve the whole community in examining the problem and developing solutions. If solutions are not accepted by the community, they will not work. I recall the former Parliamentary Secretary for Roads, the honourable member for Cabramatta, putting forward proposals to deal with issues raised at the Drug Summit. I must say I had reservations about some of the decisions taken, but at the end of the day the Government put its money where its mouth was and contributed \$172 million in new funding.

Some of my colleagues would tell the House how some of that funding has been spent in their electorates. The Central Coast, for example, now has a new drug and rehabilitation centre at Wyong hospital. Clients who were being serviced by private clinics on the Central Coast are now being serviced by the health system. There was much opposition to the proposal from people in the mainstream health system. They did not want that service interwoven with mainstream health services. I have seen how the clinic is run at Wyong and

Gosford hospitals. I have been to four private clinics, including those at Long Jetty and Redfern, and I was outside the private clinic at Cabramatta. Honourable members who saw how the methadone program was handled would have been appalled by that. Anyone would have known intuitively that it was not a solution to the problem. If anything, it could even be said to be aggravating the problem. The Government has spent \$172 million trying to deal with the drug problem in a way that prevents those problems leading to crime.

The Dutch auction on who will be tougher on crime is a wrong approach. The public will tell us that at the ballot boxes next time round. They want long-term solutions. Putting more people in gaol is not a solution to crime. It does not stop crime. Some would argue that gaol is like a finishing school for criminals. In gaol they mix with other criminals and learn more of their skills. We must stop these people getting into the system. Once they are in the system, if we have not lost them then there is a good chance we will do so. Recidivists account for about 80 per cent to 85 per cent of all crime. In other words, when released from gaol they commit more offences. We must develop community-based policies that will stop young people and others getting into a downward spiral and into a life of crime. I commend the Government on that initiative.

The Government has taken a number of other initiatives to try to deal with crime in our community. One is the Families First Program. That program is now in place on the Central Coast, with \$117.5 million of new money being spent to help families with young children over the period 2002 to 2006. That is another example of the Government dealing with issues before they become critical. Under Families First, each year every family in the State with a new baby will be offered a home visit by an early childhood nurse. Many families with young children are unable to handle their domestic situation, and that results in violence. That ends up as a crime and someone entering the criminal system.

The Government is dealing with that complex social problem. It is one of the larger problems for the community of the Central Coast. The Government is dealing with the issue, preventing domestic matters from becoming crimes. That is more important than having a Dutch auction about who will be tougher on crime and put people in gaol for longer than anybody else. It is not how long they are put in gaol but how they come out of the gaol that is important. It is even more important to stop them from going to gaol in the first place. This is sensible legislation. It is supported by my community and, I believe, everyone in New South Wales. This is sensible and reasonable legislation to deal with sentencing problems associated with crime.

**Ms HODGKINSON** (Burrinjuck) [9.06 p.m.]: The comments made by the honourable member for The Entrance about the Department of Community Services and where the Government is heading in providing services for children who are in distressed circumstances were over the top. We know that under the Government only one in 10 cases is being investigated. Mental health issues are far from even being thought to be adequately addressed by the Government. In fact, it is outrageous that any Government member could claim in this Chamber that the Government is making any progress in relation to mental health or Department of Community Services issues. Certainly, as far as the Burrinjuck electorate is concerned, the Government is losing ground on those matters. I have received many complaints from constituents. Only last week I made a major speech in this place about it. So the honourable member's comments are out of place.

But I digress from the matter that I wish to speak about, which is the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. This is nothing more than a Clayton's sentencing bill put forward by the Australian Labor Party. I will give an overview of the bill. The bill will establish a Sentencing Council to advise the judicial system on recommended sentences. It will establish a list of criteria to be taken into account in determining whether an offence should be regarded as having aggravating features. It sets out a list of factors that should be taken into account in mitigating a sentence. It allows the court not to impose any custodial sentence at all. Theoretically, a reason must be given, but if no reason is given the sentence is still valid. Standard non-parole periods are set out in the bill. Those go further than those of the Coalition in regard to offences such as possession of firearms and housebreaking, but they do not include manslaughter or common assault.

I now turn to a brief history of the bill. In June 2002 the Coalition launched its compulsory minimum sentencing policy. That policy covered crimes of violence other than manslaughter and common assault. Minimum sentences were to be determined by the Parliament, as we heard from the shadow Minister earlier this evening. In what has been regarded as the most enormous backflip in the history of this Parliament, the Government rejected the Coalition's proposals, then in September announced its own standard minimum sentencing proposals. Obviously, the Government saw the great press that the Coalition was getting on its minimum sentencing bill and decided, "Oh dear, it's about time. After 7½ years in government people are noticing that we are not doing anything about law and order in this State. Let's see if we can adopt some policies of the Opposition." That is what happened.

Let us consider what gaol sentences criminals are serving. The statistics have been sourced from the New South Wales Judicial Commission's database of sentencing statistics, and are based on convictions recorded in the Local Court from January 1998 to December 2001 and higher courts from July 1994 to June 2001. For the crime of manslaughter 12 per cent of the perpetrators did not go to gaol. The median minimum sentence was four years. No-one received the maximum penalty, which is 25 years in gaol. For malicious wounding, 41 per cent did not go to gaol. The median minimum sentence was 18 months. No-one received the maximum penalty of seven years gaol. For common assault, four in five did not go to gaol. The median minimum sentence was six months. One in 10 received the maximum penalty of two years. For rape, 16 per cent did not go to gaol. The median minimum sentence was two years and the median maximum was four years. The maximum penalty is 14 years. In the Local Court 55 per cent did not go to gaol for break, enter and steal. Of those who did go to gaol, 53 per cent received minimum terms of six months or less. In the higher courts, 35 per cent did not go to gaol. Of those who did, 65 per cent were given minimum terms of 18 months or less.

For the past seven years the way in which the Government has treated the justice system in New South Wales is criminal. The history of sentencing under the Carr Labor Government is absolutely outrageous. The Leader of the Opposition referred to the 13 mitigating factors in proposed new section 21A (3) (a) to (m) that will be taken into account to determine the appropriate sentence. Those mitigating factors include the injury, emotional harm, loss or damage caused by the offence not being substantial; the offence not being part of a planned or organised criminal activity; the offender being provoked by the victims; the offender acting under duress; and the offender not having any record, or any significant record, of previous convictions. It is outrageous!

Another mitigating factor is the offender being a person of good character. How does one determine whether a person is of good character? Further mitigating factors include the offender being unlikely to reoffend; the offender having good prospects of rehabilitation, whether by reason of the offender's age or otherwise; the offender having shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner; and the offender not being fully aware of the consequences of his or her actions because of the offender's age or disability. The list goes on. It is astounding that these mitigating factors will result in reduced sentences.

We will have the same statistics as we had for the past seven years. I cannot understand how, with these mitigating factors, sentences for serious crimes will be increased. It is outrageous that the honourable member for Bathurst can jest and smile when he knows, as a member representing a country electorate, that every day we have to deal with serious issues in our electorates. Serious crimes have been featured in the Sydney media, but similar things happen in the home towns of members representing country electorates. It is a big thing for a girl in a country town who has been raped to go to the authorities, reveal the perpetrator of the crime and cope with the resulting publicity. It is a massive psychological assault.

Sentencing an offender to weekend detention for such a crime sends shock waves through the hearts of all parents. An attack on a child strikes fear into the heart of every parent. We must ensure that the perpetrators of such crimes are adequately dealt with and are not let off because of some mitigating factor. I do not understand how anyone in this place could dispute that. We must have good, solid minimum sentences in place. The Coalition will not allow offenders to use mitigating circumstances to reduce their sentences. It is difficult to debate murder, homosexual assaults on children, and the rape of children, but it is even more difficult to see the people who commit those crimes being sentenced to weekend detention or getting off scot-free. It is astounding.

**Mr Martin:** They won't be under this legislation. That is the whole point of it.

**Ms HODGKINSON:** If the honourable member were to read the mitigating factors—

**Mr Martin:** I have.

**Ms HODGKINSON:** If that is so he will see what I mean. It is there in black and white. It is absolutely extraordinary that the Labor Government is trying to defend the bill. We will not oppose it, but we will move amendments in Committee. I appreciate the opportunity to contribute to the debate. I fully support the Coalition bill dealing with similar matters.

**Mr COLLIER (Miranda) [9.14 p.m.]:** Sentencing of those convicted of serious criminal offences is no easy task. It goes beyond applying statute and common law principles to a set of facts. Judges must have regard to sentences imposed in similar cases, to the guideline judgments of the Court of Criminal Appeal and to the

fundamental purposes of the sentencing process itself. Those purposes, which were outlined by the High Court in *Veen v the Queen (No. 2)*, include punishment, deterrence of the offender (or specific deterrence), deterrence of others who might consider committing similar offences (general deterrence), the protection of society, denouncing the conduct of the offender and the rehabilitation of the offender. Applying each of those to the facts and arriving at an appropriate sentence—one that fits the crime—is a complex task.

Making the punishment fit the crime necessarily involves the person who has heard all the witnesses and read all the reports—that is, the judge—applying his or her knowledge and experience to the objective facts of the case and the circumstances of the victim. It involves an exercise of discretion. At times that discretion is exercised too leniently. If the sentence is manifestly inadequate the appeal court may increase it. At times the community rightly feels that the sentence imposed does not truly reflect its wishes or values, and expresses its outrage at the crimes committed. Members of the community often feel that the punishment does not fit the crime, and they are left scratching their heads as to why the judge imposed the sentence and how the judge arrived at a particular term of imprisonment.

The bill promotes consistency and transparency in sentencing. It promotes public understanding of the sentencing process. It provides guidance and structure for the exercise of judicial discretion. It meets community expectations that an appropriate penalty will be imposed having regard to the objective seriousness of the offence. The bill sets standard non-parole periods for 20 serious offences. The language is simple. This is the period the offender must serve before he or she can be released to parole. The standard non-parole period applies to offences such as murder, sexual assault, armed robbery, certain break and enter offences, carjacking, commercial drug supply and firearms offences. The standard non-parole period for each offence takes into account the objective seriousness of the offence, the maximum penalty and current sentencing trends.

According to the Judicial Commission statistics the new standard non-parole periods are above the average non-parole periods for those offences in the period 1994 to 2001. In other words, the non-parole periods under this legislation, which is a starting point, have increased. No doubt the community will welcome that. The court must set a standard non-parole period unless there are reasons for setting a longer or shorter non-parole period. In other words, the court can exercise its discretion to increase or decrease the non-parole period. Clearly, this is not mandatory sentencing. It distinguishes the Government's legislation from the policy of the Opposition. Under mandatory sentencing the loving son who helps his terminally ill mother to end her life gets the same penalty as the cold-blooded contract killer. The bill will allow a judge to take those differing circumstances into account.

The bill clearly sets out the aggravating factors that will increase the non-parole period as well as mitigating factors the court can take into account. Aggravating factors include the occupation, in the case of murder, of the victim—police officers, teachers and public officials—and whether the person is acting in the course of that occupation. They include the previous criminal history, whether there has been an abuse of trust and whether the offender was on bail. It even takes into account the age of the victim. Mitigating factors include the offender's prior good character, the plea of guilty, the prospect of rehabilitation, the likelihood of reoffending, whether the offender assisted police and whether the person before the courts is a first offender.

Members of the Opposition regard the 13 factors as excuses that may be used to let criminals off lightly, but they should consider the consequences of not taking those matters into account. Under their policy there is no incentive to offenders to plead guilty and save the community the time and cost of a lengthy trial, and saving the victim the embarrassment and trauma of reliving, in examination-in-chief, the events that constituted the offence, reliving them in a lengthy cross-examination, and reliving them again in re-examination. The Opposition's policy offers no encouragement to plead guilty. To illustrate my point, in the case of *R v Ellis* (1986) 6 NSWLR 603 an offender walked into a police station and disclosed unknown guilt. The police had no evidence against that person and, if my memory serves me correctly, the case involved murder. The person walked into the police station because he was prompted by feelings of guilt and remorse, and he confessed to the murder. The Opposition's policy provides no incentive for offenders to do that.

There is no encouragement for an offender to assist police by identifying a co-offender. If two or more people commit an offence and police apprehend one offender, there is no incentive for that person to assist police to identify and bring to justice the co-offender. There is no reason for an offender to offer reparation to the victim for the loss of or damage to property, and there is no reason for an offender to turn his life around and attempt to rehabilitate himself. Under the Opposition's mandatory sentencing policy there is no reason for offenders to do any of those things because one size fits all. On the other hand, the Government's bill provides that if an offender does the crime, he or she will do the right time. That means a contract killer will be given a different sentence from the sentence imposed upon a loving son who helps his terminally ill mother to end her life.

The court can, and will be able to, take into account different circumstances. The bill provides for longer sentences to be imposed on those who have a criminal record than on first offenders, and for a longer sentence to be given to those who are convicted of an offence against elderly people as opposed to those who commit the same offence on a healthy man of reasonable firmness who is in his thirties. Courts must state their reasons and the factors that have been taken into account in sentencing. Those matters must be placed on the record for the public to see. Courts must state reasons for increasing or decreasing standard non-parole periods. This promotes transparency. Having regard to the non-parole period, the court must set the period during which the offender will be released on parole. Importantly, section 3A of the bill sets out the purposes of sentencing. Together with the recording by the judge of reasons, this will help the public to understand the sentencing process.

The bill also establishes the Sentencing Council, which will consist of 10 persons and be chaired by a retired judge. Four of the 10 members will be from the community, two of whom must have expertise or experience in matters associated with victims of crime. The Sentencing Council will provide an important opportunity for the wider community to make a major contribution to the development of sentencing law and practice. The Government's package also complements the existing guideline judgments that have proved useful in sentencing offenders. Under the Coalition policy there are no excuses; there is no mercy. I refer the House to a case which demonstrates quite clearly the problem created by a mandatory sentencing scheme—a problem caused when there is no exercise of mercy and no provision for the exercise of judicial discretion.

I invite Opposition members to place themselves in the position of Mr Robert Latimer of Saskatchewan in Canada. This is not a hypothetical case; it is a real example which tragically demonstrates the injustices that flow from mandatory sentences. In 1987 Mr Latimer was convicted of the second-degree murder of his 12-year-old daughter, Tracy. There is no dispute that Latimer carried out a mercy killing which was described by the trial judge as "compassionate homicide". Tracy was a 20-kilogram quadriplegic with the mental capacity of a three-month-old baby, who suffered from cerebral palsy. She had been repeatedly hospitalised and operated upon. She could not walk, she could not talk, she could not feed herself and she was in constant, severe pain which was unable to be treated by conventional pain-killers.

One day Mr Latimer, a loving father, placed his daughter in his motor vehicle and ran a hose from the exhaust to the cabin of the vehicle. He climbed onto the tray of the vehicle and watched his daughter die. Upon convicting him of second-degree murder, the jury recommended eligibility for parole after one year. The trial judge described Latimer's relationship with Tracy as "that of a loving and protective parent" who wanted to end his daughter's suffering. The trial judge went on to say that Latimer was not a threat to society and did not require any rehabilitation. But, under the prevailing mandatory sentencing scheme which applied at the time, Latimer was sentenced automatically to life imprisonment with no chance of parole for 10 years, in spite of the jury's recommendation.

Let there be no misunderstanding: Under the Opposition's mandatory sentencing proposals, Mr Latimer would have been sentenced not to 10 years but to 15 years imprisonment. To use the words of the Leader of the Opposition, there would be no questions asked. Tonight I was appalled when the Leader of the Opposition said "no parole"—which was interpreted by me, and no doubt by many others, to mean that under the Opposition's policy there will be no parole. Parole is an important part of the sentencing process because it gives an offender the opportunity of rehabilitation by, for example, participating in a drug rehabilitation program, adjusting back into the work force, getting a job, or getting his or her life back together. Parole plays an important role in the rehabilitation of an offender.

"No parole" effectively means that there will be no rehabilitation. The honourable member for Wakehurst has stated in this House that rehabilitation is an important part of sentencing and that the Opposition supports the rehabilitation of offenders. Yet the Leader of the Opposition is saying that there will be no parole and, therefore, there will be no rehabilitation. In contrast to that, the Government's bill is all about promoting consistency in sentencing, giving the public a say through the Sentencing Council and creating the possibility of the public having a say in the development of sentencing policy. This bill is about judges exercising discretion and about distinguishing cases on their merits. The judges will not be taking into account excuses but, rather, part of the law that has been developed over centuries.

Every right-thinking person expects that an offender who has no previous criminal record and who acts on impulse should be given a different sentence from that imposed on a person who has a criminal record as long as his arm, or who commits an offence on an elderly person, or who commits an offence in the company of another. People expect different sentences to apply to different occasions and different circumstances. The Government's bill is about making the punishment fit the crime and about making offenders serve the time—the right time. I commend the bill to the House.

**Mr RICHARDSON** (The Hills) [9.28 p.m.]: The Government's motto on sentencing appears to be, "If you can't beat them, join them", but the trouble is that the Government has not joined us. Unlike Coalition policy, this bill has loopholes that a truck could be driven through, and I believe that it does not advance the cause beyond the premise of the Premier's sentencing manual for judges, which was introduced with a flourish late last year. In June the Premier told the Parliament that mandatory sentences do not work and he denounced the Coalition's policy in the strongest possible terms. What has happened between June and now?

I think that the Labor Party has tested our policy with the electorate and found that the electorate likes it. So the Labor Party has tried to dress up its sentencing manuals as a tough-on-crime policy. Indeed, members in marginal seats, in particular, have been promoting the Government's tough-on-crime, tough-on-sentencing policy. The Coalition does not believe that that advances the cause at all. We do not believe that it will make any difference to the length of time serious violent criminals serve in gaol. I note that it was not the Premier who introduced this bill, it was the Attorney General, who said:

... I want to make it perfectly clear that the scheme of sentencing being introduced by the Government today is not mandatory sentencing.

He certainly got that right, because of that huge truck that can be driven through it: those 13 excuses for handing down a sentence that is less than the standard sentence. Despite that, Labor members have not stopped trying to sell themselves as being as tough on crime as Opposition members. The Opposition is tough on crime, but it is fair; that is the major difference between the Coalition parties and the Labor Party. The Attorney General also said:

Under the mandatory sentencing proposals of the Leader of the Opposition an offender with a long criminal record who cold-bloodedly plots and plans his crime will receive the same sentence as a young impetuous offender.

That is not right! We are talking about minimum mandatory sentencing. Is the Attorney General saying that judges could never be expected to hand down sentences longer than the minimum? That is what the community expects. As the Leader of the Opposition said in his contribution, in certain cases involving a so-called battered wife a jury is able to return a verdict of manslaughter instead of murder. Is the Attorney General saying that juries are stupid, that they cannot be trusted? Is he saying that juries cannot tell murder from manslaughter? As for his suggestion that juries will be reluctant to convict because of mandatory minimum sentences, that is an absolute nonsense. Certainly that occurs when the death penalty applies.

Students of history will recall that in the eighteenth century in Britain the death penalty applied to comparatively minor crime, property crime. A monetary limit was set, and for crimes committed over that monetary limit the offender would be sentenced to death and for crimes committed under that limit the offender would be sentenced to transportation to Australia. In those days juries regularly would assess the value of the goods stolen below that threshold so that the culprit would be given the lesser penalty of transportation. I have spoken to my constituents and those of other members and have found that most people are fed up with lenient sentencing and inconsistent sentences handed down by judges and magistrates. The standard sentencing proposed in this bill is just sophistry, a pathetic attempt at catch-up by a Government that has run out of the ideas, run out of puff and, most importantly, run out of empathy with the voting public. Section 3A of the bill sets out the purposes of sentencing. It states:

The purposes for which a court may impose a sentence on an offender are as follows:

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,
- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

Those purposes were laid down in very similar terms by the Law Reform Commission in its 1996 report on sentencing. We understand the reasons for sending an offender to prison, but rehabilitation—a purpose of sentencing covered in section 3A (d)—is something that the Government does not do well. Currently 68.6 per cent of offenders in gaol have been there at least once before. That is an appalling indictment of this Government, because prisons are, first and foremost, as the bill states, places of punishment. However, they are, secondly, places of rehabilitation.

Most prisoners will eventually be released from gaol and it is in everyone's best interest that they do not reoffend. Inmates should be engaged positively in rehabilitation, including education, drug and alcohol programs, job skills development, life skills, and self-esteem development. Of course, there should also be adequate post-release support. It is absolutely inevitable that drug-addicted inmates who are not properly treated will reoffend following their release. But each month, under Labor, only 5 per cent of prisoners are tested for illicit drugs. Every inmate should be compulsorily urine tested at least once a quarter and if a test returns a positive result that inmate should be tested daily until negative.

Inmates who are caught in possession of drugs or who test positive should immediately lose their right to see visitors. Earlier the honourable member for The Entrance spoke about the methadone program. That program is a disgrace. More than 1,000 prisoners, about 14 per cent, of full-time inmates in New South Wales gaols are on methadone. That is the highest proportion of any prison system in the world. If those prisoners were to be weaned off that addiction, that would be a good thing. But the program is a maintenance program rather than a reduction program, and most prisoners never get off that drug.

According to the Corrections Health Service annual report, in 2000-01, 1,828 inmates were released back into the community on methadone although only 1,277 were on methadone when they went into the system. In 2000-01, 628 more prisoners left gaol on methadone than went into the system on methadone. The system is creating long-term addiction. Anyone who had half a brain—other than the honourable member for Bathurst—would know that methadone is more addictive than heroin. As well, 65 per cent of inmates are functionally illiterate and innumerate, meaning that they are ill-equipped for a life outside crime. Yet the percentage of eligible prisoners participating in education programs has dropped from 60.7 per cent in 1995 to 43.7 per cent in 2001.

Prisoners with sentences of 12 months or longer should undertake literacy and numeracy testing on admission as well as annually thereafter. Offenders sentenced for 12 months or longer should leave gaol with at least basic reading, writing and mathematical abilities. Those are a few of the issues that the Government has failed to address in rehabilitating prisoners. The Government's standard sentencing policy is as effete as its efforts at rehabilitating criminals. The bill lists 13 aggravating factors that judges are to take into account in determining the length of a sentence and 13 mitigating factors, or excuses, for handing down less than a so-called standard sentence.

Those mitigating factors include that the offence was not part of a planned or organised criminal activity; that the offender was provoked by the victim; that the offender was acting under duress; and that the offender was a person of good character—how that could be the case in a murder or a rape is pretty hard to imagine. The mitigating factors also include that the offender is unlikely to reoffend; and that the offender has good prospects of rehabilitation—that is a bit of a hoot: under this Government I expect that no offender has good prospects of rehabilitation. Those are some of the mitigating factors that have to be taken into account by the courts.

The Minister said in his second reading speech that the court is required to take into account any objective or subjective factor that affects the relative seriousness of the offence. He is saying that anything goes in the courts. This bill will do nothing to increase the length of sentences or to increase the consistency of sentences beyond what is already in place. The Attorney General went on to say that the standard non-parole period for an offence represents the middle of a range of potential sentences for such an offence. So there will be a huge number of sentences around that middle range. Under new section 54B, if the court imposes a custodial sentence on a guilty party that varies from the standard of sentence, it has to set out reasons for so doing.

But here is the rub. Under new subsection 54B (5) the failure of a court to comply with this section does not invalidate the sentence. It gets worse. Under new section 54C the court can impose a non-custodial sentence or a fine—part of the hierarchy of punishments. All that the court has to do is record its reasons for imposing a non-custodial sentence. The sentence will and must be upheld because, once again, the failure of a court to comply with this section does not invalidate the sentence. So, theoretically, a judge could hand down a year's weekend detention for shooting a police officer and the sentence would stand. I do not think honourable members would regard that as an instance of a government being tough on crime. The figures certainly bear that out.

The Premier came into this Chamber and beat his chest about being tough on crime, about protecting the community because criminals have been locked up. However, over the 12 months to 30 June the New South Wales prison population actually fell—from 7,708 to 7,682. The Government professes to be tough on crime.



The Premier came into this place on 17 September and said that, under this Government, more criminals were being locked away than ever before. What an indictment of this Government! Finally, I mention the issue raised by the honourable member for Miranda relating to parole. He suggested that the Opposition does not understand the benefits of parole, which is certainly not true.

As shadow Minister for Corrective Services I have tried to indicate our strong support for a process of rehabilitation and the parole of criminals. We will not be swayed from that conviction by this bill. One of the reasons we want to amend this bill is that we do not think it advances this cause any further. As the Leader of the Opposition said tonight, when we go to the polls on 22 March next year there will be a clear differential between the Coalition parties and the Government. The Coalition parties are tough on crime and on serious, violent offenders and the Government is weak on crime, with the prison population falling. The Government does not want to rehabilitate prisoners. It is happy if those prisoners reoffend, go back into the community and commit other offences.

**Mr MARTIN** (Bathurst) [9.43 p.m.]: It gives me pleasure to support the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. I want to expose some of the hypocrisy that has been espoused by some Opposition members, including the honourable member for The Hills and the honourable member for Burrinjuck. The bill contains new or substantially amended provisions outlining the purposes of sentencing and new separate lists of aggravating and mitigating factors to be taken into consideration by judges on sentencing. Opposition members spoke only about mitigating circumstances and they conveniently ignored the aggravating factors.

The bill also contains new or amended provisions outlining the changed order in which minimum and total sentences are set, the procedure for imposing standard non-parole periods, a table of 20 indictable offences to which standard sentences will attach, and, importantly, the establishment of a New South Wales Sentencing Council. The Government has ensured that there has been adequate consultation on this bill, which has been made available to the community since 4 September. All relevant organisations have had an opportunity to contribute to this bill and to the draft bill, to suggest changes and to put forward their points of view.

Standard sentences will be established for 20 serious indictable offences including murder, sexual assault, drug manufacturing and supply offences. For those sentences attracting a standard sentence, the court will begin with a figure nominated in the table to the bill. That figure represents a non-parole period; in other words, the minimum term of imprisonment. The court will then set a supervision period, which must not exceed one-third of that non-parole period, unless there are special circumstances. We have been careful to ensure that judicial independence is maintained. Judges may reduce or increase the standard sentence according to separate lists of aggravating and mitigating factors.

As I said earlier, Opposition members made much about the mitigating factors—in other words, the 13 excuses to get people out of gaol. However, they refused to address seriously the aggravating circumstances. If judges depart from the standard non-parole period they must set out their reasons for doing so, with reference to the aggravating and mitigating factors and relevant common law rules—areas in which we require transparency. There has been a great deal of disquiet in the community about some of the sentences that have been brought down by judges, who have given no explanation for those sentences. There must be transparency for judges, just as there must be transparency for anyone else in public or private life who makes decisions affecting the community.

Judges must be held accountable and they must be able to explain why they have brought down a particular sentence. That is an area that will be dealt with by the New South Wales Sentencing Council. A new 10-member sentencing advisory body will be established to advise and consult the Attorney General on offences that may be appropriate for benchmarking and/or guideline judgments. That new body, which will have an advisory role in relation to sentencing reform, will be chaired by a retired senior judicial officer. Bodies such as that have been established by other jurisdictions around the world, in particular by the United Kingdom and by North America. Opposition members referred earlier to their mandatory sentencing provisions and said how effective those provisions will be.

There is chapter and verse in jurisdictions all around the world that refer to mandatory sentencing and its inability to reduce crime. One of the major problems relating to mandatory sentencing is that it does not reduce crime. Guilty pleas, which result in over 70 per cent of cases, will virtually dry up. Victims will be made to relive their ordeal in court because the offender has nothing to lose and no incentive to plead guilty—a particularly important issue in rape cases. All honourable members would be aware of the trauma experienced

by women rape victims. Mandatory sentencing strips a case of its fact. It results in an identical penalty being handed down for a premeditated murder as for a husband or a wife in a mercy killing—something from which Opposition members shied away.

Those provisions are in the bill in black and white. The honourable member for The Hills, who spoke earlier in debate on this bill, said that there would be a difference between Government and Opposition policies at the election on 22 March next year. There certainly will be a difference between Government and Opposition policies in that one telling area. Another problem with mandatory sentencing is that it shifts sentencing decisions from judges to lawyers. From experience in the United States of America it appears as though charge bargaining has turned into a major industry, with prosecutors doing deals behind closed doors and offenders pleading guilty to lesser charges to which no minimum penalty applies.

**Mr Ashton:** It's the television industry.

**Mr MARTIN:** Indeed. The Coalition is promoting that approach. Members opposite do not want to talk about it but it is a black-and-white issue. That is one result of the Coalition's mandatory sentencing policy. Mandatory sentencing is alien to our system of justice. Judges and juries must weigh up all the facts and circumstances surrounding a particular crime. That is an essential element of our justice system. We cannot insist upon the same treatment for cold-blooded killers and a person suffering from a momentary defect or someone who reacts in the heat of the moment. Mandatory sentencing is an absolute disaster for victims. Violent criminals facing a lengthy mandatory prison term will not plead guilty to a crime: they will instead use every chance they have to drag out a trial and avoid conviction, resulting in trauma to the victim and huge costs. Victims of sexual assault, in particular, will be forced to face their attacker in court and endure days of cross-examination because that attacker will not enter an appropriate guilty plea.

The honourable member for The Hills said that this debate is about who is tougher on crime. The Government does not want to play that sort of game, and neither does the community. The Opposition, particularly National Party members, is locked into a redneck attitude to law and order. I will touch briefly on a subject that has not been mentioned so far in this debate: what Opposition members would call the soft underbelly of the Government's crime policies. The Government has already implemented several policies. We realise that a tough sentencing procedure for serious crimes should be accompanied by treatment of the root causes of crime. There are several ways of doing this. It is a difficult process—there are all sorts of arguments about how it should be done—and we must go back to basics. We must try to reduce the number of people appearing before our courts and entering our prisons, and we should give the Government some credit for attempting to develop policies with this objective.

The Premier has said on several occasions that we must take a two-pronged approach to law and order issues. We must establish a hard but fair and compassionate sentencing system while addressing the root causes of crime. The Government has introduced about \$200 million worth of such initiatives. It has allocated some \$117 million to expand the trial Families First Program, which provides family support workers, parenting programs and volunteer home visits. From next year every family with a new baby will be offered a home visit from an early childhood nurse. At-risk families will be identified early and given ongoing help. It is particularly important that single parent families—invariably headed by single mothers—receive such support up front as it could have law and order implications later. Some \$14 million has been allocated to the Aboriginal Child, Youth and Family Strategy to fund nutrition programs, homework centres, cultural activities and mentoring by elders. Some Opposition members would probably see no correlation between such programs and law and order, but Labor members know that there is a direct link.

The Better Futures Program is an \$8.6 million literacy, behaviour, sport and recreation program aimed at nine- to 18-year-olds who are deemed to be at risk of dropping out of school or leaving home. We know that young people who leave home early or who drop out of school are more likely to be influenced by the criminal element and to follow a life of crime. Unlike the Opposition, the Government is addressing that issue. The Community Solutions and Crime Prevention Strategy creates and tailors programs to address crime problems in individual communities. Plans have been implemented for Miller, Cabramatta, Redfern, Brewarrina and Gosford, and plans for Wollongong and Canterbury are in the pipeline. This is a definite attack on the causes of crime. Circle sentencing for indigenous offenders is another important Government policy. It bypasses local courts and allows Aboriginal elders to decide appropriate punishments, with the help of police and local magistrates. It also tries to remove people from the circle of crime and reduce their potential to commit serious offences in the future.

Youth justice conferencing allows the issuing of cautions and warnings or face-to-face interaction with victims. This initiative has been around since 1995 and since its implementation the number of young offenders

gaoled has decreased from 510 to 280. That is not quite a 100 per cent drop but I am sure you would agree that it is a significant difference, Mr Deputy Speaker. Recently the Premier moved to redirect the law and order debate away from the "hang 'em high" approach advocated by the Opposition. I am reminded of the Deputy Premier's comment this afternoon. He said that in Voltaire's day one could tell whether one was in a Christian country by the presence of the gallows. We do not wish to return to the time of Voltaire but that is the attitude of those Opposite: hang 'em high on the gallows.

In contrast, the Government advocates a hard but fair system of sentencing that allows judges to take account of mitigating and aggravating circumstances. The initiatives that I have outlined are a serious attempt on the part of the Government to attack the root causes of crime. We must take a two-pronged approach. Those opposite do not accept that: they favour the redneck, National Party mindset that will never change. This Government will not become involved in a policy auction with such people. The community will accept this well thought-out legislation. Independent polls show that the Government has left the Leader of the Opposition and his hang 'em high policies far behind. Acceptance of the Government's policies is running at 50 per cent while the Opposition has only 20 per cent support. That says it all. If the honourable member for The Hills, the shadow Minister for Corrective Services, wants to make this a major issue during the State election campaign, all I can say is: Bring it on!

**Ms MOORE** (Bligh) [9.57 p.m.]: The Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill is another example of social justice being sacrificed for political opportunism. It is a simplistic and inefficient approach to complex social problems. Resources used to accommodate a burgeoning prison population would be better spent on social services that tackle the underlying causes of crime. Although debate continues as to whether standard minimum sentencing is technically mandatory sentencing, it is a significant step towards that regime. Setting standard non-parole periods continues the trend started during this Parliament to undermine the independence of the judiciary, which is a central tenet of the Westminster system. It is vital that broad judicial discretion be preserved to ensure that punishment is proportional to both the offence and the offender. Under the proposed scheme sentencing judges will be able to vary the non-parole period based on aggravating and mitigating factors or to impose a non-custodial sentence.

However, most of the standard periods are set at double or triple the current average, leading to much longer sentences. The length of prison sentences has increased over the past decade, as has the proportion of cases in which prison sentences are imposed. Research reported by the Australian Institute of Criminology does not support claims that judges hand down lenient sentences that are out of step with community expectations, although sporadic, inadequate sentences invariably receive excessive media exposure. The Bligh electorate has serious crime problems. It includes the known drug hot spots of Kings Cross, Oxford Street and Eveleigh Street, Redfern. Official statistics reveal that the inner east has Sydney's worst rates of cocaine offences and break and enter into dwellings, and the second-worst rates of assault, narcotics offences, robbery, motor vehicle theft, and cases of stealing from a motor vehicle and from people. With the exception of motor vehicle theft, the incidence of these offences has increased significantly.

As the local member of Parliament who has worked hard over many years to prevent and reduce crime, I oppose this bill because it will not decrease the rates of serious crime and drug-related problems in Bligh. In fact, it risks worsening the impact of crime and drugs and will divert funding from areas where it could make a real difference. Harsher, longer sentences do not deter crime. Research by Daniel Nagin, an eminent international scholar of deterrence, shows that the certainty of being caught deters crime rather than the severity of the penalty.

The prospect of imprisonment is particularly irrelevant for those whose decision-making ability is impaired by drugs, mental illness, intellectual disability or desperation. Mandatory sentencing in the Northern Territory failed to deter people from committing property offences. Under that harsh regime, home burglaries increased, as was acknowledged by the Premier in this House three months before he announced his minimum sentencing scheme. This bill cements the trend of using prisons primarily for locking people away rather than focusing on rehabilitation, despite the finding of the inquiry on the increase in prisoner population that:

... there has been no reliable research in Australia or overseas which has shown that increasing the number of people in gaol is an effective or economical approach to reducing crime.

Tougher and mandatory penalties in the United States of America have helped achieve the highest rate of imprisonment in the world, yet it also has the highest rates for some crimes. In contrast, Victoria has the lowest imprisonment rate in Australia and the lowest rates for certain crimes. Incarceration of young offenders is rarely necessary to prevent reoffending and it increases the likelihood of their becoming hardened criminals. The Beyond Bars Alliance reports that:

... most juvenile crime is episodic, transitory, local, unplanned, and not repeated. Seventy per cent of young people who offend once and appear in court do not subsequently reappear ... severe penalties are associated with an increased likelihood of a juvenile re-offending. For example, in the period 1986 to 1994, only 12.4% of young people appearing in the Childrens Court who received a nominal penalty re-offended. The recidivism rate increased to 79.3% of offenders who received a custodial order. In other words, penalties that were "less harsh" decreased the likelihood of re-offending.

The New South Wales prisoner population doubled between 1990 and 2000. New South Wales has 172 people in prison for every 10,000 adult citizens, compared with 85.4 per 10,000 citizens in Victoria. This bill would worsen these appalling rates. The Premier stated in his media release of 4 September:

... standard minimum sentencing will increase the prison population by about 800 over the next 10 years. This will require additional recurrent funding of about \$50 million per year. It will also mean the expansion of two existing prisons and the possibility of a new prison after 2008. This could require capital investment of up to \$150 million.

That is not what we would call social capital. That is on top of the additional \$136 million the Government has already allocated to the system over the next two years following amendments to the Bail Act. The inquiry on the increase in prisoner population found:

The total annual expenses for the Department of Corrective Services has increased by 37% in real terms since 1994, equating to approximately \$145 million additional expenditure a year in current terms.

The 2000-01 annual report of the Department of Corrective Services reported that the daily cost of keeping a prisoner in gaol ranged from \$145 to \$183—that is, between \$53,000 and \$66,000 per year per prisoner. The United States of America prison population has increased sixfold since 1970 to 1.9 million prisoners, in part because of increasingly tough penalties for violent criminals. Since 1980 incarceration costs have increased eightfold to \$40 billion. States such as California, Louisiana and Illinois are reigning in this blow-out by moving away from tough sentencing regimes. Similarly, Western Australia recently abolished sentences of six months or less, in recognition of the detrimental effects short prison terms have on inmates.

A report this week from the New South Wales Bureau of Crime Statistics and Research concluded that abolishing custodial sentences under six months could conservatively save \$33 million to \$47 million. The bureau concluded that it would be worth investigating better using this funding on policing or other crime control, and that the change would significantly reduce Aboriginal overrepresentation in prisons. Inmates are mostly people who have lived on the margins because they did not have the need to participate fully in society. Inadequate parenting, which is closely related to economic and social stress, is one of the strongest predictors of juvenile crime. The likelihood of involvement in crime is greatly increased by a cluster of factors such as child abuse or neglect, domestic violence, drug and alcohol dependency, mental illness and poverty.

I refer to the damning statistics on the socioeconomic status of the prison population: 64 per cent of inmates have no stable family and many suffered child abuse or neglect; 60 per cent are not functionally literate or numerate; 60 per cent did not complete year 10; 44 per cent were long-term unemployed; 20 per cent were homeless prior to imprisonment; 75 per cent have an alcohol or other drug problem; 21 per cent of all prisoners have attempted suicide, including 39 per cent of inmates; 25 per cent to 33 per cent of prisoners have a mental illness, and 73 per cent of female inmates were previously admitted to psychiatric or mental health units; 13 per cent have an intellectual disability; and indigenous people are also significantly overrepresented, comprising 16 per cent of the inmate population and 26 per cent of the female inmate population.

Increasing imprisonment exacerbates the systemic problems by entrenching social exclusion. The inquiry on the increase in prisoner population highlighted the lack of prison programs to address the causes of offending behaviour, most notably services to treat violent offenders and drug and alcohol dependency, even though 48 per cent of inmates are in prison for violence-related crime and 80 per cent of crime is related to alcohol and other drugs. The Corrective Services Teachers Association reports decreasing provision of education in New South Wales prisons. Teaching hours drastically reduced from 72,000 hours for 4,500 prisoners in 1992-93 to only 71,000 hours for approximately 9,000 inmates, or double the number, in 2001-02. Many prisoners are released with little prospect of reintegration into our community. Many have no accommodation, inadequate identification to open a bank account, no immediate access to social security and only the clothes they were wearing when arrested. Prisoners who served long sentences are institutionalised and can be overwhelmed. Post-release support is minimal. In this context, it is not surprising that 41 per cent of New South Wales prisoners return to prison within two years of release—the second highest recidivism rate in the country.

The Parramatta Transitional Centre, a pre-release half-way house for female inmates, is an important example of effective reintegration into society. Women spend up to 18 months at the end of their sentence in this residential home, enabling them to go into the community for education, employment, counselling and recreation. Out of 99 women who have lived in the centre, only one has reoffended. A government that ploughs scarce resources into prison incarceration is failing our communities. The minimum sentencing regime will increase the social and economic cost to society and divert essential resources from addressing the underlying causes of offending behaviour to prevent crime. There is strong evidence, most notably the cost-benefit analyses conducted by the Rand Corporation, that money spent on crime prevention, particularly early intervention, is much more cost effective in reducing crime long term than spending on prisons.

Pro rata, Britain spends 10 times more on early intervention programs than New South Wales. I submit that it would be more socially responsible and cost-effective for the New South Wales Government to fund social services than prison expansion. In 2000 I raised a concern about a crisis in Woolloomooloo, where up to 70 people were sleeping rough in Tom Uren Square. Local residents, many Department of Housing tenants, faced antisocial behaviour from some of the homeless people in order to get to the only shop in the area. Conflict led tragically to the murder of a rough sleeper in November 2000. It took that death, media exposure and much lobbying to get Government action on the crisis: first an eight-week outreach project, followed by the Woolloomooloo Homeless Outreach Service. While the service has been extended, 200 people still sleep rough in the electorate of Bligh on any given night.

A study published by the Government of British Columbia found it was more cost-effective to provide housing for homeless people than to provide costly criminal justice, health care and social services. We need increased funding for public housing. Department of Housing residents on the Northcott estate in Surry Hills recently endured three murders and two suicides, plus a recent stabbing, attempted suicide, and shooting in local Ward Park. The community is extremely stressed and disadvantaged, needing active support to make residents' homes safer, build support networks, and prevent the crime and violence. I welcome the recent funding for a community development worker. [*Extension of time agreed to.*]

We need to reverse the chronic underfunding of public housing through investment in affordable housing, increased public housing stock, and ongoing support for the most vulnerable households. Another area in which funding should be increased is education. Redfern Public School services a disadvantaged community facing many challenges. Its closure will exacerbate social problems that the Government is now addressing through the Redfern-Waterloo Partnership Project. Small schools such as Redfern Public can respond to the specific needs of local communities, particularly local Aboriginal and Department of Housing families who are under stress, in crisis and poverty, and often excluded from mainstream employment and education. They should not end up in our prisons.

Tony Vinson's inquiry into public education revealed that, while the rate of imprisonment in New South Wales rose during the past decade, spending on public education dropped from 28 per cent to 22 per cent of government expenditure. Vinson's recommendations to redress this chronic underfunding of public education called for around \$400 million. There is a dire lack of supported accommodation in New South Wales for former prisoners and people with a mental illness or intellectual disability. The Standing Committee on Law and Justice reported its concern that a:

... lack of community-based facilities for mentally ill people and for people with intellectual disabilities may be contributing to crime in the community and resulting in the imprisonment of disadvantaged persons.

Also in recognition of the benefits of crime prevention, the Government's Families First Program provides support to families with children under eight. This underfunded program relies heavily on volunteers and urgently needs the recently announced injection of \$117 million over four years, part of the \$200 million allocated to crime prevention programs. However, it is not clear whether the increase will simply cover the program's expansion across the State, or whether it will increase funding to each region to meet local support needs better. In conclusion, I oppose the bill before the House because it undermines the independence of the judiciary, entrenches crime and social exclusion, and diverts resources away from more cost-effective, and socially just, long-term solutions to crime.

**Mr ASHTON** (East Hills) [10.11 p.m.]: I have no great difficulty with much of what was said by the honourable member for Bligh. The difficulty with the whole of this debate is the range of opinion on it. The Opposition—as the honourable member for Bathurst put it—said, "Let's hang 'em high, and hang 'em often." The honourable member for Bligh said that the focus should be more on crime prevention, better housing, better education and better social facilities and functions in our community. Last week the Premier spoke at great length about the crime prevention measures that have been taken by the Government. That, I am afraid, goes hand in hand with crime prevention. If prevention measures do not work, we turn to punishment.

I disagree with the honourable member for Bligh on one issue: the bill does maintain a great degree of judicial independence. The Opposition, under its proposal for mandatory sentencing, wants to remove all judicial independence. That proposal is against more than a thousand years of the British legal system—a system adopted by most other western countries. Where crime is committed, there must be means of rehabilitation as well as punishment. I am not usually one who would include in a speech quotations from the overview provided by a bill, but on this occasion I will do so in order to make a number of points. The principal objects of the bill are "to establish a scheme of standard minimum sentencing for a number of serious offences" and "to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters". So, right from the start, the bill deals with two aspects. One is to list the objects of the bill regarding offences and sentences. The other is quite innovative in that it seeks to set up a Sentencing Council to oversee any changes to these proposals or put further sentencing proposals to the Minister.

The reforms are aimed at promoting consistency and transparency in sentencing, and promoting public understanding of sentencing. Bear in mind that every time someone is sentenced in this State for a serious offence, the first thing that must be considered is how the shock jocks, the *Daily Telegraph* and others such as "Pious" Akerman will determine how the court got it right or, mostly, how the court got it wrong. In a few hours, after this bill is passed, the public must be made more aware of what we mean by sentencing procedures and standard minimum sentencing procedures. Then the public will have a better idea that for a certain crime a particular non-parole period will be stipulated. That must always be subject to one rider—necessary in any society that embraces judicial independence—which is that the sentence can be increased or decreased according to aggravating circumstances or mitigating circumstances.

The whole bill is predicated on the purposes of sentencing. Among those is to ensure that the offender is adequately punished for the offence. No-one in this Parliament, including the honourable member for Bligh, should disagree with that. The honourable member talked about people who had been murdered, people who had been beaten up, people who sleep rough and end up being killed, often by the people who sleep rough with them. Where crimes are committed, offenders have to be adequately punished for those crimes. It is not easy to find the right balance. Another of the purposes of imposing a sentence is to prevent crime by deterring the offender and other persons from committing similar offences. Otherwise, we would have anarchy. People would take the view that there is no punishment for crime and therefore regard crime as an everyday event. Other purposes of sentencing are to protect the community from the offender, to promote the rehabilitation of the offender, and to make the offender accountable for his or her actions.

That is a most important aspect of the bill. In a local school in my electorate a boy was beaten up. The offender will not be subjected to standard minimum sentencing at this stage but to youth conferencing and counselling. Given what was said by the Minister for Education and Training today about the new laws regarding violence in schools, and especially intruders into schools, there will be quite serious punishment for those sorts of offences committed in schools. The Government has been quite active in addressing several issues, including the perception that crime is increasing and the perception amongst some that the sentences are not appropriate having regard to the criminal intent involved in the crime.

The honourable member for The Hills said that the prison population is decreasing. The Opposition cannot have it both ways. If the prison population is decreasing, it can be said only that police are not catching as many criminals. That matter could be taken up with Don Weatherburn or Ken Moroney. Police certainly are catching the criminals, and those criminals are being sentenced to gaol terms. So the Government's crime prevention methods are working. Equally, the word is slowly getting through—it will take a while—that those who commit a crime will serve the time. The Opposition is making a great deal of fuss about mitigating factors. It has a truck going through the city—I have not seen it yet, but I am sure it will turn up in my electorate at some time—criticising the mitigating factors dealt with in the bill. How dare the Opposition imply that a mitigating factor such as that the injury or harm caused, or the loss or damage, was not substantial and perhaps therefore the sentence should not be quite as severe as it otherwise might be. If the injury, harm or damage is not substantial, the judiciary will have the chance to mitigate the sentence.

If an offence is not planned or organised, but results from a spur-of-the-moment activity, that can mitigate the sentence—but perhaps by only a few months, not years. As one honourable member said, those who conspire and organise a cold-blooded murder by a hitman, a killer of the type of Christopher Dale Flannery, commit an offence that is much worse than the offence that might be committed by a child who, after years of abuse in a family home, takes the life of one of the parents. The latter is a mitigating circumstance. In a democracy, it must be retained as a mitigating circumstance. Opposition members did not want to talk about the aggravating factors to be taken into account in determining a sentence. They did not want to talk about the fact

that those aggravating factors might increase the minimum sentence. Those factors are that the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official exercising public or community functions, and the offence arose because of the victim's occupation.

Those factors could result in the standard minimum sentence being increased. That is quite reasonable. If the offence involves the actual or threatened use of violence, actual or threatened use of a weapon, or the offender has a record of previous convictions, the standard minimum sentence can be increased. Let us not pretend that members of this Parliament have not at some stage in their lives said, "Son, this is the first time you have done this. Don't do it again." I am sure all of us, whether parents, teachers, or parliamentarians giving advice to constituents, have said, "You have done this once. If you get caught doing it again, don't come to me looking for help. You have had your chance." That is life.

Going back in history, kings and queens had the right to dispense mercy. The churches did the same. Society has been built around a degree of crime and punishment, as well as a degree of mercy when warranted. Offences committed in company now attract much heavier sentences than they did formerly. For example, the penalty for sexual assault in company is now much heavier than it was. The Government is to be commended for increasing those sentences. It is difficult to talk about technical legal matters, but gratuitous violence and evil cruelty are aggravating factors that would, in the minds of the jury and the judge, warrant increasing a sentence beyond the standard minimum. With this legislation the Government is trying to achieve a balance. Critics will claim that offenders will have to be let out of gaol because they maintain that they will not re-offend or they have a clean record. But such claims are as old as western democracy and justice.

The bill provides that people whose lives are at risk from home invaders who threaten them with violence can use a degree of force to defend themselves. Even if the violence is considered excessive, those acting in self-defence will not necessarily receive a heavier sentence. A couple of weeks ago the Leader of the Opposition wanted to increase a range of penalties from what he said was a minimum of 15 years to 20 years. The Premier had to point out that the minimum penalties are already 25 years. It is possible to make mistakes about standard non-parole periods. As the Premier said, it is risky to put inexperienced people in charge of such important legal matters. Proposed new section 100I will establish the New South Wales Sentencing Council. Proposed new section 100I (2) (d) provides:

- (d) one is to be a person who has expertise or experience in Aboriginal justice matters...

We must remember that Aboriginal people are overrepresented in the prison population in every State in Australia, as are people with a mental illness. One thing often follows the other. Some people are on the outside of society from the start. They are not given an equal deal in life. If they turn to crime they may be rehabilitated. I do not want to waste the time of the House by enumerating the people who have committed crimes and then gone on to become some of our most important citizens. Let us not forget that Australia began as a penal colony where, in many cases, they sent Britain's finest. We survived in a difficult environment. We know something about prisons, crimes, punishment and rehabilitation. The legislation is an appropriate response to a difficult situation. It would be rare if any election in New South Wales were ever fought without the Opposition, particularly a conservative Opposition, saying: Whatever the Government is doing we will double it, triple it, cut their heads off twice, hang draw and quarter them a few extra times and hang them up from the gibbets. It is a policy of me-tooism. The legislation is tough. Indeed, the honourable member for Bligh claims it is too tough.

**Mr FRASER** (Coffs Harbour) [10.24 p.m.]: The honourable member for East Hills referred to me-tooism. I remind him that in June the Coalition launched its compulsory minimum sentencing legislation, which the Government laughed at and ignored. The Government claimed we were totally off the rails. It was not until September, after public outrage at the Government's position and the handling by the courts of serious offences, that the Government announced it would introduce a minimum sentencing bill. It was another five or six weeks before the bill was introduced. If the honourable member for East Hills wants to talk about me-tooism, let us talk about the way those opposite reacted. Government members have talked about the separation of powers. I fully support the separation of powers, but let us remember how it works. Parliament makes the legislation, the police enforce it and the courts decide the penalties. We are currently debating penalties the courts should impose, not whether we have the right to make the laws. We do. That is why we are elected. The overview of the bill, which we support, states:

The principal objects of this Bill are:

- (a) to establish a scheme of standard minimum sentencing for a number of serious offences, and
- (b) to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters.

The bill defines the purposes of sentencing, something that the honourable member for East Hills and others opposite have ignored. Proposed new section 3A provides:

The purposes for which a court may impose a sentence on an offender are as follows:

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,
- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

The honourable member for East Hills is arguing against himself and the honourable member for Bligh when he says we need to be more compassionate, we need to accept the mitigating circumstances outlined in the legislation, we need to give the courts a list of mitigating circumstances that says you must send a person to gaol for a minimum of 25 years for murder but you may take into account mitigating circumstances.

**Mr Ashton:** They could give them 30.

**Mr FRASER:** That is true. If I had my way with a lot of these murderers, especially those who commit premeditated murders, I would lock them up and throw away the key. A person who takes a life, especially a young life, should not receive a reduced sentence because of mitigating circumstances. When I had the caravan park a fellow who murdered the boyfriend of a young woman he raped and tried to murder was arrested under Queensland law in my caravan park. She feigned death and got away. That person and those like him are the lowest scum on the earth. His actions were totally premeditated. He had raped other women. That bloke does not deserve to be a part of our society. He has forfeited his right to be a part of our society. In his case we should throw away the key. Honourable members opposite want to talk about the redneck National Party. We are not rednecks.

**Mr Ashton:** I didn't say that.

**Mr FRASER:** That is correct, but the honourable member for Bathurst, who comes from a country community, said it. He should be aware of how people in country communities feel about the horrendous crimes detailed in the schedule to the bill. While examining "Mitigating factors", let me also examine "Aggravating factors" to take a balanced view. Subsection (3) of new section 21A, which is headed "Mitigating factors", states:

The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

- (a) the injury, emotional harm, loss or damage caused by the offence was not substantial,

What does "substantial" means in that provision? One dictionary meaning states:

1. of a corporeal or material nature, real or actual. 2. of ample or considerable amounts, quantity, size, etc.

Another dictionary definition states:

1. of real importance or value; considerable in amount. 2. of solid structure. 3. having substance, actually existing.

Who determines which definition will apply? Which one of those meanings will be applied to define "substantial"? Subsection (2) of new section 21A, which is headed "Aggravating factors", provides:

The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

...

- (g) the injury, emotional harm, loss or damage caused by the offence was substantial,



Which definition will be applied to the term "substantial" in interpreting provisions that will have opposite effects in determining sentences? Another mitigating factor as set out in subsection (3) (b) of new section 21A provides:

- (b) the offence was not part of a planned or organised criminal activity,

Who decides that—a judge, a jury? Day in and day out honourable members hear about offenders who have been members of a gang that has been committing offences. On the day they are arrested the offenders look like absolute dirtbags, but by the time they arrive at court their lawyer has told them, "Get the earrings out of your ears, the studs out of your nose, buy yourself a suit, get a haircut, cover up your tattoos, and make sure you look like a respectable member of society." The appearance of offenders on the day they are arrested bears no resemblance to their appearance on the day they appear in court, but the court makes a decision based in part on the character of the person before the court.

Another mitigating factors in subsection (3) (f) of new section 21A is that the offender is a person of good character. I suggest that there would not be an offender in New South Wales who would not be able to find someone to write a reference stating that the he or she is a person of good character. That evidence is put before the court, and this bill states that if a person is of good character, that is a mitigating factor. Who will make that decision? The judge who presides in the court will make that decision on evidence that is presented, and I believe that the evidence can be manufactured. Another mitigating factor in Subsection (3) (g) of new section 21A provides:

- (g) the offender is unlikely to re-offend,

An offender's lawyer will probably contend, "Your Honour, this man will not do this again", and then the judge will decide that the person will not reoffend. That is nonsense. On previous occasions I have cited the case in this House of a Victorian murderer who told the authorities that he would commit seven murders. He was allowed out of gaol and he committed two murders before he was eventually gaoled for a considerable period. That person was considered to be a person who was not likely to reoffend. Offenders are being let out of gaol because of so-called mitigating factors. In that case, the offender murdered two people in Katoomba, which is in the Attorney General's electorate, before being arrested. Another mitigating factor in subsection (3) (h) of section 21A provides:

- (h) the offender has good prospects of rehabilitation...

Who decides that? Subsection (3) (i) provides the following mitigating factor:

- (i) the offender has shown remorse...

Of course an offender will say he or she is sorry when faced with a sentence of 15 years, 20 years or 25 years. Subsection (3) (j) also provides this mitigating factor:

- (j) the offender was not fully aware of the consequences...

What does that mean? Does it mean that the offender did not read the legislation or the second reading speech? A couple of weeks ago an offender claimed that he was not fully aware of the consequences of his action when making a plea for mercy from the court. Thank God on that occasion the judge rejected the plea. Subsections (3) (l) and (m) provide the following mitigating factor:

- (l) the degree of pre-trial disclosure by the defence (as provided by section 22A),
- (m) assistance by the offender to law enforcement authorities (as provided by section 23).

A crook may say, "I will dob in my mates if you give me time off my sentence", but my attitude is that the offenders who commit the crime will do the time. Under subsection (2) of new section 21A, "Aggravating factors", the matters taken into account in determining an appropriate sentence include whether the offender has a record of previous convictions, but under subsection (3) one of the mitigating factors is the lack of any record, or any significant record, of previous convictions. Those provisions are in conflict. How will a judge or a court be able to take direction from this bill? As far as I am concerned, the bill should be amended to ensure that an offender claiming mitigating factors has no record of previous convictions, not any significant record of previous convictions.

In many cases, juries and courts are not told of an offender's previous record or of other charges that are pending, and leniency is shown by the court in those circumstances. In the end, the offender gets off with an extremely light sentence because the jurors and professionals in the court did not know the offender's history. The inclusion of mitigating factors in a bill that has objects designed to create a standard minimum sentencing scheme is a joke. The explanatory note attached to the bill states under "Sexual assaults on children under 10 years":

**Schedule 2 [1] and [2]** increase the maximum penalty for sexual intercourse with a child under 10, or attempted sexual intercourse with a child under 10, from 20 to 25 years.

Today honourable members heard in this Parliament about an offender who was guilty of that offence, yet the Attorney General has failed to give a commitment that he will lodge an appeal against a sentence of weekend detention. If that is an example of the regard that this Government has for the law and concerns that are being expressed in the community, I suggest that although the Opposition's amendments may be a law-and-order option, it is the Coalition that is listening to what the public is saying.

As the Leader of the Opposition said, the Coalition is talking to the victims of crime, to their relatives, and to the mums and dads, brothers and sisters of young ladies who have been gang raped. Members of the Coalition are out in the community; they are listening to the people. We are reflecting in Coalition policies what the community wants. For the Government to present legislation which claims in its objects to achieve certain standards and to then include conflicting provisions relating to aggravating factors and mitigating factors is a farce. I intend to tell the people in my electorate about the Government's snow job in its attempt to appear to be tough on crime. The bill also refers to duress, which, according to a dictionary definition, means forcible restraint of liberty or imprisonment, and I cannot understand how that can be used as a defence in trials for serious offences such as sexual offences or murder.

The Government's cobbling together of mitigating factors is unacceptable. I suggest to members of the Government that they should accept the amendments to the legislation that have been proposed by the Coalition because those amendments will give those who have been affected or who may be affected by crime some real hope that their injuries and their duress, which have been caused by others, will not go unnoticed and unpunished. The Coalition's amendments will give them some solace in the knowledge that the courts, but more especially the Parliament, are acting in their interests, rather than in a populist manner in an attempt to suit everybody. I support the amendments that have been proposed by the shadow Attorney General. In the interests of equity, fairness, and for the sake of promoting a direction for the courts to support the police of this State, I ask this Government to accept the Coalition's amendments. That will ensure that this legislation achieves the objects it proposes.

*[Debate interrupted.]*

## **BUSINESS OF THE HOUSE**

### **Extension of Sitting: Suspension of Standing and Sessional Orders**

#### **Motion by Mr Whelan agreed to:**

That standing and sessional orders be suspended to extend the sitting beyond 10.30 p.m.

## **CRIMES (SENTENCING PROCEDURE) AMENDMENT (STANDARD MINIMUM SENTENCING) BILL**

### **Second Reading**

*[Debate resumed.]*

**Ms BEAMER** (Mulgoa) [10.38 p.m.]: I support the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. The objectives of the bill are to establish a scheme of standard minimum sentencing for a number of serious crimes and offences and to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters. Those reforms are aimed at consistency and transparency in sentencing, and at promoting a public understanding of sentencing.

A great deal of what has been said in this Chamber today does little for transparency and consistency in sentencing or for promoting a public understanding of the sentencing process. The honourable member for Coff's Harbour spoke about juries not being able to sentence people because they will not have the facts before them. Juries do not sentence anyone, judges do that. Under our judicial system juries are unlikely to ever sentence

anyone. It is true that juries do not hear about prior convictions, but they do not need to because they do not impose sentences. Members should not go off the rails and make statements about our judicial system; they should stay with reality.

The bill is not about mandatory minimum sentencing, it is about standard minimum sentencing and it seeks to achieve a balance. The bill sets out mitigating and aggravating factors that are to be taken into account in sentencing. The Leader of the Opposition spoke about battered wives and minimum sentencing. He dishonestly suggested that unjust results would never occur in those cases because, first, the offenders would not be charged with murder or, second, the offenders would be found guilty of manslaughter. If a person kills another person with intent to kill or to inflict grievous bodily harm, the person will be charged with murder, and that is the charge that will go before the court. It is improper for the Leader of the Opposition to claim that such a person would not be charged with murder. That person would, indeed, be charged with murder.

It has been suggested that the person would be able to have the charge reduced to manslaughter because of provocation. Strict criteria must be met before provocation can be established. In a South Australian case that went to the High Court a woman who had suffered severe domestic violence committed murder with intent. Mitigating factors—not provocation, which is a separate matter altogether—were taken into account. In sentencing for murder a judge will be able to impose a lesser sentence if the elements of provocation are established, but the person will still be convicted of murder. The Opposition's proposes mandatory sentencing. Therefore, any factors that that may reduce the sentence will not be taken into consideration. If the Leader of the Opposition is suggesting that a battered wife who is convicted of manslaughter should be sentenced to 15 years gaol with no questions asked, that would be an obscene injustice.

If the Opposition's amendments are passed in this House, day after day we would read about mandatory minimum sentences, even though there were mitigating factors. Therefore, those punishments would not fit the crimes. We are proposing that the judicial system should be able to impose appropriate sentences after taking all of the circumstances into account. We will hear a lot of nonsense about aggravating and mitigating factors. For example, the honourable member for Coffs Harbour said that an offender not being fully aware of the consequences of his or her actions is a mitigating factor, full stop. He did not read the whole of new section 21A (3) (j), which sets out mitigating factors that are to be taken into account in determining the appropriate sentence. It provides:

- (j) the offender was not fully aware of the consequences of his or her actions because of the offender's age or any disability...

There are grounds for standardising sentences and the community is asking us, as law makers, to do so. The honourable member for Bligh rightly pointed out that the community is also asking for assistance with crime prevention, and that is what we should be aiming for. We have gone a long way in preventing crime the juvenile sector. When guilty pleas are entered in the Drug Court, offenders can enter into another form of rehabilitation. We often talk about a purpose of a prison sentence being the promotion of rehabilitation. We all know that is not the case in any system. We have some wonderful ways to encourage young offenders not to become recidivist offenders. That is important, and every civilised society must look at ways of dealing with its juveniles.

The dreadful crimes committed in Washington recently now involve jurisdictional squabbles about whether a 17-year-old can be sentenced to death. I hope that we do not come to that kind of dispute in this State. That is a jurisdiction in which decisions have to be made as to penalty. Our money must be spent on crime prevention, not on the imposition of heavier penalties. I have never heard a criminal claim that he would not have done the crime if he knew he was going to be caught and sentenced. That is not the sort of thing that goes through a criminal's mind. However, those who are guilty of serious crimes must face serious consequences.

Other factors come into play. The Government has introduced the Families First Program and other programs in an endeavour to break the cycle of poverty and crime. The community is sick and tired of people who believe that they have the right to commit any offence they please. I support the setting up of the New South Wales Sentencing Council to advise the Minister on offences that are suitable for standard non-parole periods and the length of those non-parole periods. The members of the council will be representatives of the community and the victims of crime and will consider the parameters to be set for standard sentencing. That is an important step forward. The council is to advise and consult with the Minister in relation to offences suitable for guideline judgments and submissions to be made by the Minister on an application for a guideline judgment.

They are important functions, particularly when the Sentencing Council is to comprise representatives of the general community, two of whom are to have expertise or experience in matters associated with victims

of crime. That will allow victims of crime to have a voice. I am often faced with the victims of crime in my electorate office. They often talk about compensation. They are going through the process of no longer feeling like victims. Working through that process is important. This bill will assist them and I am happy to commend it to the House.

**Mr STONER** (Oxley) [10.48 p.m.]: Crime and safety are undoubtedly among the most important issues facing the citizens of this State today. In the wake of increasing crime, as borne out by the Bureau of Crime Statistics and Research statistics, members of the community are rightly concerned about burgeoning crime and personal safety. Recently in Macksville in my electorate on the mid-North Coast there was a home invasion and murder. Some of my constituents are elderly, and they live in fear of that kind of crime, which is all too commonplace, even in country towns such as Kempsey, Macksville and Wauchope.

Sentencing is also a major issue in the community. In the wake of a number of high-profile cases in which the sentence has been seen to be out of proportion with the crime, sentencing has increasingly become a topic of discussion. More and more often constituents contact me as their parliamentary representative to express concern about the legislation governing crimes and the judiciary's approach to sentencing. Community feeling is that the sentences handed down for serious crimes have been too lenient; people expect a stronger message to be sent to criminals. In fact, commentators have suggested that the controversial decisions handed down in recent years indicate that some members of the judiciary are out of touch with community expectations. Despite the recent cases involving gang rape and Judge Finnane's tough sentencing, there is no guarantee that soft sentencing will not occur again.

This bill does nothing to overcome concerns about inconsistency in sentencing. The Coalition has announced a policy dealing with compulsory minimum sentencing that would give the community some certainty about minimum sentences for serious and violent crime in line with community expectations. This bill is the Government's response to the announcement of that policy. It is regarded as a Clayton's sentencing bill because it provides too many outs for manipulative criminals and bleeding-heart judges.

Previous speakers have referred to the 13 excuses that can be put in mitigation. I will devote a little time to these so-called mitigating factors. An offender could claim mitigation because he was provoked by the victim. As always, there are two sides to every case. The victim may have said something that was not necessarily directed to the offender, or the offender could argue that the victim looked the wrong way at him, which has been claimed in some cases. It could be argued that the offender was provoked or acted under duress. How many times have we heard an offender say he was stressed or that the police harassed him? More excuses!

Mitigation could also be claimed if the offender did not have a record or a significant record of previous convictions. That flies in the face of the principle that "If you do the crime, you do the time." If someone did not have a significant record, that could be trotted out as another excuse. It could also be claimed that the offender was a person of good character. How many times have honourable members read dodgy character references? How many times have they been asked as a local member to provide a reference for someone they did not know very well?

Mitigation could be claimed if it were believed that the offender would be unlikely to reoffend. Again, we would be required to rely on the judgment of so-called experts. How many times have they been proven wrong? Mitigation could also be claimed if the offender had good prospects of rehabilitation, whether by reason of his age or otherwise. Again, we would be relying on the advice of the offender and so-called experts. Mitigation could be claimed if the offender had shown remorse. I recall many cases in which an offender has committed a serious crime and produced crocodile tears and feigned remorse at his trial. An offender could manipulate one of these excuses to get a sentence lower than the minimum.

An offender could claim mitigation if he was not fully aware of the consequences of his actions because of his age or any disability. That is another excuse that could be manipulated. A plea of guilty by the offender could also be deemed to be mitigating, as could the degree of pre-trial disclosure by the defence and assistance provided by the offender to law-enforcement authorities. That constitutes horse trading between the offender, the authorities and lawyers, and it could be used in an attempt to attract a sentence shorter than the minimum. Those 13 excuses could be manipulated not only by the offender but also by sharp lawyers in an effort to have those who have committed a serious crime let off with a sentence shorter than the community would expect as a minimum.

New section 54C will allow the court not to impose any custodial sentence. Theoretically, a reason must be given, but if no reason is given the sentence will still be valid. That is another loophole or catch-all provision that gives total discretion to the judiciary not only not to impose the minimum sentence but also not to impose a sentence at all.

Crime in this State will continue to burgeon unless a strong message is sent to criminals that the community will not tolerate serious crime. In other words, you do the crime, you do the time. That is the basis of the Coalition's compulsory minimum sentencing policy. This bill, which represents the Government's desperate attempt to catch up, falls far too short in that it is full of loopholes that smart criminals will be able to manipulate. Some out-of-touch or bleeding-heart judges will undoubtedly use the 13 excuses to hand down sentences shorter than the minimum expected by the community, or even to impose non-custodial sentences.

**Mr CAMPBELL** (Keira) [10.59 p.m.]: It gives me no pleasure to speak in this debate. I still hold onto the dream that one day we will live in an ideal world in which people do not commit crimes that attract penalties of this nature. However, I live in the real world and understand that we must have laws that reflect the community's wishes. The important point that has been missed in this debate is that the community is looking for balance and does not see it in the sentences handed down by the courts. This bill is a balanced approach by the Government to put in place strategies to prevent crime. Strategies such as Families First, the Better Future Program, the Community Solutions Program and the Drug Summit package are good examples of that approach. Another example is the number of extra Department of Community Services district officers appointed by the Government.

A number of the programs that have been put in place by the Government have been aimed at crime prevention. The Government introduced this bill in an attempt to get the balance right. It was interesting to hear commentators outside this place say it was dreadful that the Government was responding to community opinion. I think that is an appropriate thing for the Government to do. One of the things that I, as a member of Parliament, want to do is move around my electorate, listen to what people have to say, and form some sort of view about what they want. I make no excuses for listening to people in a number of forums in the Keira electorate, and for bringing to Parliament the views they express to me.

We must not throw the baby out with the bath water, which is what we would be doing if we implemented the Opposition's foreshadowed amendments. We would not obtain a balance and we would not maintain that age-old process of judicial discretion. This bill provides to the judiciary a strong direction about the will of the community—reflected through this Parliament—while at the same time maintaining some sort of balance and retaining judicial discretion. Opposition speaker after Opposition speaker referred to the mitigating factors in this bill, which I do not intend to go through at this stage. However, they did not refer to the aggravating factors that are listed in the bill.

Opposition members who contributed to this debate did not present a balanced view. The Government tried to achieve some balance by including aggravating and mitigating factors in the bill. In September the Government released a draft bill for public discussion. Following the receipt of submissions from a number of groups in the community, including the Bar Association, the Law Society and public defenders, a number of technical changes were made to the bill, which demonstrates the Government's desire to obtain some balance and ensure that professionals outside this place have an opportunity to contribute to it. New section 54D stipulates standard non-parole periods for 20 offences. To save the time of this House I will not refer to all those offences.

As I said, the Government has attempted, through this bill, to obtain a sense of balance. After listening to the community the Government introduced the bill in an attempt to prevent crime in this State. The Government worked with New South Wales Police to ensure that those who do the wrong thing are tracked down and arrested, that investigations are carried out, and that offenders go through the court process. We need transparency in relation to the sentences that are imposed and we must maintain judicial discretion. Judges must be able to explain to the community why they have used that discretion to impose lighter sentences. As I said at the outset, I would like to work towards an ideal community in which there is no crime. That is the sort of community that I and my children and grandchildren want to live in. I commend the bill to the House.

**Mr KERR** (Cronulla) [11.05 p.m.]: How did we arrive at this state of affairs in relation to the sentencing process? This Government has been in office for nearly eight years and in that time public confidence in the sentencing process has eroded. This bill is necessary to ensure that the Government's re-election chances are increased—opportunism incarnate. Basically, the Government has thrown overboard every platform on which it was elected—including workers compensation with increased benefits, or justice for anyone involved in an accident. This shopworn Government has implemented a great deal of window-dressing.

Are there any issues about which there is consensus? There should be certainty in sentencing: if somebody commits a serious crime, they should receive a serious penalty. When the Coalition Government was

in office it ensured that there was sentencing certainty. The late John Maddison, as Attorney General, introduced a non-parole period system—a very simple system. A person who received seven years for armed robbery, with a non-parole period of four years, had to serve that four years before he or she was released. If that person was released after four years, and one year later committed another crime, the remaining three years of the original sentence would be added to the sentence for the subsequent crime.

That was a good system, and it was a real tragedy when the "early release" system came into vogue under the Wran and Unsworth governments—particularly in the Wran era. Under that system the person who was given a seven-year sentence, with a non-parole period of four years, could obtain early release during that non-parole period. That person could then commit a murder or another armed robbery just three years after originally going to gaol, because they had been released during the non-parole period.

People would want to know what was going on. They might say, "There is no certainty. We were told that this person was not eligible for parole for four years, yet that person committed a crime during the period that he should have been serving his sentence." That is how confidence in the sentencing procedure was undermined. It was not the judiciary but the Executive that allowed people out of gaol. Honourable members will recall Rex Jackson, a former Corrective Services Minister, who went to gaol.

**Mr Orkopoulos:** You are trawling through ancient history.

**Mr KERR:** This is the heritage of Government members. I might surprise the honourable member for Swansea when I tell him that Rex Jackson—

**Mr Moss:** We can name a few on your side.

**Mr KERR:** Can you name any who sign papers for the release of prisoners? That is the issue.

**Mr Orkopoulos:** We should have let Barry Morris in.

**Mr KERR:** Barry Morris never committed offences that undermined this State's prison system. I am surprised at the reaction from members of the Left.

**Mr Orkopoulos:** Marie?

**Mr KERR:** No, I am not speaking to the honourable member for Peats. If the honourable member for Swansea and the honourable member for Liverpool left, there would be no inside Left. The situation was brought about because of the actions of the Executive in undermining people's confidence in our prison system. Eight years of headlines relating to people who have been let out of gaol and committed further offences has undermined public confidence. Under the Wran Government the Bail Act was amended to provide a presumption in favour of bail, except in the case of armed robbery.

Why would the public have confidence in that sort of sentencing system? Instead of ensuring people's confidence in relation to the penalties that are imposed, the Government provides a series of factors to mitigate sentences. The Government says it will introduce tougher sentences. However, those sentences can be reduced if, for example, the offence was not part of a planned or organised criminal activity. That is of great comfort to the constituents of Kogarah if they are bashed or robbed and the assailant has committed the offence on the spur of the moment. They are as badly injured—

**Miss Burton:** You are talking rot. You do not even understand the bill. You should go back upstairs, read the bill and get somebody to explain it to you.

**Mr ACTING-SPEAKER (Mr Mills):** Order! The honourable member for Kogarah will cease her incessant interjecting. She will have an opportunity to contribute to the debate. The member for Cronulla has the call.

**Mr KERR:** I hope the honourable member for Kogarah takes the opportunity to read the bill before she begins her contribution.

*[Interruption]*

I am shocked by this display of unruly behaviour. For the benefit of the House generally, and the honourable member for Kogarah in particular, schedule 1 sets out the mitigating factors. The honourable member for Kogarah should read that part of the bill before she delivers her speech, because it sets out the mitigating factors that will reduce the sentences imposed in relation to people who commit offences against her constituents. The bill provides for a large number of mitigating factors, which include that the offender was provoked by the victim. On the face of it a sentence may seem severe, but if it is the victim's fault the sentence may be less meaningful.

Another mitigating factor is that the offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner. Does that make it any less of a criminal act? The law of averages caught up with the honourable member for Bligh tonight, because she said something that was actually correct: that the prevention of crime is of the utmost importance. If police resources are diverted into this sort of legislation, which seeks to overturn case law and previous legislation, and police are not put on the streets, people are provided with a false sense of security. Longer sentences are of no consequence if offenders are not apprehended. Under clause 54C courts are required to provide reasons for their sentences.

The clause goes on to state that the failure of a court to give reasons for its sentence does not invalidate the sentence imposed. I look forward to hearing the honourable member for Kogarah's comments about the meaning of that clause. On the face of it, it appears that if the court ignores this legislation the sentence imposed is still valid. Therefore, what is the purpose of the provision? We look forward to hearing the Government's comments on that provision. The bill sets out standard non-parole periods. It is interesting that those standard non-parole periods do not apply to manslaughter or common assault. I would be interested to hear the honourable member for Kogarah's comments on that provision.

**Miss Burton:** You're fascinated with me, aren't you?

**Mr KERR:** I will be fascinated to hear her speech.

**Miss Burton:** Stick around; you might learn something.

**Mr KERR:** I do not like my chances. If sentences are to be certain, mitigating factors should not be provided for. The bill provides that some 13 mitigating factors must be taken into account. A number of aggravating factors must also be taken into account. One of those aggravating factors is that the offence involved the actual or threatened use of a weapon. None of this is novel. Robbery has always been a lesser offence than armed robbery. Another aggravating factor is that the offender has a record of previous convictions. That has always been the case. Further aggravating factors provided for in the bill are that the offence was committed in company, and that the offence involved gratuitous cruelty. All of these aggravating factors were provided for previously. Under this Government, it seems that the more legislation changes, the more things remain the same.

This bill is simply a public relations exercise; it is not landmark legislation. All the aggravating factors referred to in the bill were previously recognised at law. A further aggravating factor provided for in the bill is that the offence was committed without regard for public safety. I would have thought that most criminal offences are committed without regard for public safety. Another aggravating factor provided for is that the offence was committed while the offender was on conditional liberty in relation to an offence or alleged offence. One has only to look at the Bail Act to see that that situation has already been recognised at law—that is, the Bail Act that was amended to prevent the mischief that the previous Labor Government created.

A lot of legislation comes about as a result of reforms enacted between 1976 and 1988. We have seen a full circle in relation to the pseudo philosophy of Labor. It has discovered that the public does not like crime, and it wants to give the appearance of doing something about it. However, the bill is unworkable. If it is right to introduce it now, why was it not right to introduce it seven years ago? [*Time expired.*]

**Miss BURTON** (Kogarah) [11.20 p.m.]: We have just heard the so-called contribution of the honourable member for Cronulla. It is time for him to retire if that pathetic excuse for a speech about an important bill delivered at this late hour is any indication. It was a disgrace and I feel sorry for the people of Cronulla. It is farcical for the honourable member even to think that he has any idea about the expectations of the people of Kogarah. In his 15-minute speech the honourable member gave us a history lesson and talked about anything but the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. He mentioned me about 20,000 times in order to take up his speaking time because he had nothing to say about the bill. Why? It is because this is a good bill that will meet the needs of the community while retaining a small amount of judicial discretion under mitigating circumstances. That is very important.

Under the Opposition's legislation, a mandatory sentence of 25 years would be imposed on a person who confronts an intruder in that person's home, hits him over the head with a cricket bat and kills him. Mitigating circumstances should apply for a raft of reasons. For example, if a parent kills the molester of his or her children in a fit of rage, the circumstances of the crime should be taken into account. Those opposite advocate a mandatory prison sentence of 25 years but they forget about plea bargaining. The Opposition's proposal is a disgrace and those opposite have been unable to articulate clearly any argument that convinces us that this is anything other than a good bill that will serve the community's needs. I have been sitting in the Chamber for the past two hours and not one Coalition member has offered a decent argument as to why this bill will not meet the community's needs while ensuring that the accused receive a fair trial at which the facts of each case are taken into consideration.

I am pleased to support the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. The bill promotes consistency and transparency in sentencing and public understanding of the sentencing process. It also establishes a Sentencing Council that will have community representation and that will consult with the Attorney General on sentencing issues. The scheme provides guidance and structure to judicial discretion while preserving that discretion. This will ensure that justice is done in individual cases. I can tell that I have won the debate as the honourable member for Cronulla is leaving the Chamber.

The bill sets standard non-parole periods for a number of specified serious offences set out in a table in the bill. Under the legislation the court must set the standard non-parole period as the non-parole period for the offence unless it determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period for that offence. The Government's bill will not only ensure greater consistency in sentencing but ensure that proper regard is given to the community's expectation that the punishment imposed will fit the crime. The bill sets out aggravating and mitigating factors to be taken into account by sentencing courts in determining the appropriate sentence for an offence. These factors are well established in sentencing procedure. The court is also required to take account of any objective or subjective factor that affects the seriousness of the offence.

The mandatory sentencing scheme proposed by the Leader of the Opposition would impose the same penalty on all offenders, no questions asked. One might wonder where the Leader of the Opposition is getting his advice when he advocates such discredited proposals—perhaps it is from the honourable member for Cronulla. If the Leader of the Opposition wants sensible advice on this issue he need look no further than his front bench and to his shadow Minister for Community Services, Disability Services and Ageing, and shadow Minister for Aboriginal Affairs, the honourable member for Wakehurst. Honourable members may recall that last year while the Opposition was concocting and cobbling together its sentencing policy a very candid document produced by the honourable member for Wakehurst came to light. I think it would benefit the House to review that document at this point. The honourable member for Wakehurst wrote:

I am concerned that the mandatory aspects remove all capacity for a judge to tailor the penalty to the actual circumstances.

He asked the Leader of the Opposition:

Would the community want a mandatory life sentence for a woman suffering (temporary) post natal depression (who nevertheless is deemed to have sufficient intent) who murders a policeman attempting to take away her baby to carry out a Care Order?

What about people suffering intellectual disability?

The shadow Minister received a cynical response from the Leader of the Opposition to that question. The honourable member for Wakehurst even tried to reason with the Leader of the Opposition by giving him the undisputed facts:

There is no evidence that gaoling more people under mandatory sentencing will reduce crime by any substantive levels.

Did the honourable member for Wakehurst believe, like the Leader of the Opposition, that mandatory sentencing would make courts more accountable? No. He told the Leader of the Opposition:

Mandatory and minimum sentencing reduces the level of accountability of the criminal justice system by transferring the punishment decision to the prosecution, who are not open to public scrutiny as are judges.

The honourable member for Wakehurst said that mandatory sentencing:

... can actually reduce consistency in sentencing and slow down the sentencing process.



He also told the Leader of the Opposition last year:

In the United States, people have been acquitted because allegedly the jury believed that the mandatory sentence was too harsh for the offence committed.

He continued:

Mandatory sentencing also arguably removes the incentive for offenders to plead guilty early in matters that attract mandatory penalties. This results in contested hearings for relatively minor matters clogging the court system adding to court delays and administration costs.

None of that sound advice had any impact on the Opposition. All in all, the honourable member for Wakehurst did not think mandatory sentencing was a good idea. What was his alternative? He thought:

The way forward may be to legislate Recommended Penalties, which a judge would have to apply unless he/she explained the reason for variance from the Recommended.

That sounds quite similar to the Government's bill, which I support. I believe Opposition members are caught in their own web: it is embarrassing for them to argue against the bill because deep down they support it. They know that, while ensuring that those who do the crime do the time, the bill allows for some flexibility in the system by permitting judges to take account of mitigating circumstances. It is important that people receive a fair hearing and a fair trial. I commend the bill to the House.

**Mr GLACHAN** (Albury) [11.28 p.m.]: The hour is late. Several honourable members have spoken to the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill, and I believe there are more to come. The speakers before me have discussed the bill at great length and I do not propose to cover old ground. I shall be brief. As I live and work in my electorate and move about it talking to my constituents, one theme emerges constantly: people are concerned about inadequate sentencing in our courts.

It is sad that this should be the case because it destroys their confidence in our justice system. We often hear about crimes such as people stealing valuable motor cars and destroying them, then going before the courts. The police do a lot of work in bringing offenders to the courts and the community is frustrated and concerned when the courts give the offenders a minor sentence that really does not fit the crime. It disturbs me to hear about people who drive cars in a reckless and wilful manner and, as a result, take someone else's life. When they appear before the courts everyone expects that the offenders will receive a fairly severe sentence, yet often they do not receive a custodial sentence at all but some minor sentence. People are left quite frustrated and concerned about it all.

Today we heard in this House about someone who had systematically over a long period of time preyed on two young girls and sexually assaulted them. One can imagine the trauma and the effect the crime will have on those young girls for the rest of their lives, and also the great sadness and distress of their families; they had to endure the court case but the offender received a totally inadequate sentence of 18 months weekend detention. Whatever mitigating circumstances might have been taken into account, it is very hard to explain to victims and their families how an offender can get away with such a serious crime by receiving such a light sentence. This type of sentencing infuriates decent people in the community and undermines their confidence in the courts and our system of justice.

A constant theme that I hear in my electorate—the old saying still applies, I believe—is that justice must not only be done but must be seen to be done. People expect that when people commit a serious crime they will receive a serious sentence. At first when one looks at this bill it appears to be a step in the right direction, so that people will serve decent sentences when they commit serious, violent crimes. But, looking closely at it, there are 13 reasons—in my view some are quite frivolous—that will allow a judge to reduce what seems to be a minimum sentence, a sentence that seems to match the severity of the crime. A judge will have 13 ways of reducing that sentence. That is not what the community wants.

It is interesting to note that in the recent gang rape trial in Sydney the young men who received very severe sentences deserved those sentences. The community indicated very clearly in letters to the newspapers and in other remarks that that is exactly what the community expected. I am concerned that the bill will allow a judge to take into account the fact that a person who has committed some serious violent crime may have been of good character. This seems quite strange to me: it just does not seem to add up that someone who commits a serious violent crime can plead that they were of good character and thus will receive a lesser sentence than they otherwise would have received.

I have very strong views on the need in our justice system to differentiate between first offenders and repeat offenders, and especially to differentiate between first young offenders and those who are older and who have offended on numerous occasions. I strongly believe that young first offenders, particularly in relation to lesser crimes, should never ever come into contact within the justice system with any repeat offenders, and especially with older repeat offenders. I believe there should be two totally separate systems. Young first offenders convicted of non-violent crimes should always be kept separate from other criminals, and every effort should be made to rehabilitate these people and turn them from potentially a life of crime to live as useful citizens. However, those who commit serious violent crimes deserve, and the community believes they deserve, quite different treatment.

The Government's solution, while providing 13 ways for the courts to reduce sentences, will never meet community expectations. The Coalition's policy of compulsory minimum sentencing is what the community expects and what those who commit serious violent crimes deserve. There is the often quoted case of the battered wife who, in self-defence, may unintentionally kill her tormentor; she would not be charged with murder but with manslaughter. The Coalition's policy explicitly excludes the charge of manslaughter. This policy that the Coalition is promoting is the policy the community wants. The community will be disappointed if those convicted of serious violent crimes escape the tough sentences they deserve by appealing to the judge on the basis of one of those 13 escape clauses that the Government is providing for their convenience.

**Mr LYNCH** (Liverpool) [11.35 p.m.]: I speak on the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. The first point that I should make is that, as best I can see, this legislation does not institute what is called mandatory minimum sentencing, that is, it retains, as far as I can read from the bill, judicial discretion in the sentencing of individual offenders. If this legislation did introduce mandatory sentencing I would have considerable difficulty supporting it and I would be compelled to consider crossing the floor. If it did introduce mandatory minimum sentencing it would also be contrary to a unanimous decision of the Labor caucus. Mandatory sentencing is appalling, obnoxious and genuinely evil. It really makes an obscenity of the criminal justice system—as seems to be agreed by several members of the Liberal Party in debates in the Northern Territory. It flies in the face of the fundamental principle that punishment must fit the crime. That is not just an objection in principle; it is a fundamental objection in practice. The absurd and unfair results that would flow inevitably from mandatory sentencing would bring the criminal justice system into disrepute, which can be of no benefit to anyone.

As the Attorney General pointed out in his second reading speech, mandatory sentencing will mean sentencing by the prosecution. Decisions about which charges will be pursued will become critical and will be taken well away from public scrutiny by prosecutors. This would be less transparent and more hidden than the present system. Another objection to mandatory sentencing is even more basic. It assumes that mandatory sentences allocated by Parliament can cover every conceivable situation. That is obviously ridiculous. Putting the argument another way, it means that it is presumed that the members of this place are all seeing and all knowing, that the intellectual capacity of members of Parliament is so awe-inspiring and overwhelming that we can determine in advance precise penalties for all possible cases. No-one believes that and no-one outside this Chamber believes any of its members are that perspicacious.

There are other reasons to oppose mandatory sentencing. One of them is that it will catch up people who should never be in gaol. That flows inevitably from the inflexibility of the mandatory system. Once in gaol quite appalling consequences can result. An analogy can be drawn with other aspects of the criminal justice system—since reformed—where mandatory custody was imposed. I refer specifically to the cases of Jamie Partic and Mr Allan at Manly who died in police cells after the shop hours dispute a number of years ago. Horrific and unfair consequences flowed in these cases where people were mandatorily and stupidly held in custody. Another adverse consequence of mandatory sentencing is that it raises the possibility of juries perversely refusing to convict. While that may, in some cases, be justice, it hardly contributes to a desirable system of justice.

I note in that regard that the Deputy Leader of the Opposition got it completely wrong. He referred to this argument when he led for the Opposition and said that because juries would perversely refuse to convict in a mandatory system, that was somehow an attack, by those of us who made that argument, upon the community and juries for saying they would not convict. In fact, it is the very opposite, it is a recognition that juries and the community are monumentally far more sensible than politicians who want to introduce mandatory sentencing. I also note that the honourable member for Gosford said that one could not possibly imagine a situation in which juries would refuse to convict because of the mandatory scheme and it would not occur. He should talk to the honourable member for The Hills, who gave some instances of precisely that happening. It would help if occasionally the Opposition members talked to each other about the arguments they are using.

Turning from the question of mandatory sentencing to the bill itself, some very interesting issues arise. If this bill is not on mandatory sentencing, if it retains judicial discretion—as I believe it does—then the issue is what is it and, more importantly, why do we need it? I must say I can find no easy or satisfactory answer to the second of these questions, at least in terms of the proper administration of justice. It is worth noting the comparatively restricted scope of this legislation. First, under proposed section 54D (2) standard non-parole periods do not apply if the offence for which the offender is sentenced is dealt with summarily. So this does not apply to cases before magistrates where the vast bulk of criminal matters are actually determined. The offences to which it does apply are called by the Attorney in his second reading speech, serious offences. As I read the bill that actually applies to only about 20 offences.

There are of course a number of offences already covered by guidelines already promulgated by the Court of Appeal. This process will continue to be used by courts. Moreover, as the Attorney has foreshadowed in his second reading speech, there will be guideline judgments about other offences in the future. He has filed applications for guideline judgments in relation to, among other things, the offences of assault police and driving with the prescribed concentration of alcohol. The filing of these applications presumably indicates that the Attorney continues to have faith in the guideline judgment scheme. That being the case, I do not understand how the administration of justice is advantaged by this legislation. If the guideline judgment system is operating satisfactorily there should be no need for this legislation.

I should note in passing that in his speech, leading for the Opposition, the Deputy Leader of the Opposition proclaimed that this legislation meant the end of the guideline judgment system. It flows from what I have just said and from what the Attorney said in his second reading speech that the comments of the Deputy Leader of the Opposition are completely wrong and he misunderstands the nature of the bill and its implications to the guideline judgment system. One of the many issues that arises in these debates is whether more people will go to gaol as a result of this legislation. I notice that issue is not dealt with by the Attorney in his second reading speech. If the Minister or his staff are awake at this stage of the night and are listening, I would be obliged if they could indicate whether their estimate is that there will, in fact, be more people going to gaol, or people going to gaol for longer periods of time as a result of this legislation.

One of the themes running through this debate is that by increasing the length of prison sentences our communities will become safer and crime will be reduced. I note that quite a number of Opposition speakers have spoken in those terms tonight, that somehow or other increasing prison sentences miraculously improves the crime rate. The Deputy Leader of the Opposition talked about breaking the cycle of crime. Anyone that turns their mind to these issues and knows anything about it understands that that is absolute nonsense. It is an intellectually dishonest and corrupt argument. Politicians of whatever ideology would be well advised to avoid such patently false arguments. It takes all of 30 seconds consideration to realise that when a perpetrator is committing an offence it is completely irrelevant to the perpetrator whether a likely prison sentence is 10 or 15 years. He—and it usually is a he—does not think he will get caught or it does not impact upon him, so he has absolutely no interest in a non-parole period, be it mandatory minimum standard or anything else. It is irrelevant to a perpetrator. The extra differential is of complete disinterest and thus of completely no deterrent effect.

In my view the public debate would be greatly enhanced if politicians would stop lying to the community by corruptly pretending that increasing penalties reduces crime. Perhaps the most interesting example in relation to that was one that was raised by the honourable member for Bligh already in the debate and that is the United States of America. There is considerable evidence from the United States and other material disputing the role of imprisonment in reducing crime. Within the western world the most dramatic increase in incarceration rates in the past couple of decades has been in the United States. In fact, incarceration rates have increased to such an extent that some writers are referring to the prison industrial complex that is now dominating sections of the American economy.

For interested members I recommend a book by Alfred Blumstein and Joel Wallman entitled, "The Crime Drop in America". They make the point that the most prodigious growth in imprisonment in America was in the 1980s, which was precisely the time when violence was increasing most markedly. There seemed to be a causal connection between increasing crimes rates and increasing violence. I am not arguing that that is what happened but what it does suggest very strongly is that increasing imprisonment rates does not have any impact upon the crime rate. It would certainly help the political debate no end if people would stop pretending that it does. The real political danger in a broad political sense is that if the public keep being lied to, if people keep pretending to the public that increasing prison rates will reduce crime rates, what will happen when it is revealed that that is absolute nonsense? Where does the debate go then? It seems to me that no-one has any service done to them and no-one has any benefit out of this false attitude that is being conveyed.

While the debate goes on we are simply drawn into a mad auction. I assume we will eventually get to a stage when one side of this House will offer to introduce capital punishment, to hang someone, and the other side will simply offer to hang them higher. It seems to me that that is the absurdity that we are heading to at the moment. There are, however, some things that can be done to reduce crime rates. None of them are found in this legislation. There is of course no single, simple solution. If there were it would no doubt have been adopted long ago. I would simply draw attention to two proposals.

In September this year David Brown, Professor of Criminal Law at the University of New South Wales made the point, in the *Sydney Morning Herald*, that 65 per cent of the prison population are serving less than 12 months imprisonment. Reducing recidivism, that is, reducing reoffending rates, has the potential to have a significant impact on crime rates. That, however, requires substantially more resources into pre-release and post-release programs. One should not support that if one is a civil libertarian or a left wing lunatic: one should support it because it might actually work and have an impact upon crimes rates. The second proposal relates to a quite excellent analysis from Don Weatherburn and Bronwyn Lind in a book published last year called "Delinquent-Prone Communities", which I recommend to anyone in this Chamber who is interested in these issues. This book is not based on a civil libertarian premise, it is simply a very good example of evidence-based policy development. The book highlights the connection between economic and social stress, parental competence and crime-prone communities. Page 3 states:

... our contention is that economic and social stress create fertile conditions for the development of crime-prone communities, not because they drive otherwise law-abiding people into crime but because they are corrosive of the quality of parenting in a way which renders juveniles more susceptible to delinquent peer influence.

The authors point to a series of policy initiatives which are actually likely to reduce crime in the long run. Their proposals deserve to be considered seriously and are financially far more likely to reduce crime than funding new gaols. The book also highlights the fundamental point that this is an economic argument. To use an old-style Labor analysis, it is about class. It is about money and power. It is about people who have got resources, money and opportunities in life, about the winners and the losers in society. Those are the issues that create the conditions for crime. If people are not prepared to address those then they should buy out of the argument. Regrettably, most of the contributions in this debate do not come to term with those sorts of issues.

**Mr BARR** (Manly) [11.47 p.m.]: Tonight it seems that we will have a choice between the Government's proposal, which is basically standard sentencing, and what the Opposition will put forward in amendments in the Committee stage, which is compulsory minimum sentencing, that is, nothing other than mandatory sentencing, which I will strongly oppose. I can live with the Government policy because there will still be judicial discretion with this bill, something that the Opposition has not mentioned. I can also accept standard sentencing procedures because it is reasonable enough for people to expect consistency in sentencing across the board from the judicial system.

I know that forum shopping and judge shopping takes place because people perceive that they can get a better deal. The public are entitled to know that there will be consistency across the board. That is an important principle in the judicial process that this legislation tries to address. In section 21A(3) of the legislation there are mitigating factors, and in section 21A(2) aggravating factors are provided for standard sentences. There will be 20 serious indictable offences for which there will be standard sentences. They include murder, sexual assault and drug manufacturing supply offences. Those serious matters go before a judge and jury and are not dealt with summarily or by magistrates.

Our Westminster system is based on the separation of judicial and legislative functions. We have not completely followed the system in the United States of America, Montesquieu's trias politica—his 1748 proposal to separate the executive, legislative and judicial functions. The United States has a much purer model, where the executive and the legislative functions are clearly separate. That is clearly not the case with the Westminster system, which has the Executive Government and the Executive Government represented in Parliament. Our system is considerably blurred, whereas the system in United States has a clear separation between the executive and the legislative functions. However, in both systems there is a clear separation between judicial and legislative functions. It is a feature of autocratic and despotic regimes that the separation of power is broken down. We need only look at Robert Mugabe's notions of judicial discretion in Zimbabwe. I am quite sure that Saddam Hussein does not have regard for judicial discretion.

Judicial discretion has been part and parcel of our system. The Opposition proposes some kind of criminal code Napoleon, which would make judges almost superfluous and would leave juries to determine the facts and politicians to apply the sentences. That is dangerous territory. I am disturbed at the frequency with

which Opposition members referred to 22 March, as though the driving force behind this measure is the next State election. This is too important a matter to be dealt with in a shallow, political way in which members seek to score cheap political points. I hope that the public is more sophisticated than to be taken in by the ruse that the Opposition's proposal is some sort of panacea. It certainly is not. It is also disturbing that the Opposition referred to the 13 mitigating factors as 13 excuses. In his contribution the Leader of the Opposition rebutted the Government's argument about the battered woman who kills her brutal husband because he beats her up. The Leader of the Opposition said that the jury can bring down a conviction for manslaughter as opposed to murder. Murder and manslaughter are distinguished by the *mens rea*—the intent—and certain defences are available.

There are two categories of manslaughter—voluntary and involuntary. Voluntary manslaughter involves dealing with intent in which the *mens rea* is appropriate to murder but there are mitigating circumstances to justify a conviction of manslaughter. The irony is that the Leader of the Opposition held that up as a good example of how the Opposition's policy still made sense. A person in those circumstances could receive the lesser conviction of manslaughter because of mitigating circumstances. However, the Opposition argues against the 13 mitigating factors in the bill. It cannot have it both ways. The Opposition's argument is so facile and superficial that I am astounded that such a poor argument could be presented in this Chamber. The Leader of the Opposition referred to a mitigating factor, despite opposing the 13 mitigating factors in the bill. That is a contradiction. The argument makes no sense and displays the shallowness of the debate, which is based on cheap political opportunism.

This is much more serious than what will happen on 22 March. It is about non-political interference in our judicial system. Judges are appointed to do their job without undue political interference. There must be a clear separation of legal and legislative functions. We are entitled to expect judges to sentence across the board with a degree of consistency, and this bill addresses that point by stipulating 20 offences. I find totally unacceptable the proposal that politicians can interfere unduly in the judicial process. Therefore, I will not support the amendments foreshadowed by the Opposition. They are predictable but disappointing.

**Ms ANDREWS** (Peats) [11.55 p.m.]: I speak in support of the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill. The principal objects of the bill are, first, to establish a scheme of standard minimum sentencing for a number of serious offences, and, second, to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters. The aim of the bill is to promote consistency and transparency in sentencing and to promote public understanding of sentencing. The bill sets out standard non-parole periods for 20 serious indictable offences, including murder, sexual assault and drug manufacturing-supply offences. Any judge who departs from the standard non-parole period must set out reasons for doing so, referring to the aggravating and mitigating factors and relevant common law rules.

The first task of the new 10-member Sentencing Council will be to report on ways to make sentencing in the Local Court more openly accountable. It is interesting to note that the New South Wales Local Court deals with more than 250,000 cases a year. Already the Carr Government has taken a number of significant steps to toughen sentencing and deal with repeat offenders in the Local Court. The Carr Government has recently sought guideline judgments so that the higher courts can set out principles to make tougher and more consistent sentences for high-range prescribed concentration of alcohol driving offences and assaults against police officers. In addition, the Government has removed the presumption in favour of bail to require magistrates to deal more severely with repeat offenders.

In my electorate of Peats police officers attached to the Brisbane Water Local Area Command and the Tuggerah Lakes Local Area Command appreciate the fact that the Government has introduced legislation supporting them in their front-line work. The fact that magistrates are required to be firmer when dealing with repeat offenders has also reduced crime quite significantly. For instance, the latest figures released by the superintendent of the Brisbane Water Local Area Command showed that break, enter and steal incidents have been reduced by a massive 43 per cent. This speaks volumes for the excellent work being carried out by the local police, particularly in the Woy Woy peninsula area, and the effectiveness of the bail sentencing legislation.

The long list of aggravating factors to be taken into account in determining the appropriate sentence for an offence include the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation; the offence involved the actual or threatened use of violence; the offence involved the actual or threatened use of a weapon; the offender has a record of previous convictions; the offence was committed in company; the offence involved gratuitous cruelty; the

injury, emotional harm, loss or damage caused by the offence was substantial; the victim was vulnerable, for example, because the victim was very young or very old or had a disability, or because of the victim's occupation—such as a taxi driver, bank teller or service station attendant; the offence involved multiple victims or a series of criminal acts; and the offence was part of a planned or organised criminal activity.

The bill is not about mandatory sentencing. Rather, it is about providing further guidance and structure to judicial discretion. It will also promote public understanding of the sentencing process, while simultaneously ensuring that the criminal justice system is able to assess the facts of an individual case. On the other hand, the Opposition's mandatory sentencing scheme would do away with judicial discretion and impose the same penalty on all offenders. Such a sentencing scheme is considered to be harsh by honourable members on this side of the House as it does not make any provision for extenuating circumstances. The electors of the Northern Territory showed their disgust with such an unbending sentencing system when they voted with their feet in the last Territory elections. On that occasion the voters had the good sense to elect a Labor Government, headed by Clare Martin.

This responsible Government seeks not only to protect members of the community by the introduction of this bill but also to implement policies that are aimed at strengthening members of our community who need extra support and assistance at times. I commend the Government for investing \$117 million in the Families First Program. On the Central Coast this program is now beginning to take shape. Shortly it is intended to link early childhood nurses with trained volunteers in those cases where a mother with a new infant is identified as needing help in caring for the child. The Family's First program will, I feel quite sure, be a very useful tool in helping to reduce the high incidence of child abuse. It is a great investment in the future.

**Mr Merton:** Point of order: I am reluctant to take this point at such a late hour, but it is hard to relate the Families First Program with the Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill.

**Mr SPEAKER:** Order! The comments being made by the honourable member for Peats are a little outside the scope of the bill. However, the Chair has extended considerable latitude to a number of members and therefore feels constrained to extend similar latitude to the honourable member for Peats. The point of order is not upheld.

**Ms Moore:** Hear! Hear! The comments are absolutely relevant.

**Ms ANDREWS:** I agree with the interjection of the honourable member for Bligh. Incidents of domestic violence are also, unfortunately, very high on the Central Coast, and these take up a considerable amount of police officers' time. Specific programs are operating in both Brisbane Water and Tuggerah Lakes Local Area Commands, and these are aimed at addressing this major problem. Recently the Premier, during a visit to the police station in Woy Woy—which is open 24 hours a day, seven days a week—announced substantial funding for a number of initiatives aimed at preventing crime on the Woy Woy peninsula. Those initiatives include domestic violence programs and activities for youth. The police and community youth club, located in Osborne Avenue, Umina, provides a range of structured and supervised activities for the young people of the Woy Woy peninsula. This club was opened by the then Minister for Police, the Hon. Paul Whelan, less than two years ago. Already it is playing a significant role in turning around the lives of a number of young people who were at risk of getting on the wrong side of the law.

The success of the club is largely due to the dedication and hard work of the Manager, Colin Fraser, Senior Constable Paul Hanna and all other members of the caring staff, together with the support and guidance of a very strong committee. In more recent months both the Premier and the Minister for Gaming and Racing, the Hon. Richard Face, have visited the club. They were both very impressed with the way in which the club is being run and with the state-of-the-art facilities available. Youth conferencing—where a young offender faces his or her victim—is working well on the Central Coast. This was another initiative of the Carr Government, and it is having a big impact on reducing offences committed by juveniles. These are just some of the measures being taken by the Government to address antisocial and criminal activities in our community. These programs, coupled with the bill now before the House, will make our communities safer, and this is what the residents of this State expect and deserve from their Government. It gives me great pleasure to commend the bill to the House.

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

**The House adjourned at 12.05 a.m. Wednesday.**

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