

# LEGISLATIVE ASSEMBLY

Wednesday 21 September 2005

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## ABSENCE OF MR SPEAKER AND MR DEPUTY-SPEAKER

**The Clerk** announced the absence of Mr Speaker and Mr Deputy-Speaker.

**The Chairman of Committees (Mr John Charles Mills)** took the chair as Acting-Speaker at 10.00 a.m.

**Mr Acting-Speaker** offered the Prayer.

## CONFISCATION OF PROCEEDS OF CRIME AMENDMENT BILL

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

### Second Reading

**Mr GRAHAM WEST** (Campbelltown—Parliamentary Secretary) [10.04 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

This bill contains important amendments to the Confiscation of Proceeds of Crime Act 1989, the Civil Liability Act 2002, the Crimes Act 1900 and the Forfeiture Act 1995. These amendments will improve the processes involved in confiscating criminal assets, broaden the scope of existing laws, make prosecutions easier, create new offences of money laundering, prevent mentally ill offenders from misusing civil damages paid to them, and prevent mentally ill murderers from profiting from their crime by applying the forfeiture rule. The amendments to the Confiscation of Proceeds of Crime Act implement recommendations arising from a comprehensive review of criminal asset confiscation laws in New South Wales. This review was jointly conducted by the Attorney General's Department and the Ministry of Police.

The review was informed by a group of experts drawn from NSW Police, the Office of the Director of Public Prosecutions, the New South Wales Crime Commission, the Legal Aid Commission, the Public Trust Office, the New South Wales Law Society, the New South Wales Bar Association, and the Australian Crime Commission. Amendments to the money laundering provisions will implement an agreement reached by the Council of Australian Governments at its Summit on Terrorism and Multi-Jurisdictional Crime to reform money laundering laws. Those reforms will strengthen New South Wales criminal asset confiscation laws, target terrorist fundraising and other money-laundering schemes, and ensure that such laws are an effective deterrent to profit-motivated crime.

The Government is pleased that those reforms will benefit victims of crime. All of the proceeds of crime derived under the Confiscation of Proceeds of Crime Act are channelled into the Victim's Compensation Fund, which is used to compensate victims of crime for the harm they have suffered. I do not intend to canvass all of the provisions in the bill; many are self-explanatory and I intend to outline only the more major and significant reforms. The first major amendment under item [25] is to revamp the existing provisions for drug proceeds orders. A drug proceeds order is made by the court when a person is convicted of a drug trafficking offence to recover any assets obtained as a result of drug trafficking.

In such cases, a sentencing court must assess the value of all benefits the defendant has derived from drug trafficking at any time and order that the defendant pay that amount. The drug proceeds order provisions of the original Act introduced by the former Coalition Government have yet to be proclaimed, primarily due to the practical implications of commencing the provisions in their current form. They are cumbersome, unwieldy and differ in practical effect from pecuniary penalty orders that are available for non-drug crimes. In practice, assets of drug traffickers have been seized under the Criminal Assets Recovery Act, which is administered by the Crime Commission. The amendments set down in this bill will make it easier for the prosecution to seek those assets earlier and in a more comprehensive fashion.

The bill addresses the concerns about the existing drug proceeds orders provisions by aligning them more closely with pecuniary penalty orders, particularly in terms of procedure and assessment. As part of a more focused approach, the definition of "drug trafficking offence" has been amended by item [6]. It includes the offence of possession of precursors for the manufacture or production of prohibited drugs, offences involving more than a small quantity of prohibited drugs and the offence of ongoing supply of prohibited drugs. This reflects the objective of the Act to target profit-motivated crime rather than small-time users. The key changes to the drug proceeds orders provisions are as follows. First, under new section 13 (2), the procedure for applying for a drug proceeds order will be aligned with those for pecuniary penalty orders sought in non-drug cases. This will ensure that such orders are only sought in appropriate cases.

Second, the bill removes the current requirement under section 29 (1) for a drug proceeds order to be limited by the amount that may be realised at the time the order is made. With this amendment a drug proceeds order can be the value of any benefits derived in connection with drug trafficking at any time. This will assist in obtaining the value of property or goods that have been sold or otherwise disposed of in the course of the criminal conduct, rather than simply the amount available at the time of the order. In other words, drug traffickers will have to pay the full amount derived from their criminal activity. Third, the bill removes the requirement in current section 29 (2) for a court to take into account a drug proceeds order before imposing a fine.

Fourth, new section 30 sets out the matters to which the court may have regard in assessing the benefits derived in connection with drug trafficking. Those matters are of the same kind that are currently taken into account for pecuniary penalty orders. Fifth, the new section 31A contains provisions of general application relating to evidence that may be given in drug proceeds order proceedings as to the market value of substances involved in drug trafficking offences. Finally, new section 32 contains provisions similar to those for pecuniary penalty orders, which set out the circumstances when a court may treat property subject to the effective control of a defendant as property of a defendant. The definition of "tainted property" has been broadened to include property substantially derived or realised as a result of the commission of a serious offence, or property substantially derived or realised from property used in the commission of a serious offence.

That means that where a defendant has traded in a tainted \$30,000 Toyota Camry for a \$40,000 Subaru WRX, the WRX is also considered tainted property and can be forfeited. The bill also introduces the term "value of property" at Item [15], which provides a method for determining the value of property other than cash. Item [33] inserts a new division 1A into the Act concerning freezing notices. The bill introduces a new and more efficient system involving the use of freezing notices for the seizure, restraint, management and disposal of tainted property. This will increase the ability of NSW Police and the Office of the Director of Public Prosecutions to pursue confiscation action under the Act. The system will be made more efficient by progressing the criminal prosecution and confiscation action together.

Criminal asset confiscation should be viewed as an important and integral part of investigating and prosecuting serious offences. People who commit serious offences need to know that any profit they make from committing those offences will be stripped from them when they are convicted. Under new section 42B (1) of the Act, an authorised officer may apply to an authorised justice for a freezing notice over specified property if a defendant has been, or is about to be, charged with a serious offence or has been convicted of a serious offence. When making the application, the authorised officer must have reasonable grounds to believe that: the defendant committed the offence, if the defendant has yet to be convicted; and the property is tainted property or the proceeds of drug trafficking. Under section 42B (2) a freezing notice may be sought over property effectively controlled by the defendant but held by another person.

An authorised justice may issue a freezing notice under section 42C if they are satisfied that: the defendant has been or is likely to be charged with the offence within 48 hours or has already been convicted; and there are reasonable grounds for the applicant's belief as to the matters set out in the applicant's statement. Section 42D provides that a freezing notice specify how the property is to be dealt with and who will hold the property, pending the confirmation of the notice by a court. Under section 42F, notice of the issuing of a freezing notice must be given to the defendant, any affected property owner and any other person subject to the notice. A court may either confirm or set aside the freezing notice. Section 42L sets out the matters a court must be satisfied of before confirming a freezing notice. The hearing to confirm a freezing notice will generally coincide with the first date for committal or trial proceedings for the offence on which the notice is based.

Under section 42J, the court may require the authorised officer to notify any person with an interest in the property of the application, including third parties, to confirm the freezing notice. Such persons will be

entitled to appear and adduce evidence at the hearing. If a court confirms a freezing notice, it must make orders for the management of the property under section 42M. Section 42M (3) sets out the matters the court should have regard to in determining the property management orders it should make. One of the things the court must take into account at the property management hearing is any hardship to the offender or to any third parties, and the wider concept of family and kinship ties when considering hardship to Aboriginal offenders.

In most cases, if it is appropriate, the court will order the Commissioner of Police to retain or take control of the property, dispose of it and retain any proceeds until they are payable under the Act to another person or the State. If it is not appropriate for the property to be disposed of, the court may instead make other orders for the management of the property, for example, that the property remain with the defendant subject to certain conditions, or that the Commissioner of Police take control of the property and hold it until any confiscation hearing. It will be an offence under section 42O to knowingly contravene a freezing notice, carrying a maximum penalty of two years imprisonment. Provision is made in sections 42K and 42U for appeals against freezing notices issued by authorised justices, and appeals against a refusal to confirm a freezing notice. Section 42V enables confirmed freezing notices to be set aside or varied.

Under section 42R, a freezing notice may be discharged by payment to the State of an amount equal to the value of property subject to a freezing notice. Pursuant to section 42S, if a freezing notice ceases to be in force and the property is not subject to any other order under the Act, the person lawfully entitled to the property may apply to the Attorney General for its return, or for the payment of an amount equal to the value of the property plus interest. The Attorney General must, if satisfied that the person is lawfully entitled to the property, return the property or pay the amount required no later than six months after receiving the application. The bill also amends section 87 to increase the Local Court's monetary jurisdiction under the Act from \$10,000 to the limit that would apply when the court exercises its general civil jurisdiction, which is currently \$60,000.

Finally, the bill introduces the term "interstate crime related property declaration", and changes to the existing definitions of "interstate forfeiture order", "interstate pecuniary penalty order" and "interstate restraining order" to ensure that New South Wales can recognise and enforce all relevant interstate confiscation instruments. I now turn to schedule 2 to the bill, which amends the Civil Liability Act 2002. In 2003, the Civil Liability Act was amended to limit the damages payable to people who are injured as a result of engaging in criminal conduct. Damages payable to a person who was mentally ill at the time of engaging in criminal conduct are limited to damages other than damages for non-economic loss and loss of earnings. In other words, such people can still recover damages for medical and care costs.

Schedule 2 to the bill further amends the Civil Liability Act to provide for the supervision of damages awarded to mentally ill people in these circumstances. Under section 54D, a court that awards such damages must make an order directing the Public Trustee to take control of the amount of damages if it is in the best interests of the mentally ill person. The Public Trustee will hold the amount in trust for the person, and must ensure that the amount is only used to cover the medical and care costs of the person. A damages supervision order is intended to ensure that a mentally ill person does not simply dissipate damages awarded to cover medical and care costs.

A damages supervision order may: regulate the manner in which the Public Trustee exercises his or her functions under the order; specify the purposes for which amounts may be disbursed; specify the obligations of the Public Trustee and the person awarded the damages; and make any other provision the court considers appropriate. A damages supervision order will remain in force until an appropriate court revokes it or until the death of the person awarded the damages. Schedule 3 to the bill amends the Crimes Act 1900 to create new money laundering offences. As honourable members would know, money laundering is the process by which cash and other assets derived from criminal activity are introduced into an economy to make them appear to have been legitimately obtained.

Through money laundering, criminals distance themselves from the criminal activity that generates their wealth, making it harder to prosecute them and confiscate their ill-gotten gains. Money laundering is a significant global problem. The International Monetary Fund has estimated that money laundering accounts for between 2 per cent and 5 per cent of global gross domestic product. Since the terrorist attacks of 11 September 2001 there has been an increased focus by governments around the world on strengthening their anti-money laundering regimes and on targeting terrorist financing. Like the amendments to the New South Wales asset confiscation regime, the amendments to the New South Wales anti-money laundering regime are part of this Government's commitment to ensuring that those who engage in criminal activity as a business can effectively be dealt with under the law and do not profit from that activity.

In addition to being part of a national initiative to address money laundering and organised criminal networks, the amendments will ensure that the New South Wales anti-money laundering regime is consistent with international standards set by the OECD's Financial Action Task Force on Money Laundering. The New South Wales money laundering offence is currently found in the Confiscation of Proceeds of Crime Act 1989. The bill will re-enact an improved form of the existing money laundering offence in the Crimes Act 1900 and create additional money laundering offences. This will give New South Wales strong, comprehensive money laundering laws. The new offences will be located in the Crimes Act 1900, which appropriately emphasises the serious criminal nature of these offences.

Section 193B will create three offences for dealing with the proceeds of crime, that is, any property, including money, that is derived from the commission of a serious offence. "Dealing with" includes receiving, possessing, concealing or disposing of property. First, it will be an offence for a person to deal with the proceeds of crime knowing they are proceeds of crime and intending to conceal that they are proceeds of crime. This offence will carry a maximum penalty of 20 years imprisonment. Second, it will be an offence for a person to deal with the proceeds of crime knowing they are proceeds of crime. This offence will carry a maximum penalty of 15 years imprisonment. Third, it will be an offence for a person to deal with the proceeds of crime being reckless as to whether they are proceeds of crime. This offence will carry a maximum penalty of 10 years imprisonment.

Section 193C will create a summary offence for dealing with property where there are reasonable grounds to suspect the property is the proceeds of crime. This offence will carry a maximum penalty of 50 penalty units and/or 2 years imprisonment. It will be a defence to a prosecution for this offence if the defendant satisfies the court that the defendant had no reasonable grounds for suspecting that the property was the proceeds of crime. Section 193D will also create two offences for dealing with property, being money or other valuables, that subsequently becomes an instrument of crime. First, it will be an offence for a person to deal with property intending that the property will become an instrument of crime, and the property subsequently becomes an instrument of crime. This offence will carry a maximum penalty of 15 years imprisonment. Second, it will be an offence for a person to deal with property being reckless as to whether the property will become an instrument of crime, and the property subsequently becomes an instrument of crime. This offence will carry a maximum penalty of 10 years imprisonment. Prosecutions for the instruments of crime offences will require the consent of the Director of Public Prosecutions. Section 193E makes provisions for alternative verdicts to be reached on certain money laundering offences.

Finally, I turn to schedule 4 to the bill, which contains amendments to the Forfeiture Act 1995. The common law forfeiture rule operates to prevent killers from benefiting financially from their victim's estate. The Forfeiture Act 1995 leaves the common law rule intact but allows the court to modify the effect of the rule if justice demands it. The forfeiture rule currently cannot be applied to people found not guilty of a killing by reason of mental illness. The bill amends the Forfeiture Act 1995 to enable the forfeiture rule to be applied to people found not guilty of murder by reason of mental illness where it would not be just for them to inherit from their victim's estate.

Section 11 provides that where an offender has been found not guilty of murder by reason of mental illness, any interested person may apply to the Supreme Court for a forfeiture application order to enable the forfeiture rule to apply as if the offender had been found guilty of murder. The court may make an order applying the forfeiture rule if it is satisfied that justice requires the rule to be applied. In determining whether justice requires the rule to be applied, the court is to have regard to: the conduct of the offender; the conduct of the deceased person; the effect of the application of the rule on the offender or any other person; and any other matter the court considers relevant. Section 12 provides that a forfeiture application order must be sought within six months after the day on which it is determined that the offender was not guilty of murder, although the court may grant leave for a late application.

Section 13 makes provision for the court to accept applications for the revocation of a forfeiture application order that has already been made. The Confiscation of Proceeds of Crime Amendment Bill contains important reforms. The reforms will strengthen criminal asset confiscation and money laundering laws in New South Wales and, as such, has the support of the key New South Wales law enforcement and prosecuting authorities. The bill also contains important reforms relating to mentally ill people who commit serious offences. I commend the bill to the House.

**Debate adjourned on motion by Mr Thomas George.**

**NATIONAL PARKS AND WILDLIFE AMENDMENT (JENOLAN CAVES RESERVES) BILL**

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

**Second Reading**

**Ms ALISON MEGARRITY** (Menai—Parliamentary Secretary) [10.22 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

I present the National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill to facilitate the Government's karst reserve management restructure. This bill proposes to remove division 8 of part 4 and related schedules from the National Parks and Wildlife Act 1974. This will effectively abolish the Jenolan Caves Reserve Trust and transfer care, control and management of the Jenolan, Wombeyan, Borenore and Abercrombie Karst Conservation Reserves to the Department of Environment and Conservation. The Council on the Cost and Quality of Government recommended that the four karst conservation reserves be transferred from the Jenolan Caves Reserve Trust to the Department of Environment and Conservation to improve financial and visitor experience outcomes. The council also recommended that a capital works package be initiated to address outstanding infrastructure works. The Government has adopted these recommendations.

One of the fundamental tenets of the Jenolan Caves Reserve Trust was that it be a self-financing and independent entity. In recent years the trust has been unable to sustain its financial resource requirements, by deferring capital works relying on government grants to carry out some essential works. Due to the problems with the trust's financial model, the Council on the Cost and Quality of Government carried out a special review. The review recommended when the last trust board's term expired in January 2004 that an administrator be appointed to review in detail the management of trust and recommend a way forward. The review carried out by the administrator of the financial and structural model of the trust found that the trust had performed very well, given its operating parameters.

However, visitor numbers have declined and the business model has not proved to be sustainable, with lower levels of revenue from popular sites such as the Jenolan Cave system being insufficient to cover capital works and product development for all four karst reserves under the trust. The Government has carefully considered these findings and proposes a sensible, economical and sustainable option for the future management of the karst reserves, ensuring the continued protection and sustainable use of the New South Wales karst reserve system. The Government has developed a revitalisation package not only to conserve these natural and iconic assets but also to assist local economies by providing regional employment and increased tourism opportunities.

The package includes an \$18 million program of works on Jenolan Caves Road, generating new jobs; a \$4 million capital works program to upgrade important cave and above-ground infrastructure; the establishment of a new specialist unit within the Department of Environment and Conservation to ensure best practice management of karst areas throughout New South Wales; the establishment of a Karst Management Advisory Committee under the National Parks and Wildlife Act 1974 comprised of key stakeholder representatives, including karst scientists, speleologists, traditional owners and the New South Wales Heritage Office.

The role and composition of this committee will be defined in the Act. The management of karst reserves will be consolidated, ensuring that Abercrombie, Wombeyan, Borenore and Jenolan karst reserves are managed, along with the State's 30 other significant cave systems, by the one organisation. A further \$120,000 per annum in additional funding will also be provided to enhance management outcomes. To facilitate this comprehensive initiative, minor amendments are required to the National Parks and Wildlife Act to transfer management responsibility from the Jenolan Caves Trust to the Department of Environment and Conservation. This is a sensible and necessary bill. I commend it to the House.

**Debate adjourned on motion by Mr Thomas George.**

**PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT BILL**

**Second Reading**

**Debate resumed from 13 September 2005.**

**Mr MICHAEL RICHARDSON** (The Hills) [10.29 a.m.]: The Protection of the Environment Operations Amendment Bill is like the curate's egg: it is good in parts. The Act that it amends drew together five

existing pieces of legislation, including the Environmental Offences and Penalties Act, which Tim Moore introduced under the Greiner Government in 1989. The bill has come about as part of the statutory review process for the principal Act. It was good to see the Minister table the draft bill before the winter recess. That is unusual for this Government, which has not been known for its consultation in the past. That gave industry a couple of months to have its say and allowed stakeholders to at least put forward objections to some of the provisions in the bill. The Government has taken notice of only some of those objections. That is why we have significant concerns about certain aspects of the legislation.

The Minister's second reading speech, unusually, was delivered as a ministerial statement. Indeed, at the time he actually said it was a ministerial statement. I rose to take the call to respond to the ministerial statement, as is my right, but the honourable member for Liverpool, who was in the Chair, would not allow me to speak. I would like it noted that I believe that constituted a breach of the standing orders of this Parliament. It was outrageous. The bill is a grab bag of amendments to what is very complex legislation, which brings together five other pieces of legislation. Given that the Minister did not list the amendments in his second reading speech, I will read the overview of the bill for the benefit of members. It reads:

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* (**the Principal Act**) and other legislation as follows:

- (a) to extend the matters that may be taken into account when considering whether a person is a fit and proper person to hold an environment protection licence (a **licence**),
- (b) to make other provision with respect to licences, including in relation to conditions that may be imposed on licences and suspension and revocation of licences,
- (c) to require the environmental values of water to be considered in relation to licensing matters and prevention notices,
- (d) to increase penalties for offences,

That is the primary focus of the bill. The overview continues:

- (e) to make provision with respect to the regulation of land pollution and waste, including new offences relating to land pollution and the supply of false information about waste and amendment of existing offences,
- (f) to provide for the use of smoke abatement notices to control smoke pollution from residential premises and for offences for failure to comply with notices,
- (g) to confer additional powers on authorised officers and make other provision in relation to authorised officers,
- (h) to make provision with respect to enforcement, including providing for voluntary undertakings to the Environment Protection Authority (the **EPA**) and their enforcement,
- (i) to enable noise control notices to be issued in relation to proposed activities,
- (j) to provide for green offsets to be implemented under licence conditions and to enable provision for the operation and elements of green offsets to be made by regulations,
- (k) to provide for the enforcement provisions contained in Chapter 8 of the Principal Act to apply in respect of the *Environmentally Hazardous Chemicals Act 1985*,
- (l) to extend from 3 years to 4 years the interval between the making of reports by the EPA on the state of the environment,
- (m) to make other miscellaneous amendments of a minor, consequential or savings and transitional nature.

As I said, the bill is a grab bag of disparate amendments and it is very much like the curate's egg: good in parts. Businesses and the Coalition strongly support some of the initiatives the Government is introducing, such as green offset schemes, which are consistent with the original intention of the Protection of the Environment Operations Act. We also support the changes to section 76, which provide for a closure plan to be one of the conditions for issuing a licence for a licensed facility such as a waste dump. I am sure honourable members would be aware that there are literally thousands of waste tips around New South Wales without such a plan and which present long-term liabilities for companies and councils. Indeed, many people hold the view that councils ought to account for those liabilities in their balance sheets. I commend that proposal to the Government. I believe it is important that communities should know what sorts of costs they are facing in the future in relation to waste tips.

The Coalition also has no problem with the extension of the section 83 definition of "fit and proper person". It is appropriate that a person or corporation holding an environment protection licence should be of appropriate integrity and standing. We do not believe that these changes will have any effect on the vast

majority of good, ethical businesses. The waste industry has moved on from the Wran years, largely as a result of changes introduced by the Greiner Government. During the Wran years there were a lot of cowboys in the industry; a lot of dubious activity was taking place in the waste industry. That has been cleaned up; the industry has been regulated and licensed.

Apart from some issues relating to this Government's administration of Waste Service NSW, which I will address later in my contribution, I believe things are very much better now than they used to be. Green offset schemes have the potential to improve our overall environment. They would allow businesses to mitigate or offset the impact of pollution created at licensed premises—that is, not hotels and clubs, but premises licensed under the Act. Proposed section 295O outlines the purposes of such a scheme as follows:

- (a) to carry out a specified program for the restoration or enhancement of the environment that is related to a licensed activity,
- (b) to prevent, control, abate, mitigate or otherwise offset any harm to the environment arising (wholly or partly) from any licensed activity,
- (c) to make good any environmental damage arising (wholly or partly) from a licensed activity.

A broad range of considerations could be taken into account in establishing a green offset scheme. I suppose the proof of the pudding will be in the eating: it is a matter of the legislation being passed and green offset schemes being put in place to ascertain whether the legislation will do the job the Government hopes it will do. In practice, green offset schemes might end up being as flawed as the New South Wales greenhouse gas abatement scheme. Honourable members would have seen the story on the front page of the *Sydney Morning Herald* last week that addressed that scheme, which is an absolute sham. It will achieve little in greenhouse gas reductions, despite costing electricity consumers something like \$2 billion over the nine-year lifetime of the scheme. Something like 95 per cent of all the projects that have been approved so far under the scheme were up and running before the scheme began.

The University of New South Wales estimates that 70 per cent of the total number of New South Wales greenhouse gas abatement certificates to be issued will not represent additional greenhouse gas reduction. The Coalition takes the environment seriously. We believe that if a scheme such as this is to be implemented it should do what it is supposed to do, that is, reduce greenhouse gas emissions, and not simply provide windfall profits for companies that are astute enough to take advantage of it. Examples of such windfall profits include 166,000 certificates created for existing Forests NSW plantations, three million certificates created by Tower and Appin coal waste gas plants that were built in the mid 1990s, and almost two million certificates created for landfill gas plants such as Lucas Heights 1 and 2, which were built before the scheme began. There is also double counting of almost half a million New South Wales greenhouse gas abatement certificates for the Federal Government's mandatory renewable energy targets.

This is a disgrace. Forty per cent of the certificates registered are outside New South Wales. The scheme is doing absolutely nothing to reduce greenhouse gas emissions in this State, as I think we predicted when the scheme was first introduced. As I said, the greenhouse gas abatement scheme is costing electricity consumers something like \$2 billion over a nine-year time frame. The scheme should either be amended so it does the job it is intended to do, or scrapped altogether. My concern is that the green offset scheme may go the same way. I cannot find in the legislation any reference to additionality. The Minister certainly did not explain in either of his very brief contributions to this debate how the green offset scheme would work. I had intended to ask the Minister whether he could provide a detailed explanation of the scheme, but he is not in the Chamber so I suppose it is a little difficult for him—

**Ms Alison Megarrity:** He will be here shortly.

**Mr MICHAEL RICHARDSON:** I am delighted to hear that. The Parliamentary Secretary at the table assures me that the Minister will be here shortly. I hope he is not held up in a traffic jam. Perhaps the Minister might also explain how he proposes to ensure that the works undertaken are additional and not merely an excuse for industry to pollute and make good elsewhere. The Opposition has some very real concerns about new section 135C of the legislation, which changes the law relating to smoke pollution. The bill provides for an authorised officer of an appropriate regulatory authority—that is, a local council—to issue smoke abatement notices to homeowners when it appears that excessive smoke is being emitted from a house chimney.

Under the legislation, "excessive smoke" means the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds

when the plume extends at least 10 metres from the point at which the smoke is emitted. If that is occurring when an officer inspects the premises or has occurred at any time in the past seven days, the officer can issue a smoke abatement notice to the resident to cease and desist emitting the smoke. That notice will be in place for 21 days.

We understand that smoke pollution is a problem in many country towns and in parts of Sydney. The particulate matter that is part and parcel of wood smoke can be a major problem for asthmatics and has even been implicated in cancer cases. However, I think the way in which the Government is going about defining "excessive smoke" is an absolute nonsense. A plume of smoke extending from a chimney would vary in length depending on wind conditions, wind direction, the stillness of the air and the amount of water vapour in the air. How would any officer be able to tell that the smoke had been emitted from the chimney for 10 minutes within the past seven days? Will we reach the point where neighbours will spy one on the other, video chimney smoke and present their evidence to the local council so that a smoke abatement notice can be issued? If a similar offence occurs within 21 days of the issuing of a smoke abatement notice the maximum penalty of \$3,300, or 30 penalty units, can be imposed. That is a very significant amount.

I have some very real concerns about this legislative provision. I think it is ill thought out and unenforceable. A significant amount of cost shifting to local government will occur for no good purpose. I might add that there is still no regulation of chimineas, which are the Mexican wood heaters sold by Bunnings and other outlets. While slow-combustion stoves must abide by an Australian standard no standards whatsoever apply to chimineas. Wood heaters cannot be sold in New South Wales unless they comply with Australian standard 4013 but chimineas can be sold anywhere to anybody and there are no controls over their sale or use. I have received complaints from residents of townhouse complexes, in particular, about smoke from chimineas blowing in their windows and courtyards. They seem able to do absolutely nothing about it. Chimineas are supposed to burn dry fuel only but there is anecdotal evidence that they are being used as backyard incinerators to burn paper and other products. That is simply not good enough. I would like to hear what the Minister intends to do about chimineas. So far as section 135 is concerned, I foreshadow that the Opposition will move an amendment in Committee to omit that part of the legislation.

New section 198A gives authorised officers the power to turn off home or car alarms that sound continuously. I suspect that every member of this Chamber has at one time or another had to put up with a car or house alarm that has sounded continuously contrary to the legislation. That is certainly extremely annoying, particularly if it occurs at night and keeps people awake. Officers may be unable to enter the car or the premises to turn off the alarm. However, I am not sure that new section 198A is such a giant leap forward because under section 197 of the existing Act an officer can enter a home only with the permission of the occupier or with a search warrant. So if an alarm goes off in the middle of the night a council or Environment Protection Authority officer will have to find a magistrate, get a warrant, return to the home or car and force entry in order to switch off the alarm. I do not know how often that is likely to occur in reality. Will the officer be able to force entry to the house or car if that involves breaking a door or window? That is not clear from the legislation.

The bill also provides additional protection for the Government's \$102 million revenue stream from the waste levy, which is supposed to be used to reduce the amount of waste going to landfill and to improve recycling outcomes and of which the Government said it would hypothecate 55 per cent to resource recovery and waste reduction. However, that has not happened and waste levy collections are now going into consolidated revenue. Even the fiction that the waste levy would be used for the purpose for which it was intended has been abandoned with the abolition of the Waste Fund. The Government has now increased the maximum penalty for failing to pay the levy on time to \$1 million for a corporation and \$250,000 for an individual. That has nothing to do with improving environmental outcomes and everything to do with protecting the Government's waste revenue stream, which is not being used for the purpose for which it was intended.

Members on this side of the House think that is an absolute disgrace. Honourable members will be aware that, with the abolition of the Waste Fund, waste levy money collected from throughout the greater metropolitan area is being used to finance the Brigalow buy-out, for example, and a make-work scheme for timber workers in the Pilliga. I know that the honourable member for South Coast and the honourable member for Southern Highlands are most concerned about that—as, I suspect, Labor members from the Illawarra would be. The Minister for Aboriginal Affairs and you, Mr Acting-Speaker, as the honourable member for Wallsend, might also be concerned about that issue as your constituents pay that waste levy every time they take their wheelie bins to the curb. That money is being used simply to pay for other government programs and not to reduce the amount of waste that goes to landfill.



Indeed, that might not matter if the Government were doing what it says it is doing, but the amount of money that it is collecting from the waste levy has increased from \$83 million, which is what it predicted it would collect in 2004-05 two years ago, to \$102 million, and that equates to an extra 950,000 tonnes of waste going into landfill. That is an absolute disgrace, but the Government is rubbing its hands with glee. It is talking about raking in an extra \$19 million, so why would it object? Why would the Government want to reduce the amount of waste going to landfill when it can get \$102 million a year out of it? And we know that this Government's budget is in crisis: a deficit of around \$732 million now, and climbing every day because of this Government's mismanagement of the New South Wales economy.

The legislation also purports to provide additional protection from land pollution. The old definition of land pollution was the degradation of land because of disposal of waste on the land. The new definition is:

*land pollution or pollution of land* means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
- (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

The Australian Environment Business Network has a particular concern about the combination of this definition and the new section 142A. The network's concern is as follows:

Very little variation to land will result in causing harm to other terrestrial life or ecosystems. For example:

- Placing any earth moving equipment (*any matter*) on the site that *causes harm to terrestrial life* such as any land clearing.
- Reaping a crop, could be construed as lowering the land value or causing detriment as it transfers to the truck which collects the crop. The matter, which is placed on the land, is the agricultural machinery.
- Sowing crops could be construed as harming other terrestrial life and the seed would fit the description of *any matter*.
- Developers who demolish a building, which lowers the value of the land:
  - By removing a building considered to have heritage value
  - From building rubble which remains (If the developer is suffering financial difficulties demolition wastes may not be removed for some time. There is little difference, under s142A between cleaning up a demolished building and site remediation, both of which can be cleaned up given enough time).

AEBN can see this section being used or abused by opponents to any development citing that any land clearing or building demolition is detrimental, especially if native vegetation or ecosystems are harmed or likely to be harmed.

I would appreciate the Minister's comments on those concerns and his assurance that they were taken into account during the consultation phase. But, of course, when we are talking about the Government's actions in relation to land pollution, its words are a lot stronger than its deeds.

Mr Acting-Speaker, as a member in the Hunter area you would be aware of the issue of the rehabilitation of Hexham swamp. Indeed, I believe you have spoken on that issue in this place in the past. Hexham swamp is a 3,200 hectare SEPP 14 wetland, which falls under the New South Wales Coastal Wetland Protection Program. It is registered on the National Estate and should be an important bird and fish breeding area, but it has been suffering from a lack of water since 1971 when the Iron Bark Creek floodgates were shut. I understand that one of those floodgates has recently broken down to an extent and that the swamp is starting to refill with water, which is likely to be a good outcome for the environment. But the big problem is the land owned by pensioner Ronald David Smith. Mr Smith owns 40 hectares of land between the swamp and the railway line. The main railway line from the Hunter carries an enormous amount of coal—I think more than any railway line in the world.

This 40 hectares of land has been used as an illegal dump for 500,000 tyres, scrap metal, motor vehicles, and an old caravan. Mr Smith wanted to establish some sort of an airport there and there is even a windsock standing on the land. On the land there are empty bottles, soil, brick and concrete rubble and garbage—a most extraordinary collection of materials that has been dumped there and, I might add, for which Mr Smith has been paid. It has been used as an illegal waste site and environmentalists and local citizens have a

great concern that the flooding of Hexham swamp is going to mean that a lot of these materials will be leached out into the water, and that is going to have a very significant adverse impact on the environmental values of the swamp.

It might be asked: So what? Is that not an issue for Newcastle Council to deal with? Well, it is and it is not. The Chairman of the Environment Protection Authority [EPA], David Harley, and the Nature Conservation Council of New South Wales have written to the Minister about this issue, and certainly the council has written to the Minister for Planning about it. I am sure that the Minister is very well aware of the problems caused by his Government and Newcastle City Council's inactivity in relation to this site. Those 500,000 tyres are starting to break down, and that process is going to be accelerated when water flows onto Mr Smith's land. That is a matter of real concern to people living in the Hunter and to people on this side of the House. I think that the Government should take some real action and intervene. This illegal dumping continued until at least 2002, even though the Land and Environment Court had ordered Mr Smith to remove these materials 15 years earlier. And this Government did absolutely nothing.

**Mr Anthony Roberts:** How many years?

**Mr MICHAEL RICHARDSON:** Over 15 years. The Government did absolutely nothing. We are now talking 18 years on from that Land and Environment Court order and this rubbish and rubble are still there and it still has the potential to cause major environmental problems. The Minister made much of the new protections afforded landowners who unwittingly have contaminated waste dumped on their land, as well as of the differentiation between wilful and negligent conduct. Under the legislation the maximum financial penalty for tier one offences will be \$2 million for negligence and \$5 million for wilfulness, and for individuals \$500,000 for negligence and \$1 million for wilfulness. The Minister said that these increased fines will send a strong message to potential polluters that they will be caught and they will be punished.

**Mr Anthony Roberts:** They have to be caught.

**Mr MICHAEL RICHARDSON:** The honourable member for Lane Cove says they have to be caught, and of course that is very true. The legislation has to be applied even-handedly across the board. I wonder whether the Minister can explain how Waste Service NSW got away with deliberately and wilfully dumping 40,000 tonnes of toxic waste from its Lidcombe waste treatment plant at Lucas Heights landfill—40,000 tonnes of sludge containing tens of thousands of litres of toxic organochlorines were knowingly dumped at Lucas Heights and Jacks Gully over a two-year period. But who owns the landfills? Waste Service NSW, or WSN Environmental Solutions, as it has now renamed itself.

It is extraordinary that if a private sector corporation committed such an offence it could have faced the maximum fine under the legislation, that is, \$1 million, and individuals could have gone to gaol for seven years, yet the fine levied on Waste Service NSW was just \$5,000. The Minister has increased the fines by a factor of four or five times in many instances. Yet the fine for a tier one offence committed by a government agency, for which the maximum potential fine was \$1 million, was only 1/200<sup>th</sup> of that maximum. What is the point of increasing fines to that extent if they are never going to be applied? The Minister might say there is a deterrent value associated with having the fines in place but if the Government is not prepared to act impartially and police its own actions, the legislation and the fines are not worth the paper they are written on. In his second reading speech the Minister said:

Enforcement action by the Environment Protection Authority has revealed numerous incidents where wastes are deliberately being falsely described to avoid the cost of proper disposal and make a quick profit. For example, solvents and hydrocarbon oils mixed with food wastes have been applied to grazing land ...

What about what Waste Service NSW dumped at Lucas Heights? We know that 40,000 tonnes of toxic waste that was not properly processed, and was collected over two years from the Chem-Collect Program, went to Lucas Heights and Jacks Gully. But the worst feature is that the waste was not dumped in the same place and there is no record of where it was dumped. Vast areas of land could have these organochlorines and there is no way now of addressing that situation. Yet for that crime Waste Service NSW copped a fine of only \$5,000.

The directors of Waste Service NSW can scarcely say they did not know about this deliberate action designed to undercut Rethmanns and Collex, the private sector operators at an alternative waste treatment plant nearby in Lidcombe. The suggestion is that Waste Service NSW profited to the tune of \$5 million from that illegal action but was fined only \$5,000. The organochlorines and other material have the potential to leach into the Georges River. We just do not know what will happen in the future. It is a toxic time bomb.

I challenge the Minister: Will the law be the same for all? Will Waste Service NSW, now renamed WSN Environmental Solutions, in future be given the same treatment as the private sector? What action, if any, will the Minister take in respect of the 40,000 tonnes of toxic waste? Maybe I am wrong. Maybe he knows where the sludge has been dumped at the tip. Maybe he can identify and quarantine it in some way to protect the river. Maybe that will happen, but I suspect not.

The Opposition is concerned about the size of the increase in maximum fines under the legislation. Most of this bill is about fines and penalties. That is the way this Government operates— with a big stick. We know that the Government is strapped for cash and that raising fines is a very attractive option for it. It will not spend money to help a company solve its environmental problems but it will come along with a cudgel or sledgehammer and threaten that company, which is exactly what it has done with this legislation.

In many instances the increased fines are out of all proportion to the offence. For example, the maximum fine for fiddling with antipollution devices on a motor vehicle has risen from \$250,000 to \$1 million for a corporation, and from \$120,000 to \$250,000 for an individual. A company can be fined \$1 million for selling a car that has not been serviced, maintained, or adjusted as prescribed. Theoretically a motor dealer who accepts a trade-in on a car that has not been serviced properly, and then on-sells that car perhaps to another dealer could be fined \$1 million—the same penalty as for removing antipollution devices.

Honourable members should remember that WSN Environmental Solutions copped a fine of only \$5,000 for dumping 40,000 tonnes of toxic waste at one its own tip sites. Similar penalties will be applied under the Act for tier two offences relating to water and air pollution and for transporting waste to a place that cannot lawfully be used as a waste facility for that waste. Surely that applies to the 40,000 tonnes of toxic waste that was taken out to Lucas Heights, because at no time was Lucas Heights licensed to accept that waste.

The \$1 million fine for a tier two water offence seems to me to very significantly overlap the separate Marine Pollution Act. When the Government brought together five pieces of legislation I am not sure why it did not see fit to try to also amalgamate the Marine Pollution Act. That Act provides for maximum fines of up to \$10 million for polluting our waterways, but again those fines have never been applied. I am sure every honourable member in this House is familiar with the *Laura D'Amato* spill of 294,000 litres of oil into Sydney Harbour in 1999, which resulted in the Land and Environment Court imposing a fine of only \$620,000—\$510,000 against the owner of the ship and \$110,000 against its captain. That is another example of where the maximum fine of \$10 million was way ahead of the court's willingness to impose those fines.

**Mr Anthony Roberts:** Did they work for the Government?

**Mr MICHAEL RICHARDSON:** No, they did not work for the Government.

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! The honourable member for Lane Cove will come to order. The standing orders prohibit the casting of aspersions on judges.

**Mr MICHAEL RICHARDSON:** Had they worked for the Government, I am sure the fine would have been significantly reduced. All sections of industry are opposed to the new fine regime. The Combined Industry Group says there is no justification for a five-fold increase in penalties. Dr Ray Johnson, Chief executive officer of New South Wales Farmers, says:

The Association is of the view that the current fines and penalty amounts provide a significant deterrent to potential environmental offenders. Further, the Association believes that the current fines are significant and can be regarded as excessive for particularly minor pollution offences and that the attainment of good environmental outcomes in the longer term is better achieved through incentives, education and awareness.

That is exactly what I have been saying. The Government should work with people to reduce environmental pollution rather than take the big-stick approach. According to a letter I received on 19 September from the Minister, the existing maximum \$1 million for a tier one offence has been applied only once, in a case involving the deliberate diversion of sewage from a caravan park at Karuah into the Karuah River. The practice continued for more than two years—the same time as the toxic waste was going out to Lucas Heights. The diversion of sewage threatened people's health as Karuah is an oyster growing area, and the defendant consistently sought to conceal his crime. The necessity for a five-fold increase in that fine has not really been established.

The existing fine regime was put in place by the Greiner Government when Tim Moore, the then Minister for the Environment, introduced the Environmental Penalties and Offences Act 1989, which, for the

first time, set appropriate standards and penalties for environmental offences. I know Tim Moore was very keen to introduce that legislation because at the time maximum penalties ranged from \$2,000 to \$40,000, and they were absolutely derisory compared with the scale of damage done by companies such as Union Carbide. Who was the Labor Minister for the Environment for the four years leading to the change of government in 1988?

The honourable member for Lane Cove will remember it was actually Robert John Carr, the great environmentalist, the environmental Premier, who did not see fit to increase penalties that ranged from \$2,000 to \$40,000 to a level that was commensurate with the scale of the offence. Bob Carr did not think that was important at all—and this was the man who established his environmental credentials by playing God; by creating national parks from land that was already owned by the Government and then failing to adequately resource those national parks, creating enormous dissent and ill-will in the bush as a consequence.

The Coalition did not think that scale of fines was appropriate, and changed it. The maximum penalty for a tier one offence became \$1 million in the case of a corporation and \$150,000, or seven years imprisonment, or both, in the case of an individual. We stand by the decision that we took in 1989. It was principled, it was appropriate at the time, and we can see the rationale for an increase in the scale of fines now being commensurate with inflation since 1989. But in that time we have not had inflation of 500 per cent—largely, I might add, because of the outstanding economic management of the Howard Government. This outstanding economic management has given the New South Wales Labor Government a revenue stream the like of which a New South Wales government has never seen before—yet it still cannot balance the books.

The Greiner Government did more to change the face of environmental protection in this State than Labor has ever done. Never let it be forgotten that it was a Coalition government that created the National Parks and Wildlife Service—the Askin Government of 1967. It was a Coalition government that created the EPA—the Greiner Government. It also introduced kerbside collection and the environmental offences and penalties Act. Our track record has been absolutely outstanding, and our commitment to the environment is unchallenged. The biggest concern that industry has with the bill is the proposed removal of section 169 (1) (a). That section provides for a director or manager of a corporation a defence to an offence—potentially a tier one offence—carrying a potential \$1 million penalty, plus seven years imprisonment, that the corporation contravened the provision "without the knowledge, actual or imputed or constructive of the person". In his second reading speech the Minister said the:

... "no knowledge" [defence] currently available to directors ... can undermine what are otherwise effective pollution control laws by encouraging directors and other managers to deliberately turn a blind eye to environmental offences being committed by their corporations.

That shows a complete lack of understanding of how companies work. It is absolutely inconceivable that a director of a major corporation, like Orica or BHP, could wilfully or deliberately turn a blind eye to a major pollution problem. That certainly did not happen with Orica at Botany. Orica committed almost \$140 million to that clean-up. We think the Government should have acted sooner to assist Orica in its task of sucking out the pollutants from the groundwater, rather than going for the eleventh-hour approach of putting in wells along Foreshore Drive, right on the edge of Botany Bay. Orica is doing the right thing. Certainly, when that pollution occurred, respect for the environment and pollution controls were very different from those of today. We are talking about the standards of the 1940s, as opposed to the standards of the twenty-first century.

I repeat what I said before: It is absolutely inconceivable that a director of such a company could turn a blind eye to a major pollution problem. Yet under this legislation, which will delete the no-knowledge defence, a director of a major corporation in Melbourne, for example, potentially could be fined \$1 million or gaoled for an event that he could not have been expected to have had any knowledge of. On that issue the Combined Industry Group said:

To remove the 'no knowledge' defence will create a situation where a director or manager may be convicted of a serious criminal offence when they could not know of the contravention of the corporation. ...

The current 'no knowledge' defence found at section 169(1)(a) of the Protection of the Environment Operations Act requires that directors and management undertake reasonable inquiries to fully understand the operation of the business so that they may comply with the Act.

There is no reason in law or policy why individuals who have undertaken reasonable enquiries should be subjected to derivative criminal liability and punished where that person could not have known about the circumstances of the contravention.

It then directed this comment to the Minister:

You suggested in the second reading speech that the current 'no knowledge' defence allows directors and managers to take a "head in the sand" approach: that is, avoid gaining actual knowledge of the circumstances that result in the contravention of the corporation.

This suggestion is, in our view, based on a misunderstanding of the defence. The current 'no knowledge' defence under consideration is only established where the accused establishes (on the balance of probabilities) that the person did have actual, imputed or constructive knowledge of the contravention.

In effect, this defence is only available if the director or manager has made reasonable enquiries to inform themselves ...

It said further:

The three levels of knowledge that must be negated by an accused before the defence is successfully raised can be described in the following fashion:

- a) *Actual* knowledge—which is the knowledge of the party concerned
- b) *Imputed* knowledge—the knowledge that an agent or employee received or should have received had they made enquiries. That knowledge is imputed to the director/manager
- c) *Constructive* knowledge—a person has constructive knowledge of all matters of which he or she would have received notice if the person had made investigations that you would expect the person to make in those circumstances.

It concluded:

Consequently, this provision does not allow directors or managers to avoid knowledge and liability of the circumstances of the contravention by sticking their "heads in the sand". In fact, it imposes a high standard for those that direct a corporation's activity to know how the corporation operates.

I repeat the Minister's words:

... [the] "no knowledge" [defence] currently available to directors ... can undermine what are otherwise effective pollution control laws by encouraging directors and other managers to deliberately turn a blind eye to environmental offences being committed by their corporations.

So far the Minister has been unable to provide a single example of a director or manager turning a blind eye to environmental offences. That is because it really does not happen. I cannot for the life of me understand why the Minister and the Government considered it necessary to have deleted this defence provision through this bill. It really does not make any sense. I foreshadow a further amendment to omit that deletion provision from the bill. The only other part of the bill that I want to refer to—

**Mr Milton Orkopoulos:** Is this your last point?

**Mr MICHAEL RICHARDSON:** The bill is a grab-bag of different issues and amends a complex piece of legislation. I am sure the honourable member will understand that it is necessary for me to take some time to explain these issues to the House. I repeat: The only other part of the legislation that I wish to refer to relates to the proposal to increase the length of time between State of the Environment reports from three to four years. Green groups do not support this amendment, which would see the next State of the Environment report published on or about 1 October 2007. They say that environmental reporting should be linked to the electoral cycle, with State of the Environment reports being provided in the first 12 months after an election and in the last 12 months before an election. That, of course, would mean that State of the Environment reports would be prepared every two years.

Personally, I agree with the Government on this issue. I think two-yearly reporting is too frequent, so the Coalition will not support any amendments to the Government's proposal in this regard. I repeat that the bill is like the curate's egg: it is good in parts. There are certainly good aspects of the legislation, and we support them. But we will reserve our position on the bill until we know the Government's response to our amendments.

**Ms VIRGINIA JUDGE** (Strathfield) [11.20 a.m.]: It is wonderful to see young people and their teachers from Homebush Public School in the gallery. The bill details ways of improving the quality of the environment so that each and every one of them can grow up in, and experience, an environment with clean air and clean water. Nothing is more important than our environment but, sadly, it is often taken for granted. Our

environmental resources are treated as infinite, but they are irreplaceable. Often I am overwhelmed when I see photographs of our beautiful planet taken by people who are investigating outer space. But when we look further out into space we realise how unique our universe is and what a gift it is to each and every one of us. The environment should never be taken for granted.

Some time ago I read that Australia is one of the most resource-hungry nations in the world. Globally we are rated fourth for energy consumption—each Australian needs 7.2 hectares to sustain his or her current lifestyle. People in underdeveloped or developing nations need a much smaller area. We have a huge responsibility to protect our environment. The young people in the gallery are our future: the future is in their hands. We are trying to establish a framework to enable them to carry on. One day they might be leaders in their community and, hopefully, they will do whatever they can to protect the environment.

The bill amends a variety of Acts. I do not know whether honourable members remember the history of the introduction of pollution control measures. In 1997 the Labor Government introduced the Protection of the Environment Operations Bill, to replace overlapping and sometimes confusing legislation, some of which went back as far as the 1960s. The 1997 legislation was a revolutionary attempt to achieve a holistic and sustainable approach to protecting our wonderful and finite environmental resources. The Government believed then, as it does now, that every human being has the right to breathe clean air and to be protected from the adverse effects of the environment. The Minister for the Environment and his hardworking staff have put a lot of effort into formulating and introducing the bill. The honourable member for The Hills endorsed the Government's broad community consultation before the bill was introduced in draft form. I know that in 1997 environmental groups, councils and stakeholders were encouraged to be part of the process, to be intimately involved, and to have input before the bill was introduced, to ensure that all bases were covered.

My contribution will focus on the polluting effects of wood smoke. As the young people in the gallery would know, when wood burns it generates smoke, which sends lots of little particles into the atmosphere. Epidemiological studies show that those little particles can cause respiratory disease, such as asthma. It is important to try to limit the effect of burning wood in enclosed fires or in home fires to maintain our clean, fresh air. The bill provides a new tool to prevent the polluting effects of wood smoke and the distress it causes our neighbours and us.

Wood smoke is a problem in urban areas, such as my electorate of Strathfield, and in many country towns in rural Australia. A recent survey of council officers in both regional and metropolitan areas rated domestic solid fuel heating as a top air-quality management issue. Statistics have shown that about 31 per cent of homes in regional New South Wales use domestic wood heaters, which I found quite surprising. I did not think the number would be so high. In Sydney, Newcastle and Wollongong, wood heater ownership is approximately 13 per cent. I do not know whether any of the young people in the gallery have a wood fire at home—perhaps not in the Homebush West area. Pollution from wood heaters is a problem that affects a diverse range of communities, not just in the city but also in regional New South Wales.

The new wood smoke offence can be utilised to limit wood heater-based pollution across the whole of the State. Wood heaters are a particularly popular form of heating in colder areas, such as the Blue Mountains, where the Minister lives. It can get frosty and chilly in those beautiful areas. The bill is broad based. The introduction of the wood smoke offence is the result of a pilot Wood Smoke Reduction Program that was run by the Environment Protection Authority with some regional councils between 2002 and 2004.

During the life of the program cleaner forms of heating replaced more than 2,000 older style polluting wood heaters, which resulted in an estimated reduction of 61 tonnes of fine particles from wood smoke annually across the townships involved in the program. In addition, regional councils were granted \$1.5 million to undertake community education on the health impacts of wood smoke and the benefits of correct wood heater operation.

Councils also carried out smoky chimney patrols, which involved local council officers providing information on correct wood heater operation to householders with excessively smoky chimneys. That is a proactive approach: working with the community to increase its awareness. If excessive smoke continued to be observed, a follow-up letter was issued, and in serious cases a prevention notice was given under the Protection of the Environment Operations Act. Over the three years during which the program was in operation brochures were delivered to 1,185 households, with only 127 follow-up warning letters and two regulatory notices issued. These statistics demonstrate the effectiveness of providing information in combating wood smoke problems. However, they also show that some households need more formal advice, such as a letter, and a small proportion require a regulatory instrument to motivate improved behaviour.

The proposed offence is not intended to stop the use of domestic wood heaters, which are an important source of heating in regional New South Wales. However, it is intended to stop the increased incidence of these heaters causing excessive smoke. For example, excessive smoke can be caused by using the wrong type of fuel or turning down the air supply too soon. The introduction of this offence will be complemented by an education campaign designed to educate households on the proper use of wood heaters. The proposed new offence will empower council officers to issue smoke abatement notices if they notice excessive smoke coming from domestic chimneys.

These matters are tailored specifically to deal with excessive smoke from domestic wood heaters. The offence is designed to be effective at the time air pollution from wood smoke is at its peak, which is during the winter months. It achieves this through providing that smoke abatement notices [SANs] cease to have effect after six months. In other words, a SAN lasts for only one heating season. It also allows individuals a 21-day period of grace to fix any potential problems with their wood heater. It is only after this period has expired that an offence can be committed. They will have a little time to try to get it right.

Another key mechanism that the Government is using to control the emission of air pollutants, particularly from industrial sources, is the Protection of the Environment (Clean Air) Regulation that commenced on 1 September 2005. That regulation replaces earlier regulations and was developed following extensive stakeholder consultation. The regulation specifies new industrial emission standards for major air pollutants and requires more stringent air pollution standards for future industry as well as for equipment that undergoes major modification. The effect of some weather conditions on air pollutants has resulted in the Government's continuing concern about photochemical smog and brown haze in urban areas. We all hate that, and it was so beautiful today to travel into Parliament House today and notice such clean air, a blue sky and a smoke-free environment.

Photochemical smog is primarily caused by vehicle emissions, and brown haze is caused by wood heater and diesel car emissions. The challenge for the Government is to ensure that important gains that have been made over the past two decades as a result of the introduction of the Protection of the Environment Operations Act, which revolutionised the way we did things, are maintained. The Government will not rest on its laurels but will remain ever vigilant in its pursuit of a clean and pure environment while accommodating growth in population and economic activity. There is a continuous stream of people into New South Wales, people who want to live in this wonderful State. That is great, but we need to make sure that we have a properly maintained environment for sustainable population expansion.

The Government's initiatives to address air pollution are supported by the growing body of health studies that demonstrate the impact of air pollution on human health, particularly respiratory and cardiac impacts. The New South Wales Government is tackling the air-quality issue in a variety of ways. A tangible way in which it has done so has been the introduction of the Protection of the Environment Operations Amendment Bill. Air quality is improving and we all hope that the regulatory measures provided in the bill will result in continuous improvement in air quality. I am sure that the wonderful young students in the gallery from the Homebush Public School will do whatever they can to assist when they see something that is happening in their neighbourhood or their community that they think may breach the legislation. They may even wish to obtain a copy of the bill and have a chat about it when they return to school.

I know that young people love the environment and they love to do whatever they can to help to improve the environment's air quality and water quality by recycling and other measures. That is great because each and every one of us is part of the solution. We can all make a tangible contribution to preserving this wonderful environment that has been given freely to us. I commend the Minister, his staff and the department for the presentation of this bill. It is great that this Labor Government is doing everything possible to make sure that this State has the best air and water quality in this great nation of ours.

**Mr ANTHONY ROBERTS** (Lane Cove) [11.33 a.m.]: I commend members on both sides of the House who have contributed to debate on the Protection of the Environment Operations Amendment Bill. I particularly pay tribute to the shadow Minister for the Environment who does an absolutely tremendous job in this House and for his electorate. The bill makes a number of changes to the Protection of the Environment Operations Act following its first five years in operation. The key provisions of this bill will strengthen the waste regulatory framework and will protect land and landholders through the creation of new offences and by clarifying the definition of "waste".

The bill increases penalties for serious offences in line with comparable legislation. It will also repeal section 169 (1) (a), which is known as the no-knowledge defence for tier one offences, and expand alternatives

to sentencing in civil enforcement, including enabling the Environment Protection Authority to accept voluntary enforceable undertakings. The bill also provides for the encouragement of sustainable development through the introduction of green offset measures as licence conditions and for the improvement in existing notice powers, especially with respect to odours. The legislation will also give authorised officers the power to turn off car and house alarms that are sounding in breach of the regulations and will introduce smoke abatement notices for excessive smoke emitted from country and city residential premises. The bill also will extend the time frame for preparing the State of the Environment report from three years to four years.

The bill improves the Act in several material ways. I notice that the green offset scheme is strongly supported by the mining industry. It is good to note that the Act differentiates between the wilful and negligent commission of protection of the environment tier one offences. The bill also provides that the supply of waste that causes material harm—for example, when contaminated fill or toxic waste is supplied to a farmer—may be the subject of prosecution, thereby helping to reduce the amount of contaminated waste that is being dumped as clean fill. However, I have a number of difficulties with this bill. I notice that every business group opposes the increased fines.

The maximum fine for a tier one offence has been increased from \$1 million to \$5 million for a corporation, and for a tier two offence the fine has been increased from \$250,000 to \$1 million. The maximum penalty for adjusting an antipollution device on a motor vehicle has risen from \$250,000 to \$1 million for a corporation and from \$120,000 to \$250,000 for an individual, and similar maximum penalties apply to selling a motor vehicle that emits excessive air impurities or has not been fitted with antipollution devices. Similar increases have been put in place for water pollution offences and for failure to pay the waste levy.

The maximum penalty for selling a motor vehicle that emits excessive air impurities will increase from \$120,000 to \$250,000, and a similar penalty will apply to adjusting an antipollution device. The honourable member for Strathfield mentioned an interesting issue to the students from the Homebush Public School with respect to air quality and air pollution, particularly in the Sydney metropolitan area. Among my constituents are a number of fantastic local citizens, including Professor Kearney, who is part of the Lane Cove Tunnel Action Group. The group has been fighting alongside many different organisations within the Sydney metropolitan area to have tunnels fitted with air filters.

Tunnels are producing, directing and concentrating large quantities of noxious and poisonous gases. The Government has not seen sense, despite overwhelming scientific evidence from around the world that particulates emitted from tunnels, particularly the Lane Cove tunnel, cause cancer. They cause asthma and growth defects in young children as well as various forms of leukaemia. Overseas research shows there is a direct relationship between childhood leukaemia and how close people live to a motorway. There are ways of improving air quality in Sydney, especially by filtering tunnels, just as the Norwegians, the Japanese and people in many other countries throughout the world do. Unfortunately, the State Government, despite overwhelming scientific evidence, adopts a flat earth mentality and has refused to install air filtration.

Prior to the most recent Federal election the outstanding and hardworking Federal parliamentary representative of my area, Joe Hockey, and the Minister for the Environment and Heritage, Ian Campbell, pledged \$10 million toward meeting the cost of filtration for the Lane Cove tunnel. That is evidence of a Federal Government that is concerned about people who live near motorways and tunnels and who will be hit hardest by particulates emanating from tunnels that are without air filtration. The maximum fine for a tier one offence of \$1 million has been applied only once in relation to a caravan park at Karuah that for more than two years had deliberately diverted sewage and consistently concealed its pollution. For tier two offences courts have historically imposed fines which averaged approximately 10 per cent of the available maximum. As stated by the honourable member for The Hills, it seems that waste services seem to have some sort of special exemption from being held accountable for offences that could only be described as criminal rather than negligent.

Section 169 (1) (a) of the Protection of the Environment Operations Act provides a no-knowledge defence for a director or manager of a corporation for a tier one offence, the worst possible offence. The section states in part " ... the corporation contravened the provision without the knowledge actual, imputed or constructive of the person". In 1989 that defence was expressly incorporated by the Greiner Government when it introduced the original legislation. The Minister said that the defence "would send a very poor signal to industry and would encourage deliberate avoidance of management responsibility by those who have the authority to ensure that risks are minimised". With all due respect, the Minister's comments show a lack of understanding of how business works.



I turn now to smoke abatement notices, which are an absolute nonsense. Any member of this House who has been involved with local government would know that if council officers start chasing people who water their gardens on the wrong days more regulatory officers will be needed. Again, that would be more cost shifting to local government as we face the huge financial disaster that is overwhelming New South Wales. The money is not there: it is gone, through inaction and bad management. Further cost shifting involves rangers prowling about looking for smoking chimneys. As I said last night, at least the Government is imaginative in working out new ways to fleece the ratepayers and taxpayers in New South Wales and in cost shifting. I hate to raise the possibility of further cost shifting because the Government is likely to announce it next week. The only tax we do not currently have in New South Wales is a window tax, a matter I recently spoke about with the honourable member for Baulkham Hills. The Government will probably introduce that next week.

**Mr Wayne Merton:** Absolutely, the mirror tax.

**Mr ANTHONY ROBERTS:** Yes, the mirror tax. The Government would hit us heavily with a mirror tax, because it is continually looking into everything. The Combined Industry Group submission on the review of the Protection of the Environment Operations Act 1997 included a number of issues that need to be addressed. One is the removal of the no-knowledge defence. The submission states:

To remove the "no knowledge" defence will create a situation where a director or manager may be convicted of a serious criminal offence when they could not know of the contravention of the corporation.

The submission states that the penalties imposed should fit the crime. The submission further states:

... there is no justification for a fivefold increase in penalties. The proposed gaol penalties for negligently committing a Tier One offence are the same as those for a wilful Tier One breach.

That is another significant issue that needs to be addressed. The current no-knowledge defence is covered in section 169 of the Act, which requires directors and management to undertake reasonable inquiries to fully understand the operation of the business so that they may comply with the Act. There is no reason in law or policy why individuals who have undertaken reasonable inquiries should be subject to derivative criminal liability and punished when that person could not have known about the circumstances of the contravention. The submission states that the current provision requires directors and managers to be fully informed. The submission states that that suggestion was based on a misunderstanding of the defence. In that regard it states:

The current "no knowledge" defence under consideration is only established where the accused establishes (on the balance of probabilities) that the person did not have actual, imputed or constructive knowledge of the contravention ...

The three levels of knowledge that must be negated by an accused before the defence is successfully raised can be described in the following fashion:

- a) *Actual* knowledge—which is the knowledge of the party concerned
- b) *Imputed* knowledge—the knowledge that an agent or employee received or should have received had they made inquiries. That knowledge is imputed to the director/manager
- c) *Constructive* knowledge—a person has constructive knowledge of all matters of which he or she would have received notice if the person had made investigations that you would expect the person to make in those circumstances

That is summarised in the submission, which states:

Consequently, this provision does not allow directors or managers to avoid knowledge and liability of the circumstances of the contravention by sticking their "head in the sand". In fact, it imposes a high standard for those that direct a corporation's activity to know how the Corporation operates.

In the past five years no director or manager has escaped liability by successfully raising any of the defences found in section 169 (1) of the Act. Therefore, it can hardly be suggested that failure to amend the provisions has allowed a director or a manager to escape liability. Under the Act the proposed penalty for an individual is up to \$1 million and/or seven years gaol for a tier one offence, and up to \$250,000 for a tier two offence. The maximum penalties available against directors/managers for breaches of the Occupational Health and Safety Act are a maximum penalty of \$55,000 with no gaol sentence for a first offence. The submission makes a good point when it states:

It is unfair and unconscionable to expose a director/manager to criminal liability and substantial penalties for another person's contravention where that person did not know and could not have found out with reasonable inquiries. In our view, such liability should only be imposed where the director/manager either knew of or should have known of the contravention.

As the shadow Minister, the honourable member for The Hills, stated, this is yet another bill that puts further imposts on the people and businesses of New South Wales. Undoubtedly that is why we saw the 24 per cent swing against the Australian Labor Party [ALP] primary vote in Curran, 17 per cent in Glenfield East, 15.1 per cent in Ingleburn, 15.15 per cent in Ingleburn High—

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! The honourable member for Lane Cove will return to the leave of the bill. Even if he does so only tangentially, that would help.

**Mr ANTHONY ROBERTS:** As the people of The Grange voted 20 per cent against the ALP—

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! I call the honourable member for Lane Cove to order. If he wants to test my patience and cavil with my ruling he will find himself on more than one call to order.

**Mr ANTHONY ROBERTS:** I am trying to draw to the attention of the House to the fact that with these sorts of bills, the people of New South Wales—

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! I call the honourable member for Lane Cove to order for the second time.

**Mr ANTHONY ROBERTS:** I move on to the smoke abatement notices, which are an absolute nonsense.

**Ms Linda Burney:** An eminently sensible idea. Where there's smoke there's fire.

**Mr ANTHONY ROBERTS:** It was worth it. The legislation provides for council officers to issue smoke abatement notices when a visible plume of smoke emanates from a home for 10 minutes, including a period of 30 seconds during which it must extend at least 10 metres from the chimney. That is ridiculous. A failure to comply with a smoke abatement notice will attract a \$3,300 fine. I have a lot of family and friends who have homes in the bush with wood heaters and wood stoves. They are facing the threat of officious bureaucrats and hefty fines if this legislation goes ahead. The Leader of The Nationals, Andrew Stoner, has stated:

You can't go fishing without red tape and taxes; you can't ride your horse or drive your 4WD in the bush; you can't have a septic tank; you can't burn off; you can't fell a tree; you can't shoot foxes or other vermin; and now it seems you can't light your wood fire or stove without Labor's bureaucrats sticking their noses into your life.

That is an excellent quote from the hardworking Leader of The Nationals. Once again, I have a number of concerns about this section of the bill. I know that amendments are to be moved in both Houses to retain section 169 (1) (a) and to delete the sections relating to smoke abatement notices. I find it absolutely ridiculous that on the one hand someone in Woodstock, near Cowra, who lights a wood stove that gives off a 10-metre plume for more than 30 seconds can be fined \$3,300. Yet, on the other hand, the State Government continues to ignore the calls from people all over Sydney to filter its tunnels to provide clean air. That is gross hypocrisy. If anyone should be condemned for pollution it is the State Government, because it is about time the tunnels in metropolitan Sydney were filtered.

**Ms LINDA BURNEY** (Canterbury—Parliamentary Secretary) [11.48 a.m.]: Honourable members would be pleased to know that my contribution will take between five and seven minutes.

**Mr Gerard Martin:** And it will make more sense.

**Ms LINDA BURNEY:** Yes, it will make more sense. Members on the other side of the House should realise that we live on a globe. The world is no longer flat and we have moved on from the sorts of things referred to in the delusional speeches that we have heard from members of the Opposition. I am sure the Minister will respond to the points that were raised by the honourable member for The Hills. Earlier I used the word "delusional" deliberately because the honourable member for The Hills said that the environment had fared wonderfully well under the Greiner Government, which is a delusion. As a member of the Government I am genuinely proud of the work that has been done for the environment by the Labor Government. It is proper to acknowledge the work of Minister Debus and Minister Knowles over the past few years. There has been an enormous reshaping of the environment and a reorganisation of natural resource management in New South Wales.

Many issues have been taken back to a local and regional level through the involvement of local government, the establishment of the catchment management regime, the establishment of many new national parks and the joint management arrangements with indigenous people across a number of those parks, which has made it possible for the community to play a much larger role in looking after our environment. Other provisions in this bill will assist in balancing the socioeconomic needs of rural communities with natural resource management. That is a challenge for any government. The honourable member for The Hills spoke as though Government members did not understand that.

One aspect of this bill that I want to address is the green offsets element, which goes to the heart of balancing socioeconomic needs with the natural health of the environment. The Government is very aware of these issues. The Government has a long-term view in relation to sustainable development issues. As such, it takes a sensible approach to the economy and to balancing those needs with the environment. The New South Wales Government is a leader in applying innovative economic tools to address complex environmental issues. The Protection of the Environment Operations Amendment Bill already contains several financial and economic instruments that complement its regulatory schemes and assist in achieving cost-effective environmental protection. An additional instrument of green offset schemes has been developed and piloted by the Environment Protection Authority [EPA], which is to be given stronger legal status.

The bill takes that one step further. The Government expects green offset schemes to become a valuable part of the sustainable development tool kit in New South Wales. A green offset scheme will ensure that there is a net environmental improvement as a result of development. We cannot pretend there is one without the other. Any additional environmental impact that is generated by development is offset by action taken off site that reduces the greater amount of environmental impact so the effect of the development is positive. Under the proposed amendments green offset schemes and works will be implemented by licence conditions and regulations. Opposition members should note that green offset licence conditions will not be imposed under the Act unless the EPA is satisfied that pollutants or impacts of the activity may not be otherwise prevented in a cost-effective way by other measures under the licence.

The proposed green offset scheme is likely to have a beneficial effect on the environment. The costs and benefits of the green offset scheme can be reliably estimated and the proposed scheme is located in the area affected by pollutants. These checks and balances will ensure that green offsets are not used as a substitute for proper pollution prevention works at the licensed site—the most important aspect of my contribution. Green offset schemes can often achieve environmental improvements at a lower cost than regulation alone. They enable resources to be used where they can achieve the greatest environmental improvement. It is the way forward. It is not unusual to have in place these sorts of arrangements. I assume Opposition members would be most upset if a green offset scheme were not built into this legislation.

**Mr PETER DEBNAM** (Vaucluse—Leader of the Opposition) [11.55 a.m.]: I want to make a few brief comments in the debate on this important bill, in respect of which Opposition members believe the Government is mishandling the matter. The shadow Minister, the honourable member for The Hills, made a number of points that I want to reinforce. In 1989 Tim Moore introduced the Environmental Offences and Penalties Bill. Clearly, it was an important start for this legislation. I will quote a few of the statements that were made by the Minister for Environment, and Assistant Minister for Transport, Tim Moore, in his second reading speech:

We operate in a climate where large sections of responsible industry are willing to spend substantial sums of money in rehabilitation and restoration to overcome the inadequate industrial hygiene and industrial housekeeping standards that have existed in industry over previous generations.

At that point he was saying we needed to take a quantum leap in how we handled environmental issues and offences. He went on to state:

This bill is not aimed at those who are acting responsibly to address the problems of the past and to prevent problems in the future. This bill is aimed at those persons who breach, either knowingly or recklessly indifferently, what the community accepts to be the desirable and necessary standards of environmental protection in New South Wales.

Later he said:

It is time that those who from occasion to occasion operate at the sleazy end of the environmental market-place were dealt with a vigour not previously available under the laws of this State. The legal inheritance that the Greiner Government was passed by the Leader of the Opposition—

who was then Bob Carr—

from his tenure as Minister responsible for the major environmental protection statutes of this State is a miserable one.

He also said:

The imperative at the present time... is to address those who are operating at the unacceptable end of the environmental spectrum.

That was a point he had made before. He then said:

I make it abundantly clear, to return to my original theme, that it is not the desire of the Government to deal harshly with those companies in their operations that are seeking to do the right thing by the environment.

Later he said:

As I understand it, this is the first time that such a broad range of environmental protection measures, and in some areas radical legal measures, is being brought together in one Act to protect the environment.

The bill is another opportunity to take a bipartisan approach to the environment. Opposition members implore the Government to reconsider two provisions. The shadow Minister raised concerns about smoke abatement notices. Clearly it is ridiculous to apply those provisions across rural and regional areas. We referred also to the no-knowledge defence and to amending section 169 of the principal Act. These amendments will remove the no-knowledge defence. The Government introduced a provision that seems appropriate and that should remain. We do not regard the removal of that provision as a good step forward.

The Coalition has always viewed this legislation as critical. We took a major step forward in 1989. The Government is getting it wrong with those two provisions and we ask it to reconsider them. The shadow Minister foreshadowed that the Opposition will seek to amend the bill to remove those two provisions. We simply say to the Minister that this is an opportunity to reconsider the legislation. We would like to work with the Minister to ensure an improvement to environmental legislation in New South Wales. We had a great start in 1989 with Tim Moore; we would like to have a bipartisan approach taken to this legislation. For all the reasons discussed in detail by the shadow Minister, those two provisions are clearly inappropriate. We ask the Minister to reconsider them.

**Mr PAUL PEARCE** (Coogee) [11.59 a.m.]: I listened with interest to the comments by the Leader of the Opposition about the legislation that former Minister for the Environment Tim Moore introduced in 1989. I concede that that legislation had some important features and recognised that the business community and the corporate sector have responsibilities in the area of environmental performance. However, we cannot ignore the fact that the legislation ultimately failed. It was a failure because, on the one hand, it set strict standards—it introduced the classic command and control framework—but, on the other hand, it underfunded the relevant agencies. Rather than taking a broad environmental approach, the legislation focused on the bad boys, or the sleazy operators, as the Leader of the Opposition accurately described them.

If there is an impact on the environment it does not matter whether the operator concerned is sleazy or respectable—I use those words advisedly. It is a false dichotomy. The issue is the environmental impact. Therefore, the personal responsibility elements of the command and control aspects in the Protection of the Environment Operations Act, which succeeded Tim Moore's legislation, must be maintained. They encouraged the due diligence audit, which is enhanced by the green offsets recommended in the Protection of the Environment Operations Amendment Bill. It contains enhanced penalties for failing to respect those environmental responsibilities.

I shall speak about two aspects of this complex bill, which makes a number of significant changes to the base legislation. I will address the issues of waste and fines and penalties. The inappropriate reuse, disposal and labelling of waste has emerged as a particular problem in Western Sydney. For example, in 2003 the Environment Protection Authority [EPA] received reports from local residents of foul odours emanating from a farming property. Investigations revealed that a farmer was receiving what he thought was fertiliser from a waste company. In fact, the so-called fertiliser contained chemicals such as petroleum and heavy metals in unacceptable levels that exceeded the EPA guidelines. The application of toxic waste to land in this manner risks harm to agriculture, the environment and human health.

The EPA has also investigated numerous other cases of substances being disposed of in Western Sydney that could cause environmental harm, such as asbestos-contaminated fill. In some cases the EPA has identified the misclassification of waste, which could result in the incorrect handling, storage and use of such waste. In one case a prosecution was discontinued against a person who classified drums of hazardous material

for disposal in Western Sydney as containing a less harmful type of solid waste because there was doubt about the ability to prove the classification of waste and whether the landfill could lawfully accept the waste.

In essence, this bill does three things in relation to waste to address problems such as those that I have outlined. First, the bill will stamp out a current practice of waste being inappropriately and harmfully reused or recycled as landfill, fertiliser or fuel. Secondly, the bill creates a strong deterrent to land pollution by including a new strict liability offence in relation to land pollution. Item 154 of schedule 1 defines "land pollution" as follows:

... *land pollution* or *pollution of land* means placing in or on, or otherwise introducing into or onto, the land ... any matter, whether solid, liquid or gaseous:

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage that is not trivial, or
- (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

The bill creates a strong deterrent by introducing a new strict offence in relation to land pollution. New section 142A outlines the following substantial penalties:

... in the case of a corporation—\$1,000,000, and in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or ... in the case of an individual—\$250,000, and in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

Thirdly, the bill introduces a tough new offence for providing false or misleading information about waste. New section 144AA of the bill refers to the giving of false or misleading information about waste, and states:

A person who supplies information, or causes or permits information to be supplied, that is false or misleading in a material respect about waste to another person in the course of dealing with the waste is guilty of an offence.

Substantial penalties apply for such an offence: \$250,000 in the case of a corporation and \$120,000 in the case of an individual. A defence is listed in new section 144AA (2). The New South Wales Government's policies on sustainability include encouraging the beneficial use of waste rather than simply disposing of it. However, this is appropriate only when the waste materials can be safely reused or recycled and when such use would not cause harm to agriculture, the environment and human health. The cost of treating or disposing of waste properly can provide an incentive to use the waste inappropriately as fuel, fill or fertiliser.

The new definition of waste in the bill will allow the EPA to prescribe the circumstances in which a waste that is recycled or reused as fuel, fill or fertiliser will remain a waste for the purposes of the Act. This complements the new residue waste regulation made under the Protection of the Environment Operations Act, which specifically prohibits the application of certain toxic industrial by-products to land used for the purpose of growing plants. This also supports efforts being made at the national level, where the Environment Protection and Heritage Council has resolved to develop a framework on the reuse and recycling of industrial wastes, focusing on their application as landfill.

I now turn briefly to the fines and penalties in the bill. The honourable member for Lane Cove discussed a number of these and, I believe, was a little misguided in his comments. The bill also proposes to increase the maximum amount that individuals and corporations can be fined for breaches of environmental laws. Environmental offences can have serious impacts on the community, and this should be reflected in the penalties that a court can impose for such offences. The amendments will increase the maximum amount that a court can impose for the most serious category of environmental offences—that is, tier one offences. This will apply to both corporations and individuals who commit these offences. A distinction will be made to recognise that acts of wilfulness, where deliberate intent is involved, are different from acts of negligence. The new maximum fines reflect this. When a corporation acts wilfully in a way that breaks these laws it will face a maximum penalty of up to \$5 million. If an individual commits a wilful act contrary to environmental law he or she will face a maximum fine of up to \$1 million. If a company acts negligently the courts can impose a maximum penalty of \$2 million. For individuals who act in a similar manner, the proposed maximum fine is \$500,000.

The EPA has a very strong record in the robust and consistent enforcement of this State's environmental laws. This is shown by the high fines that the courts have imposed. For example, in 1997 an individual was fined \$250,000 and gaoled for 12 months for wilfully disposing of waste in a manner likely to harm the environment. This case clearly shows the commitment of the EPA to investigate and enforce serious environmental crimes. The offender owned and operated a caravan park near Port Stephens on the New South Wales coast. For about three years he pumped untreated human effluent into the Karuah River. Then, when he sold the business, he attempted to conceal from the new owners the illicit disposal system he had set up. The action of pumping untreated effluent into the river posed a grave health risk for the local community. Viral contamination was still evident in the river six months after the offence stopped.

Large fines for environmental offences have also been imposed on corporations. In 2003 Warringah Golf Club was fined \$250,000 for contributing to a substance escaping in a manner that harmed the environment. In February 2001 hundreds of fish were found dead in the Manly Lagoon. Upon investigation the cause was found to be a pesticide being washed into a stormwater drain at the golf club by one of its employees. Approximately one teaspoon of the pesticide in an Olympic-size swimming pool is enough to kill aquatic life in a matter of hours.

A continuing signal needs to be sent to deter potential environmental offenders and keep pace with community expectations. The proposed increase in maximum fines is important to keep New South Wales penalties comparable with those in other States' environmental laws. For serious environmental crimes the New South Wales Marine Pollution Act has a maximum penalty of \$10 million. South Australia recently increased the maximum penalty for serious environmental crimes to \$2 million. These maximum penalties recognise the severe impact environmental crimes can have. In the case of the individual I mentioned earlier, 130,000 litres of untreated human effluent was being pumped into the river on a daily basis. Nearby in the river several commercial oyster farms were in operation. In the Warringah Golf Club case more than four tonnes of dead fish, ducks and geese were recovered from Manly Lagoon.

The imposition of fines is also accompanied by the use of alternative sentencing options for the court. An example of how these orders can be used is a publication order. The purpose of the publication order is to take away the public invisibility of corporate wrongdoing—the naming and shaming, if one likes. Publication orders have a high degree of flexibility and can be tailored to fit the circumstances of a much wider range of contraventions. In the case of *Environment Protection Authority v Steepleton Pty Ltd*, the corporation was ordered to cause notice of its conviction to be published in the *Newcastle Herald* and the *Waste Management and Environment* magazine. An individual living near Maitland had asked Steepleton, a local demolition company, to transport material to his premises to build a mound. The premises were not licensed as a waste facility, so Steepleton committed an offence by transporting and dumping the material.

Another example of an alternative sentencing order is the environmental service order. This order has been used where a meat processing company operating an abattoir near Wagga Wagga was the subject of numerous odour complaints. The court ordered that the company establish a tree planting project to the value of \$32,000 on land donated by it to the community. A purpose of environmental service orders is to benefit the community impacted upon by the offence, whose trust has been broken. This alternative sentencing option recognises direct measures to fix problems at their source or to prevent the problem reoccurring as an important adjunct to a fine which penalises a breach of the law.

A fine is not always the best mechanism for dealing with breaches of environmental laws. The above examples show how useful a range of options for the court can be. The proposed amendments expand these options to include orders such as financial assurances. This wider range of options allows courts to tailor penalties to achieve the most effective outcomes in individual matters. The comments of the honourable member for Lane Cove referred to changes to section 169 of the Act. The bill amends provisions relating to tier one offences under the Act, introducing a new distinction between penalties for wilful and negligent commission of those offences. The law remains unchanged in that such offences must harm the environment or be likely to harm the environment in order to be offences under the Act. Proposed sections 142B, 142C, 142D and 142E provide defences. It should be noted that these defences relate to the act of polluting itself rather than the knowledge or intention of the accused.

As regards offences by corporations, a new subsection (5) will be added to section 169 of the Act to provide that the state of mind of a person includes the knowledge, intention, opinion, belief or purposes of the person, and the person's reasons for the intention, opinion, belief or purpose. This amendment to section 169 of the Act does nothing to detract from the importance of due diligence in section 169 (1). The so-called "due diligence" defence remains. I commend the bill to the House.

**Mr ANDREW FRASER** (Coffs Harbour) [12.14 p.m.]: When the Protection of the Environment Administration Bill was introduced by the Hon. Tim Moore I supported it but foreshadowed that I would move 52 amendments because I thought it was somewhat restrictive on business and probably had more a big stick approach than a carrot-and-stick approach. Today, in a similar vein, I suggest to the Minister that he talk to business and local government about the way this legislation has operated since its introduction in 1991, and in 1997 when the honourable member for Wentworthville was Minister.

I will refer to two examples in my electorate in the past couple of years which demonstrate the total unfairness of the reporting of pollution process, and I know that there have been other instances. At one stage Bellingen council had a spillage at its landfill site at the local tip and, as required under the Act, reported it to the Environment Protection Authority [EPA], cleaned up the spill and did everything it could to remediate and minimise any adverse effects on the environment. The EPA gladly accepted the self-reporting by Bellingen council but at the end of the day fined it a large amount of money, well over \$20,000 from memory. Similarly, the Raleigh Norco Co-operative factory—a great co-operative operated by locals to process local milk and water—had a spill in the local river. I am sure no-one would have known about the spill except, under the reporting provisions of existing legislation, the co-operative reported it to the EPA, advised it of the remediation actions and clean-up it had undertaken, and once again was fined.

The legislation provides for a huge increase in fines from \$250,000 to \$1 million for a corporation. It is hard to accept that rather than that sort of money going into government coffers by way of fines it could not be utilised by firms on remediation or to prevent any further accidents. Those two cases showed genuine actions by the owners. I am the first to admit that there are many unscrupulous people, for example, a person who dumps a car body over a waterfall into a national park or a State forest and/or public land. Recently I worked on a local car rally, and I thank the Minister for allowing the cars to use a national park road. Not far from the road, some mongrel—that is the only way I can describe that person—had dumped a truckful of building waste and rubbish.

I am not sure whether it was in a State forest or a national park because they border one another. As far as I am concerned people who do such a thing should have the full force of the law thrown at them. They should be fined and made to clean it up, and a public example should be made of them. However, firms, farmers or anyone else who accidentally pollute but take immediate voluntary action to clean up at their own cost should not be the subject of a fine of \$1 million as outlined in this legislation.

I listened with interest to the honourable member for Coogee, who spoke about heavy metals being applied as fertiliser on farming properties. For a number of years Sydney Water, which I think looks after value-adding sewage effluent, has been pelleting treated effluent and selling it to farmers. I know for a fact that a number of years ago, in a couple of areas in the Goulburn district, farmers who were using this by-product on their properties—under licence to the Environmental Planning and Assessment Act but also Sydney Water—were told that because it contained heavy metals they would be allowed one application in so many years.

So this was in essence a licence to pollute; they were using a by-product of treated Sydney sewage to pollute their own lands. I use the word "pollute" because there was some question as to the concentration of heavy metal in the ground if the pellets continued to be applied over a number of years. The Government should be looking for ways to minimise pollution instead of adopting the big-stick approach it is using in this bill. It should be looking at proper management of appropriate ways to use treated effluent, as was done in the instance I just cited. One of the most distressing provisions of this bill is proposed section 135A, which relates to emission of excessive smoke from domestic chimneys. It provides:

In any proceedings for an offence under this section, a document signed by the authorised officer of an appropriate regulatory authority who issued a smoke abatement notice certifying the officer had, at a specified time and place:

- (a) observed a plume of smoke being emitted from a chimney on or in premises specified in the certificate for a continuous period of not less than 10 minutes, and
- (b) observed during that period a plume of smoke extending at least 10 metres from the point at which the smoke was emitted from the chimney for a period of not less than 30 seconds,

is evidence of the matters so certified, unless the contrary is proved.

People who commit this dastardly offence will face penalties of \$3,300. That conjures up visions of an Environmental Planning and Assessment Act officer in the suburbs of colder places like Coffs Harbour or Dorrigo with a pair of binoculars and a camera, filming smoke plumes to use as evidence of an offence. I said jokingly to some of my colleagues that if this offence were brought in my wife would be guilty and I would

have to mortgage the place to pay the fines. She is a very cold fish, and I think our fire—even though we are only 15 kilometres out of Coffs Harbour itself, at Central Bucca—is lit from April through to October. If the wood is a bit wet—

**Mr Steve Cansdell:** Or green.

**Mr ANDREW FRASER:** —or green, as the honourable member for Clarence says, out of the chimney will come what would be seen as a plume of smoke. On a cold night my wife would burn bricks, if they would burn. You could get a plume from the chimney from a slow-combustion stove. I would love to hear what the people of Armidale and the cold areas of Guyra and along the tablelands or in the Southern Highlands would have to say about overzealous and officious EPA officers sitting in their cars and using binoculars and cameras to record these sorts of offences and fining people \$3,300.

There have been many instances of absolute overregulation in this State, many of which I believe have been introduced to find jobs for the boys in the Labor Party and the union movement. The current occupational health and safety legislation provides absolute evidence of that. The honourable member for Clarence interjects. He could tell us about a farmer in his electorate who was bashing in some star pickets on his own property with a device that was not properly guarded, and was subject to occupational health and safety legislation. This bill proposes completely unnecessary provisions and is totally unfair to the citizens of this State. I do not think any Joe Blow who lights a log fire in the middle of winter would have any intention to pollute. Despite that, this bill gives the Government the opportunity to present evidence in court, subjecting good citizens to the expense of a court case, with a view to fining them under this proposed amendment. That is laughable.

The Minister has been very quiet about the huge fires in national parks, such as the Royal National Park, because of lack of maintenance works undertaken by the National Parks and Wildlife Service. Those fires emit tonnes of smoke and rubbish into the atmosphere due to the poor management of the Labor Government. But do we see any regulatory authority taking action to fine the Government? How many times, on flights from the north coast, have we seen bushfires raging in national parks and the unbelievable quantity of pollution of the atmosphere that they cause? The operation of the principal legislation over the years has resulted in a cleaner Sydney skyline. Gone are the days when planes could not land in Sydney because of the smog and a brown haze that was regularly seen on the horizon.

**Mr Michael Richardson:** It probably has something to do with the quality of petrol.

**Mr ANDREW FRASER:** The honourable member for The Hills mentions the quality of petrol. The Federal Government has taken some positive actions. I am saying this bill is all stick and no carrot. It prohibits people from acting normally and in a manner that is not intended to pollute. Because of the provisions of proposed section 135, many people could be hauled before the court by overzealous officers. For instance a Pitt Street farmer who has no knowledge of the day-to-day operations of a property or business in a distant location could, through accidental pollution, find himself in court and facing fines of up to \$1 million. That could be yet another example of actions by overzealous officers. I suggest the Minister should give careful consideration to the amendments to be proposed by the honourable member for The Hills. Those are sensible amendments, and they would not make the bill any more onerous than I believe it already is. I have already urged members to go back and read *Hansard* of 1991 and the complaints I raised then.

Small businesses like Norco and local government authorities have paid huge penalties, I believe unfairly, especially where they have been proactive following an accidental commission of an offence. To remove the no-knowledge defence to the existing legislation, and to add a provision relating to smoke from domestic fires, makes the existing legislation even more onerous than it is now and has been in the past. It is totally unacceptable. Let us look at positive achievements of the legislation that was introduced by the Coalition Government in 1991. Let us acknowledge those, rather than provide a means to fund the department through the imposition of fines for offences that are completely outside the realms of the principal legislation. The exercise of these measures in the bill by overzealous Environmental Planning and Assessment Act officers could send people broke.

**Mr JOHN MILLS** (Wallsend) [12.27 p.m.]: I am pleased to support the Protection of the Environment Operations Amendment Bill, which was introduced by the Minister for the Environment. I take this opportunity to respond to some remarks made earlier today by the shadow Minister, the honourable member for The Hills. At the time of its delivery I was Acting-Speaker and, of course, exercised considerable restraint and remained silent. I will continue to exercise some restraint now that I am addressing the House. The shadow Minister referred to a case of allegedly dumping materials on land owned by Ron Smith at the northern end of the Hexham swamp.



The honourable member referred to the concerns of some environmentalists in the Hunter when the Hexham swamp rehabilitation project is properly under way and flood gates are opened more than they are now. From the beginning there has been a minor opening of one of those gates. That does not allow anything from the marine environment to enter the wetlands. However, the wetlands have changed over the past 34 years from a marine environment and the biggest prawn and fish nursery on the east coast of New South Wales to an essentially freshwater environment. Some patches of mangroves and some portions of the marine environment survive. When cattle are removed the saltbush regenerates, so the hope that the swamp will rehabilitate is certainly well founded. Development applications for the project have gone to Newcastle council.

The shadow Minister expressed concern that leachates from these materials may spoil the environment when the swamp is inundated by saline water from the river. For his information, Smithy's land was not purchased by the Catchment Management Authority because it is above the level of any inundation from the Hexham swamp rehabilitation project. Therefore, the inundation coming from the project will not impact on the environment, which is what the honourable member for The Hills was concerned about. Progression of the project to re-establish the marine environment and return it to the great fish and prawn nursery that existed in Hexham wetlands—which everyone, especially representatives of the fishing community on the east coast of New South Wales, wants—is not contingent on dealing urgently with the allegedly illegally dumped materials.

**Mr GREG APLIN** (Albury) [12.30 p.m.]: I support the shadow Minister, the honourable member for The Hills, in foreshadowing amendments to the Protection of the Environment Operations Amendment Bill. The section I will concentrate on affects regional areas particularly. I will deal with the schedule that introduces domestic air pollution and provides a new scheme for managing smoke pollution arising from residential premises. The bill will enable an authorised officer of a local authority to issue a smoke abatement notice if it appears to the officer that more than the specified amount of smoke has been emitted from a residence.

What constitutes excessive smoke? The bill states that excessive smoke means the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds where the plume extends at least 10 metres from the point at which the smoke is emitted from a chimney. This provides difficulties in regional areas, not only for the poor administrator who is charged with measuring a particular plume of smoke and deciding that it exceeds 10 metres at any given point of time for more than 30 seconds, but also for residents of New South Wales who utilise fire and coal for heating because they do not have access to gas, unlike so many people in metropolitan areas.

I draw the Minister's attention to the fact not only that it will be difficult to implement this punitive measure, but that variables such as rain and wind will have a great effect on the enactment of such a provision. It is important to note that the scheme is discriminatory not only between city and regional areas where wood and coal heating are much more utilised for heating during the colder months, but also inside and outside a residence, which I find particularly odd. If the aim of the bill is to control smoke pollution—the term used in the bill is "domestic air pollution"—I do not perceive any difference between the emission of smoke from within a residence or from outside a residence.

The bill provides that a chimney is a chimney, flue, pipe or other similar means of conveying smoke emitted from inside residential premises to the outside. We know that some people have barbecues on enclosed verandas that could have chimneys emitting smoke to the outside. One would hope they would not emit smoke to a point 10 metres above the house, but these matters are not captured by the bill.

The chiminea, which is so popular these days, is not captured by the bill. Incinerators are particularly excluded. This section does not apply to a chimney that is in or on an incinerator, or is used only in relation to smoke originating from outside a residence. I find it peculiar that there is discrimination in saying that one type of smoke is possibly worse than the other. The smoke that is deemed to be worse is the smoke that originates from home heating appliances. It could be argued that they are more beneficial to the occupant than the smoke arising from an incinerator outside the premises. It is a difficult issue to police. It is difficult to enforce. It is difficult to measure. I urge the Minister to take on board the amendments foreshadowed by the shadow Minister and to effect an amendment to the bill, which we would support except for the clause mentioned originally by both the shadow Minister and the Leader of the Opposition.

**Mr BOB DEBUS** (Blue Mountains—Attorney General, Minister for the Environment, and Minister for the Arts) [12.35 p.m.], in reply: The amendments to the Protection of the Environment Operations Act proposed in the bill will ensure that New South Wales will remain a world-class leader in environment protection and regulatory innovation. The bill will enable resources to be better focused on the highest-risk activities, such as

minerals, chemical industries and waste disposal, which, if they are not properly regulated and controlled, bring long-term pollution legacies.

The Act has led to the successful prosecution over some years of hundreds of polluters. It has provided a creative set of tools to fix pollution problems faster and more cheaply than previously. Since the Act came into operation more than \$1 billion has been spent by industry on pollution-reduction measures. We now have a streamlined process that industry and the community can understand easily and an unprecedented level of information available to the community. In this context it is not surprising that air and water quality have been improved, because industrial and water pollution problems have been turned around.

We have the cleanest beaches we have had for generations. We have made a lot of progress against major historical problems, such as lead emissions. The bill contains a broad range of measures to provide checks and balances to make the environment legislation stronger than ever. The introduction of a scheme for the independent certification of load-based licensing data will provide further assurance that polluters are paying for the pollution they cause through the proper monitoring of chemicals and the proper calculation of fees.

The ability of the Environment Protection Authority [EPA] to refuse the surrender of a licence when ongoing environmental impacts remain will ensure that the EPA can oversee a proper clean-up of problem sites using the strict controls and licence conditions that will prevent contamination. Expansion of the criteria to assess whether a licence applicant or holder is a fit and proper person will weed out unsuitable operators who try to stay a step ahead of the law. These types of provisions will stop problems before they arise, and will send a stronger deterrent message to rogue operators intent on trying to undercut legitimate operators at the expense of the environment. The ability to require the former holder of a licence to provide financial assurance is a further way of managing the inherent risks associated with some types of activities. Financial assurances have been used effectively to ensure that sufficient funds are available to clean up sites. They bypass problems that often arise if a company goes bust with no money available for the proper clean-up and closure of a site.

I turn now to matters that were raised in debate. I will deal with them more or less in the sequence in which they were raised. The honourable member for The Hills requested clarification about whether green offset schemes within the bill are additional to existing requirements of licences. I can confirm that the bill includes enhanced principles for greenhouse offset schemes and works that now must be acknowledged.

The principles require that the schemes must offset the impact of pollutants from unlicensed activity which cannot otherwise be prevented, controlled, abated or mitigated at the premises by using cost-effective measures; result in a net environmental improvement or, at a minimum, no net impact on the environment; offset the impact of pollutants from a licensed activity for the period that the impact occurs, that is, not the period in which the activity occurs, so this takes into account impact that might remain after an activity ceases; have impacts and benefits which can be estimated reliably; relate to the same type of pollutants as those being emitted from the premises; and offset the impact, wherever possible, in the region affected by the pollutants from the licensed activity. I refer the House also to the remarks made during the debate by the honourable member for Canterbury on the wider question of green offsets as they are promoted by this legislation.

A number of members repeatedly raised concerns about wood heaters, about which the honourable member for Strathfield spoke in some detail. I point out that while community education is an important tool for encouraging householders to improve the operation of solid fuel heaters, we need to supplement education by establishing a clearly defined offence with an appropriate penalty to signal to the community the seriousness of premises emitting excessive smoke. Honourable members who think that excessive smoke from wood heaters is somehow not a problem obviously have never lived in any of the cooler places in the State, such as Cooma, Katoomba, Armidale or Orange, and they have never lived in parts of the State where fuel heaters are in more common use than they are in Sydney.

I assure members opposite that feedback has been received from councils. The honourable member for Clarence would not know about this matter because people in his electorate do not have to resort to wood heaters. Feedback from councils and community groups during public consultation on the protection of the environment operation legislation indicated widespread support for an offence and an on-the-spot fine for the poor operation of solid fuel heaters resulting in the creation of an adverse impact upon air quality. Throughout the review process, wood smoke was referred to by a number of community groups. I should say that in 2003 the pollution line of the Department of Environment and Conservation received 172 complaints about wood smoke and an additional 336 inquiries requesting information on advice about wood smoke and wood heaters.

The results from a pilot study funded by the Environmental Trust Program run by the Hunter region councils showed that more than 86 per cent of 275 houses that were observed to have excessively smoky chimneys fixed the problem after having been given the information about heater operation and the use of seasoned wood. That is very important information. A further 12 per cent of heaters stopped smoking excessively after a warning was given. That is to say, 98 per cent of the households that were part of the pilot project that was funded by the Environmental Trust for the Hunter Region Organisation of Councils fixed the problem when someone told them about it.

If honourable members think it is not a problem to have excessive smoke coming from a wood heater in a neighbouring property, obviously they have not lived in a place that has a cooler climate. The problem can drive a household completely mad. It can induce all manner of illness to have smoke pouring from the house next door into your kitchen.

In the very small percentage of cases in which education did not achieve an improvement, the problem has been fixed with an on-the-spot fine. I point out that the bill bends over backwards to make sure that the situation so luridly described by a many members opposite will not arise. People will not have council or Environment Protection Authority [EPA] inspectors suddenly walking into their house and issuing an on-the-spot fine for an excessively smoky chimney as a result of the bill. To the contrary, the bill lays down a process of education and a process of warning through abatement notices. Only as an ultimate sanction will a fine be issued. I also point out that the fine proposed by the bill is actually lower than the fine already provided for in the council-administered schemes.

For all the carry-on of members opposite, the Government has introduced a measure in direct response to consultation by the Department of Environment and Conservation in the preparation of this bill. It is a response that follows techniques that have already been tested and investigated. Far from being in some sense authoritarian, the bill puts all its emphasis on education, followed by the issuing of an abatement notice. The bill proposes, at the end of that process only, that a fine issued on the spot will be very similar to the type of fine that might be issued in response to a littering offence. I should point out that there is a period of warning before the on-the-spot fine can be imposed. In other words, the objections by members opposite are a complete furphy and fail to reflect the desire of communities in which there is a good deal of solid fuel burning for home heating.

The honourable member for The Hills asked some questions about the provisions of the Act authorising the disabling of an illegally sounding alarm. There are no express powers in the Act at the present time to allow authorised officers to disable an illegally sounding vehicle or building alarm, but councils, the police and the EPA currently are able to issue on-the-spot fines for noisy alarms. The public consultation process associated with this bill identified the need to make some changes. The amendments will provide the EPA and council officers with the power to disable illegally sounding car and building intruder alarms, though search warrants will still be required if officers need to enter a home to turn off an alarm. In practice, it will be necessary for authorised officers to take appropriate experts with them to disable alarms effectively and to re-secure vehicles and premises. In exercising a power to enter premises, an authorised officer is required to do as little damage as is possible. In any event, the normal compensation provisions in the Act will apply.

In commenting on the proposed amendments, one council has advised the Department of Environment and Conservation that it has successfully entered a residence and disabled a continuously ringing alarm pursuant to the existing powers in the Act. I am able to say that because the council informed the department of exactly the action it took under the current provisions of the Act. The intention of the amendment is to clarify the existing power. I will provide an example of how it would work in practice. The council took all reasonable steps to contact the owner, obtained a search warrant, took steps to use only reasonable force by engaging a locksmith to gain entry and an electrician to turn off the alarm, arranged for assistance from police officers, re-secured the property on departure, and provided the owner with the details of the action taken and a copy of the search warrant for perusal upon their return. It is expected that a similar approach will be adopted by other councils using the powers in the new Act, which will be express and clear, to turn off noisy alarms.

Members opposite asked about the land pollution offence provided in the legislation. The land pollution offence applies only when the land pollution causes, or is likely to cause, actual or potential harm to the health and safety of people, or terrestrial life or ecosystems, or potential loss or property damage that is not trivial. This offence is not intended to deal with harm, loss or damage that is of a trivial nature only, and of itself the definition of the offence will ensure that individuals are protected from a significant fine for a trivial offence. A statutory defence will be available also if the land pollution is the result of an activity specifically authorised by an environment protection licence.

In particular, I reiterate that defences also cover lawful agricultural practices. It is a defence if the substance applied to the land was a pesticide and used in accordance with the Pesticides Act. It is a defence if the substance applied to the land was a fertiliser, liming material, or trace element product that can lawfully be sold under the Fertilisers Act. It is also generally a defence if the owner engaged in other key agricultural activities such as the application of manures, biosolids, or agricultural crop wastes. In other words, there is no serious possibility that there can be some form of unfair prosecution under this offence. Nevertheless, it is an appropriate offence that is necessary to prevent people from using a present loophole: to pretend that polluting material is some kind of agricultural or otherwise legitimate substance that might be spread on land.

I turn to increases in fines and penalties, about which the honourable member for Coogee made a well-informed contribution. The Department of Environment and Conservation, of course, uses a range of approaches, including education, incentives, partnerships, and civil enforcement action to protect the environment. During my introduction of this bill I spent a good deal of time talking about the proposed alternative sentencing arrangements. Nevertheless, it is proposed that fines should be increased because prosecutions remain an important part of the Government's regulatory approach. They are self-evidently a significant deterrent to potential environmental offenders.

When the Government's environment protection laws, fines and penalties were first introduced they were the toughest in the country. Recently South Australia passed legislation that enables penalties of up to \$2 million to be imposed for the most serious category of offences. At present, large companies could find it cheaper to pay a fine than to prevent pollution, and that is not acceptable. The Act has two categories of offences. The most serious offences, which involve intention or negligence, are known as tier one offences. It is proposed that the maximum fine for companies that intentionally act in a way that causes environmental harm be raised to \$5 million, and those involving negligence to \$2 million. The maximum fine for individuals will rise from \$250,000 to \$500,000 for negligence, and to \$1 million for wilful offences.

Lesser tier two offences will increase to maximums of \$1 million for corporations and \$250,000 for individuals. If this kind of tough law had been in place 40 years ago we would not be facing today the legacy issues such as those at Orica, in Botany. One leg of the Opposition's apparent argument includes an allegation that somehow or other individuals will be hit with \$1 million fines for minor motor vehicle offences. Frankly, that demonstrates that some members opposite just do not understand the provisions of the Protection of the Environment Operations Act. The Act has a category of offence that has not been referred to in the debate so far—because it has not been changed. That is the tier three offences, which are dealt with by on-the-spot fines.

Tier three offences are defined as tier two offences that are better dealt with by on-the-spot fines of between \$200 and \$500, for a motor vehicle offence for instance. Minor offences involving those that members opposite have mentioned concerning motor vehicles would be dealt with by on-the-spot fines. There is no possibility in practice, and in any event the court system would never allow, for a person who has fitted an illegal device to a car to be given a massive fine under tier one or tier two. The kinds of offences that members opposite raised concerning individuals owning cars with illegal devices would be dealt with under tier three and, therefore, with relatively modest on-the-spot fines.

A person who wants to contest a fine can go to court, but obviously it would be to the Local Court, where the maximum penalty is about \$20,000. All the talk about people being charged with serious offences for relatively trivial actions is silly. The Act is purposely structured to protect individuals who commit minor offences, while allowing the Department of Environment and Conservation the necessary powers it needs to catch serious shonky operators who are committing serious offences. For example, a large car dealer who repeatedly bypasses environmental controls on hundreds of vehicles could be liable for a much larger tier two fine. Someone who had done that would indeed be so liable, as they should be.

I turn briefly to remarks by the honourable member for The Hills and the honourable member for Lane Cove about NSW Waste Services and the Lidcombe Waste Treatment Plant. The honourable members alleged that Waste Services had dumped toxic sludge from its waste treatment plant in 2004, and seemed to suggest that it had not been sufficiently severely dealt with. As a matter of fact, when the Department of Environment and Conservation became aware of a breach, it found that the dump did not involve toxic sludge and did not pose a risk to human health. There was a failure in some disposal activities by Waste Services, but it did not improperly dispose of any sludge that could be called toxic. In any event the Department of Environment and Conservation imposed an appropriate fine of \$5,000, further demonstrating that it is appropriate to have a range of fines available for a range of offences.

**Mr Michael Richardson:** What? For 40,000 tonnes? Crikey!

**Mr BOB DEBUS:** Despite the honourable member's interjection, I point out that the offending material was not toxic. That is pretty important in the circumstances. Finally, I turn to the question of defences for directors. At present three separate defences are available to directors and managers who are charged with an offence committed by a corporation under this Act. The first two defences are that the director exercised due diligence to prevent the offence, or that the director could not influence the conduct complained of. The third defence that is available at present is that the offence occurred without the knowledge of the director. The bill proposes to abolish that third defence. The amendment would merely bring the Protection of the Environment Operations Act into line with the occupational health and safety legislation and the Pesticides Act in New South Wales and current environment protection legislation in Queensland, South Australia, Tasmania and Western Australia.

In other words, if it needs to be spelled out, the Government is not doing anything that is in any way unusual or revolutionary. I would have thought it could fairly be said that since events like those that so shocked us all in, say, the James Hardie case, community attitudes about corporate responsibility have become quite clear. The community expects the directors of corporations to be accountable. One is not accountable if one raises a defence against an offence committed by one's company of saying, "I did not know it happened." Opposition members become agitated when they hear a claim that someone could not have been responsible for an alleged criminal act because he or she was drunk, but apparently they think it is satisfactory for company directors to say that it is acceptable for the company for which they are responsible to have committed an offence merely because they, the directors, did not know about it.

If a company director exercises due diligence to prevent an offence and the offence nevertheless occurs, or if a company director could have no influence over the conduct of a corporation employee that amounted to an offence, the company director has a good defence. I submit that it is not ethically acceptable for a company director to be able to avoid responsibility for an offence merely by saying that he or she did not know about it. That proposition has been accepted implicitly in a series of other pieces of legislation in New South Wales and in other States. I do not believe—and I invite the honourable member for The Hills to argue against this publicly—that ignorance is an excuse for damaging the environment. It is just not acceptable for company directors to stick their heads in the sand and then pretend that they ought not bear responsibility for an offence.

I repeat that the defences under this Act available to directors are that although a polluting event occurred the director exercised due diligence to prevent its commission, or that the director could not have had an influence over the person responsible for the offence. They are fair and reasonable defences and they do not require that company directors behave in anything other than an ordinarily responsible fashion. This amendment states that ignorance cannot be accepted on its own as an excuse for damaging the environment. I assert and will continue to assert, whenever it is necessary, the correctness of that proposition. Overall, I submit that this bill represents some extremely well thought out reforms to key environmental legislation in this State. Public consultation on the bill shows that industry and environmental groups generally welcome these reforms. I emphasise again that it is because of public consultation that the new scheme concerning the control of wood smoke has been introduced. I assert generally that these reforms will ensure that the environment of New South Wales will continue to be protected by world-class environmental laws. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**Consideration in Committee ordered to stand as an order of the day.**

*[Madam Acting-Speaker (Ms Marie Andrews) left the chair at 1.06 p.m. The House resumed at 2.15 p.m.]*

## **BUSINESS OF THE HOUSE**

### **Routine of Business**

*[During notices of motions]*

**Mr SPEAKER:** Order! In the past I have warned members that a notice of motion should not take the form of a speech. I rule the notice of motion given by the honourable member for Ballina out of order.

**Mr Barry O'Farrell:** Point of order: Mr Speaker, given the notice of motion of the honourable member for Mount Druitt, I ask you to make the same ruling.

**Mr SPEAKER:** Order! I will not have my ruling canvassed. If the honourable member for Ballina wishes to re-word his notice of motion, he may give it again tomorrow.

### **DISTINGUISHED VISITORS**

**Mr SPEAKER:** I welcome to the public gallery the Hon. Harvey Hodder, MHA, Speaker of the House of Assembly of Newfoundland and Labrador, and Mrs Pearl Hodder, and Mr John Noel, Clerk of the House of Assembly of Newfoundland and Labrador, and Mrs Ruth Noel. I welcome also the Hon. Jane Aagaard, MLA, Speaker of the Northern Territory Legislative Assembly.

### **PETITIONS**

#### **Gaming Machine Tax**

Petitions opposing the decision to increase poker machine tax, received from **Mrs Shelley Hancock, Mrs Judy Hopwood and Mr Andrew Tink.**

#### **Alstonville Bypass**

Petition requesting that the Alstonville bypass be completed by the end of 2006, received from **Mr Donald Page.**

#### **South Coast Rail Services**

Petition opposing any reduction in rail services on the South Coast, received from **Mrs Shelley Hancock.**

#### **Southern Tablelands Rail Services**

Petition opposing any reduction in rail services on the Southern Tablelands line, received from **Ms Katrina Hodgkinson.**

#### **Murwillumbah to Casino Rail Service**

Petition requesting the retention of the CountryLink rail service from Murwillumbah to Casino, received from **Mr Thomas George.**

#### **CountryLink Rail Services**

Petition opposing the abolition of CountryLink rail services and their replacement with bus services in rural and regional New South Wales, received from **Mr Andrew Stoner.**

#### **Anti-Discrimination (Religious Tolerance) Legislation**

Petitions opposing the proposed anti-discrimination (religious tolerance) legislation, received from **Mr Steve Cansdell, Mr Wayne Merton and Mr John Turner.**

#### **Jervis Bay Marine Park Fishing Competitions**

Petition requesting amendment of the zoning policy to preclude fishing competitions, by both spear and line, in the Jervis Bay Marine Park, received from **Mrs Shelley Hancock.**

#### **Whale Protection in Australian Waters**

Petition requesting protection of whales in Australian waters, received from **Mrs Judy Hopwood.**

#### **Shoalhaven River Water Extraction**

Petition opposing the extraction of water from the Shoalhaven River to support Sydney's water supply, received from **Mrs Shelley Hancock.**

**Kurnell Desalination Plant**

Petition opposing the construction of a desalination plant at Kurnell, received from **Mr Malcolm Kerr**.

**Kempsey Water Fluoridation**

Petition opposing the addition of fluoride to the Kempsey and district water supply, received from **Mr Andrew Stoner**.

**Milton-Ulladulla Public School Infrastructure**

Petition requesting community consultation in the planning, funding and building of appropriate public school infrastructure in the Milton-Ulladulla area and surrounding districts, received from **Mrs Shelley Hancock**.

**Model Farms High School Hall**

Petition requesting the provision of a school hall for the Model Farms High School, received from **Mr Wayne Merton**.

**Breast Screening Funding**

Petitions requesting funding for BreastScreen NSW, received from **Mr Steve Cansdell, Mrs Judy Hopwood, Mr Wayne Merton and Mr Andrew Stoner**.

**Campbell Hospital, Coraki**

Petition opposing the closure of inpatient beds and the reduction in emergency department hours of Campbell Hospital, Coraki, received from **Mr Steve Cansdell**.

**Coffs Harbour Aeromedical Rescue Helicopter Service**

Petitions requesting that plans for the placement of an aeromedical rescue helicopter service based in Coffs Harbour be fast-tracked, received from **Mr Andrew Fraser**.

**Somersby Fields Sandmining Project**

Petition opposing the proposal for the Somersby Fields sandmining project, received from **Ms Marie Andrews**.

**Old Western Road Commercial Development**

Petition opposing the proposed land development on the existing line of the Old Western Road for commercial and recreational purposes, received from **Mr Paul Gibson**.

**Isolated Patients Travel and Accommodation Assistance Scheme**

Petition objecting to the criteria for country cancer patients to qualify for the Isolated Patients Travel and Accommodation Assistance Scheme, received from **Mr Andrew Stoner**.

**Recreational Fishing**

Petitions opposing any restrictions on recreational fishing in the mid North Coast waters, received from **Mr Andrew Stoner and Mr John Turner**.

**Crown Land Leases**

Petition requesting the withdrawal of changes to the rental structure of Crown land leases, particularly enclosed road permits, received from **Ms Katrina Hodgkinson**.

**Collector Bushrangers Reserve Motorcycle Track**

Petition requesting approval for the construction of a motorcycle track at Collector Bushrangers Reserve, received from **Ms Katrina Hodgkinson**.

**Water-Access-Only Property Policy**

Petition requesting a review of the water-access-only property policy, received from **Mrs Judy Hopwood**.

**Willoughby Traffic Conditions**

Petition requesting a regional traffic plan for the Pacific Highway at Willoughby, received from **Ms Gladys Berejiklian**.

**Edinburgh Road, Willoughby, Traffic Conditions**

Petition requesting a right turn arrow for traffic travelling west on Edinburgh Road, Castlecrag, turning north onto Eastern Valley Way, received from **Ms Gladys Berejiklian**.

**Nowra Bypass**

Petition requesting an appropriate bypass for Nowra, after community consultation, received from **Mrs Shelley Hancock**.

**Barton Highway Dual Carriageway Funding**

Petition requesting that the Minister for Roads change the Roads and Traffic Authority's priority for Federal AusLink funding for the Barton Highway to allow the construction of a dual carriageway, received from **Ms Katrina Hodgkinson**.

**Forster-Tuncurry Cycleways**

Petition requesting the building of cycleways in the Forster-Tuncurry area, received from **Mr John Turner**.

**BUSINESS OF THE HOUSE****Reordering of General Business**

**Mr ANDREW TINK** (Epping) [2.38 p.m.]: I move:

That General Business Notice of Motion (General Notice) No. 883 have precedence on Thursday 22 September 2005.

The motion of which I have given notice reads:

That this House:

- (1) notes with concern the reduced sentences given to the Skaf brothers for pack rape;
- (2) notes that these sentences resulted from Labor Government legislation which reduced the maximum penalty for pack rape from life imprisonment to twenty years;
- (3) calls on the Premier to apologise to the Skaf victims for the Government's reduction of the maximum penalty for pack rape; and
- (4) calls on the Attorney General to lodge a High Court appeal without delay.

It is interesting that throughout the judgement of the New South Wales Court of Criminal Appeal in *Regina v Bilal Skaf* one sees how the court again and again comes up against the maximum 20-year penalty. There were occasions when the court sentence exceeded that penalty to allow for accumulation of sentencing, but the judges basically were constrained by the 20-year maximum penalty for rape that existed at the time that the offences were committed. It can be seen in paragraphs 35 and 55 and in many other paragraphs. Earlier the honourable member for Mount Druitt gave us a history lesson when he mentioned various Premiers—McKell, Heffron,



Renshaw, Wran and Carr. I remind the House that on 18 March 1981 Mr Wran stood in this place and, in relation to the Crimes (Sexual Assault) Amendment Bill, said:

This is an historic measure and one of the most important reforms this Government has ever presented to this Parliament.

He went on to explain that a category 1 offence, the worst category of offence, "will attract a maximum penalty of 20 years penal servitude". Up until that time the penalty for the worst case of rape was life imprisonment. Mr Wran reduced the maximum penalty for pack rape from life imprisonment to 20 years gaol. As a result of that Labor Government decision, the maximum penalty for any particular offence committed by Bilal Skaf is 20 years. For that reason the penalties are what they are in this case. At that time the Coalition opposed, and divided on, the penalty, the introduction of which was aided and abetted by those in the left of the Labor Party.

**Mr SPEAKER:** Order! Government members will come to order.

**Mr ANDREW TINK:** It was only that the Coalition raised the matter after the Bilal Skaf case that the Attorney General realised his mistake and reintroduced the maximum penalty. Who in this House would say that the Bilal Skaf case was not the worst case of pack rape? Who in this House would not say that Bilal Skaf, taking a leadership role in that pack rape, is not the worst class of criminal of this type? Not one member opposite raised his voice to contest that proposition. The Attorney General's job and responsibility is clear: Go from here and lodge an appeal today. [*Time expired.*]

**Mr CARL SCULLY** (Smithfield—Minister for Police, and Minister for Utilities) [2.41 p.m.]: Not one person in this Parliament would be other than absolutely disgusted by those individuals. The honourable member for Epping should not come into this House and try to politicise the judicial process. A process is under way. I will not have the honourable member politicise it.

**Mr SPEAKER:** Order! The Leader of The Nationals will come to order.

**Mr CARL SCULLY:** I will not allow the honourable member for Epping to project the foul position that somehow the Government has anything but complete and utter disgust for what those individuals did. Processes have to be followed.

**Mr Andrew Tink:** Point of order—

**Mr CARL SCULLY:** The honourable member has had his say. He should be ashamed of himself.

**Mr Andrew Tink:** Point of order: Why is the Attorney General not responding to an issue about an appeal? Why is the Attorney General hiding behind the Minister for Police? Get up and indicate why you are not appealing. Or are you appealing? Are you going to appeal?

**Mr SPEAKER:** Order! There is no point of order. The honourable member for Epping has had an opportunity to speak to the motion. He will resume his seat.

**Mr CARL SCULLY:** For 2½ years I have been Leader of the House and I deal with procedural matters. I thought I was Leader of the House. What is the honourable member for Epping doing? This is a procedural attempt to reorder the business of the House to score political points by giving the impression to the community that somehow this Government is soft on those characters. We are not. I will not have the honourable member for Epping bastardise tomorrow's program to try to give a false impression that somehow this Government is soft on those ratbags. The Attorney General is seeking advice. The Director of Public Prosecutions is considering whether an appeal should be lodged. The honourable member for Epping says that in 1981, when half the members of this House were still in high school, a law was somehow put through. The Coalition was in Opposition for seven years. What was the honourable member for Epping doing for seven years when those on this side of the House were changing a law that they thought was shameful? We will not let him participate in a disgusting and disgraceful political stunt. No!

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 34**

Mr Aplin  
Mr Barr  
Ms Berejiklian  
Mr Cansdell  
Mr Debnam  
Mr Draper  
Mrs Fardell  
Mr Fraser  
Mrs Hancock  
Mr Hartcher  
Ms Hodgkinson  
Mrs Hopwood

Mr Humpherson  
Mr Kerr  
Mr Merton  
Ms Moore  
Mr Oakeshott  
Mr O'Farrell  
Mr Page  
Mr Piccoli  
Mr Pringle  
Mr Richardson  
Mr Roberts  
Ms Seaton

Mrs Skinner  
Mr Slack-Smith  
Mr Souris  
Mr Stoner  
Mr Tink  
Mr Torbay  
Mr J. H. Turner  
Mr R. W. Turner  
*Tellers,*  
Mr George  
Mr Maguire

**Noes, 48**

Ms Allan  
Mr Amery  
Ms Andrews  
Mr Bartlett  
Ms Beamer  
Mr Black  
Mr Brown  
Ms Burney  
Miss Burton  
Mr Campbell  
Mr Collier  
Mr Corrigan  
Mr Crittenden  
Ms D'Amore  
Mr Debus  
Ms Gadiel  
Mr Gaudry

Mr Gibson  
Mr Greene  
Ms Hay  
Mr Hickey  
Mr Hunter  
Mr Iemma  
Ms Judge  
Ms Keneally  
Mr Lynch  
Mr McBride  
Mr McLeay  
Ms Meagher  
Mr Mills  
Mr Morris  
Mr Newell  
Ms Nori  
Mr Orkopoulos

Mrs Paluzzano  
Mr Pearce  
Mrs Perry  
Ms Saliba  
Mr Sartor  
Mr Scully  
Mr Shearan  
Mr Stewart  
Mr Tripodi  
Mr Watkins  
Mr West  
Mr Whan  
*Tellers,*  
Mr Ashton  
Mr Martin

**Pairs**

Mr Armstrong  
Mr Constance

Mr Price  
Mr Yeadon

**Question resolved in the negative.**

**Motion negatived.**

**PUBLIC ACCOUNTS COMMITTEE****Report**

**Mr Matt Brown**, as Chairman, tabled report No 13/53 (No. 156), entitled "Value for Money from Corrective Services" dated September 2005, together with "Extracts from Minutes of Public Accounts Committee Meetings relevant to Value for Money for NSW Correctional Services".

**Report ordered to be printed.**

**LEGISLATION REVIEW COMMITTEE****Report**

**Ms Virginia Judge**, on behalf of the Chairman, tabled Discussion Paper No. 1, entitled "The Right to Silence: Discussion Paper", dated 21 September 2005, together with "Extracts from Minutes of Legislation Review Committee meetings relevant to The Right to Silence: Discussion Paper".

**Report ordered to be printed.**

## QUESTIONS WITHOUT NOTICE

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### STATE FINANCES

**Mr PETER DEBNAM:** My question is directed to the Premier, and Treasurer. In the midst of his budget crisis, with his Treasury secretary and Minister for Finance contradicting each other, will he come clean with the people of New South Wales and table the secret Treasury report on the State's deteriorating finances?

**Mr MORRIS IEMMA:** The Leader of the Opposition asked that with a straight face. For the record, the State's finances are strong. The balance sheet is as strong as ever and our debt levels are low and sustainable at 1 per cent of gross State product. The Coalition left debt level at 7.5 per cent but currently it is 1 per cent. The State's triple-A credit rating is secure. But, of course, six years of deficit was the last chance that the Coalition had to manage the State's finances—a period characterised by a blow-out in debt, the State placed on credit watch, and increased taxes and charges. That was the Coalition's record. If the Coalition ever gets the chance to get back on the Treasury benches, they will do all that again.

**Mr Peter Debnam:** Point of order: My point of order is relevance. We are asking for the secret report.

**Mr SPEAKER:** Order! There is no point of order. The Leader of the Opposition is well aware of the standing orders of this House. The Premier has the call. The Leader of the Opposition will resume his seat.

**Mr MORRIS IEMMA:** Yesterday I outlined to the House how the Coalition's spending commitments have so far topped \$16 billion comprising spending commitments of \$9 billion and taxation commitments of \$7 billion. That is a total of \$16 billion, and there is no mention of how they will pay for it. If ever the unfortunate circumstance occurs of the Coalition getting back to the Government side of the House, they will send New South Wales broke. What I did not mention yesterday was that the latest addition to the spendometer comes from the honourable member for Myall Lakes who is committed to upgrading the whole of the Pacific Highway by 2016. That was quietly dropped into a single paragraph. He let the Commonwealth off the hook by agreeing to New South Wales paying for the whole road—adding, I am advised, a further \$5.9 billion to the spendometer.

**Mr SPEAKER:** Order! The honourable member for Myall Lakes will resume his seat.

**Mr MORRIS IEMMA:** It is an old trick, but it is a goody. It is what they used to ask Michael Egan. The Government has never engaged in a daily commentary on the budget. The budget is presented, the half-yearly statement is made, and that is followed by the next budget.

**Mr George Souris:** You only do a half-yearly when you are in crisis.

**Mr MORRIS IEMMA:** The half-yearly statement will come down in December, as it has always done and as it will continue to do. It has never been a daily commentary, which is what the Opposition is seeking. By that custom and practice and as required by law, budget projections are published twice each year, as I have mentioned—once on budget day and once in a half-yearly review.

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

**Mr MORRIS IEMMA:** It is no secret that there are pressures on the budget and there are risks to the budget result. Unforeseen events occur which are a cost to the Government. At the time of delivery of the budget in May, the surplus was predicted to be \$303 million, which is what the secretary of the Treasury stated last night. Clearly the decision to remove the vendor duty will have an impact on the surplus. The duty was expected to raise \$358 million in the 2005-06 financial year. However, its removal is anticipated to have a positive effect on economic activity in the housing market, which has been estimated by Access Economics—I note it had plenty to say this morning in the *Sydney Morning Herald*—to range between \$140 million and \$280 million. The actual budget position will be determined in part by the strength of the property market through the balance of the financial year, keeping in mind that it is influenced by a range of factors. Even if the budget operating result is a deficit, it will be mild and temporary, not requiring the kind of knee-jerk responses such as the mass sacking of 29,000 people that the Leader of the Opposition has proposed.

**Mr SPEAKER:** Order! The Minister for Aboriginal Affairs will come to order.

**Mr Peter Debnam:** Point of order: The point I am making is that a recruitment freeze is very different from what the Premier is talking about. We are talking about a recruitment freeze that would save \$2.3 million a day. If the Government undertook a recruitment freeze today it would save \$2.3 million tomorrow and every day after tomorrow.

**Mr SPEAKER:** Order! The Leader of the Opposition will resume his seat. I remind him that this is question time, it is not a debate.

**Mr MORRIS IEMMA:** What you can do today is tell us whether you are going to junk the policy of 29,000 sackings.

**Mr Peter Debnam:** I am happy to answer that question.

**Mr SPEAKER:** Order! The Leader of the Opposition will resume his seat. The Premier will address the Chair.

**Mr Peter Debnam:** I am happy to talk about it. If you want me to explain the recruitment freeze, I am very happy to do it.

**Mr SPEAKER:** Order! The Leader of the Opposition will resume his seat. The Premier will address the Chair.

**Mr MORRIS IEMMA:** The Leader of the Opposition has had two weeks of opportunity to junk that policy and so far has not done so. Obviously he stands by the policy of mass sackings of 29,000 public sector workers. That, of course, cannot be achieved without sacking nurses, police and teachers. That is what the Opposition stands for: sacking nurses, police and teachers.

**Mr SPEAKER:** Order! The Leader of the Opposition will resume his seat. He will have an opportunity to speak at the appropriate time.

**Mr MORRIS IEMMA:** The only way the Opposition will achieve the sacking of 29,000 people is by sacking nurses, police and teachers. Nevertheless, we commissioned the audit as part of the Government's efforts to reduce duplication, to cut down on waste, to find areas of inefficiency and to provide taxpayers with maximum value for the money we spend on front-line services in Health, Education and Police. If the Opposition wants to talk about finances, it should remember that in 1995 the level of net debt was 7.5 per cent of gross State product. Today it is at 1 per cent; that is the kind of financial discipline and management that will continue as long as the Labor Party is on this side of the House. If the Coalition ever gets over here it will not only sack front-line police, nurses and teachers—because that is the only way it will get 29,000—it will send the State broke with its spendometer that so far is \$16 billion, plus another \$5.5 billion as a result of the latest promise by the honourable member for Myall Lakes.

### **HIT-AND-RUN ACCIDENT PENALTIES**

**Mr BARRY COLLIER:** My question without notice is addressed to the Attorney General. What is the Government's response to community concerns about hit-and-run offenders?

**Mr BOB DEBUS:** On 8 January 2004, 9-year-old Brendan Saul was out riding his bike with his brother. An ordinary Dubbo summer afternoon quickly turned into a scene of horror and tragedy when young Brendan was hit by a car driven by a juvenile offender. The collision was fatal. The exact circumstances and facts surrounding this tragedy left many unanswered questions and, understandably, unleashed confusion and outrage in the Dubbo community and across the State. But, despite the many mysteries surrounding this case, there was no doubt that the driver did not stop after hitting young Brendan, and he was not found by police for some hours after the event.

Under our current laws, failure to stop at the scene of an accident is covered under the Road Transport (Safety and Traffic Management) Act. It provides for a maximum penalty of 18 months for a first offence and two years for a second or subsequent offence. When such a relatively low penalty for failure to stop is balanced against higher penalties for crimes such as dangerous driving, there is no apparent incentive in the law for

drivers to stay and render assistance. Young Brendan's family, particularly his father, have been determined that Brendan's death should not be in vain. Mr Kevin Saul has campaigned for law reform in this area. Earlier this year I met with him along with the honourable member for Dubbo, Dawn Fardell. Among other issues, I agreed with Kevin Saul that the Government would move to reform the law. When a driver on our roads leaves the scene of an accident, leaving in his or her wake a dead or badly injured person without attempting to render assistance, the fundamental code of civilised society is breached.

Every driver on our roads needs to be aware that with the privilege of driving on our roads comes a fundamental responsibility to our fellow drivers. Earlier today I spoke to Kevin Saul and was able to tell him that notice will be given today of the introduction of legislation to give true recognition to society's abhorrence of those who injure their fellow citizens and then abandon them to die. A new offence of failing to stop and assist will be introduced into the Crimes Act. This offence will increase the maximum penalty from 18 months imprisonment to 10 years if a person fails to stop and assist where, it is stated, "a victim dies as a result of an impact with a vehicle and the driver knew or ought to have known that the impact caused the death or serious injury of a person".

Assistance may be as simple as phoning for an ambulance, waving down another driver to get further assistance, or helping the victim. The prosecution will have to establish only that the driver ought to have reasonably known that the impact caused really serious injury; actual knowledge will not be required. In other words, the law will make it easier to prove this offence. The offence will apply to any person who gets behind the wheel of a car, irrespective of age or whether the driver was licensed or unlicensed. The 10-year penalty strips away any incentive that may exist in the present penalty structure to flee or evade police.

The new law will assist police in the prosecution of dangerous driving offences where, for example, the police cannot test the driver's blood alcohol level because the driver had left the scene. It will also increase the likelihood that victims will receive assistance when they most need it. An education campaign aimed at informing drivers of their responsibilities will be developed prior to commencement of the legislation. Any father of a child, any parent, can only imagine the emotional torment experienced by Mr Saul and his family. Nothing can compensate him for his loss. But Mr Saul's campaign on behalf of Brendan has brought about this reform and, in this small sense, Brendan's death was not in vain. In a very real sense this law, for which I am sure the House will give bipartisan support, will be Brendan's law.

### GOVERNMENT TRAVEL CONTRACTS

**Mr ANDREW STONER:** My question is directed to the Premier, and Treasurer. Why has the Premier allowed the budget crisis to take business away from travel agents in country New South Wales by giving the State Government travel contract to a French-owned company that has its call centre in Perth and its regional office in Singapore?

**Mr MORRIS IEMMA:** As I outlined earlier, the State's budget position is strong, the finances are strong, and our debt levels are at record lows. As the Leader of The Nationals knows, when it comes to procurement and contracts, those matters are for tendering, as are expressions of interest. This State has an unequalled record for an adherence to probity. The Leader of The Nationals should not come into this House crying crocodile tears when it comes to State contracts, procurement or any other issue, because that is all he is doing. These matters are put out to contract and are at arm's length from Ministers and governments. In a probity sense it is appropriate that they be tendered out.

### BUS LANE CAMERAS

**Ms ANGELA D'AMORE:** My question without notice is addressed to the Minister for Roads. What is the latest information on the Government's bus lane enforcement cameras to improve bus travel times?

**Mr JOSEPH TRIPODI:** I thank the honourable member for her timely question and for her keen interest in bus transport. Buses are an integral part of our transport system. They can carry around 50 people and occupy much less road space per passenger than a car.

**Mr SPEAKER:** Order! The Minister has the call.

**Mr JOSEPH TRIPODI:** Bus lanes help to provide efficient and reliable bus services and their value is widely recognised across the community. A good example of this is the bus lane on the Sydney Harbour Bridge,

which transports more people to the city in the morning peak than all the other city-bound lanes combined. During the morning peak in March last year around 14,100 people an hour were transported across the Sydney Harbour Bridge bus lane compared to an average of 1,800 people in each of the adjacent southbound lanes. Bus lanes are in operation on major transport corridors across Sydney, the Illawarra, the Hunter and the Central Coast. Unfortunately, the illegal use of bus lanes is a problem and that has had a direct impact on bus travel times.

A number of initiatives have been implemented to improve motorists' compliance with the rules, such as colouring bus lanes red to increase their visibility and to reduce illegal usage. That has been largely successful. For example, the outbound bus lane on Oxford Street saw a 35 per cent reduction in illegal use after it was painted red. Public education campaigns such as, "Don't get busted in a bus lane" have also been conducted to increase road users' awareness. Of course, a small number of motorists still think they can get away with flouting the rules. The great majority of motorists are law abiding, but it is those drivers who use bus lanes to take shortcuts in traffic that can directly impact on bus services. One inconsiderate driver can hold up a bus carrying over 50 people.

**Mr SPEAKER:** Order! The honourable member for Coffs Harbour will resume his seat.

**Mr JOSEPH TRIPODI:** Not only does this affect the reliability of bus services; it also is unfair on the majority of drivers who do the right thing and stay within the law. There is a clear message to that minority of motorists who use those lanes illegally: Bus lanes are for buses and they will get caught. Enforcing bus lane rules has proved difficult. Police enforcing the rules are required to stop the offending vehicle. In many cases, because of the lack of locations with clear and safe areas to stop motorists, enforcement has been difficult. Stopping an illegal user within a bus lane is counterproductive. It adds to disruption and causes inconvenience to the legal users of the lane. This has been identified as a particular problem in restricted areas such as the Sydney central business district. That is why a new enforcement system to deter motorists from illegally using the lanes and to improve bus travel times will start operating next week.

The aim of this new enforcement system is to encourage drivers from believing they can get away with breaking the bus lane laws. These cameras will help to improve bus travel times at a time when bus patronage is growing. Some bus routes recorded a morning peak increase of 7 per cent in August. The first three bus priority enforcement cameras to begin operation are located on Parramatta Road near the University of Sydney at Glebe, southbound on the Warringah Freeway at North Sydney near Berry Street and the High Street overpass, and another 10 cameras will monitor the Liverpool to Parramatta transitway at Smithfield, Bonnyrigg, Prairiewood, Hinchinbrook and Liverpool.

**Mr SPEAKER:** Order! The honourable member for Murrumbidgee will come to order.

**Mr JOSEPH TRIPODI:** Motorists will be given four weeks to become familiar with the new enforcement cameras before infringements are issued for illegal use of bus lanes from 24 October. During this time warning letters will be sent to motorists who use bus lanes illegally but no infringements will be issued. In addition, the Roads and Traffic Authority will carry out an education campaign to inform New South Wales drivers of the new enforcement system and emphasise the importance of bus lanes for the entire traffic network. The education campaign will inform drivers of the rules relating to bus and transitway lanes and the penalties for breaking those rules, which include a \$225 fine and three demerit points.

Motorists can legally use a bus lane for up to 100 metres before or after turning. The newly installed enforcement cameras will detect motorists at two different locations more than 200 metres apart to identify drivers using the lanes illegally. When a vehicle passes the first checkpoint the camera digitally records the vehicle's numberplate. If the vehicle passes a second camera within a predetermined time frame, another digital image is recorded and a potential violation is recorded. Images from the cameras will be stored only if a potential violation has been detected. Additional bus lane enforcement cameras will be rolled out in stages. I look forward to the operation of these cameras to help improve bus travel times for Sydney commuters. I remind the very small number of motorists who use bus lanes illegally that bus lanes are for buses.

#### **MINISTER FOR PLANNING, AND MINISTER FOR REDFERN WATERLOO COMMENTS ON KOORI RADIO**

**Mr PETER DEBNAM:** My question without notice is directed to the Minister for Redfern Waterloo. With Mick Mundine in the gallery, and given his call for the Minister's resignation as Minister for Redfern Waterloo, why will he not do the honourable thing and resign?

**Mr FRANK SARTOR:** The Leader of the Opposition well knows that on Monday this week I did an extensive radio interview on Koori Radio. In the course of that interview I said something inappropriate. I corrected myself at the interview and I subsequently rang Mick Mundine and apologised, and he accepted. I subsequently held a media conference that afternoon and invited Mick Mundine to attend, which he did. I again apologised and he again accepted my apology. Anyone who knows Mick Mundine would know that he makes up his own mind about these matters. Over a six-month period the Government has had a different point of view to that of the Aboriginal Housing Company in regard to a number of issues relating to Redfern. That legitimate issue is part of the democratic process.

In any event, what transpired subsequent to that and what Mick Mundine said subsequent to that is a matter for him. I think the critical issue is to move beyond personal matters back to the issues in Redfern. Members of the Opposition dealt gently with the Redfern issues by threatening to demolish the Block—that was their sophisticated policy—whereas all I have sought to do is implement a process to deal with it. I think that has been well responded to by various commentators over the past few days. I do not need to go back there or anywhere near it. Those who know me are aware of my bona fides and they know I have been genuinely trying to address that issue. If honourable members had listened to the whole of the radio interview they would know I talked about five or six initiatives that the Redfern-Waterloo Authority has dealt with. One of those initiatives is a job contract where we employed—

**Mr Peter Debnam:** Point of order—

**Mr SPEAKER:** Order! Government members will come to order. The honourable member for Bankstown will come to order.

**Mr Peter Debnam:** My point of order relates to relevance. Frank, the problem is that people do know you.

**Mr SPEAKER:** Order! The Leader of the Opposition will resume his seat.

**Mr FRANK SARTOR:** Yesterday I was invited back on Koori Radio and I repeated the apology. Mick Mundine is here today and I again repeat my apology to him.

#### **FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY**

**Mr PAUL McLEAY:** My question without notice is addressed to the Premier. What is the Government's response to community concerns about the Federal Government's attack on the working conditions of New South Wales families?

**Mr MORRIS IEMMA:** For the benefit of the Leader of The Nationals, Carlson Wagonlit is a good outcome for New South Wales. Seventeen regional offices will be maintained and an additional six offices will be appointed.

**Mr Andrew Stoner:** Country agents have lost their business.

**Mr SPEAKER:** Order! The Leader of The Nationals will resume his seat.

**Mr MORRIS IEMMA:** The Leader of The Nationals should tell the people of Bathurst that he does not want them appointed. He should tell the people of Queanbeyan, another of these extra locations—

**Mr SPEAKER:** Order! I call the Leader of The Nationals to order.

**Mr MORRIS IEMMA:** The contract with Carlson Wagonlit provides for the maintenance of the existing 17 regional locations, plus the appointment of another six offices, including at Bathurst. The Leader of The Nationals should tell the people of Bathurst that he does not want a representative office appointed there. He should tell the people of Queanbeyan, the people of Wollongong and the people of Tweed Heads because they are all in the additional six locations. Above all, whilst he is at it he should tell them that he does not believe New South Wales ought to save \$30 million over the life of the contract. He thinks the taxpayers of New South Wales should pay an additional \$30 million for that contract.

**Mr SPEAKER:** Order! The honourable member for Coffs Harbour will resume his seat.

**Mr MORRIS IEMMA:** We think Bathurst ought to be one of the six additional locations, and so should Queanbeyan and Tweed Heads, but the Leader of The Nationals does not want them. I am more than happy to provide him with more information about the travel contract. It is a good outcome for taxpayers and a good outcome for the people of Bathurst.

I thank the honourable member for Heathcote for his question. John Howard and Peter Costello have one lifelong ambition—to smash Australia's industrial relations system. On 26 May they announced the most radical change to industrial laws ever seen in our history. Now that he has unfettered control of the Senate, the Prime Minister is set to enact his long-term obsession with radical change to our industrial relations system, a change that will affect 10 million Australian workers, dramatically curtailing their pay and conditions. Make no mistake, this obsession is driven by ideology, not practicality. The Federal Government's reform package will increase confusion, complexity and cost and minimum conditions will be stripped to just five: a minimum hourly rate of pay of \$12.75, unspecified sick leave, four weeks annual leave, unpaid parental leave, and a 38-hour week. Everything else—weekend overtime, shift penalties, allowances, public holidays and paid maternity leave—is up for grabs. The Federal Government's proposals are based on strong-arm tactics, forcing employers and employees into individual bargaining even when they prefer collective arrangements. Where the Commonwealth Government cannot do this through legislation it is trying to do it by tying the allocation of roads and TAFE funding to the acceptance of the Federal industrial relations agenda.

**Mr SPEAKER:** Order! The honourable member for South Coast will come to order.

**Mr MORRIS IEMMA:** Each and every time the Commonwealth Government has faced a minimum wage case before the Australian Industrial Relations Commission it has pushed for miserly increases for low paid workers, such as bar staff, kitchen hands, cleaners and child care workers. It has always pushed for miserly increases. The increases advocated by the Commonwealth Government have been consistently so small that they would have left workers worse off in real terms. If the Commonwealth had had its way the minimum wage would be \$50 a week less than it is now. The Australian Industrial Relations Commission did not listen to the mean Commonwealth submission and granted workers real increases so they could enjoy some share in Australia's decade of prosperity.

No wonder the Commonwealth Government is obsessed with destroying the Industrial Relations Commission. The time has come around again for the Australian Industrial Relations Commission to consider pay rises for workers on Federal awards. On this occasion the Australian Council of Trade Unions [ACTU] is proposing an increase of \$19.38 a week for the lowest paid workers in this nation. That is a fair and reasonable request when they have been treated so badly by the Commonwealth Government.

I can inform the House and the honourable member for Heathcote that the New South Wales Government will support the ACTU's claim for workers on minimum pay, not just because it is fair and decent but because it is probably going to be the last pay rise delivered by a Federal independent umpire, the Australian Industrial Relations Commission, before the Commonwealth replaces it with its so-called fair pay commission. The Commonwealth has let the cat out of the bag there by stating it does not expect workers to receive a pay increase until at least late 2006. That is its commitment to low-paid workers. Yesterday the Commonwealth confirmed its low pay commission would not issue a wage increase for 18 months. Some fair pay deal that is for low-paid workers! It is an absolute disgrace. The Commonwealth advanced a preposterous proposition yesterday. Why does the honourable member for South Coast not speak up on behalf of low-paid workers in her electorate? We take a completely different approach, not only supporting the ACTU's position—

**Mr SPEAKER:** Order! The honourable member for South Coast will stop calling out and come to order.

**Mr MORRIS IEMMA:** We support a fair and equitable increase for low-paid workers. This proposal would not impact on New South Wales public servants as all their awards offer wages above the paltry minimum rate of pay. The question that must be asked is this: Will those opposite support a \$19.38 pay increase for low-paid workers? Will they support this fair and reasonable claim put forward by the ACTU and supported by the State Government, or will they sell out low-paid workers in this State who are currently on Federal awards? The Government will support the ACTU's position and will support low-paid workers getting this fair and reasonable increase. We will also do everything in our power to protect the integrity of the New South Wales industrial relations system. We will do everything in our power to ensure that we continue to have an independent umpire in our industrial relations system in this State. We have spent a century building up a fair and balanced industrial relations system in this State and we are not going to see it torn apart by an outdated, ideological obsession on the part of the Commonwealth in its pursuit, in particular, of low-paid workers.



### GRIFFITH BASE HOSPITAL SURGERY POSTPONEMENT

**Mr ADRIAN PICCOLI:** My question without notice is directed to the Premier. Why has he allowed the budget crisis to reach a point where the Griffith Base Hospital had to postpone a day's worth of surgery last week because essential materials had not been supplied due to an outstanding debt of \$140,000 owed to the supplier?

**Mr MORRIS IEMMA:** As the honourable member will be aware, the current State budget funds the redevelopment of Griffith Base Hospital's emergency department. Not only that, inside that emergency department provision is made for observation areas for those suffering a mental illness, the most significant enhancement to facilities at that hospital.

**Mr SPEAKER:** Order! The Premier has the call.

**Mr MORRIS IEMMA:** The Health portion of the State budget sees a \$900 million increase this year, some 9 per cent. Do not come in here crying crocodile tears about health funding.

**Mr Adrian Piccoli:** Point of order: My point of order relates to relevance. The question was about unpaid bills which led to surgery being cancelled, not a question about capital works.

**Mr SPEAKER:** Order! The Premier was clearly answering the question.

**Mr Adrian Piccoli:** This is asking the Government about a problem in the public sector of New South Wales. That is exactly what I am asking and I would like it answered.

**Mr SPEAKER:** Order! The honourable member for Murrumbidgee knows that he cannot ask the same question twice. The Premier has answered his question.

### RAIL INFRASTRUCTURE

**Mr KEVIN GREENE:** I ask the Minister for Transport: What is the latest information on the Government's plans to improve rail services?

**Mr JOHN WATKINS:** The Government has already unveiled major plans for delivering comprehensive improvements to public transport across the State. We are committed to providing better, safer and cleaner facilities across trains, stations, buses and ferries as well as improving customer service and information provided to commuters. In order to deliver these improvements, the Government has announced a multi-billion-dollar capital investment package, the largest single investment in metropolitan rail services in Australian history. On 9 June we announced an \$8 billion, 15-year plan to extend the CityRail network to service Sydney's growth areas in the north-west and the south-west and to increase the network capacity in and under the CBD. It will be the biggest expansion of the CityRail network since the 1930s.

When complete, the new line will run from Rouse Hill, in Sydney's north-west, through the city to Leppington in the south-west. While planning for these new projects commences, work continues on the Government's \$1 billion rail clearways plan. Clearways is about building extra tracks, platforms, turnbacks and loops to create freeways; removing bottlenecks and junctions; and reducing congestion and delays. The first of the Clearways projects—the \$17 million Macdonaldtown turnback—is already completed and operational. Work on the \$55 million Bondi Junction turnback is also nearing completion, with the benefits from this project to flow with the introduction of a new timetable for the eastern suburbs, Illawarra and South Coast line by mid 2006.

I note the front-page story in yesterday's edition of the *Illawarra Mercury* that was brought to my attention by members of Parliament who represent electorates in that area. It reported that the Sydney timetable changes have provided the Illawarra with the best on-time running figures in two years. That is ahead of the introduction in the middle of next year of the Illawarra's own special timetable, which will bring further improvements. Pleasing as these early timetable results are, we are working hard to ensure that they are maintained, because the travelling public will only accept sustained improvements in on-time running.

The Government has also committed a massive \$2 billion to the new Epping to Chatswood rail link. When completed in 2008 the new line will provide capacity for an additional 12,000 rail passengers a day and,

by providing a new route into the city, reduce congestion on the main western line between Strathfield and the central business district. The Government is also investing heavily in rolling stock replacement, having committed an unprecedented \$2.5 billion to this project. This includes fast-tracking the replacement of the 498 non-airconditioned carriages that are still on our network. That project will be completed by 2010.

I am pleased to report to the House on the latest of the Government's infrastructure plans for improving the CityRail network. This morning I joined with the Premier in announcing plans for a \$58 million upgrade of North Sydney railway station. North Sydney station—the fourth busiest peak-hour station and the fifth busiest station throughout the day—has not been upgraded substantially since it was constructed as part of the Harbour Bridge development in 1932. In 2004 North Sydney station had 45,000 average daily passenger movements. In the next 15 years that is expected to increase to 70,000 passenger movements per day. The planned upgrade will ensure that North Sydney station will be able to accommodate this expected growth in the number of commuters and it will greatly improve crowd control, safety and security measures.

The \$58.2 million project is scheduled to be completed by mid 2008. It is particularly pleasing that the cost to government will be reduced by \$22 million as a result of developer contributions received under an agreement with North Sydney Council. I thank the council for that memorandum of understanding and for those developer contributions. The plant upgrade will provide an expanded concourse and enhanced station safety and security systems, new fire detection and protection safety systems, new lifts, new escalators, and 16 additional ticket barriers. Initial work will commence during the traditional Christmas close-down from 26 December to 31 December. Major construction work will commence in mid 2006.

The North Sydney upgrade complements similar upgrades already under way at other CityRail stations. Work on the \$100 million Parramatta transport interchange is well under way, with completion due in 2006. Initial work on the recently announced \$351 million redevelopment at Chatswood station are also progressing well. The project is due for completion in 2007 in time for the opening of the \$2 billion Epping to Chatswood rail line in 2008. Work also commenced recently on stage one of the Town Hall station redevelopment. This \$7 million project, due for completion in March next year, is designed to improve passenger flow and includes the development of a master plan for a major future upgrade to ensure that the station can cope with future growth. These programs combined will mean safer, more reliable rail services for passengers on the entire network. This Government has provided unprecedented investment in the rail network and we will continue to work hard to complete the work required and to satisfy the travelling public of New South Wales, who depend on our rail system every day.

### MENTAL HEALTH SERVICES

**Ms CLOVER MOORE:** My question is directed to the Minister for Housing, and Minister Assisting the Minister for Health (Mental Health). Given the violent assaults at the Caritas psychiatric facility and the state of our underresourced mental health services, as exposed again on the *Four Corners* program this week, will the Government provide immediate funds to redevelop and expand this inner-city facility?

**Miss CHERIE BURTON:** I thank the honourable member for Bligh for her question. I know from our discussions that she takes a keen interest in supporting mental health in her electorate. St Vincents Mental Health Service is funded to provide a range of mental health care to the residents of the inner city of Sydney. As the honourable member knows, the inner city has a residential population of approximately 110,000 people. The number of presentations to emergency departments by people with severe mental illness is increasing. I am advised that this is due mainly to an increase in the use of a form of amphetamine commonly known as ice.

**Mr SPEAKER:** Order! The honourable member for Upper Hunter will come to order.

**Miss CHERIE BURTON:** Presentations are becoming more complex due to the increased use of more potent forms of this drug. I am advised that the purity of these drugs has increased significantly since 2002, and this can lead to violent behaviour.

**Mr SPEAKER:** Order! The honourable member for Upper Hunter will come to order.

**Miss CHERIE BURTON:** In order to assist St Vincent's Hospital to cope better with this growing problem, the Government has funded a psychiatric emergency care centre. It is anticipated that this centre will open at the end of October this year. I had the pleasure of joining the honourable member for Bligh and the Minister for Health in breaking through the first wall to mark the start of the centre's construction. The centre

will provide additional services to St Vincent's Hospital to improve emergency mental health care. It will ensure faster access to mental health and substance abuse treatment. The six-bed unit is being constructed alongside the St Vincents Hospital emergency department to improve the quality of care for patients requiring emergency mental health treatment.

I am advised that significant recruitment issues impact on safety at Caritas. In order to address this issue, earlier today I met with the chief executive of the area health service, Professor Deborah Picone, and other senior officials from NSW Health. I have asked Professor Picone to investigate providing an outreach service from Prince of Wales Hospital to support the nurses at Caritas when necessary. This would address any potential safety and staffing issues at Caritas. I have also asked Professor Picone to work with St Vincents in drafting a community mental health service model for the area. The aim of this model is to provide better mental health services and better outcomes for mentally ill people in south-east Sydney and the Illawarra region.

Two other psychiatric emergency care centres are currently being built within this health service area. One will be located at St George Hospital and the other will be developed at Wollongong Hospital. Capital development currently being carried out within the health service area includes two 20-bed non-acute facilities. One of these facilities is at St George and the other is at Shellharbour. There will also be a 15-bed specialist mental health service unit for older people at Wollongong. I will keep the honourable member for Bligh fully informed of any future developments and progress regarding Caritas.

### **ABORIGINAL COMMUNITY DEVELOPMENT PROGRAM**

**Mr NEVILLE NEWELL:** My question is addressed to the Minister for Aboriginal Affairs. What is the latest information on the Aboriginal Community Development Program?

**Mr MILTON ORKOPOULOS:** I thank the honourable member for Tweed for his question and his longstanding interest in this issue. The Aboriginal Community Development Program [ACDP] is a long-term program that delivers training and employment for Aboriginal people so they can improve the delivery of health and housing services in Aboriginal communities. Since its inception, more than 220 apprenticeships for Aboriginal people have been created. These jobs are providing real training opportunities, for example, in Lightning Ridge; a five-week building course has been developed by Barriekneal Community and Housing Ltd and Moree TAFE. Eleven students have completed the course and are employed in building, painting, tiling, and electrical trades. We know that employment reduces alcohol and drug abuse, family violence, and other problems impacting on Aboriginal communities. Through this program we are making a real investment in Aboriginal communities, with real results.

At Tabulam in the State's north, Mr Gordon Walker has recently become a carpentry supervisor for GN Constructions. Mr Walker, an Aboriginal man with four children, has been employed by the ACDP for five years. He completed his traineeship last year and is now a fully qualified carpenter. Mr Walker said working on homes in his own community has meant a great deal to him because, in his words, "there was a real need for it in the mission". The program is a \$240 million investment over nine years and it is providing better housing, waste disposal schemes, and running water and sewerage systems. The program is delivering on-the-ground benefits for Aboriginal communities. In housing this means improved plumbing and electricity, fixing damaged and unsafe areas, and the replacement of switches, taps and plugs.

Twenty-two major projects have been successfully completed in communities such as Bellbrook, Brewarrina, Armidale, Kempsey, Willow Bend, Walcha, Mungundi, and Toomelah. Work has also commenced in seven other communities: Baryugil, Tumut, Forster, Coffs Harbour, Malabulginah, Purfleet and Cowra. In total, more than 750 houses around the State have been repaired or improved. And in the provision of water and sewerage services, more than 2,700 Aboriginal people in 38 communities now have running water and proper sewerage systems, which they did not have before. A further 29 projects are under way, including at Tingha, where the project has recently been announced as one of the winners of the Case Earth Awards, which are presented annually for civil construction projects.

The program also has a substantial positive impact on the economy in remote communities. In some remote towns the program is injecting up to \$16 million into the local economy. This is the lifeline for some of these towns. By investing heavily in this program and working closely with Aboriginal people, we have helped bring about significant improvements in the lives of young people and their families: providing jobs, traineeships, apprenticeships, and safe and functional homes. It is a long-term plan to deliver long-term results and I am pleased to report that it is well and truly on track.

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

**Mr Michael Richardson:** Point of order: I submit that the time for questions has not expired. The Opposition has only been given four questions. The fifth question was taken by the honourable member for Bligh and when the Minister Assisting the Minister for Health (Mental Health) read her answer she thanked the honourable member for Bligh for her question.

**Mr SPEAKER:** Order! The honourable member for The Hills will resume his seat.

[Interruption]

**Mr SPEAKER:** Order! The honourable member for The Hills will resume his seat.

**Questions without notice concluded.**

## **BUSINESS OF THE HOUSE**

### **Notice of Motion**

**Mr Carl Scully:** Point of order: I wish to raise a point of order in respect of a notice of motion given earlier today by the honourable member for Davidson. In respect of paragraph 1 of the motion I ask that you to consider—

[Interruption]

**Mr SPEAKER:** Order! The Minister will address the Chair. I call the honourable member for Murrumbidgee to order for the second time. This is a serious matter and I wish to hear what the Minister has to say.

**Mr Carl Scully:** As the House may be aware, a police investigation is currently under way. Paragraph 1 of the motion alludes to certain matters that may or may not be factual. That will depend on the outcome of the investigation. Given the circumstances of this serious and tragic matter, it is inappropriate for the House to put on its record a version of the facts that may or may not be true. I ask you to direct that paragraph 1 not be placed on the record of the House.

**Mr SPEAKER:** Order! While the Leader of the House was speaking, the Clerk handed me a copy of the notice of motion. At this stage it would appear that the point of order taken by the Leader of the House is well founded. Although I am conscious of the need to protect the right of all members to free speech, I must also take into account the serious and important processes of other arms of government, particularly those relating to law enforcement. I will review the notice of motion and take into account the issues that have been raised when determining what should be placed on the business paper.

## **BUSINESS OF THE HOUSE**

### **Routine of Business: Suspension of Standing and Sessional Orders**

#### **Motion by Mr Carl Scully agreed to:**

That standing and sessional orders be suspended:

- (1) to allow for two additional speakers to speak on the motion for urgent consideration, for five minutes each; and
- (2) to permit the introduction of the following bills without notice up to and including the Minister's second reading speech:

Crimes Amendment (Road Accidents) Bill  
Criminal Procedure Amendment (Prosecutions) Bill

## **CONSIDERATION OF URGENT MOTIONS**

### **Federal Government Industrial Relations Policy**

**Mr PAUL McLEAY** (Heathcote) [3.47 p.m.]: My motion is urgent because the Federal Government is attempting to hijack the State industrial relations system and strip New South Wales employees and employers of the protections they currently enjoy.

**Mr SPEAKER:** Order! Government members will come to order.

**Mr PAUL McLEAY:** The matter is urgent because families in New South Wales have a right to fair and decent working conditions. I put all honourable members present today on notice that the successful passage of the Federal Government's radical industrial agenda will dramatically alter, perhaps irreversibly, the harmonious and effective industrial environment that currently operates in our State.

**Mr Wayne Merton:** Point of order: The mover of this motion is dealing with the substance of the motion in great detail. He is not dealing with urgency; he is dealing with the substance of the motion.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! As the honourable member for Heathcote continues his speech he should take account of the point of order taken by the honourable member for Baulkham Hills.

**Mr PAUL McLEAY:** I acknowledge the importance he gave to it. This matter is urgent because families will suffer as parents are forced to work longer hours and on weekends for less money and diminished job security. This is urgent because family-friendly working conditions will be bargained away under individual agreements. This is urgent because for the first time businesses will be locked into the costly, complex, and remote Federal workplace relations system. This is urgent because John Howard said yesterday, as reported on the front page of today's *Sydney Morning Herald*, in case honourable members missed it, that he believes that wages for apprentices are too high. John Howard believes that apprentices get paid too much money, and John Howard believes this of the New South Wales industrial system:

... various State industrial relations systems were too inflexible and a barrier to "skills development".

The Prime Minister believes that the solution to the skills shortage is to cut the pay of apprentices. This matter is urgent because this issue is important for Australian workplace families. It was raised by the Prime Minister just yesterday. The matter is urgent because the changes proposed by the Federal Government have little to do with better wages, more productive workplaces, and a more productive economy. They have more to do with an ideological obsession to wrest control from the States and strip employers and employees of the choices and protections they currently enjoy.

### State Budget

**Mr PETER DEBNAM** (Vaucluse—Leader of the Opposition) [3.50 p.m.]: Nothing is more urgent than the State's budget, which is unravelling. The Government needs a healthy budget to be able to deliver services to the people of New South Wales. Labor members should vote for my motion because they need money in the trough that they put their snouts into. They should vote for my motion to ensure there is a solid State budget—

**Mr Steve Whan:** Point of order: The Leader of the Opposition is not seeking to establish the urgency of his motion. And he should apologise for his appalling suggestion that members of Parliament have their snouts in the trough.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! There is no point of order.

**Mr PETER DEBNAM:** Nothing is more important than making sure the budget is in a sound condition. Clearly, it is not at the moment.

**Mr Kerry Hickey:** Point of order: The Leader of the Opposition is engaging in tedious repetition. The Opposition has raised this issue over the past two weeks, tediously repeating the same points.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! There is no point of order.

**Mr PETER DEBNAM:** I, too, can understand what the Minister is on about. The most urgent issue for the people of New South Wales, whether it was expressed on the weekend at Macquarie Fields, Maroubra or Marrickville, is to have a sound State budget. That underpins absolutely every State service.

**Mr Gerard Martin:** Point of order: The Leader of the Opposition once again is flouting the standing orders. He is not arguing why his matter is urgent. He would have heard the Premier say this afternoon that the State's finances are nothing like the legacy the Coalition left the people of this State when they were removed from government after delivering deficit after deficit.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! At this stage the Leader of the Opposition is in order.

**Mr PETER DEBNAM:** Now we have heard from the biggest shareholder in Telstra we can return to the real issue.

**Mr Steve Whan:** Point of order: The Leader of the Opposition has his facts wrong. The taxpayers of Australia are the biggest shareholders in Telstra.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! There is no point of order.

**Mr PETER DEBNAM:** I know Government members want to talk about Telstra shares. Look, the honourable member for Bathurst is going out to buy more.

**Mr Kerry Hickey:** Point of order: Mr Acting-Speaker, I ask you to bring the Leader of the Opposition back to establishing the urgency of his motion—not to talk about Telstra shares or the sale of Telstra. He should be directed to return to the issue at hand, and that is the urgency of his motion.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! I uphold the point of order. I ask the Leader of the Opposition to return to establishing why the matter he wishes to debate should have priority.

**Mr PETER DEBNAM:** I agree to leave Telstra behind and get back to the 24 police that the New South Wales Labor Government has cut from Liverpool and Macquarie Fields, the beds that are not available in Camden and Campbelltown hospitals, and the nurses who are talking to Opposition members and the media about the stress they are under. The people in the emergency department at Liverpool hospital, which the honourable member for North Shore and I visited on Friday, are in real distress because the Government simply has not put the necessary resources and funding into Liverpool hospital to allow them to properly deal with the families of people with medical traumas. Let us talk about the 553 police that Labor has slashed in two years. The Government is not properly funding hospitals and schools for a very good reason: because the budget is unravelling.

**Mr Matthew Morris:** Point of order: The Leader of the Opposition is debating the substance of his motion, not demonstrating why it is urgent.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! The Leader of the Opposition is debating the detail of his motion. I ask him to demonstrate his case for priority.

**Mr PETER DEBNAM:** This matter is urgent because the Treasury Secretary and the Minister for Finance have been contradicting each other in the past 24 hours. The Premier is using weasel words to pretend the budget is fine. But it is not. We all know it is in crisis.

**Mr Kerry Hickey:** How would you know?

**Mr PETER DEBNAM:** Because your members and your Treasury people talk to us. [*Time expired.*]

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

**The House divided.**

**Ayes, 45**

Ms Allan	Mr Gibson	Mrs Paluzzano
Mr Amery	Mr Greene	Mr Pearce
Ms Andrews	Ms Hay	Mrs Perry
Mr Bartlett	Mr Hickey	Ms Saliba
Ms Beamer	Mr Hunter	Mr Sartor
Mr Black	Ms Judge	Mr Shearan
Mr Brown	Ms Keneally	Mr Stewart
Ms Burney	Mr Lynch	Mr Tripodi
Miss Burton	Mr McBride	Mr Watkins
Mr Campbell	Mr McLeay	Mr West
Mr Collier	Ms Meagher	Mr Whan
Mr Corrigan	Mr Mills	
Mr Crittenden	Mr Morris	
Ms D'Amore	Mr Newell	<i>Tellers,</i>
Mr Debus	Ms Nori	Mr Ashton
Mr Gaudry	Mr Orkopoulos	Mr Martin

**Noes, 33**

Mr Aplin	Mr Kerr	Mr Slack-Smith
Mr Barr	Mr Merton	Mr Souris
Ms Berejikian	Ms Moore	Mr Stoner
Mr Cansdell	Mr Oakeshott	Mr Tink
Mr Debnam	Mr O'Farrell	Mr Torbay
Mr Draper	Mr Page	Mr J. H. Turner
Mrs Fardell	Mr Piccoli	Mr R. W. Turner
Mr Fraser	Mr Pringle	
Mrs Hancock	Mr Richardson	
Mr Hartcher	Mr Roberts	<i>Tellers,</i>
Ms Hodgkinson	Ms Seaton	Mr George
Mrs Hopwood	Mrs Skinner	Mr Maguire

**Pairs**

Mr Price	Mr Armstrong
Mr Yeadon	Mr Constance

**Question resolved in the affirmative.**

**FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY****Urgent Motion**

**Mr PAUL McLEAY** (Heathcote) [4.05 p.m.]: I move:

That is House:

- (1) supports the rights of New South Wales families to have fair and decent working conditions; and
- (2) calls on the Prime Minister to abandon his changes to the industrial relations system, which will strip away basic safeguards for New South Wales workers.

Although comprehensive details regarding the content of the proposed legislation remain a closely guarded secret, information that is being gradually released to the public indicates that it will significantly transform the current industrial landscape in Australia. In the absence of a referral of industrial powers from the State, the Federal Government hopes to use the corporations power to launch a hostile takeover of the State-based industrial relations system, thus stripping New South Wales employees and employers of the choices and protections they currently enjoy.

**Mr Chris Hartcher:** Point of order: The speaker is a former Assistant General Secretary of the Public Service Association. He must know something about industrial relations. He was not put there by the Australian Labor Party machine to keep the seat warm. He does not need to read it from notes. He knows something. He was part of the right-wing push to take over a left-wing union—and didn't he enjoy it!

**Mr ACTING-SPEAKER (Mr John Mills):** Order! The honourable member for Gosford is not speaking to the point of order, he is debating the matter. The honourable member for Heathcote has the call. The honourable member for Gosford will resume his seat.

**Mr PAUL McLEAY:** If the Federal Workplace Relations Act serves as a blueprint, the Federal Government is seeking to override our legislative framework, which is underpinned by principles of fairness and justice, only to replace it with an unnecessarily complex, unbalanced and adversarial system that contains little in the way of protection for employees. In contrast, the New South Wales Industrial Relations Act allows individual workplaces broader scope to determine work practices and wage outcomes better suited to the workplace—arrangements that encourage equitable, innovative and productive workplaces. Our commission can settle disputes quickly, and offers an unfair dismissal system that is equitable, efficient and easily accessible to those who need it most. The shadow Minister for Industrial Relations has celebrated the virtues of the New South Wales industrial relations jurisdiction, and has placed his respect for the New South Wales Industrial Relations Commission on record on at least two occasions that I have noticed in this House.

**Mr Chris Hartcher:** And more!

**Mr PAUL McLEAY:** And more. Why has he done that? I suspect he has done it because he acknowledges the value of a secure, balanced commission. Why does the Federal Government have an ideological bent on changing the industrial framework? Let me lay to rest a few myths. The attack on industrial laws is not an attack on unions but an attack on working families. Unions in this country are not run on backroom deals; they have not been run that way for long time. The largest and, I would argue, the most influential unions are the white-collar unions, which are comprised mainly of women, that provide front-line service provision and service delivery. They are shop assistants, teachers, nurses and public servants. For several years these unions have been growing in strength and activism.

Most affiliates of Unions New South Wales are not affiliated with the Australian Labor Party. They have been an integral part of Australia's growing economy: They are the powerhouses behind it. Unions are good for business. They have the support of the wider community, even if people do not sign up. The attack is not against the union movement but rather against Australian working families, people who want decent minimum wages, and conditions like penalty rates at weekends, rights to redundancies and dismissal laws, and a right to collective bargaining rather than being picked off one by one in a race to the bottom. Under Federal Government proposals the minimum wage and common rule awards will be early casualties.

The Federal Treasurer, Peter Costello, has stated that he would prefer a system with far fewer award minimum wages. The Federal Minister for Employment and Workplace Relations is on record declaring that the current minimum wage is \$70 higher than he thinks it should be. The Federal Government has consistently criticised the scale of increases awarded by the Australian Industrial Relations Commission. If the Federal Government's safety net review submissions had been heeded over the past nine years, workers on the award rates would be a shocking \$50 a week or \$2,600 a year worse off. The Prime Minister claims that under his Government the minimum wage has increased 12 per cent in real terms since 1996. What he fails to mention is that this was despite his best efforts, not because of them.

Far from welcoming each increase, the Federal Government has vigorously protested against each increase since taking office. A significant component of the Federal proposal centres on stripping the independent umpire of its powers to fix wages and replacing it with the Australian Fair Pay Commission. The establishment of such a commission will allow the Prime Minister to implement his long-held policies of reducing the minimum wage in real terms. That is of enormous concern to the citizens of New South Wales. The national minimum wage is an essential safety net for low-income earners and its reduction will also drive down the wages of middle-income earners. The Howard Government plans to abolish the existing no-disadvantage test by the creation of a new Australian fair pay and conditions standard.

Currently, Federal and State awards are the baseline against which collective and individual agreements are measured. The new standards will guarantee only four conditions of employment and the minimum wage. For existing employees, other conditions will have to be bargained away to negotiate a pay increase. Current conditions will simply not be offered to new employees. Many workers will be disadvantaged in the long term. The extreme overhaul does not stop there. The Federal Government is also determined to force workers into individual Australian workplace agreements [AWAs]. That is an undisguised attempt at marginalising Federal and State awards and collective agreements. While the Minister for Employment and Workplace Relations, Mr Andrews, claims that AWAs are a crucial component of the modern, flexible workplace, studies indicate that individual agreements not only deprive employers and workers of choice, but also strip away benefits and attack the conditions of the lowly paid.

Under what the Federal Government envisages as a streamlined process, AWAs and certified agreements will need only to be filed with the Office of the Employment Advocate to have legal effect. The present vetting, such as it is, by the commission and the advocates will cease. The Federal Government also intends to remove protection from unfair dismissal claims for employees who work for businesses with up to 100 employees. The result will be the creation of a distinctly two-tiered unfair dismissal regime which will entrench an artificial separation of rights. A minority of employees will have their dismissal rights while 4,000,000 Australian workers—1.2 million of whom work in New South Wales alone—will have none. In addition, the jurisdiction for the creation of this type of polarised and intrinsically unjust system is based on myth, not fact.

The fact is that Australians have enjoyed moderate and steady increases in the Federal minimum wage of approximately \$71 over the past five years while simultaneously enjoying steady employment growth of



819,400 jobs during the same period. The Federal Government's Productivity Commission recommended improving the training opportunities or employability of the unemployed as the primary strategy, rather than cutting wages and conditions. On two separate occasions the Federal Government has formally invited New South Wales to refer its industrial relations powers. In both instances, the invitation has been rejected. To surrender the State over industrial relations matters would be to strip employers and employees of choice, flexibility and fundamental entitlements, with devastating consequences for industrial relations in this State.

The ability to mould an industrial system to be responsive and in tune with the individual needs of our State would be lost. It is telling that the Federal Government's push for a single national industrial relations system has failed to gain support from most of the Coalition's State counterparts—and even some of their own Federal colleagues. Matt Birney, the Leader of the Opposition in Western Australia, and Iain Evans, the South Australian shadow Minister for Industrial Relations, have both raised their voices against the Federal Government's plans. Senator Barnaby Joyce has expressed a number of reservations in relation to the Federal Government's radical industrial agenda. Even The Nationals Opposition in Queensland, led by Lawrence Springborg, were recently reported—

**Mr Daryl Maguire:** Point of order: I draw your attention to the reference to copious notes at paragraph 13.9 of *Decisions from the Chair*. The honourable member for Heathcote clearly has been reading from a prepared speech. The rulings on pages 98, 99, 100 and 101 clearly indicate that he is not complying with *Decisions from the Chair*.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! I note what the honourable member for Wagga Wagga has said. I also note the decision of the former Speaker that when time is limited, members may indeed refer to copious notes.

**Mr PAUL McLEAY:** The eagerness of a former New South Wales Opposition leader to roll over and refer New South Wales industrial powers reflects a conscious decision of the New South Wales Liberal Party to abandon employers and employees of our great State to pave the way for its Federal Government's ideological obsession. I call on the new Leader of the Opposition to shelve this ideological obsession and adopt a position that is in the interest of New South Wales. The *Workforce Daily* of 13 September states:

Debnam is currently reviewing all state Opposition policy to see where he stands, his spokesman said: "To be honest I don't know. I haven't been asked that before. But I would imagine he would be supporting the Federal Govt.

I call on the Leader of the Opposition to support workers and families of New South Wales, and not just the Coalition cronies and John Howard. [*Time expired.*]

**Mr CHRIS HARTCHER (Gosford) [4.15 p.m.]:** I move:

That the motion be amended by leaving out paragraph (2) with a view to inserting instead:

- (2) (a) condemns the Government's poor record of industrial relations, which has led to a massive blow-out in the State budget by the failure to contain public sector wage costs;
- (b) endorses the support of former Labor Premier Bob Carr and present Labor leader Steve Bracks for a national industrial relations system;
- (c) endorses the support of former Labor leader Mark Latham and present Labor leader Kim Beazley for a national industrial relations system; and
- (d) congratulates the Howard Liberal-Nationals Government on its economic achievements through its effective industrial relations system.

Let me support that amendment by quoting a well-loved figure of Labor Party history, Bob Carr, who, when speaking about national industrial relations, stated:

In a nation of 17 million people struggling to modernise its economy, seven separate systems of industrial regulation are an absurd luxury.

That was the stated by none other than Robert John Carr. At the Victorian conference of the Australian Labor Party Steve Bracks stated:

The Victorian ALP supports in principle the concept of a single national system of industrial relations, and it always has. It can deliver benefits to both employees and employers by creating a uniform national framework for dispute resolution and the application of minimum employment standards that can be more easily complied with and enforced.

What did the Federal shadow Minister for Industrial Relations, Stephen Smith, say on 20 February this year on the *Sydney Sunrise* television program? He said:

It is possible to consider, in the abstract or hypothetically, a single unitary system. It's not a novel policy idea, and you can contemplate a whole range of efficiencies that would occur in the economy and in the system if it were to take place.

What did Bill Shorten say? He is the head of a great and proud union, a splendid man who is the National Secretary of the Australian Workers Union [AWU]. He stated:

It seems absurd that there are more than 130 pieces of State and Federal legislation pertaining to industrial law, and that is not including the new provision in privacy laws that affect the employment contract. For the AWU and employers operating in more than one State, it is tedious work, learning the legislative requirements for each State.

What did Jeff Shaw, a former Minister for Industrial Relations in the Carr Labor Government, say? In 2000 Jeff Shaw, as Attorney General, addressed the subject of national industrial relations at a seminar of the Business Council of Australia in 2000. He said:

... the corporations power has been liberally interpreted by the high Court and can sustain legislation designed to regulate the employment relationships between a corporation and its workforce ... Industry and commerce increasingly crosses historically determined state boundaries. The wages and conditions of employees are relevant to national economic considerations and it will often be convenient for both employers and unions to have uniform national conditions.

We have Labor Ministers, trade union secretaries, Labor Premiers, past and present, and the great Bob Carr all endorsing the concept now advanced by the Prime Minister of one national industrial relations system. What did Mark Latham say? He said he supported a national system. What did Kim Beazley say in February 2004? He said that Labor has no objection in principle to a single national industrial relations system.

**Mr Anthony Roberts:** Cuddly Kim.

**Mr CHRIS HARTCHER:** Cuddly Kim, whom we love, and long may he stay Leader of the Federal Opposition. In February 2004 he supported a single industrial relations system. There they are. Mark Latham—what a popular man he is with those on the Government benches. His photo still hangs in Labor's party room as one of the great leaders of the Labor Party. If members look up the index in Mark Latham's book, I am sure many of them will find that they have been mentioned. Mark has something to say about all of them, and it would be something nice. Mark says only nice things about his Labor Party colleagues. He would have something nice to say about each and every one of them.

The honourable member for Heathcote, the former Assistant General Secretary of the Public Service Association, would never say that he used the Public Service Association as a stepping stone to a political career. No, he was there because he believed in the workers. But what can be said about other members opposite? The honourable member for Drummoyne missed out on Cabinet because her brother-in-law's attentions were elsewhere. Her brother-in-law was too busy looking after the new Premier to worry about his sister-in-law. During question time it was lovely to hear a question to the Minister for Roads asked by the honourable member for Drummoyne. It was good to see the family come together: families who plot together stay together. That is the new slogan for the Australian Labor Party, and it is a very valid one. There is much to be said about why a woman of the ability of the honourable member for Drummoyne did not make Cabinet.

**Ms Noreen Hay:** Point of order: For some time I have been listening to nothing less than personal attacks and slurs from the honourable member for Gosford. I ask you to ask him to get back to the issue before the House and to stop making personal attacks on members of this Chamber.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! I uphold the point of order, in as much as it is a couple of minutes since the honourable member for Gosford addressed the motion.

**Mr CHRIS HARTCHER:** If saying that a member of Parliament should be in Cabinet is a personal attack, I withdraw my remark that the honourable member for Drummoyne should be in Cabinet. I support the point taken by the honourable member for Wollongong that that is a personal attack upon the honourable member for Drummoyne. I will now talk about the honourable member for Wollongong, who was in the left faction, because—

**Mr ACTING-SPEAKER (Mr John Mills):** Order! I have already upheld the point of order. The honourable member for Gosford should return to the motion and the amendment.

**Mr CHRIS HARTCHER:** The amendment seeks to condemn the Iemma Labor Government and its members. It was a widely worded motion, but I will not talk about the honourable member for Wollongong today; I will do that on another occasion. The budget of the Iemma Labor Government has blown out by more than \$500 million. Today we have a report that that if the Teachers Federation gets the amount it is going for, there will be another \$600 million blow-out over the next 18 months. The Government is in financial crisis because it has been unable to manage its industrial relations. If ever there is to be a rescue effort mounted by a government, it will be by the Howard Liberal Government riding to save the State Government from its inept industrial relations problems. Long live John Howard!

**Ms ANGELA D'AMORE** (Drummoyne) [4.25 p.m.]: I support the urgent motion. Neither the Australian economy nor the New South Wales economy can manage without the contribution of working parents. In 52 per cent of New South Wales families with children both parents are in the labour force. Census data shows that over half the number of women with a child under five participate in employment. That rate increases to almost 70 per cent when the youngest child is between five and nine years of age. If families are to be destabilised, and parents and their children are to be penalised, there is no better way to achieve that than by the Howard Government's proposed industrial relations changes. I note that the shadow Minister is walking out. He obviously does not want to hear the truth.

What will be the impact of these changes on job security and, therefore, on the financial security of working families? The industrial changes planned by the Federal Government, particularly those that will affect workers on individual contracts, or casuals or independent contractors, are about workplace insecurity, not genuine workplace flexibility. For working families trying to combine caring commitments with work responsibilities, reduced wages, a fire-at-will workplace environment—

[*Quorum formed.*]

[*Debate interrupted.*]

## BUSINESS OF THE HOUSE

### Urgent Motion: Suspension of Standing and Sessional Orders

**Mr MILTON ORKOPOULOS** (Swansea—Minister for Aboriginal Affairs, and Minister Assisting the Premier on Citizenship) [4.31 p.m.]: I move:

That standing and sessional orders be suspended to restore the speaking time remaining for the honourable member for Drummoyne to 3 minutes and 50 seconds.

**Mr CHRIS HARTCHER** (Gosford) [4.31 p.m.]: What an extraordinary attempt to save the honourable member for Drummoyne! She came into this Chamber with a prepared printed speech given to her by departmental officers—a prepared printed speech that was used by the honourable member for Heathcote—and all she wants to do is read that speech onto the *Hansard* so she can send it to one of the little trade unions, the Nurses Association, with whom she claims some affiliation, so she can say she is standing up for the workers in this State. The fact is she is not, and nor is the honourable member for Heathcote.

**Mr Milton Orkopoulos:** Point of order: The honourable member for Gosford is not speaking to the motion that standing and sessional orders be suspended to restore the speaking time of the honourable member for Drummoyne. He is engaging in a personal attack on the honourable member for Drummoyne and should be asked to desist.

**Mr CHRIS HARTCHER:** To the point of order: The issue is whether the speaking time of the honourable member for Drummoyne should be restored. That is the issue before the House. That is the motion and I am speaking to that motion.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! There is no point of order. The honourable member for Gosford may continue.

**Mr CHRIS HARTCHER:** Mr Acting-Speaker, I have said many times that you have the wisdom of Solomon. The honourable member for Drummoyne has nothing to contribute to this debate. There is no reason at all why her extreme right-wing views should be placed in the *Hansard*. The right wing rises again.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! There is too much interjection in the Chamber.

**Mr CHRIS HARTCHER:** We want to hear from that wonderful former member of the Left, the honourable member for Wollongong. We want to hear from the social conscience of the party. We heard from one right-winger, the honourable member for Heathcote, and we do not want to hear from another in the form of the honourable member for Drummoyne. There must be a few left-wingers who have a contribution to make. They should be given time to make their contributions. The honourable member for Newcastle is the embodiment the Left. He is the soul and conscience of the Left. He is the sort of man from whom we should be hearing in these difficult times. He is the sort of man who has something to contribute to the working class.

What did members of the right wing ever do for the working class? They walk all over them. As soon as members of the right wing get into this place they walk all over the working class and use them to promote their career paths. Nobody has ever accused the honourable member for Heathcote of using the trade union movement to promote his career path. Nobody would ever say that about the honourable member for Heathcote. I defy anybody to say that outside this Chamber because I will sue him or her.

**Mr Gerard Martin:** Point of order: My point of order relates to the sheer hypocrisy of the honourable member for Gosford. He is in no way a friend of the working class and he knows it. He should not use barefaced effrontery to try to divert the attention of the House. We want to hear from the honourable member for Drummoyne. She is a real representative of the working class.

**Mr ACTING-SPEAKER (Mr John Mills):** Order! I will consult the standing orders as to which is correct. The honourable member for Gosford has the call.

**Mr CHRIS HARTCHER:** Last Saturday we heard from the working class. We saw in Macquarie Fields a 13½ per cent swing as workers headed for the polling booths with Liberal how-to-vote cards in their hands. They said, "Workers of the world, you have nothing to lose but your Labor Party chains." Workers united will never be defeated. They stand on this side of the Chamber. They stand here, Howard's battlers, giving Howard majority after majority and seat after seat. They are heading back to the State Liberal Party and Government members know that that is occurring.

I amend this motion simply by stating: Let us hear from the Left. Let us hear from the new Minister for Aboriginal Affairs, whom I have not yet congratulated on his appointment. It is a great achievement for the Central Coast and we are proud of him. Notwithstanding our great pride we need to hear from a more representative sample other than the Public Service Association and the Nurses Association. We need to hear from people who really represent and care about the workers of this State. We need to hear from people who have an interest in the workers of this State, that is, members on this side of the Chamber. One of the people we want to hear from is the honourable member for Lane Cove. He should have the call. [*Time expired*]

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 46**

Ms Allan	Mr Gaudry	Mr Orkopoulos
Mr Amery	Mr Gibson	Mrs Paluzzano
Ms Andrews	Mr Greene	Mr Pearce
Mr Barr	Ms Hay	Mrs Perry
Mr Bartlett	Mr Hickey	Ms Saliba
Ms Beamer	Mr Hunter	Mr Sartor
Mr Black	Ms Keneally	Mr Shearan
Mr Brown	Mr Lynch	Mr Stewart
Ms Burney	Mr McBride	Mr Tripodi
Miss Burton	Mr McLeay	Mr Watkins
Mr Collier	Ms Meagher	Mr West
Mr Corrigan	Mr Mills	Mr Whan
Mr Crittenden	Ms Moore	
Ms D'Amore	Mr Morris	<i>Tellers,</i>
Mr Debus	Mr Newell	Mr Ashton
Ms Gadiel	Ms Nori	Mr Martin

**Noes, 31**

Mr Aplin	Mr Kerr	Mr Slack-Smith
Ms Berejiklian	Mr Merton	Mr Souris
Mr Cansdell	Mr Oakeshott	Mr Stoner
Mr Draper	Mr O'Farrell	Mr Tink
Mrs Fardell	Mr Page	Mr Torbay
Mr Fraser	Mr Piccoli	Mr J. H. Turner
Mrs Hancock	Mr Pringle	Mr R. W. Turner
Mr Hartcher	Mr Richardson	
Ms Hodgkinson	Mr Roberts	<i>Tellers,</i>
Mrs Hopwood	Ms Seaton	Mr George
Mr Humpherson	Mrs Skinner	Mr Maguire

**Pairs**

Mr Price	Mr Armstrong
Mr Yeadon	Mr Constance

**Question resolved in the affirmative.**

**Motion agreed to.**

**DISTINGUISHED VISITORS**

**Mr ACTING-SPEAKER (Mr John Mills):** I welcome to the public gallery a delegation from the Jilin Provincial People's Government from the People's Republic of China. I trust that they enjoy their visit to the Parliament of New South Wales.

**FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY****Urgent Motion**

*[Debate resumed.]*

**Ms ANGELA D'AMORE:** For working families trying to combine caring commitments with work responsibilities, reduced wages, a fire-at-will workplace environment and ever-diminishing entitlements to family-friendly conditions will mean second or third jobs just to stay afloat. The Federal Government's industrial changes will be devastating to families' jobs and financial security. For a start, if you are one of the 62 per cent who work in a business with fewer than 100 employees, you can be fired at will without any obligation on your employer to give you a reason, let alone notice or redundancy pay. What about the effect of losing the independent tribunal, the Australian Industrial Relations Commission, to determine minimum wage increases? More than 60 per cent of award-dependent workers are women, and they will be hit the hardest.

Just look at the impact of losing penalty rates—it could equal the impact of interest rates jumping by 2 per cent. The Prime Minister has tried to camouflage the effects with the often-repeated mantra that real wages have grown by 14 per cent. This has been exposed as an absolute misrepresentation designed to fool Australian workers. The facts show that average real wages have increased by just 3.6 per cent for non-managerial workers, and they are the lucky ones. The lowest 20 per cent of workers have had an increase of just 1.2 per cent. Meanwhile, the top 10 percent earners' incomes have grown by 13.8 per cent over the same period. The richer you are, the richer you will get. The Prime Minister should think twice before saying he can rely on his record. It comes as no surprise, looking at his plans for working families, that he refuses to give a guarantee that there will be no disadvantage in his industrial changes.

In fact, that index of fairness, the no-disadvantage test, will disappear too. The protection of minimum award conditions as a base line for checking Australian workplace agreements will be replaced by five conditions, and there is no room for overtime or penalty rates. Mortgages are often paid with overtime and penalty rates, as are food, petrol and other household bills. Despite its rhetoric, the Federal Government is simply anti family. We have heard previously that the Federal Government has opposed every minimum wage claim since 1997. That means the Federal Government believes we should have \$50 less than the minimum wage today. It offers \$6 to lowly paid workers but it does not tell people that it tried to deny them \$50 a week.

It opposed every additional unpaid family leave entitlement in the recent family provisions test case, insisting that anyone and everyone already had family-flexible conditions, because all they had to do was ask for them. If that were the case, we would not need an industrial relations commission, we would not need trade unions and we would not need employer associations either. But based on all the evidence, the commission decided that a positive step was needed, through awards, to assist employees to reconcile work and family responsibilities.

I also note a recent case of a mushroom harvester, Carmen Vel Walewska, employed by Imperial Mushrooms in Penrith, who was sacked for refusing to sign an Australian workplace agreement that offered her lower pay and lesser conditions than the award. I commend the Australian Workers Union for taking up this case and negotiating a package for the worker. The right of employees to take such claims to an affordable industrial tribunal will be taken away by the Howard Government if it gets its way. Instead employees will be forced into the unaffordable and complex Federal Court. Workers such as Carmen, earning a gross sum of \$460 per week, will not be able to fight for their rights and will be victimised in their employment with no recourse. I commend the motion.

**Mr ANTHONY ROBERTS** (Lane Cove) [4.47 p.m.]: It is with great pleasure that I support the honourable member for Gosford's amendment, in which he condemns the Labor Government for its poor record in industrial relations. This has led to a massive blowout in the State budget through the failure to contain public sector wage costs. He also endorsed former Labor Premier Bob Carr, present Labor Premier Steve Bracks, former Labor leader Mark Latham and present Labor Leader Kim Beazley for their support for a national industrial relations system. Worker by worker, family by family, individual by individual, booth by booth, seat by seat, the Coalition is taking back the people of New South Wales. This is about efficiency, competition, freedom, and better conditions for workers. I am not the only one saying it. It is with pleasure that I support the Howard Government's reforms.

**Mrs Karyn Paluzzano:** Point of order: This is not relevant. The only relevance here is the workers and the people of Penrith whom I met on the picket line supporting Carmen. The workers in Penrith support the Unions NSW position.

**Madam ACTING-SPEAKER (Ms Marianne Saliba):** Order! There is no point of order.

**Mr ANTHONY ROBERTS:** The workers of Penrith will get a better deal, there will be more jobs and less unemployment, and that is what the union hacks are afraid of. They are afraid that you are losing control of the workers. They are waking up, looking at Australian workplace agreements and looking forward to a new future where they do not have to rely on the greedy fat cats in the union movement to tell them what to do. There are more jobs. It is not just John Howard and me saying it; Jeff Shaw agrees there should be a national industrial relations system. Steve Bracks and Bob Carr also agree. I remind honourable members that Bob Carr said:

In a nation of 17 million people struggling to modernise its economy, seven separate systems of industrial regulation are an absurd luxury.

**Mr Matthew Morris:** Point of order: My point of order relates to tedious repetition. The honourable member for Lane Cove is making exactly the same speech as the honourable member for Gosford.

**Madam ACTING-SPEAKER (Ms Marianne Saliba):** Order! There is no point of order.

**Mr ANTHONY ROBERTS:** I was quoting Bob Carr: that is exactly what he said. Even Bill Shorten, National Secretary of the Australian Workers Union, and Stephen Smith agree with him. Labor members fear that this is the end of militant unionism. I have a press release from the Hon. Kevin Andrews—who is a great Minister—in which he points out that the State Premiers and union officials support reform of the industrial relations system. He wants a better deal for Australian workers. He wants to ensure more jobs and less unemployment. The release quotes the comments of Chris Cain, West Australian Secretary of the Maritime Union of Australia, at a rally at the Victorian Trades Hall Council. He said:

If you believe in rank and file trade unionism, you have to break the law ... Because I break the law every day and sooner or later we're going to have casualties when we do, but if we do it en masse, then we'll win.

Those are the sorts of people that must be broken and taken out. We must break the nexus of illegality. We must return to a system that is fair for all workers and that pays them a good day's wage. We must ensure that there

are jobs and that industry can grow and create wealth. It is important that the national Government is providing leadership, particularly in the area of employment. New South Wales has an awful employment record.

[Interruption]

Labor members should be quiet because even Victoria is beating us. The recent Federal unemployment figures were at their lowest level since 1976—which is a 29-year low.

**Mr Matthew Morris:** Where are they all?

**Mr ANTHONY ROBERTS:** That is a good question. I will tell the honourable member where they are: They are in Queensland and Victoria because that is where the employment is. There is no employment in New South Wales. The honourable member for Gosford urged us to reflect upon what occurred last Saturday. Let us consider the electoral swing towards the Liberals in a by-election held in the Labor heartland. The people are coming back to us because Labor has forgotten and betrayed them. People see Labor members as a bunch of class traitors and they are looking to the Liberal Party to provide employment and assistance. Last weekend saw swings of 22 per cent, 14 per cent, 17 per cent and 19 per cent.

**Ms NOREEN HAY** (Wollongong) [4.52 p.m.]: What a sad and pathetic lot those opposite are! We have heard some absolute garbage from the other side of the Chamber. I can also quote Bob Carr. In this place on 22 June 2005 he said:

They have Federal responsibility in Victoria—we have a State-based system—and they have 50 per cent more industrial disputes.

Bob Carr pointed out that there are 50 per cent more disputes in the construction industry in Victoria than there are in the New South Wales industry. He continued:

It costs three times more to throw up an office tower in Melbourne than in Sydney.

But that lot opposite would have us believe that is something to brag about! I support the urgent motion moved by the honourable member for Heathcote. The Prime Minister, John Howard, should abandon his changes to the industrial relations system and the New South Wales Opposition should drop its blind support for it. It is a shame that Opposition members do not take the same approach to trying to retrieve \$3 billion in GST revenue from the Federal Government. These changes are not just bad for workers and families but they are bad for business and bad for taxpayers.

The Federal Government has made numerous sweeping statements during its campaign to sell its industrial relations changes. One of the more recent announcements is that up to \$120 million could be saved by abolishing the State industrial relations systems. Unfortunately for the Federal Government, this grand claim merely exposes its understanding of basic economics to be as poor as its understanding of productive and fair industrial relations. What the Minister for Employment and Workplace Relations should have said is that his Federal industrial relations system costs twice as much per worker to run as the New South Wales system and that Australia's taxpayers are picking up the bill.

The Federal industrial relations system cost a grand total of \$140 million to run in 2004-05. Given that the Federal system covers approximately four million workers, this means that it cost \$35 per worker to operate. In contrast, it cost just \$41.8 million to run the New South Wales system in the same year. Covering 2.5 million workers, this equates to a cost of just \$17 per head. This is the efficient and cost-effective system that John Howard wants to take over. He wants Australia's taxpayers to fork out for a system that costs twice as much but delivers less than half as much. There is no great economics there!

Look at compliance, for example. Last year the New South Wales industrial inspectors completed 15,000 investigations, covering 14,000 workplaces and 80,000 employees. Some \$2.5 million in underpaid or non-paid wages was recovered. Federal industrial inspectors visited fewer than 2,000 employers in the same year as part of their compliance campaigns. The New South Wales Office of Industrial Relations initiated 42 prosecutions and issued a further 176 infringement notices. What about the Federal department? It prosecuted just seven employers Australia wide. The Office of the Employment Advocate—which is responsible for ensuring compliance with the 700,000 or so Australian workplace agreements approved since 1997—prosecuted just one employer. That is not surprising when one considers that it has no full-time compliance staff. That shows clearly how the Federal Government views compliance: as irrelevant and unimportant. But, in reality, compliance is a vital service that ensures that workers receive their correct entitlements and that businesses compete on a level playing field.

So that is the bad news for taxpayers. Now let us turn to the bad news for business. The Prime Minister and Kevin Andrews have asserted repeatedly that their industrial relations changes will be beneficial for business. They obviously forgot to tell small business! Businesses in New South Wales can currently choose the industrial relations system that best suits their needs: either the Federal or the State system. Not surprisingly, two out of three businesses have chosen to stay in the New South Wales system because it is less costly and less complex. The Federal Government wants to remove this choice and force all businesses to operate in the Federal system that favours large employers. In fact, the Federal system is so complex that most businesses will need dedicated industrial relations expertise just to understand and comply with the laws.

The Federal Government's changes will drag many businesses into lengthy industrial disputes. The Federal system is riddled with lengthy disputes and employer lock-outs. In fact, 91 per cent of all lock-outs occur in the Federal system. Unlike the New South Wales system, disputes in the Federal system cannot be resolved by a strong, independent umpire. The Federal Government is trying its hardest to convince businesses that the industrial relations changes will be beneficial for them. [*Time expired.*]

**Mr ANDREW FRASER** (Coffs Harbour) [4.57 p.m.]: In my position as shadow Minister for Small Business I have visited small businesses in the past couple of months that are doing it very tough in this State. These small businesses, which number 375,000 in New South Wales and employ more than 1.2 million people, are extremely concerned about the occupational health and safety and workers compensation WorkCover laws in this State. Those businesses are looking at moving interstate because of occupational health and safety, workers compensation and payroll tax. Labor members should be concerned about the poor conditions that those businesses and their employees must endure.

The cost of compliance with New South Wales government regulations is so great that businesses in this State cannot afford to employ more people. A fisherman from Coffs Harbour told me that, under the regulations, he is supposed to employ an additional deckhand. However, workers compensation and occupational health and safety regulation costs so much that he cannot afford to employ another deckhand. A government department is going to stop that man from fishing because of New South Wales government regulations. We have heard today that workers in New South Wales are poorly done by. But the unions are driving a campaign that has no basis in fact. The nurses, teachers and the Public Service Association know full well that they have an opportunity to negotiate Australian workplace agreements with the New South Wales Government.

If the unions had any brains in relation to this matter they would make representations to the State Government and negotiate decent wages and conditions on behalf of their members under an Australian workplace agreement [AWA] proposed by the Federal Government. We have not seen the legislation on the table yet but we have been told by the Prime Minister, the Treasurer, Mr Andrews and others to wait and see. They do not want to take away the rights of people but under AWAs they are looking for increased productivity, conditions, and wages for workers. Steve Harrison, the brother of the former honourable member for Parramatta Gabriel Harrison, a former Minister in this Government, has been running labour hire firms for a long while. Every business he has been into has had increased employee satisfaction, profitability, and wages—and sickies on Mondays and Fridays have disappeared.

**Mr Anthony Roberts:** Gone.

**Mr ANDREW FRASER:** Gone.

**Mr Matthew Morris:** They sack them.

**Mr ANDREW FRASER:** No, they do not sack them. They increase employment numbers, the productivity of the firm, and worker satisfaction, and at the end of the day the country, the workers and the businesses do well. They do not do well with onerous legislation and regulation forced on them by this Government. Every small business in this State must comply with a pile of occupational health and safety regulations and WorkCover regulations. This week I visited one business that is about to put off 26 workers because the Government has hit it with a WorkCover premium of \$62,000, which cannot be justified. The business queried the premium and WorkCover is now backing off and says it may have miscalculated.

Another business is about to put off 122 employees because WorkCover is charging a premium on superannuation, holiday pay, and other add-ons it cannot afford. Businesses will lay off people because they cannot afford them, and what benefit do injured workers get? They only get the award wage, yet this



Government is ripping the guts out of employers. What the Government is doing to small business in this State is nothing short of disgraceful. The campaign being waged by unions on television at the moment is dishonest. If unions really want to help workers in this State in regional towns such as Coff's Harbour they should go out and negotiate AWAs on their members' behalf. They should stand up for their workers and not have people such as the honourable member for Charlestown tell lies in this House.

**Mr MATTHEW MORRIS** (Charlestown) [5.02 p.m.]: I welcome the opportunity to support my colleagues on this very important issue not only for the State but the nation. I will firstly set the record straight in relation to the Federal member for Lindsay, who has disgraced herself to the point that she cannot even bring herself to talk to her constituency about this industrial relations reform package. She refers any issue straight to Federal Minister Andrews, and that reflects the commitment of the Government to this process and the reforms. On a more local note, these proposed industrial relations changes are really about degrading the role of unions while reducing the rights and entitlements of employees. There is nothing good about the Federal Government nor its proposed industrial relations changes.

The question that needs to be answered is: What will it mean for thousands of employees across this State? It will mean the loss of entitlements, reduced job security, more individual workplace agreements and less take home pay. What a tragedy for employees. It is no surprise that individuals and families are bitter towards the Federal Government. Setting about to destroy employees' rights and entitlements is socially and morally unacceptable. We have all witnessed and participated in the strong campaign co-ordinated through the union movement—and what a great campaign it is. Look at the level of participation across employees and employers in this on-going campaign. The message to the Federal Government is simple: "Hands off our rights and entitlements. If it ain't broke don't fix it", as the old saying goes.

New South Wales has a great industrial relations system that has proven itself time and time again. Employees across this State deserve their hard earned entitlements. Governments at all levels and of all persuasions have a responsibility to respect and preserve the public interest and govern in a way that supports our communities. The industrial relations reforms as proposed do nothing but undermine the interest of our communities and actually degrade those hard earned entitlements over many years. What a joke! The Federal Government continues to push these reforms. However, I suspect the worst has not yet been exposed, but it will be in time. What will these significant changes to industrial relations mean for our children? A cut-throat marketplace without any protection for individuals, reduced wages and entitlements, and zero job security. An absolute disgrace.

I will share a real example put to me by a motor mechanic who came to my office. He was threatened by his employer to sign off on a pink slip for his mate's car, otherwise he would be sacked there and then. Another example is the Boeing workers on the picket line at Williamstown, who for more than 100 days have been on strike because of the way Boeing is treating them. The Boeing workers' campaign is really the tip of the iceberg, with only more of the same to come. Let us think about the future: less pay, minimal workplace rights, no union representation, individual contracts, no job security, and no job certainty. Think that through. Is that the future we want for our children? No, of course not. Collectively we must tell the Federal Government to pull their heads in. It is simple.

I call on members of the Opposition to support this Government and ring their mates in Canberra and tell them to back off. How any honourable member opposite could endorse the degrading of rights and entitlements in any workplace is just astounding. Many of those members have benefited in their working lives from these rights and entitlements that unions and individuals have fought for in time gone by. Members of the Opposition have their hands in the air and will quite happily tow the line for their Federal mates and make sure that New South Wales suffers, with total disregard for its community.

Let us give credit where it is due. Everyone in this State can see what the Federal Government is trying to do, and the message is clear: We do not want, need, or deserve to have our workplace rights degraded. I say, bring on the next Federal election. The people of New South Wales say, bring on the next Federal election, which will be judgment day for the Opposition's mates in Canberra. I will send them a farewell card right now.

**Mr PAUL McLEAY** (Heathcote) [5.07 p.m.], in reply: The motion supports the right of families in New South Wales to have fair and decent working conditions. My motion calls on the Prime Minister to abandon his changes to the industrial relations system, which will strip away basic safeguards for New South Wales workers. The gallery is now full of Australian workers who see the shamefaced hypocrisy of what the Liberal Party and The Nationals have thrown up. Elsewhere in Australia, Matt Burney, the Leader of the Opposition in Western Australia, and Iain Evans, the South Australia shadow Industrial Relations Minister have both raised their voices against the Federal Government plans. Our old favourite, Senator Barnaby Joyce, expressed a number of reservations about the Federal Government's radical changes and even The Nationals in

Queensland led by Lawrence Springborg were recently reported as having reservations about the Commonwealth's desire for a national industrial relations system. We know Barnaby Joyce because we have seen him flip-flop all over the national agenda, and I hope he sticks on this one.

At the start of this debate the Opposition shadow Minister for Industrial Relations mischievously quoted esteemed Labor leaders. We are happy when union and Labor leaders talk and debate efficiencies in the labour market but we just do not want to reduce conditions, and that is the difference. We will talk in a constructive way that suits employers and employees, as opposed to the shadow Minister for Industrial Relations, who simply misquoted and suggested that Labor would like to slash conditions, when it does not. The honourable member had nothing to say about the motion or the amendment. The honourable member for Drummoyne spoke about the destabilising impact on families of award changes and the devastating effect that would have on her community as well as the wider communities of New South Wales and Australia. The honourable member for Lane Cove had a strange quotation about union leaders. I will check *Hansard* tomorrow, but I thought he said:

They are the type of people who need to be broken.

That was an extraordinary utterance of honesty by the honourable member for Lane Cove. He said the real agenda behind the Federal Government's proposal is breaking unions. As I explained in my second reading speech, that is absolutely misguided. The honourable member for Wollongong spoke about the Victorian system of industrial relations, and the fact that when industrial relations in that State were under the Federal system it had 50 per cent more industrial disturbances than New South Wales. That puts the lie to the suggestion that the Federal system has more efficiencies. The New South Wales system is much stronger and more robust.

I do not need to respond to the remarks made by the honourable member for Coffs Harbour. We have heard his anti-WorkCover speech a number of times. It is getting a bit boring. The honourable member for Charlestown spoke about support for families in his electorate. It is interesting that he said that the Federal member for Lindsay, Jackie Kelly, has nothing to say about John Howard's proposal. She is ashamed to talk about her Government's policy. She refuses to answer anyone's questions, refuses to acknowledge any correspondence, and refuses to attend any public meetings. Contrast that with the State member for Penrith, who has gone on record many times in this Chamber to oppose the Federal legislation. The Federal member for Lindsay is even refusing to acknowledge her Government's policies and the shame-faced nature of them. It is indeed a very sad day. Her position is to be contrasted with that of her colleague the State member for Penrith, a very strong local member who stands up for her constituency.

The Federal changes are still secret, but they cannot deny that 1.6 million people still rely on awards for their wages and conditions. Millions more are on agreements that rely on awards to underpin their conditions. The Federal Government wants to get rid of all State awards. It wants to get rid of conditions like skills-based wage rates, long service leave, and the conversion of long-term casual to permanent employment. For more than 100 years the Industrial Relations Commission has set increases in minimum wage rates. The Federal Government wants to reduce minimum wage rates. John Howard said yesterday that his solution to addressing skills shortages is to cut pay rates for apprenticeships. That demonstrates the sad story of his agenda.

**Question—That the words stand—put.**

**The House divided.**

**Ayes, 47**

Ms Allan	Mr Gaudry	Ms Nori
Mr Amery	Mr Gibson	Mr Orkopoulos
Ms Andrews	Mr Greene	Mrs Paluzzano
Mr Barr	Ms Hay	Mr Pearce
Mr Bartlett	Mr Hickey	Mrs Perry
Ms Beamer	Mr Hunter	Ms Saliba
Mr Black	Ms Judge	Mr Shearan
Mr Brown	Ms Keneally	Mr Stewart
Ms Burney	Mr Lynch	Mr Torbay
Miss Burton	Mr McBride	Mr Tripodi
Mr Collier	Mr McLeay	Mr Watkins
Mr Corrigan	Ms Meagher	Mr West
Mr Crittenden	Mr Mills	Mr Whan
Ms D'Amore	Ms Moore	<i>Tellers,</i>
Mr Draper	Mr Morris	Mr Ashton
Ms Gadiel	Mr Newell	Mr Martin

**Noes, 28**

Mr Aplin	Mr Kerr	Mrs Skinner
Ms Berejiklian	Mr Merton	Mr Slack-Smith
Mr Cansdell	Mr Oakeshott	Mr Souris
Mrs Fardell	Mr O'Farrell	Mr Tink
Mr Fraser	Mr Page	Mr J. H. Turner
Mrs Hancock	Mr Piccoli	Mr R. W. Turner
Mr Hartcher	Mr Pringle	
Mr Hazzard	Mr Richardson	<i>Tellers,</i>
Ms Hodgkinson	Mr Roberts	Mr George
Mrs Hopwood	Ms Seaton	Mr Maguire

**Pairs**

Mr Price	Mr Armstrong
Mr Yeadon	Mr Constance

**Question resolved in the affirmative.**

**Amendment negatived.**

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 47**

Ms Allan	Mr Gaudry	Ms Nori
Mr Amery	Mr Gibson	Mr Orkopoulos
Ms Andrews	Mr Greene	Mrs Paluzzano
Mr Barr	Ms Hay	Mr Pearce
Mr Bartlett	Mr Hickey	Mrs Perry
Ms Beamer	Mr Hunter	Ms Saliba
Mr Black	Ms Judge	Mr Shearan
Mr Brown	Ms Keneally	Mr Stewart
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Mr Hazzard	Mr Richardson	<i>Tellers,</i>
Ms Hodgkinson	Mr Roberts	Mr George
Mrs Hopwood	Ms Seaton	Mr Maguire

**Pairs**

Mr Price  
Mr Yeadon

Mr Armstrong  
Mr Constance

**Question resolved in the affirmative.**

**Motion agreed to.**

**PRIVATE MEMBERS' STATEMENTS**

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**NORTH-WEST RAIL LINK**

**Mr MICHAEL RICHARDSON** (The Hills) [5.28 p.m.]: As honourable members would know, for the past 12 years I have been working hard to achieve improved public transport in my electorate. The Hills is the only metropolitan electorate that has no government-run public transport—no buses, no trains and, of course, no ferries. Recognising this, the Coalition launched The Hills-City express bus service in 1994 and built the M2 it now runs along, which carries 1.5 million passengers a year. Labor opposed the M2, even to the extent of boycotting its official opening in 1997. Therefore, honourable members can understand that I am extraordinarily cynical when it comes to promises made by this Government about infrastructure for The Hills. That is why I was not particularly surprised when I received an answer last week to a question on notice in which I asked whether the route agreed to with the councils of the shires of Baulkham Hills and Hornsby for the proposed north-west rail link was the final route or whether it was still possible that the Government would alter it in the future.

The Minister for Infrastructure, Planning and Natural Resources—I assume it was Craig Knowles—said that the route from Epping to Rouse Hill, via Castle Hill, is the proposed alignment, based on considerable investigations, but that should an alternative emerge during the environmental impact assessment stage that minimises environmental impacts, then it was possible that the alignment could change. So here we have the Government drawing a line on the map that people are planning their lives around, when that line is not fixed, when it may change at some time in the future, and when that is unlikely to happen before the next man lands on the moon.

While a Department of Planning spokesman told the *Hills Shire Times* this week that "The route is not going to change dramatically", back in May the department announced it was reconsidering the route, and the line could originate from Epping, Parramatta or Carlingford stations. Perhaps my geography is a bit out, perhaps my sense of direction is not what it used to be, but I am of the impression that a line that starts from Carlingford or Parramatta would be dramatically different from one that starts from Epping. I have been saying since December 1998, when the then Minister for Transport, Carl Scully, announced the north-west rail link in the now totally discredited Action for Transport Plan, that the rail link is a mirage, a ghost train.

Unfortunately, there are now three Labor councillors on the Council of the Shire of Baulkham Hills who actually believe what this Government says. A couple of lightning visits by former Minister Craig Knowles and the odd cup of Nescafé and they become convinced that their Labor mates will deliver on the rail link. No matter that there is no physical or empirical evidence to support their belief; no matter that not even so much as an environmental impact statement has been completed. They are convinced, and they seem to have transferred their cargo cult mentality about the rail link to the council's planning department. So council is now planning the development of the shire—the second fastest-growing part of Sydney with 6,000 people a year pouring into it—around this mythical rail link. That includes the development of the Balmoral Road release area in Kellyville, still a greenfields site, with densities of more than 40 dwellings per hectare around a station that may never be built. And now we discover that even the planned route may change!

Imagine being a landowner in the Balmoral Road area whose land release has stalled because of problems with Sydney Water, and then the former Minister for Transport, Carl Scully, comes along with his pre-election stunt. Imagine also that the Government is returned and the land release process is further delayed because the council is now basing the development on a Labor lie. In June, as one of the last acts of his fading premiership, Bob Carr re-announced the north-west rail link for the fourth time—just eight months after he told the *Hills Shire Times* that it was not a viable option in the short term and 15 months after Minister Carl Scully said that the Government's position for public transport for the foreseeable future for north-west Sydney is buses.

One can understand people's scepticism. This link has been on again and off again—more times than the costumes in *The Producers*—only this time it will not just go from Epping to Rouse Hill. Now it will go from Bringelly to Vineyard, with a new Sydney Harbour crossing. Perhaps the Premier, and Treasurer, Morris lemma, will go one better and take it to Goulburn and Newcastle. The point is that talk is cheap. The Government's lines on the maps amount to little increased expense. The *Hills News* described the latest announcement as "spider webs on a press release". Based on the Government's past performance, that is about right. One of those Balmoral Road landowners is Rhonda Howard. She told the *Hills Shire Times* on 7 June that the uncertainty about plans for the area was causing her family "deep distress". "It is just going on and on," she said. "Nobody wants to buy this land because they don't know what the zoning will be and we need to move on with our lives." Ditto the landowners in North Kellyville, who, at the insistence of the Department of Planning, Infrastructure and Natural Resources, chipped in for a master plan for their area that the Government threw out of the window with its disastrous green zone overlay. This is simply not good enough.

The Government, and its mates on Baulkham Hills council, are messing with people's lives. Not only are they giving landowners in the new release areas apoplexy, they are confusing my constituents, many of whom may have bought into the area having believed the Government's rail line fable. It is outrageous that this Government—any government—could treat hardworking families in that way. My constituents have had to put up with a lot. They have had to put up with the highest taxing State Government in Australia, cuts to Castle Hill police numbers, a roads system that would be better suited to a farming community than to a growth area, the collapse of the only two companies providing bus services to their district, and the Government's urban consolidation policy, which has resulted in hundreds of flats being built in Castle Hill. They should not have to put up with lies and deceit regarding the north-west rail link. The Premier, Morris lemma, says that he listens. He claims to be outcomes orientated. Let him fix this situation. Let him commit to the railway link, bring it forward by seven or eight years, and instruct his people to start work on the environmental impact statement now. The people of The Hills deserve no less. [*Time expired.*]

#### WESTERN SYDNEY ACADEMY OF SPORT

**Ms TANYA GADIEL** (Parramatta) [5.33 p.m.]: Today I bring to the attention of the House the excellent achievements of the Western Sydney Academy of Sport's to date. Since the academy was incorporated and launched by the former Premier on 9 August 2004, it has gone from strength to strength and has become an integral step in an elite athlete's development path. The new Western Sydney Academy of Sport now includes talented young athletes from all 10 local government areas covering the Western Sydney region. These include Auburn, Bankstown, Blacktown, Blue Mountains, Fairfield, Hawkesbury, Holroyd, Parramatta, Penrith, and Baulkham Hills.

The Government's commitment to the academy has been significant. Since its incorporation the academy has received over \$150,000. The Department of Tourism, Sport and Recreation has covered one-off costs of around \$50,000 associated with the establishment of the academy as well as providing a staff person and motor vehicle for two years during this development period. The fundamental mission of the academy is to provide quality development opportunities for talented young athletes residing in the Western Sydney region. This is such a critical role for the academy for not only is the region Australia's powerhouse in an economic sense, it boasts an exceptional nursery of young sports people who are essentially our future Olympians.

A key factor in establishing the new academy was the strength associated with an academy that represented such a strong growth region. It has brought together local government and businesses with a focus on helping to develop the next generation of Olympians. Western Sydney produced over 17 per cent of the State's athletes that represented Australia at the previous Athens Olympics. It has produced such tremendous success stories as Ian Thorpe, Liz Ellis, the Waugh brothers—and the list goes on. Academy programs are provided for young athletes in the 13-to-18 years age bracket, which is a critical and formative time in any young person's development. The programs provide a focus on the holistic development of the young athlete, including education seminars on important issues such as drugs in sports, nutrition, physiology and so on, as well as fitness camps and opportunities to compete against other academy athletes.

The end result of the academy programs is that the young athlete is better prepared for the progression they will make to the elite levels of sport, such as the New South Wales Institute of Sport, and State and national team representation. The academy programs are recognised by national and State sporting organisations as an integral component of an athlete's development pathway, and their support is also by way of providing funding assistance to the academy. The academy has implemented development programs across five key sports: canoe/slalom, cycling, netball, softball and swimming. A total of 79 athletes and 19 volunteer staff now represent the Western Sydney region across these sports.

The academy has an objective to increase its programs and athlete scholarship numbers by 100 per cent over the next three or so years. There is certainly the capacity to introduce a multitude of new sports that are anxious to have their young athletes introduced into academy programs. For example, the State bodies associated with tennis, rugby union, track and field, soccer, rugby league and cricket are all desirous of providing assistance in running an academy program. The academy has been active in developing relevant products to achieve corporate partnerships and has had some success to date with companies such as Heartland Holden at Parramatta, Optima Technology Solutions, which is Australia's leading domestic manufacturer of information technology hardware and software and employs more than 200 people in Western Sydney, the Penrith WhiteWater Stadium and the recently secured new sponsor in Community First Credit Union Limited. I congratulate these companies on their commitment to the academy.

The Western Sydney Academy of Sport is an important contributor to the welfare and development of Western Sydney's young sports people. Its programs are considered vital in preparing talented young athletes for entry to the elite level of sports. The academy, in a very short period of time, has shown that the region's talented young athletes can, and will, respond to holistic development opportunities. In essence, the academy and its partners are showing the way for the development of our next generation of Olympians. I take this opportunity to thank Martin Bullock, the chief executive officer of the academy, and his hardworking team as well as the academy's board of directors. They are doing a fantastic job. Their commitment to the youth of Western Sydney is nothing short of outstanding. I thank them very much for their efforts.

### **BURRINJUCK FAMILY DAY CARE**

**Ms KATRINA HODGKINSON** (Burrinjuck) [5.38 p.m.]: Honourable members with young families will be only too aware of the pressures of modern day life on working families. Our children are the future of this great State and they deserve the best upbringing that we can provide. Yet so often both parents are required to work, which raises the need for affordable and accessible child care services. Today I inform the House of the situation facing Burrinjuck Family Day Care, which operates in Boorowa and Yass shires. Burrinjuck Family Day Care is a home-based child care service that was established 10 years ago. It is overseen by a committee that consists of the general manager and a councillor from each of the councils, and representatives of carers and parents.

The service currently has six active carers, three of whom live in Boorowa. It provides part-time care on a regular basis for 41 families and 64 children, and 25 children are registered for casual or vacation care. In the past, Burrinjuck Family Day Care has provided a very good service. However, currently on the waiting list are 25 families and 57 children, who are unable to access this service in the Yass district. Burrinjuck Family Day Care is primarily funded through an operational subsidy from the Federal Department of Family and Community Services for each child receiving full- or part-time care. Families who are fortunate enough to be able to access Burrinjuck Family Day Care also receive financial support from the Federal Government through the Child Care Benefit Scheme.

In the last Federal Budget the number of funded family day care places Australia-wide increased by 2,500. For the past 10 years Burrinjuck Family Day Care had been operating successfully on a self-funded basis and had accumulated a reasonable reserve of funds. Unfortunately, the service is now in a difficult financial position, due primarily to the severe regulations placed on it by the New South Wales Labor Government. The income stream of Burrinjuck Family Day Care is dependent on the number of children for whom it provides care. Over the past year it has been difficult for the service to attract and maintain carers and the decreasing number of children in care has had a direct impact on the income stream of the service.

Family day carers receive only a very modest income of less than \$4 per child per hour and this, coupled with the significant costs and inconvenience of meeting State Government mandated standards, is making the recruitment of new carers difficult. We all agree that in the provision of child care services, the safety and wellbeing of the children should be of paramount importance. Yet I and many members of local councils and the community hold significant concerns about the excessive nature of the requirements prescribed by the State Government. I have raised my concerns with the Minister for Community Services, who is present in the Chamber. However, I must say that she does not seem to understand that the New South Wales Labor Government's drive for increasing regulation is reducing the availability of child care.

Following her less-than-helpful reply to my representations, I have again written to the Minister seeking financial assistance for carers so their houses can meet the requirements mandated by the New South

Wales Labor Government in the Children's Services Regulation 2004. Her silence so far has been deafening. Although the New South Wales Labor Government may extol the virtues of child care and pay lip service to its necessity, it is regulating family day care services in rural areas out of existence. This is not the only area where increasing Labor Government regulation or centralisation is causing loss of services and increased costs for rural residents. The centralisation of health services has led to the closure of some operating theatres and maternity wards in local hospitals. That is forcing pregnant mums and patients needing even minor surgery to travel long distances away from their family support networks to access those services.

Rural small businesses have lost the face-to-face services of local business enterprise centres and are facing increased travel costs to access government services. Small businesses are also struggling under increased regulatory adherence costs for workers compensation and other State regulations. Residents of the former Mulwaree, Gunning and Yarrowlumla shires have faced increased rates and charges and greater travel costs to access local government services because of Labor's forced amalgamation of councils. Adequate, affordable and accessible child care services are an absolute necessity in today's society. When there is a clear demand for child care services in an area, when a service has a demonstrated track record over 10 years of providing self-funded child care, when a service has been caring for children safely for ten years without any injuries being reported to its administration, what possible reason can the State Labor Government have for imposing further regulations that only serve the purpose of reducing the number of carers and reducing the level of child care in communities desperately in need of more child care?

The Minister should discard her unhealthy obsession with increasing government regulation and speak at first hand with people in Yass and Boorowa, who are facing real difficulties in getting child care in that rural area. I call on the Minister to act to reduce onerous and costly regulations and work to increase the availability of family day care in the Boorowa and Yass shires. The inability of almost 60 children to access family day care means that their parents and families are facing extreme difficulties in finding somewhere to leave their children during the day when they are at work. Much of the time there is no alternative to having one parent, who should be out working, stay at home. [*Time expired.*]

**Ms REBA MEAGHER** (Cabramatta—Minister for Community Services, and Minister for Youth) [5.43 p.m.]: I point out that the provision of child care and planning for the placement of child care centres is predominantly a Federal Government responsibility. As the honourable member for Burrinjuck pointed out, Burrinjuck Family Day Care has operated on a Federal Government subsidy. She has also pointed out that the subsidy seems to be inadequate. The Federal Government has a responsibility in that regard. I refer the honourable member for Burrinjuck to recent comments made by Child Care New South Wales, which has asked the Federal Government to strengthen its involvement with the planning and placement of child care centres across New South Wales, indeed across the country, to fill the shortfalls of the kind that she has identified.

One of the biggest problems confronting parents in New South Wales is that the Federal Government's child care benefit is not easily available to parents who put their children into community-based preschool child care. It is difficult for those parents to access support services similar to those available to parents who put their children into private child care. That is a real difficulty. The New South Wales Government has called on the Federal Government to review the Commonwealth Child Care Benefit Scheme. To date there has been no response. These are serious issues, but the Children's Services Regulation 2004 was the subject of extensive consultation with local communities and stakeholders. The primary function of the regulation is to guarantee the safety and wellbeing of children in care.

#### **JANNALI NEIGHBOURHOOD AID FORTIETH ANNIVERSARY**

**Mr BARRY COLLIER** (Miranda) [5.45 p.m.]: On 17 September 2005 I had the privilege of attending the fortieth anniversary celebrations of a truly remarkable shire organisation, Jannali Neighbourhood Aid [JNA]. This non-profit, non-denominational community-based organisation assists those in the community who need support to help them live safely and independently in their own homes—the frail aged, the disabled and their carers. The service began its life as the Nightingale Home Aid Service in 1965 after a local general practitioner [GP] identified a growing need in the Jannali area. Day after day the GP saw patients who were socially isolated due to ill health, who were unable to do the simplest chores, or who were unable to look after their own children. The GP saw carers needing a hand and a break. The GP raised those concerns with Mrs Margot Waters. Meetings were held and a support network called the Nightingale Home Aid Service came into being. I had the honour of sitting next to the 84-year-old Mrs Margot Waters during the celebrations last Saturday. I am in no doubt as to the compassion and continued determination of Mrs Waters and her group of ladies, who worked so hard to establish Jannali Neighbourhood Aid way back in 1965.

Today, Jannali Neighbourhood Aid has five paid staff and some 65 volunteers under the management committee led by President Lynne Hale and Co-ordinator Dianne Townsend. The service receives Home and Community Care [HACC] and Department of Community Services funding and the guidance and support of shire HACC development officer, Ms Melinda Paterson. The services currently provided by the committed staff and dedicated volunteers include assistance with shopping for those unable to leave their home, driving small groups of clients to and from the shops to do their own shopping, transporting clients from home to appointments with their doctor or dentist, subsidised low home maintenance and lawn mowing, and providing financial assistance with food and electricity bills for clients referred by Centrelink. There are also "Keep in Touch" phone calls and "Buddy Link", a special service organised for volunteers to visit housebound clients each week or each fortnight just to have a chat and a cup of tea or coffee.

Jannali Neighbourhood Aid is committed to meeting the needs of its community; it is an organisation with a big caring heart and a truly loving soul. Mrs Jan Porter provided me with a copy of the organisation's fortieth anniversary booklet entitled "The History". I could not be other than deeply impressed and deeply humbled by the tireless work, dedication and commitment of the staff and magnificent volunteers year in and year out over the 40 years since Jannali Neighbourhood Aid began its life. This was the first such service in the shire and the second service in the State. I read of the work of the service during the 1994 Como-Jannali bushfires. I read of the support and hope given by the service to those families who suffered on that "Black Saturday" and beyond. But there is much more to that service, more than assisting those in need at times of calamitous and disastrous events that make the newspapers or television headlines.

The workers and the volunteers are the quiet achievers, working continuously for their fellow human beings in need of a helping hand, encouragement, or a warm, friendly chat. Forty years on, the need for social support and assistance within our community remains. The social isolation has increased as spouses have passed on, children have grown up and moved away, and the number of single-person households in the shire has increased. The need remains and Jannali Neighbourhood Aid is there, continuing to play its role. The cover of its fortieth anniversary booklet entitled "The History" states, "We're here to help." Clearly, the most significant word of all is "neighbour." Jannali Neighbourhood Aid's slogan states encouragingly, "Who knows? Who cares? We do!"

At the fortieth anniversary celebration I had the honour of presenting certificates of achievement to Jess Anwyl, Lynne Hale, Shirley Hamill, Janice Lucock, Marie O'Driscoll, Bev Rendell, Ruth Spooner and Joan Stilgoe. Heather McPhee, Pat McArthur and Norm Rendell also received certificates. On behalf of the people of Jannali and the surrounding suburbs and on behalf of the wider shire community I thank the staff and volunteers of Jannali Neighbourhood Aid for their tireless, unselfish work. No economist and no government could ever place a monetary value on their work, simply because it is priceless. Jannali Neighbourhood Aid volunteers do their work without seeking praise and thanks, and always without fanfare. Over the years each one of them has made, does make and will continue to make a difference to the lives of so many.

People often ask, "Why do volunteers do such work? Why do they give of their time freely to help others in need, help that is often unnoticed by others in the wider community and performed without monetary reward?" The answer is simple. Staff and volunteers know the value of giving. As an old Chinese proverb states, "A bit of fragrance always clings to the hand that gives you roses." I thank all volunteers and staff at Jannali Neighbourhood Aid for their contribution to those in need over the past 40 years. I trust that Jannali Neighbourhood Aid will continue its valuable work for another 40 years [*Time expired.*]

#### **FRIENDS OF WOODSTOCK DISABILITY SERVICES INC.**

**Mr GREG APLIN** (Albury) [5.50 p.m.]: Friends of Woodstock Disability Services Inc. is an Albury-based non-profit organisation that has been providing assistance to people with special needs for over 20 years. It is committed to supporting district people with disabilities and their families through the management of a range of tailored services for all ages. These services include early intervention, a toy library, flexible respite options, emergency respite, peer support and leisure activities, transport, volunteer support and training. The 2005 annual general meeting of the Friends of Woodstock was held at Albury's Sailors, Soldiers and Airmens Club last Wednesday. In her president's report Doreen Widdison announced she was stepping down after 20 years in that position.

I have known and admired Doreen Widdison for many years. She is one of those most valuable community members who serve in so many different roles. Whether it is on the executive of the local branch of the War Widows Guild, the Albury Show Society, or catering at church or school functions, Doreen is there and



everything is under control. Today I pay tribute to the work of Doreen Widdison and the Friends of Woodstock Disability Services by tracing some of the history of the organisation and urging support from the Government in assisting the process of relocating their specialised services. Doreen's association with Woodstock began in 1983, when the Department of Health purchased the land and buildings of the former Woodstock Presbyterian Girls School for use by intellectually disabled people. Later the Department of Community Services and then the Department of Ageing, Disability and Home Care [DADHC] took charge of the services at Woodstock providing residential accommodation for adults and children with a disability.

At that time a group of 41 parents and friends met to form an auxiliary to support the clients in care. Peter McCormack was the first President of the Friends of Woodstock auxiliary, and the group raised small amounts of money to purchase items to improve the quality of life for clients. Fundraising activities included race days, doll shows and cake stalls. In 1984 Val Wells and Lucy McGrath-Cusworth started the toy library to support families with children who had a disability, and Coinda Family Support was also started. The auxiliary met regularly and office bearers included paid staff from the government facility at Woodstock. At that time the auxiliary decided to build a swimming pool suitable for clients, and the Friends of Woodstock raised \$13,000, the department matched the amount and the vision became a marvellous reality.

More funding was required to provide services so the new president, Bernie White, gained the support of local clubs to run bingo. Doreen Widdison became the licensee and continues in the position to this day. Bingo started at the Albury Golf Club and later moved to the Sailors, Soldiers and Airmens Club. Doreen then became president of the Friends of Woodstock. Over the years the funds raised from those bingo sessions helped to purchase two houses for permanent accommodation for adults with a disability. These group homes are rented to the Department of Ageing, Disability and Home Care, which provides services to 10 people. The bingo funds also supported the acquisition of buses to provide a transport service to enable clients to attend day programs, weekend and after-hours events.

Other fundraising activities included the Albury Air Show, fetes and fun days. In 1988 funding was received through the department to provide respite care for families through the Family Link service. Family Link was first funded to provide host family respite using volunteer carers. It now has over 30 clients but centre-based respite remains the pressing need in Albury. In 1994 the Early Childhood Intervention Service was funded through the Department of Youth and Community Services and was later assisted by DADHC to provide services from birth to school age for young children with disabilities or developmental delays. The service operates on a minimal level of funding compared to other regions in New South Wales. Changes in government policy saw the department's offices and clients move away from the residential units at Woodstock, but the Friends of Woodstock stayed on to fill the gaps in services, and Treasurer Inge Husz provided support and expertise to assist Doreen Widdison in the battle for funding.

The time came when volunteers alone could no longer take the responsibility for co-ordinating all the activities, administering the operation and preparing funding submissions, so an executive officer was appointed. The Friends of Woodstock now has a staff of 12 people, casual workers and 70 volunteers. Doreen Widdison stepped down as president after 20 years, saying she had loved working with the Friends of Woodstock and it had been a huge part of her life. She acknowledged the enormous contributions of volunteers over the years and also the support of people like Michael Evans in the department's Albury office. She will continue in her fundraising roles and her experience will be required because services like the Early Childhood Intervention Service continue to be hampered by a lack of funding to the Albury region. The most important challenge facing the Friends of Woodstock is its future location. The health department appears intent on selling the properties. The buildings are the target of vandalism and break-ins. Let it be clear: government provided the original premises and helped to build up this volunteer service. It must now take responsibility to provide a new safe and secure facility.

#### **QUEANBEYAN DISTRICT HOSPITAL UPGRADE**

**Mr STEVE WHAN** (Monaro) [5.55 p.m.]: Tonight I refer to progress on Queanbeyan hospital, which is to be rebuilt. The Government made a commitment to the people of Queanbeyan and in its last budget allocated \$44 million for the project, an increase of \$14 million on the figures for the original project. The project is well on track. It is important for me to report on progress because the Opposition is running a misinformation campaign. Opposition members are attempting to tell people lies about the progress of the hospital. The \$44 million Queanbeyan hospital project will be a magnificent facility with at least 60 beds—currently the hospital has 36 beds—an emergency department with a six-hour paediatric observation unit, wards, state-of-the-art surgical and operating facilities, community health, alcohol and drug services, and mental health facilities.

It will be a great facility for many years to come and a key in-flow reversal from the Australian Capital Territory. Currently the Australian Capital Territory receives just over \$50 million a year to deliver services to New South Wales patients in Canberra hospital, which, unfortunately, is one of the most expensive hospitals in Australia. By achieving flow reversal we will be able to deliver more services at a lower cost and, therefore, service more people in New South Wales. Before the election the Government promised that the hospital's completion date would be 2008. There has been a fair bit of misinformation from Opposition members, who have suggested that it should be finished this term. As promised in black and white the completion date is 2008. We are on track to achieve that completion date.

Recently the shadow Minister visited Queanbeyan and tried to tell people that the Government was late in starting the hospital. The promise was that the hospital would be started this year. When Opposition members made a promise they did not say they would start until the end of this term. In theory, if had they been elected they might not have started the project for another year or so. As I said earlier, the project is well on track. Over the past 18 months comprehensive planning has been undertaken in conjunction with the health professionals who will use the facility—doctors, nurses and the community—about what needs to be included in the hospital and about its scale.

There has been debate in the community over the location of the hospital. I advocated the current hospital site as an ideal location as it is big enough and capable of housing a three-storey hospital with room for expansion in the future. Some local doctors said they would prefer a greenfields site. Recently Dr Phillip Gray was quoted in one newspaper as saying that he thought we should look for an alternative site. If we did that the time delay would be weeks rather than months. Unfortunately, the bad news is the rebuilding of the hospital would take many more months if we were to look for an alternative greenfields site. We investigated a number of greenfields sites on the outskirts of Queanbeyan and other Crown land. For various reasons none of them was suitable because of aircraft noise, lack of public transport, native title claims over the site and the steepness of blocks.

The people of Queanbeyan can be assured that those other sites have been thoroughly explored and there are no other greenfield sites to consider. That does not matter because the current site is ideal for the hospital. It is in the centre of town, it is well located relative to public transport and the community, and it is able to use some existing facilities; for example, the new ambulance station is on the existing hospital site and the co-location is very positive. The site location issue has been a distraction that we did not need. The key point for people in Queanbeyan is that the hospital is on track and building will be under way soon. Most of the building will occur in the next financial year and the financial year after that.

**Mr Thomas George:** Point of order—

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! There is no point of order. The honourable member for Lismore will resume his seat. The honourable member for Monaro may continue.

**Mr STEVE WHAN:** The reason we have seen some concern is that the Opposition has been content to lie about this process. It is lying in saying the hospital has been delayed. It is not delayed, it is on track. What is the Opposition's record? We have five hospitals in the Monaro electorate and over the past 50 years the Liberal-Nationals Opposition has rebuilt none of them. The Labor Party built Cooma and Delegate hospitals and it is rebuilding Queanbeyan and Bombala hospitals. That is four out of five. The other one was very much longer. The Opposition is again lying about the situation with Queanbeyan Hospital. The completion date is 2008.

**Mr ACTING-SPEAKER (Mr Paul Lynch):** Order! The honourable member for Monaro will come to order. If the person behind me wishes to interject, she will be removed from the House. I directed the honourable member for Lismore to resume his seat before hearing the substance of his point of order because I heard him get his instructions from the person who interjected on me a moment ago from behind the Speaker's Chair. For that reason I knew precisely what the point of order would be, and that is why I ruled the way I did.

#### **ORANGE POLICE AND COMMUNITY YOUTH CLUB BAND**

**Mr RUSSELL TURNER (Orange)** [6.01 p.m.]: I want to talk about some of the wonderful musical opportunities we have in Orange and, in particular, the problems that the Police and Community Youth Club [PCYC] Band is experiencing following the retirement of Harry Sloggett, who led the band for over 50 years. It is quite understandable that Harry has called it a day—I apologise that I forget whether he is 85 or 86—because he has certainly been around for a long time. He has been a wonderful contributor to music in Orange, a fact that

was recognised some years ago when he was made Citizen of the Year during the Australia Day celebrations. Following Harry's retirement the band has had a problem obtaining a bandmaster who has both the commitment and the ability to lead the principally young members of the band.

The situation is getting quite desperate because some of the band members are not turning up for practice. Unless we can do something about it very quickly, there is a risk that the band will disband altogether. There has been some talk of amalgamation with the Orange City Brass Band, but that band is going through the same issue with a bandmaster. I spoke today to Graham Sattler, who is the musical director of the Orange Regional Conservatorium, and I am having discussions with him and Harry Sloggett on Friday with a view to someone from the conservatorium providing tutorial services so that we can get another bandmaster for this very important band.

The band forms a part of some of the musical opportunities in Orange at the moment. I acknowledge all the great bands that we have in our high schools, such as James Sheahan Catholic High School, Orange High School, Canobolas Rural Technology High School, as well as some of the primary schools. Our young children in Orange and throughout the district have some wonderful opportunities to learn to play a musical instrument or to sing in one of the various choirs. I understand that there were some 4,000 entries in the recent Orange Eisteddfod, which finished recently. I congratulate all the volunteers who provided their services over the month in which the festival was held. They kept track of all the entrants, including the multiple entries, from various schools not only in Orange but all over the district who came to Orange to compete in that prestigious competition.

On Saturday 20 August the headlines in the *Central Western Daily* referred to the lack of a leader being a blow to the Orange PCYC band. That highlights the issue because that band has been playing under the tutelage of Harry Sloggett for over 50 years. It has been a mainstay at Anzac Day services, Citizen of the Year services and all the other important occasions when a band helps make a part of the city work. I acknowledge the contribution that Orange City Council makes to the band each year and likewise to the Orange City Brass Band. The council, on behalf of ratepayers, recognises the wonderful contribution the Orange PCYC Band makes to our city.

I hope that as a result of the discussions which I will convene on Friday we will be able to find someone who is prepared to become the bandmaster and provide leadership to the young members of the Orange PCYC Band so that we ensure the continuation of their long history of contribution to the city. The Orange City Brass Band also makes a contribution to the city and is supported by council. The bands do their own fundraising because they need to supply not only musical instruments but also uniforms where necessary. Many of the young band members come from families who cannot meet the cost of the musical instruments and the uniforms and of getting the band members to practise every Monday night. Again I acknowledge the wonderful contribution to Orange of the PCYC Band.

### **SOUTH SYDNEY DEVELOPMENT**

**Ms KRISTINA KENEALLY** (Heffron) [6.06 p.m.]: Earlier this year I gave notice of a motion that asked the House to note that on 31 March there were 43 city achievements on the Council of the City of Sydney web site, none of which had taken place south of Cleveland Street. I called on the honourable member for Bligh to advise the House when residents in South Sydney would begin to see the council deliver achievements in their local area. Last week, on 15 September, the Lord Mayor, who is also the honourable member for Bligh, announced a "new vision for revitalising the southern sectors of the city". This vision would be spearheaded by a \$50 million-plus program over four years to improve facilities and services for people living and working in Redfern, Waterloo, Darlington and Eveleigh. While I welcome the Lord Mayor's response, it saddens me to point out that not much of what the Lord Mayor announced last week is new or visionary. Indeed, almost every item in the announcement had been announced previously, some of them in this very Chamber. In short, this was not a new vision; it was just a new press release.

Let us talk about the two big initiatives in the Lord Mayor's announcement. The first is the Redfern Street upgrade. On 7 April I called on the Lord Mayor to announce when the Redfern Street upgrade would begin. A Council of the City of Sydney publication stated that it was due to begin some time in 2004. On 3 May I called upon the Lord Mayor to advise when the upgrade would begin. On 26 May the Council of the City of Sydney posted on its web site an update of the Redfern Street upgrade, saying that it would begin in 2005. According to the latest press release that the Lord Mayor put out on 15 September, the upgrade of the Redfern Street will commence in mid-2006 and be completed by 2007. Let us be clear on what the Lord Mayor's

announcement last week really advised the people of Redfern. This major project, this first initiative in the Council of the City of Sydney's program of revitalising the Redfern district, this important project that was meant to start in 2004, is now two years behind schedule.

The Lord Mayor also highlighted some other initiatives, such as an \$11 million revamp of Prince Alfred Park. Perhaps this is the most timely of the announcements in that the draft plan of management and the strategic master plan for Prince Alfred Park were posted on the Council of the City of Sydney web site on 15 September. However, the honourable member for Bligh advised the House about the \$11 million upgrade of Prince Alfred Park in her private member's statement of 4 May 2005. The Lord Mayor also spoke about a \$1 million upgrade of three parks in the Eveleigh precinct: Yellowmunde, Hugo Street Reserve and Pemulwuy Park. If the revamp of Prince Alfred Park is the most timely of the 15 September announcements, the upgrade of the Eveleigh precinct parks is the most outdated.

The upgrade of these parks was first announced in a media release from the Council of the City of Sydney on 24 March 2004—prior to the Lord Mayoral elections. On 28 July 2005 the Council of the City of Sydney posted on its web site the Eveleigh Street precinct parks upgrade, outlining the community consultation and containing downloads of the concept designs. As if that was not enough, the honourable member for Bligh advised the House of the upgrade of these parks in her private member's statement of 4 May 2005. So it was a bit rich for the Lord Mayor to stand up last Thursday and announce these park upgrades as part of the new vision for Redfern. Further, the Lord Mayor fails to note that the New South Wales Government, through the Department of Sport and Recreation, gave the city funding towards the Hugo Street Reserve upgrade in March 2004. The Lord Mayor says in her announcement of 15 September that the city is about action, not talk. I say it is high time the city got on with the upgrade of the Eveleigh precinct parks. The State Government gave money for that purpose more than 18 months ago and I would like to see the Council of the City of Sydney putting it to use.

The Lord Mayor also spoke about the upgrade of the skate park in Waterloo. This stands alongside the Eveleigh precinct parks as part of the new vision. But the media release of March 2004 that announced the upgrade of the Eveleigh parks also announced the upgrade of the Waterloo skate park. Further, the honourable member for Bligh advised the House on 4 May 2005 of the city's plans to upgrade the Waterloo skate park. Again, as with the Eveleigh parks precinct, the New South Wales Government gave the Council of the City of Sydney in the 2003-04 round of capital assistance money to upgrade the Waterloo skate park. We have been talking about the Waterloo skate park for 18 months, we have been talking about the upgrade of Redfern Street for more than two years, and we have been talking about the Eveleigh parks precinct for some time also. The Lord Mayor claims that the Council of the City of Sydney is about action, not talk. The people of South Sydney tell me that they are tired of talk and want some action. Lastly, I draw the attention of the House to the Lord Mayor's claimed vision for Redfern Oval. I would like to see her take her vision to the Council of the City of Sydney and have the council vote on it. [*Time expired.*]

### CATHOLIC HEALTH CARE SERVICES

**Mrs JUDY HOPWOOD** (Hornsby) [6.11 p.m.]: Care for our aged—some of the most vulnerable people in our community—should be a priority in our State and our country as a whole. In fact, as has been said many times, societies are judged by how they treat those members who are most in need. Such people include our children and our elderly. Hence, this evening I speak with great admiration about Catholic Health Care Services, which is based in Waitara in my electorate. It is most appropriate to mention the organisation in Dementia Awareness Week as it not only cares for the health and wellbeing of our aged but also offers special services for those with dementia and the people who support them in the community.

Catholic Health Care Services was established by the bishops of New South Wales. It was founded to renew and expand the Catholic Church's ministry in health and aged care services. Employing more than 2,000 staff, Catholic Health Care Services operates 18 residential aged care communities and three hospital communities across metropolitan and regional New South Wales. The organisation also supports more than 2,000 older people and people with disabilities to live independently at home. The mission of Catholic Health Care Services is:

To bring hope to those we serve,  
To share the meaning of our work,  
To be good stewards in our mission,  
To promote life,  
Collaboratively

On 16 September I had the pleasure of attending a ceremony at the Epping Club for aged care workers who were graduating with a certificate 3 in aged care. Regional head Steve Tuelen, staff members Jeremy and Janet, and educators Kate and Jan were also present to see the handful of people who had worked hard for a year receive their certificates. I should mention also Kerrie Lovell and her team of volunteers who do a great deal of community outreach work.

Catholic Health Care Services was established on 21 July 1994 in response to new and emerging needs. The organisation aims to promote and achieve collaboration between Catholic health and aged care providers and with State and Commonwealth health and aged care departments. Following extensive consultation throughout the community between 1992 and 1994, congregational and diocesan leaders expressed unanimous support for establishing a public juridic person—a new legal entity in Church law—to provide the means for significant collaboration. This entity, which had previously been known as the Mercy Family Centre in Waitara, became Catholic Health Care Services.

Drawing on the long history of Catholic health care and a willingness to commit to the future, Catholic Health Care Services was established as a result of the collaboration of six founding member organisations: the Religious Sisters of Charity of Australia, New South Wales Province of the Sisters of St Joseph of the Sacred Heart, Province of the Holy Spirit of the Sisters of the Little Company of Mary, Sisters of Mercy, Province of St Therese of the Sisters of St John of God, and Province of the Holy Family of the Hospitaller Order of St John of God. As at 30 June 2004 the organisation had 16 members, which shows that it is successful and expanding.

On 23 September—this Friday—Catholic Health Care Services is celebrating Mercy Day in recognition of the foundation of the Sisters of Mercy. The sisters recognise their foundress, Sister Catherine McAuley, who is on the path to canonisation. On Friday there will be a celebration for staff, volunteers, residents and friends of Mercy Community Care at McQuoin Park. Unfortunately, I will be unable to attend but I congratulate Catholic Health Care Services on all it contributes to the community. I look forward to visiting McQuoin Park in the near future to witness at first-hand the valuable work that Catholic Health Care Services does for the elderly and the community at large.

#### **NORTH ST MARYS NEIGHBOURHOOD CENTRE**

**Mr ALLAN SHEARAN** (Londonderry) [6.16 p.m.]: This evening I will report on the opening of the new North St Marys Neighbourhood Centre. The importance of the occasion was demonstrated by the presence of many VIPs, community groups and local residents. In attendance were the Federal member for Chifley, the Hon. Roger Price, MP; the Mayor of the City of Penrith, Councillor Jackie Greenow, together with the Deputy Mayor, Councillor John Thain, and councillors Lexie Cettolin, Pat Sheehy and Susan Page; Penrith City Council Acting General Manager, Alan Stonham; Chairperson of the North St Marys Neighbourhood Centre Management Committee, Don Lawless; Chairman of the Board of St Marys Leagues Club, Warren Smith; Steven van Zwieten, representing Panthers; General Manager of the Department of Housing Western Division, Cliff Haynes; and Chairman of JobQuest, Paul Bell.

The opening was a day of festivity. There were games and activities for the children, displays, native animals on show and, of course, the traditional barbecue and refreshments. It was generally a fun day for all. This was one of those moments when, as a member of Parliament, one feels a sense of achievement. As members of Parliament, we all desire many things that we feel will benefit our community, and the opening of this centre was the fulfilment of one such desire. The neighbourhood centre concept shows how a community can come together and achieve a significant project. However, it did not happen overnight. My understanding is that the centre was one of a number of recommendations from a neighbourhood renewal process that involved, over a number of years, the hard work of members of the old Neighbourhood Centre, Penrith City Council, the State Government, non-government agencies and, in the early stages, the work of the former member for Londonderry, Jim Anderson.

My involvement in the project commenced when I was approached about concerns that the State Government's support for the new centre was in jeopardy. Alarmed, I made representations to the then Minister for Housing, the current Minister for Police, who was invited to the site of the old Neighbourhood Centre. He was impressed by the potential of the proposed new facility and, thankfully, my representations were received favourably. I can still recall my excitement when the Minister telephoned me and pledged the full proceeds of the sale of the old centre to the new development. Penrith City Council, the owners of the project, contributed more than \$800,000, but for me the commitment of the Minister, along with a community solutions grant of \$60,000, locked in a potential \$350,000 and gave a security that allowed us to see this project to completion.

What I find particularly pleasing is that this project is in every sense of the word a community project. Once the need was clearly identified all hands were on deck. Its ultimate success came about through the collaboration of local government, the State Government, and three local licensed clubs—the St Marys Band Club, St Marys Leagues Club and Panthers.

If I may digress for a moment, I have to say that despite the ongoing concerns about the clubs tax issue, these clubs have demonstrated what community involvement is all about. They have made a significant contribution to this project, and for that I am very grateful. Importantly, congratulations have to go to all the staff of the St Marys Neighbourhood Centre, which has operated over the past 21 years from an old Department of Housing four-bedroom cottage. They have provided essential community services for north St Marys residents with dedication and commitment. In fact, the leading promoters of this project have been the current staff, led by Anna Frank and a very active management committee. They, together with the previous staff and management, have all worked very hard to make the dream of this new facility a reality. Indeed they should all be acknowledged by the community for their efforts.

This neighbourhood centre, its staff and management committee have enormous potential to provide a wide range of services. Its partnership with council and other agencies such as the Department of Housing, Department of Community Services, police, local schools and other government and non-government organisations will ensure that essential services continue in a modern and more efficient environment. I am also told that the Department of Housing and the St Marys Community Health Centre have expressed an interest in providing outreach services in the new centre. The mayor even mentioned that St Marys Centrelink might also provide an outreach service. Such is the potential for this centre to make it easier for local families, young people, older people and all residents generally to access locally some much needed services.

The opening day was, for many, including the mayor, a very emotional day. The pleasure of seeing the culmination of the work of so many and the sense of Jim Anderson's presence was very evident. For me it was a day of pride and fulfilment, knowing that I had played a small part in seeing this worthy project completed. The people of north St Marys are proud people. We now have a facility they can be proud of, a neighbourhood centre which I am sure can be regarded as one of the best in the State.

### **DRINK SPIKING**

**Mrs DAWN FARDELL** (Dubbo) [6.21 p.m.]: The cowardly crime of drink spiking has now made its way into the once safe confines of the humble country pub. What is worse, as many of my fellow members know, this crime leads to a crime far more devastating and horrendous: rape. Until only a few weeks ago many residents in the electorate of Dubbo would have thought that drink spiking was strictly confined to the big city, where young people fall prey to the lecherous and predatory. Sadly, as we have now witnessed, and as a family in my electorate has experienced, that is not the case.

There have been only a handful of publicised cases in and around Dubbo over recent years. Indeed, most occurrences outside Sydney have been reported in areas with large concentrations of university students. This fact indicates the parasitic nature of drink-spiking offenders who prey on the vulnerable. Although reported to police, there has never been solid proof of these crimes in Dubbo. Offenders have gone undetected, but their victims have been left shattered and bewildered. I take this opportunity to inform the House of one such case. On the night of 22 July this year a young woman who had returned home to Dubbo to visit family and friends decided to do what most normal young people do: enjoy a night on the town with friends. It was a chance meeting with a young man outside a city hotel that night that exposed this young woman to the nightmare of brutal rape.

This case is now being investigated by the courageous members of the Dubbo detective squad. I shall inform the House of some of the harrowing details of this event. Because of the strength of the drug that was used, her recollection of the events is hazy, and she could pass on to police only a small amount of information. This whirlwind of torture began innocently enough. The young lady described meeting a man, a stranger, outside a licensed premises and he struck up a conversation with her. He was well versed in small talk, and before long he invited himself to a sip of her drink. I have since been reliably informed by NSW police detectives that this is the method often used to slip drugs into a drink. The offender simply places a tablet under the lip or tongue and lets it spill into the drink after they have swallowed a small amount.

This young woman did not consume enough alcohol to render her unconscious, but that is how she ended up. At approximately 2.00 a.m. her friends lost track of her, and it was well into the morning before her

parents received a horrific phone call. She had been found—she had turned up at a friend's home. The parents described their daughter as being severely distraught, shaking, crying and disoriented. It was their turn to share in this nightmare when the young woman confided in her mother that she thought she had been raped. Following a trip to hospital and to the police station those fears were indeed confirmed.

Mothers worry about the welfare of their daughters at the very best of times, but to have this type of cowardly behaviour present itself brews feelings of heightened anguish and stress. Only a few days ago I met at length with the mother of this young woman and she described the absolute turmoil in which this family now finds itself. Indeed, the whole tragic incident has triggered much deeper, gut-wrenching memories for this family: A family friend molested this same young woman when she was just five years of age. It has taken her and her family a long time to recover from that. Fears have now materialised about how the courts will treat this case. The recent reduction of sentences in a high-profile gang-rape case in Sydney does nothing to instil confidence in the community that proven offenders will have the full weight of the law imposed on them.

We demand severe sentences for these offenders. The courts add insult to the very deepest and personal of injuries to any rape victim by judicial comments that there are varying types of rape. This most brutal of crimes, whether through an incident of drink spiking, abduction or gang-rape, should bear the same length of sentence. For victims it is the very same crime. I invite those magistrates or barristers that defend proven offenders to get a very large dose of reality by spending just a few minutes in the office of counsellors, parish priests, doctors, domestic violence workers or indeed my own electorate office and listen to the gut-wrenching tale from a mother or a victim. It is a topic repeatedly raised.

Indeed, I have only recently received a letter from another constituent who was the victim of rape many years ago. It is still on her mind, as is the experience of reporting the crime and the treatment she encountered when the matter went to court. She recalls in vivid detail how demoralising it was. If, in the eyes of the law, anyone charged with an offence is innocent until proven guilty, why do rape victims have to prove that the offence occurred and that they are not the guilty party? Victims feel that they are the ones on trial, not the offender. Perhaps it is time to investigate measures that could put an end to this treatment. I propose the special clinics should be created for victims to attend following an assault rather than having to wait for hours for someone to come to assist them.

Understandably, drink spiking is tough to police, because often it can only be detected after the fact. But it is certainly something that all parents should make their children aware of. Heed the advice of police and health authorities. Never leave drinks unattended or allow strangers to get them. Make sure you know who you are being introduced. If residents of New South Wales do not take notice of my words in this place, at least I hope they will listen to the appeals from this victim's mother. Drink spiking happens, and it can leave behind tattered rape victims with lasting physical and psychological injuries. I pose the same question as the parents of the young lady: How can one person carry out such a heinous and cowardly act? [*Time expired.*]

### CIRCULAR QUAY FERRY ACCIDENT

**Mr DAVID BARR** (Manly) [6.26 p.m.]: On Monday the Manly ferry *Collaroy* collided with No. 2 wharf, Circular Quay, causing some damage to the ferry but fortunately none to the passengers. The *Collaroy* has been involved in four incidents, including a previous disagreement with Circular Quay wharf in March. The *Narrabeen* collided with Circular Quay earlier this year and the *Freshwater* hit a stopping board at Manly in March. The ferries have also been afflicted with mechanical problems, leading to dislocation of services. In a nutshell, there have been far too many incidents and breakdowns to be accounted for by bad luck. This is affecting commuter confidence in the safety and reliability of the ferry service.

The chief executive officer of Sydney Ferries is quoted in the *Manly Daily* as saying that the *Collaroy* "from time to time" had control problems and that was common to the fleet of Sydney Ferries and had not necessarily contributed to the crash. That statement is quite remarkable. I would have thought any control problem would be unacceptable. As a consequence of the ongoing ferry mishaps the Office of Transport Safety Investigation is set to review the safety of the Manly ferry fleet. This is necessary and should be done promptly and openly. Two previous incidents are still being investigated: the earlier *Collaroy* accident and the *Narrabeen* accident in May.

Monday's accident is also being investigated. And on top of this, the entire fleet safety is to be examined. The first two investigations are taking too long and should be promptly completed and made available to the public. Under section 46 BA of the Passenger Transport Act the Chief Investigator, Mr Paul

O'Sullivan, must provide a written report to the Minister of an investigation, and under section 46D the Minister must table the report within seven days. So we now await the tabling of four reports. The ferry service is highly important to the people of Manly and to its visitors. Confidence in its safety is paramount. Sydney Ferries and the Government must be open about the faults and flaws in the ferries and must be prepared to fund the service to the appropriate level to ensure safety and reliability. The four freshwater class ferries were built in the 1980s. The *Collaroy* was built in 1987. In maritime terms, they are not old and should have many years of service left in them. The vessels they replaced, *North Head* and *Barracoola*, had each given more than 60 years of service on the Manly run. So the case is maintenance, or lack thereof, and this must form part of the terms of reference for the inquiry.

Recently, the Sydney Ferries Corporation applied to the Independent Pricing and Regulatory Tribunal [IPART] for fare increases in something of an ambit claim. I have written to IPART stating that all fare pricing options put forward by the Sydney Ferries Corporation should be rejected. Instead, a two-tier pricing system should be adopted, recognising the different commuter and visitor segments, with significant discounts for commuter bulk purchases in the form of Ferry Tens and bus-ferry passes. Given the current shortcomings, which are reducing passenger confidence, there should be a freeze on fare increases until the Sydney Ferries Corporation gets its act together. I am calling on the Minister to do this, and I have written to him to this effect. The corporation has no right to press for fare increases in the present circumstances. There have been more incidents than can be simply attributed to mere bad luck, and as such the causes must be investigated immediately and the problems rectified. The ferries must be fixed.

**Private members' statements noted.**

*[Mr Acting-Speaker (Mr Paul Lynch) left the chair at 6.31 p.m. The House resumed at 7.30 p.m.]*

**DUTIES AMENDMENT (ABOLITION OF VENDOR DUTY) BILL**

**SPORTING VENUES (OFFENDERS BANNING ORDERS) BILL**

**Messages received from the Legislative Council returning the bills without amendment.**

**BUSINESS OF THE HOUSE**

**Matter of Public Importance: Suspension of Standing and Sessional Orders**

**Motion by Ms Sandra Nori agreed to:**

That standing and sessional orders be suspended to provide that the matter of public importance selected for today be postponed.

**PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT BILL**

**In Committee**

**Clauses 1 to 4 agreed to.**

**Mr MICHAEL RICHARDSON** (The Hills) [7.31 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Pages 16 and 17, schedule 1 [62], line 14 on page 16 to line 31 on page 17. Omit all words on those lines.

No. 2 Page 24, schedule 1 [84], lines 1 and 2. Omit all words on those lines.

These amendments were foreshadowed in the second reading debate earlier today. They are very simple. Effectively, they oppose two amendments in the bill. The first would delete from schedule 1 item [62], which inserts a new section relating to domestic air pollution and smoke abatement notices. A number of honourable members addressed this issue during the second reading debate. I would like not only to reiterate the arguments against that measure but also to bring some new issues before the Committee for consideration. The Government's proposal is to empower a council officer to issue a smoke abatement notice to the owner or occupier of a home if that home is emitting what is described in the bill as "excessive smoke". That is defined as:

... the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds when the plume extends at least 10 metres from the point at which the smoke is emitted from the chimney.



Proposed section 135B provides that an offence can have been committed "within the past 7 days" if it appears to the council officer that excessive smoke has been emitted from the chimney. How on earth can any individual hope to assess whether excessive smoke was emitted from a home during the past seven days when he or she did not actually witness the offence? I do not know. It absolutely eludes me. Also, I cannot imagine the council officer going to a home, staring at the chimney, measuring how long the plume of smoke is, and perhaps waiting for a change in weather conditions so that the plume extends 10 metres or more from the chimney. Indeed, as we are talking about a "visible plume of smoke", I suggest that anyone who looks at a chimney of a slow combustion stove that is operating will see the air moving around the chimney. All chimneys emit some sort of a visible plume.

I can see this offence becoming a source of very considerable concern for councils, and a source of bad blood between neighbours. I would have thought that is something in the twenty-first century that we would have sought to avoid. I wrote to the Minister for the Environment—who, I note, is not in the Chamber—on 22 June about a device called Smartburn. Subsequently this device appeared on the "New Inventors" program. It was invented by a Western Australian man and designed originally for industrial applications. It is a small device in which a squashed metal tube containing a mixture of chemicals is put in a slow combustion stove at the beginning of winter, and it has the capability, according to the Australian Home Heating Association, which tested it, of reducing smoke and particulate matter by up to 50 per cent.

I would have thought this to be something that the Minister and the Government would have embraced with open arms. It is a very practical way of making genuine reductions in smoke pollution, and doing it by working with home owners—not against them, not fining them, not taking the big stick approach to dealing with the problem—to try to relieve this problem. I had some quite congenial discussions with the Minister about this issue. He has a wood stove in his home in the Blue Mountains. I suggested that he might like to try one of those devices there. I also suggested that the Environment Protection Authority [EPA] might test it.

What was the response from the Minister, and effectively from the EPA? The EPA wanted the device to be permanently fixed to the heater, and was very concerned that it had to be renewed every winter. They also said they did not know what was in it. In other words, they were not prepared to analyse it. They were not prepared to investigate whether it actually had a beneficial effect of reducing the amount of smoke being emitted. That is the kind of bureaucracy we are dealing with here, and it is the kind of government we are dealing with. This Government really is not concerned with improving our environment. If the suggestion is made by a member of the Opposition, it seems to be almost *de rigueur* for the Government to oppose it.

I encourage Minister Nori, who is in the chair, to act in a bipartisan manner regarding this bill. The Coalition has been very reasonable regarding most of the amendments proposed by the bill, but we just do not think the smoke abatement notice measure has merit, particularly not for people living in country towns. We understand that many country towns in colder climates have problems in winter with smoke. I have experienced that in places like Armidale.

**Mr Daryl Maguire:** Tumbarumba.

**Mr MICHAEL RICHARDSON:** In Tumbarumba as well, as the honourable member for Wagga Wagga reminds me. In his reply today the Minister said the Government had worked with home owners in the Hunter—apparently quite a number of homes there were emitting excessive smoke—to eliminate that problem from 98 per cent of offending homes. That is the way to do it. That is the appropriate method to use. It is not appropriate to use the big stick, and it is not appropriate to cost shift onto local councils and expect them to use all sorts of arcane measuring devices to try to work out how far a plume of smoke is extending from the chimney, plus a stopwatch to determine whether the plume is present for longer than 30 seconds.

Amendment No. 2 relates to the Government's proposal to eliminate section 169 (1) (a) of the Protection of the Environment Operations Act, which provides a director or manager of a company with the no-knowledge defence for a pollution offence. The combined industry group—representing the New South Wales Minerals Council, the Australian Environment Business Network, the Australian Institute of Company Directors, the Australian Aluminium Council, Cement Concrete and Aggregates Australia, the Australian Food and Grocery Council, and the Australian Chicken Meat Federation—pointed out that in the past five years no director or manager has escaped liability by successfully raising any of the defences found in section 169 (1) (a). Therefore they say that it can hardly be suggested that failure to amend the provisions have allowed a director or manager to escape liability. That is particularly important because in his reply the Minister said, twice, that ignorance is not an excuse for damaging the environment.

We do not think that ignorance is an excuse for damaging the environment or that it should be used as an excuse for damaging the environment. Equally, we on this side of the House support the principle of natural justice. We do not believe that somebody who did not know of an offence should face the possibility of a large fine or a gaol sentence. I note that the proposed penalty is up to \$1 million and/or seven years gaol for a tier one offence, and up to \$250,000 for a tier two offence for an individual. The Minister claimed that the amendments in the bill would bring the Protection of the Environment Operations Act into line with the Occupational Health and Safety Act. But according to the combined industry group the maximum penalties available against directors or managers for breaches of the Occupational Health and Safety Act are a maximum of \$55,000 with no gaol sentence for a first offence, and \$82,500 and/or two years gaol for second and subsequent offences.

The scale of penalties proposed in the legislation is far in excess of the scale of penalties that apply currently under the Occupational Health and Safety Act. As the combined industry group says, it is unfair and unconscionable to expose a director or manager to criminal liability and subsequent penalties for another person's contravention when that person did not know, and could not have found out with reasonable inquiries. Such liability should be imposed only when the director or manager either knew or should have known of the contravention.

Section 169 of the Protection of the Operations of the Environment Act 1997 provides for other defences apart from the no-knowledge defence. The first is where the corporation contravened the provision without the knowledge—actual, imputed, or constructive—of the person. The other two are where the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or where the person in such a position used all due diligence to prevent the contravention by the corporation.

If the director or manager did not know of the offence, I do not know how he or she could possibly rely on the latter two offences, where the person was not in a position to influence the conduct of the corporation relating to its contravention of the provision. Clearly, he or she would have been in such a position because of his or her situation. The person could not possibly use all due diligence to prevent the contravention by the corporation because he or she did not know that the offence was being committed. I do not understand how either of those defences can be used by someone who was ignorant of a defence having been committed.

We do not support companies wilfully and negligently destroying our environment. As I said, we introduced the notion of substantial fines and penalties for environmental offences. We are proud of that and we stand by the legislation we introduced in 1989. We believe it has made an enormous difference to our environment in New South Wales. But we believe that the principles of natural justice must prevail, that someone who did not know of, and could not have known of, an offence that was being committed should not end up in gaol or face a massive fine.

I reiterate: it is open to the Government to adopt a bipartisan approach to the legislation. It could accept our amendments in the spirit in which they have been proposed. We could achieve unanimous support for the legislation, which would be a good thing. The environment should be a bipartisan issue. We all benefit from protecting and improving our environment. I do not believe that my amendments are unreasonable. We think they would strengthen the integrity of the legislation by ensuring that it functions appropriately.

**Ms SANDRA NORI** (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [7.47 p.m.]: I am pleased to hear that the honourable member for The Hills thinks we should adopt a bipartisan approach. If he does he will have no difficulty withdrawing his amendments and supporting the legislation. The Government will not support the amendments. I know that my colleague the Minister for the Environment argued the case at great length and in great detail. I will speak first to the honourable member's second amendment. As the Minister said earlier, three separate defences are available to directors and managers who are charged with an offence committed by the corporation—that the person exercise due diligence to prevent the offence, the person could not influence the conduct, or the offence occurred without their knowledge.

We propose to remove the no-knowledge defence in line with defences in occupational health and safety legislation. The other two defences will remain. The entire employer-employee legislation is based totally on the legal concept of constructive knowledge. I do not see why, in these circumstances, the spirit of that type of relationship and legal understanding should not apply to directors in a corporation. In relation to the honourable member's first amendment, it is true that the councils involved in a wood smoke reduction program, which was funded by the environment trust program, reported that community education and individual instruction have resulted in a substantial reduction in the number of smoky chimneys in their area.

Among the many things said by local government in relation to these issues, one thing that has been very clearly expressed is the desirability of creating an offence that can be applied to the small number of householders who are recalcitrant and refuse to co-operate by improving the operation of their heaters. On behalf of my colleague the Attorney General, Minister for the Environment, and Minister for the Arts I emphasise that an offence is constituted only after excessive smoke is emitted 21 days after a written warning has been issued. I do not think it is too much to ask that within 21 days people should rectify a problem that is frequently very easily remedied. The Opposition is quite right in stating that the environment is important. Everyone has a role to play, including people who have smoky heaters that can be fixed. The Government opposes the amendment.

**Mr DARYL MAGUIRE** (Wagga Wagga) [7.50 p.m.]: I support the amendments and I take issue with the stand taken by the Government against smoke and chimneys that emit smoke from household fires in colder areas in my electorate. Anyone who has an understanding of climatic issues faced by constituents in, for example, Tumbarumba would know that although the town is in a mountainous area, it is actually situated in a valley and that smoke from household fires hangs in the valley. The cold winter weather exacerbates that tendency. The problem is that while we all encourage household fires to be used more efficiently and new technologies to be applied so that household fires burn more cleanly, the residents of Tumbarumba have no reasonably priced alternative to a wood fire to warm them. Most of the houses in the town are heated by wood fires.

The Tumbarumba area has an enormous supply of wood. Older residents in particular use wood for household heating. The Lions Club and Rotary clubs cut wood and provide it free of charge as a means of creating warmth in the homes of older people. Because of climatic conditions, even those who use the most efficient and environmentally friendly heaters are faced with the problem of the smoke hanging in the valley because of the cold climate. Alternative energies include electricity, but Tumbarumba and Khancoban experience very difficult winter weather and the elderly residents of those towns are unable because of cost to substitute alternative forms of energy for wood fires.

Gas heating is usually a cost-effective alternative, but it is not a viable alternative for those residents. Gas can be supplied only in bottles to towns such as Batlow, Tumbarumba, Khancoban and Cabramurra. The transportation of gas to those communities involves an enormous cost. Constituents with whom I meet regularly have complained about the cost of bottled gas used for heating their homes. Those people sit in freezing conditions because they cannot afford to turn on their gas-powered heaters, yet their next-door neighbours who use wood-fire heating, for which the wood is in many cases provided by local charities, warm their homes by combustion appliances that operate 24 hours a day. The cold season begins earlier and continues for longer in areas of higher altitude in my electorate than is the case in most regions around Sydney and southern parts of the State. There is often snow and ice in the towns I have mentioned during winter.

The point I make is that while we all support clean air and the use of efficient technologies to burn wood, gas, and other energy-producing materials more cleanly, we must face the reality that in some circumstances the problem of smoky chimneys simply cannot be avoided. I understand the Minister's explanation for the introduction of this legislation as an instrument for dealing with recalcitrants who refuse to conform to community expectations, but my concern is that this legislation could also be used by neighbours involved in differences of opinion as a battering ram. Given the cold climatic conditions of the area, I can well imagine that happening.

I live in a rural area and until recently had wood-fire heating. I enjoyed the warmth and of course the cost benefits. The shadow Minister for the Environment has enjoyed the warmth of the slow combustion heater in my home, but from time to time climatic conditions make wood-fire heating uncomfortable for most people because of the smoke. If neighbours become upset by smoke, this legislation will create the potential for more angst in the community and will probably result in more arguments than benefit.

I see greater benefit in firstly providing communities with affordable alternatives. Tumbarumba has gas transported by truck at enormous cost. Khancoban residents have to buy gas in cylinders, and the cost of transporting the cylinders is greater than the cost of the gas. Gas is burned at a higher rate because of the climatic conditions and residents have to pay hundreds of dollars to try to keep themselves comfortable during the winter months. To avoid the possibility of causing harm, the Government should address cost when it introduces legislation. The cost of providing reticulated gas to Tumbarumba is approximately \$8 million. Industries in the town as well as householders and businesses would use gas if it was available, and they are willing to make a contribution. If the community contributes \$4 million, there will be a shortfall of \$4 million,

but nothing has been said by the Government about that. Reticulated gas is an alternative that would result in the production of a reduced level of greenhouse emissions and it will be a cost-effective solution if it is provided in reticulated form.

I have outlined the types of alternatives that the Government should consider. The Government should introduce this type of legislation only when it is accompanied by provisions for funding alternatives, particularly when older people may be hard done by if councils decide to pursue the legislation with vigour. I am sure the Committee recognises that neighbours become involved in disputes over complaints about wood fires. I have received complaints from residents, and I am in favour of technological solutions that can resolve those difficulties, as I have explained. Technological solutions are available and should be adopted, but the Government does not seem to be inclined to apply them. Instead it resorts to heavy-handed legislation providing for fines, which is the case with most legislation passed in this Parliament.

Reference has been made to councils that are promoting the clean air project. That important project was successful up to a point when people got rid of their polluting wood fires and introduced new forms of heating. The alternative heating was affordable because infrastructure services were available in the form of natural reticulated gas, but that is not the case with many rural communities such as Lockhart, The Rock, and Tarcutta. Unlike Wagga Wagga, those communities and the many towns and cities this legislation will affect do not have access to an alternative to wood-fire heating, such as natural gas. The many communities in this State that have no alternative to wood-fire heating should have the benefit of the Government's interest being focused on the development of environmentally friendly technologies that will enable people to continue to keep warm at an affordable cost by burning wood fires.

**Mr MICHAEL RICHARDSON** (The Hills) [8.00 p.m.]: I wish to respond to the remarks of the Minister and to add a comment to those made by the honourable member for Wagga Wagga relating to wood heaters. The honourable member for Wagga Wagga mentioned a number of towns in his electorate that do not have natural gas. It is not only country towns that do not have natural gas; much of my electorate does not have natural gas. Most of the West Pennant Hills valley, where I live, does not have natural gas. Some years ago I made representations to AGL to extend its Goldline Program down a number of additional streets close to the central business district in Castle Hill. AGL would not do that. The alternative for people in Castle Hill, where it is often very cold, is either electricity or wood heating.

Most people use their wood heaters in a responsible way, but inevitably some air pollution is created. The honourable member for Wagga Wagga alluded to weather conditions. In some situations the weather conditions could lead to an offence being committed. It could well be that when a council officer returns to the house the weather conditions could be similar. An offence could be recommitted save for no other reason than that certain weather conditions were prevailing at the time. That is not fair; that is not a reasonable set of circumstances. The Opposition certainly believes that air pollution is a serious issue that needs to be addressed. But, for goodness sake, if the Government is going to penalise people for using a wood heater, it should provide a viable, cost-effective heating alternative.

Pensioners and people on low incomes should not be told to either install an expensive liquefied petroleum gas system, or use electricity, or put on another pullover, or freeze. The Government should not require that: it is absolute anathema to people on this side of the House. We care about people and we do not think that is a reasonable state of affairs. It is extremely likely that this bill will lead to wars between neighbours. If the Government believes that is not likely to happen, it is denying human nature. As the honourable member for Wagga Wagga said, those are the sorts of things that unquestionably do occur. Legislation passed in this place should act as a pacifier, not as an exacerbator of tensions between neighbours.

The Minister claimed that the abolition of section 169 (1) (a), the no-knowledge defence, was reasonable in all the circumstances. I would like to know why the Government put the no-knowledge defence into the Protection of the Environment Operations Act in 1997. Why did it do that if it now thinks it ought to be removed? What has changed? Who used that defence inappropriately over that time to cause the Government to want to remove it? What the Minister said shows, once again, that the Government has a poor understanding of how management and businesses work today. These days managers and directors of businesses do not deliberately set out to not inform themselves of what is going on in their business because they think that that might lead to some benefit to them in the future.

**Ms Sandra Nori:** You think that is what happened with the Enron experience, do you?

**Mr MICHAEL RICHARDSON:** The Minister now suggests that it is because of the collapse of Enron in the United States of America—

**Ms Sandra Nori:** No, I didn't.

**Mr MICHAEL RICHARDSON:** That is what she said: the collapse of Enron in the United States of America has led to the no-knowledge defence being abolished from the Protection of the Environment Operations Act. That is an absolute nonsense, but I guess the truth will out. I was wondering why the Government had proposed this amendment to the legislation, and now I know. It is because the Government has real fears of an Enron-style situation happening in Australia.

**Ms Sandra Nori:** We had it. It was called HIH.

**Mr MICHAEL RICHARDSON:** I do not think the HIH case involved any lack of knowledge. That has absolutely nothing to do with what the Government is proposing here: the abolition of the no-knowledge defence. As the Combined Industry Group has said, in the past five years no-one has used that defence—no-one has used any of the defences actually—and it certainly has not been used in an inappropriate fashion. It is unnecessary to remove that safety net and to potentially criminalise unwitting directors and managers.

**Question—That the words stand—put.**

**The Committee divided.**

**Ayes, 44**

Ms Allan	Mr Gaudry	Mr Oakeshott
Mr Amery	Mr Gibson	Mr Orkopoulos
Ms Andrews	Mr Greene	Mrs Paluzzano
Mr Barr	Ms Hay	Mr Pearce
Mr Bartlett	Mr Hickey	Mrs Perry
Ms Beamer	Mr Hunter	Ms Saliba
Mr Black	Ms Judge	Mr Sartor
Mr Brown	Ms Keneally	Mr Shearan
Ms Burney	Mr McLeay	Mr Stewart
Miss Burton	Ms Meagher	Mr Tripodi
Mr Campbell	Mr Mills	Mr West
Mr Collier	Ms Moore	Mr Whan
Mr Corrigan	Mr Morris	<i>Tellers,</i>
Mr Crittenden	Mr Newell	Mr Ashton
Ms D'Amore	Ms Nori	Mr Martin

**Noes, 30**

Mr Aplin	Mrs Hopwood	Mr Slack-Smith
Ms Berejiklian	Mr Humpherson	Mr Stoner
Mr Cansdell	Mr Kerr	Mr Tink
Mr Debnam	Mr Merton	Mr Torbay
Mr Draper	Mr O'Farrell	Mr J. H. Turner
Mrs Fardell	Mr Page	Mr R. W. Turner
Mr Fraser	Mr Piccoli	
Mrs Hancock	Mr Pringle	<i>Tellers,</i>
Mr Hartcher	Mr Richardson	Mr George
Mr Hazzard	Mr Roberts	Mr Maguire
Ms Hodgkinson	Mrs Skinner	

**Pairs**

Mr Price	Mr Armstrong
Mr Yeadon	Mr Constance

**Question resolved in the affirmative.**

**Amendments negatived.**

**Schedule 1 agreed to.**

**Schedule 2 agreed to.**

**Bill reported from Committee without amendment.**

### **Adoption of Report**

**Ms SANDRA NORI** (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [8.15 p.m.]: I move:

That the report be now adopted.

**Mr MICHAEL RICHARDSON** (The Hills) [8.15 p.m.]: I am disappointed at the Government's attitude to this bill. The Opposition moved what I would have thought were reasonable amendments to it. We agreed with 95 per cent of the Government's proposals. We strongly support, for example, the introduction of green offsets, but what remains to be seen is how well they work. We have some concerns about the scale of the fines but we are prepared to let those go through on the basis that maximum fines have rarely, if ever, been applied previously. The Minister for Tourism and Sport and Recreation suggested that the abolition of the no-knowledge defence is as a consequence of the collapse of Enron in the United States of America. That is nonsense, and leaves me with no alternative other than to oppose the whole of the bill.

**Motion agreed to.**

**Report adopted.**

### **Third Reading**

**Ms SANDRA NORI** (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [8.17 p.m.]: I move:

That this bill be now read a third time.

**The House divided.**

*[In division]*

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

### **Ayes, 45**

Ms Allan	Mr Gibson	Mr Orkopoulos
Mr Amery	Mr Greene	Mrs Paluzzano
Ms Andrews	Ms Hay	Mr Pearce
Mr Barr	Mr Hickey	Mrs Perry
Mr Bartlett	Mr Hunter	Ms Saliba
Ms Beamer	Ms Judge	Mr Sartor
Mr Black	Ms Keneally	Mr Shearan
Mr Brown	Mr Lynch	Mr Stewart
Ms Burney	Mr McLeay	Mr Tripodi
Miss Burton	Ms Meagher	Mr West
Mr Campbell	Mr Mills	Mr Whan
Mr Collier	Ms Moore	
Mr Corrigan	Mr Morris	
Mr Crittenden	Mr Newell	<i>Tellers,</i>
Ms D'Amore	Ms Nori	Mr Ashton
Mr Gaudry	Mr Oakeshott	Mr Martin

**Noes, 30**

Mr Aplin	Mrs Hopwood	Mr Slack-Smith
Ms Berejiklian	Mr Humpherson	Mr Stoner
Mr Cansdell	Mr Kerr	Mr Tink
Mr Debnam	Mr Merton	Mr Torbay
Mr Draper	Mr O'Farrell	Mr J. H. Turner
Mrs Fardell	Mr Page	Mr R. W. Turner
Mr Fraser	Mr Piccoli	
Mrs Hancock	Mr Pringle	
Mr Hartcher	Mr Richardson	<i>Tellers,</i>
Mr Hazzard	Mr Roberts	Mr George
Ms Hodgkinson	Mrs Skinner	Mr Maguire

**Pairs**

Mr Price	Mr Armstrong
Mr Yeadon	Mr Constance

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a third time.**

**STANDARD TIME AMENDMENT (DAYLIGHT SAVING) BILL****Second Reading**

**Debate resumed from 13 September 2005.**

**Mr ANDREW TINK** (Epping) [8.28 p.m.]: The Coalition does not oppose this bill, the purpose of which is to extend daylight saving by one week to 2 April 2006 to coincide with the eighteenth Commonwealth Games, which are to be held in Victoria. In that regard it is recognised to be in line with arrangements that were made for the Olympic Games and, as a one-off for that purpose, it is not opposed by the Opposition. The other major change is to enable the daylight saving period to be changed by regulation. We do not have any problem with that proposal either, except that if a major change to daylight saving was proposed to which objection was likely to be taken, the regulation should be brought forward in plenty of time. If the question of disallowance arose, there would not be the problem of winding back a regulation that was already in force and having to unscramble it, so to speak. On that understanding, we do not have any problem with the bill as it stands.

**Ms CLOVER MOORE** (Bligh) [8.29 p.m.]: With the welcome return of daylight saving still a month away, it is timely to discuss and debate the merits of extending the daylight saving period. An extension of daylight saving makes sense not just during the Commonwealth Games but also for economic, social, cultural and environmental reasons. In Committee I propose to move an amendment to the Government's bill to make a longer daylight saving period than the legislated norm. I will support the Government's proposal to have the daylight saving period set by regulation but will move to disallow any regulation that makes the period less than that laid down in the bill.

People work long hours and would appreciate some daylight time at the end of the working day. That is what daylight saving means: saving time for families and friends. In 1976 a referendum of 2.7 million citizens in New South Wales found that 68 per cent wanted daylight saving time. Australians have an average working week that is amongst the longest in the developed world. They want to be able to get home in the evening and have a chance to relax in a park, at the beach or in their backyards with family and friends. This is one of the best things about the summer months, and we should extend the opportunity to early spring. Extended daylight saving worked for us during the Olympic Games in 2000. Everyone remembers the buzz and feeling around the city during that time. We were out on the streets enjoying long spring days—the city was alive. But now too many people miss these beautiful months of September and October.

It is worth noting that daylight saving time is not a new idea. The idea was first conceived by Benjamin Franklin, while he was an American delegate in Paris, in the essay *An Economical Project*. The logic behind this

concept is simple: a better use of daylight hours. Extending daylight saving would bring a range of positive outcomes for families, businesses, and community health and wellbeing. It would allow us to enjoy the world's most beautiful playground, with our harbour, the beaches, parks and playgrounds. An extension of daylight saving would be beneficial for Sydney business. Shops, bars and outdoor cafes would experience increased trade and I am sure there would be a marked reduction in stress for office workers. The chamber of commerce has previously indicated its support for such an extension.

Obesity is a serious medical condition associated with a range of debilitating and life-threatening conditions. From 1985 to 1995 the proportion of Australians who were overweight or obese more than doubled. By 1995 the proportion of overweight or obese youth aged between 2 and 17 years was 21 per cent for boys and 23 per cent for girls. NSW Health identifies the shift to a more sedentary lifestyle as the major cause of childhood obesity. The New South Wales Child Health Survey of 2001 found that 40 per cent of children aged 5 to 12 years watched two or more hours of television a day. An early extension of daylight saving would encourage adults and children to stay outdoors and be more active. Families could spend more time with each other, engaged in healthy activities.

There are also convincing environmental reasons for extending daylight saving time. Daylight saving has been introduced into many countries in an attempt to save energy. In Australia daylight saving was introduced by the Federal Government during World War II in 1942 to save fuel by cutting down on the use of artificial lighting. Similarly, in the United States of America during the Organisation of Petroleum Exporting Countries oil embargo, daylight saving was extended for 10 months in 1974 and 8 months in 1975 in order to save energy. It is estimated that 10,000 barrels of oil were saved each day during that period.

I believe the Government should take every opportunity to reduce energy demand and explore measures that reduce greenhouse gas emissions. Energy use and demand for electricity for lighting homes is directly related to the time that people go to bed and get up because appliances are generally turned off when people go to sleep. New Zealand power companies have found that power usage decreased 3.5 per cent when daylight saving starts. Peak evening consumption commonly drops about 5 per cent. The United States of America Department of Transportation conducted a study that found that daylight saving reduces the country's electricity usage by a small but significant amount. Given the urgent need to reduce energy demand, it is critical that the Government explore all energy-saving options.

Another benefit of daylight saving is increased community safety and, equally importantly, a parallel reduction in the fear of crime. Daylight saving gives people time to travel home from work and school in daylight, which is much safer than in the dark. In considering this proposal for the temporary extension of daylight saving, we should recognise that, while it is important to extend daylight saving time for a sporting event, it is surely equally important to extend it for families, the environment and the New South Wales economy not just in one year but in every year. October and April are wonderful months and there are many practical and social benefits of daylight saving. I call on the Government to amend its proposed amendments so that daylight saving is legislated to start at the beginning of October and end in late April. I foreshadow that I will move an amendment in Committee to make daylight saving time begin on the first Sunday in October each year and end on the last Sunday in April.

**Mr ANTHONY ROBERTS** (Lane Cove) [8.35 p.m.]: The first amendment in the Standard Time Amendment (Daylight Saving) Bill seeks to extend the daylight saving period for 2005-06 by one week in light of the fact that the XVIII Commonwealth Games will be held in Melbourne next year. As the Games end on Sunday 26 March—which is also the day that daylight saving is due to end—I understand that the Victorian Premier has requested that New South Wales extend its daylight saving period by one week to Sunday 2 April 2006 to allow the Games and associated events to be completed with minimal disruption.

As the Attorney General, Minister for the Environment, and Minister for the Arts pointed out in his second reading speech, New South Wales was privileged to host the 2000 Olympic Games and Paralympics. I congratulate the Fahey Liberal Government on bringing the Games to this great State. At that time the Victorian Government agreed to adjust that State's daylight saving time, and I understand that the Lemma Government is happy to reciprocate and return the favour, with the full support of Opposition members. I note the Minister said that New South Wales would enjoy positive benefits as a result of the Games, including an increase in the number of tourists visiting this State. I hope that is true for the State's sake, after all that this Government has done to destroy the New South Wales economy and tourist industry.

I was surprised by the second amendment in the bill as it is probably the only reasonable legislative provision to come from this tired old Labor Government in a number of years. It calls for an amendment to the



Standard Time Act 1987 to provide a more flexible means of adopting any future changes to the daylight saving period. This would allow future changes to be made by regulation—a much more efficient system than the current method, which requires an amendment to the Standard Time Act whenever a change to daylight saving is needed in order to accommodate a major event. In his second reading speech the Minister said:

The regulatory impact process means that an assessment of any proposed changes to the daylight saving period would be undertaken. The public and peak industry bodies would be given the opportunity to comment on the proposals. Any regulation proposing a change to the daylight saving period would be subject to parliamentary scrutiny and possible disallowance. The proposed change is a practical measure and will ensure that New South Wales can respond appropriately to new developments, which may require change to the daylight saving period.

That seems to be a reasonable proposal, which my colleagues on this side of the House and I support. Finally, the bill recognises the long-held practice of setting the daylight saving time of Lord Howe Island at 20 minutes in advance of standard time rather than one hour in advance of standard time, as per an order published in the *Government Gazette*. I commend the bill to the House.

I welcome to the public gallery President Mary O'Dea and members of the West Pymble branch of the Liberal Party, who are guests of the Deputy Leader of the Opposition. It is wonderful to see them here. On behalf of Coalition members, I take this opportunity to express our goodwill to all competitors in the Commonwealth Games, particularly the Australian competitors, many of whom I have been privileged to meet. My colleagues the honourable member for Wagga Wagga and the honourable member for Epping join me in wishing them the best of luck at the Games—not that they will need much luck as they are well trained and disciplined.

**Ms SANDRA NORI** (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [8.40 p.m.], in reply: I thank the Opposition for its support. The Government will not agree to the amendments as outlined by the honourable member for Bligh. The arrangements in place now are at least standard across those States that adopt daylight saving changes. They are also consistent with the current changeover time in Europe—with the exception of next year for the Commonwealth Games—which, for some people, is not a major consideration but it is important for people who conduct business across the continents.

That disruption to business should not be undertaken lightly. If New South Wales wished to make those changes permanent it would surely be better to raise the matter at a ministerial council level so that it could be done consistently and introduced across those other States. It is not appropriate for us to do it alone. The honourable member for Bligh referred to the saving in electricity with people being home earlier and not having to use their lights. Daylight saving does not change the amount of light that is available in any 24-hour period, so I presume people who rise earlier would have to use more electricity in the mornings.

Whilst that might be relevant to the time some people get home it is not relevant to schoolchildren who, generally speaking, in Australia get home in broad daylight regardless of the time of the year. The Government will not support the amendments foreshadowed by the honourable member for Bligh for the reason that if we were to make those changes it would have to be done in agreement with the other States and introduced simultaneously.

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 3 agreed to.**

**Ms CLOVER MOORE** (Bligh) [8.46 p.m.] by leave: I move amendments Nos 1 to 3 standing in my name in globo:

- No. 1 Page 3, schedule 1, line 10. Omit "last". Insert instead "first".
- No. 2 Page 3, schedule 1, line 12. Omit "March". Insert instead "April".
- No. 3 Page 3, schedule 1, lines 15 to 17. Omit all words on those lines.

For the reasons outlined in my contribution to the second reading speech I support extending daylight saving for important sporting events such as the Commonwealth Games, but I believe that extension should be made permanent for economic, social, cultural and environmental reasons. I submit that it should commence on the first Sunday in October each year and end on the last Sunday in April.

**Mr ANDREW TINK** (Epping) [8.47 p.m.]: The Coalition opposes these amendments which, in our view, do not strike the right balance between city and country interests. There are some very important issues in the bush which do not align necessarily with the needs or desires of people in the city. We are a broad-based Coalition, representing the whole State, and we have to strike a balance. We believe the balance is properly struck in the bill as it stands with a special allowance made for the Commonwealth Games next year. We will not support the amendments.

**Mr DAVID BARR** (Manly) [8.48 p.m.]: I support these amendments, which are well worth pushing. The Government said that not all States will be aligned, but they are not aligned at the moment: Queensland certainly is not. If one looks at the extent of sunlight hours that we already have in the middle of September one could argue quite easily that we could begin daylight saving right now. It would enhance the quality of life for people. They could come home from work and enjoy leisure time at home with their family, go on picnics to the beach, take their dog for a run or whatever. There is no reason why daylight saving could not begin at the beginning of October and end in April. It would certainly be a great enhancement to the lifestyle of people in metropolitan areas as they could enjoy all the facilities that our city has to offer. So far as I am concerned there would be no down side to these changes.

**Ms CLOVER MOORE** (Bligh) [8.48 p.m.]: I know that regional issues are raised constantly in this Parliament, but I think it is important that we remember that the majority of people live in urban areas. We are the most urbanised country in the world. Sydney is Australia's global city, and it is the economic engine of our nation. This is where the majority of people work; it is where the majority of people live. It is important that we think about their health, their welfare, their family life, the very long hours that they work, and the wonderful attributes that we have in our climate and our weather. This Parliament should keep those matters in mind when making these decisions.

**Ms SANDRA NORI** (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [8.49 p.m.]: As I indicated earlier, the Government must reject the amendments moved by the honourable member for Bligh. I was prompted to make this further contribution by the comments that the honourable member just made. Yes, Sydney is a global city. And, yes, I am the Minister for Tourism. But not one stakeholder in the tourism industry has come to see me about this matter. As for the earlier reference by the honourable member for Bligh to the fact that young people are getting fatter; there is no doubt about that. Equally, there is no doubt that people are exercising less.

**Mr Barry O'Farrell**: Speak for yourself!

**Ms SANDRA NORI**: Some of us do very well! But the fact that young people are getting fatter and people are exercising less has very little to do with changing the clock by an hour for daylight saving. In enjoying a lifestyle in Sydney we are not changing the weather. That reminds me of the argument about the fading curtains. I emphasise again that there is already disharmony within this country on this issue. To introduce a further out-of-sync time zone within Australia would be ludicrous and would not help business. The honourable member is right: most people do live in Sydney; most people do live on the eastern seaboard. But I think it would be wrong to suggest that we can ignore the views of other people on this matter. The honourable member for Eastwood got it right: it is about striking a balance. I personally would have no real objection to daylight saving being extended, but one has to be practical. That would have to be done with the agreement of the other States if we were to do something that would take us even further out of sync. The great difference in Europe of course is that its nation States are so small. Australia has different naturally occurring time zones within one State. The Government rejects the amendment. I thank the Opposition for its support of this measure.

**Question—That the words stand—put.**

**Division called for. Standing Order 191 applied.**

**Noes, 3**

Mr Barr  
Ms Moore  
Mr Oakeshott

**Question resolved in the affirmative**

**Amendments negatived.**

**Schedule 1 agreed to.**

**Bill reported from Committee without amendment and passed through remaining stages.**

**CRIMES AMENDMENT (ROAD ACCIDENTS) BILL**

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

**Second Reading**

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [8.58 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

Recent tragic cases in New South Wales and other States have highlighted the difficulties and consequences that may follow when drivers leave the scene of a collision and do not stop to render assistance to victims. Brendan Saul, a 9 year-old-boy, died after being struck by a car at Dubbo in January last year. Under this bill, a new offence of failing to stop, with much heavier penalties, is introduced into the Crimes Act in recognition of society's abhorrence of those who injure their fellow citizens and then abandon them to die. When a driver leaves the scene of an accident, leaving in his or her wake a dead or badly injured person without attempting to render assistance, the fundamental code of civilised society is breached. Every driver on our roads needs to be aware that with the privilege of driving on our roads comes a fundamental responsibility to our fellow drivers.

The bill creates section 52AB of the Crimes Act, which makes new indictable offences. The new section makes it an offence for the driver of a vehicle that is involved in a collision causing death or grievous bodily harm to fail to stop and give assistance in circumstances in which he or she knows, or ought reasonably to know, that the vehicle has been involved in such a collision. When the collision causes death, the maximum penalty for failure to stop is imprisonment for 10 years. When the collision causes grievous bodily harm, the maximum penalty for failure to stop is imprisonment for seven years. The maximum penalties applying in these cases are severe. The maximum penalties are equivalent to those for offences of dangerous driving occasioning death and dangerous driving occasioning grievous bodily harm in section 52A of the Crimes Act.

As a result no incidental advantage will accrue to a driver who flees and knows or ought reasonably to have known that death or grievous bodily harm was occasioned by the impact. The extension of the mental element to incorporate an objective element of "ought reasonably to have known" is warranted in the special circumstances of this offence. There should be no arguments about "actual knowledge" when objectively a person ought reasonably to have known that death or grievous bodily harm would result from a collision. The offences will apply to cases involving impacts occasioning death or grievous bodily harm. The definition of "impact" will be that used in section 52A of the Crimes Act. That definition is broad, extending to situations where vehicles run off the road or people are thrown from vehicles.

It will apply to any person who gets behind the wheel of a car—irrespective of age or whether they are licensed or unlicensed. The focus of the new offences is to ensure assistance for victims of serious vehicle impacts. Assistance may save a life, minimise injury, improve the prospect of recovery, alleviate suffering, and preserve the dignity of the injured or deceased. Failure to stop and assist in serious accidents should invite significant punishment. The requirement is to stop and give any assistance necessary that is in the driver's power to give. That is not to say that people must stop to perform first aid when they are not qualified to do so, or rescue someone from a burning car in dangerous circumstances. Obviously commonsense judgment will be required.

What is required is for the person to stop and take steps to assist directly or obtain expert help by contacting police or emergency services to ensure that professional expert assistance is obtained at the earliest opportunity. The action of drivers fleeing may thwart police in their ability to identify the drivers and collect necessary evidence. The presence of drivers at the scene ensures that the investigation is at no disadvantage. The creation of indictable offences of "failing to stop and assist" will also enliven a broader range of powers available to help a police investigation, such as, for example, the power to demand the name and address of a person when a police officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence.

A person convicted of these offences will be liable to mandatory driver's licence disqualification. The offences will be relevant offences for the purpose of habitual traffic offender declarations and disqualification periods. There is provision to deal with the proposed section 52AB indictable offences summarily or on indictment in the District Court, at the election of the prosecution. The bill also amends section 70 of the Road

Transport (Safety and Traffic Management) Act. Section 70 will be similar to section 52AB in that it will also incorporate the objective test where the driver knew or ought reasonably to have known the result of the accident. However, the offence will apply to drivers of vehicles involved in collisions causing any physical injury. The definition of "impact" will also be that used in section 52AB.

Section 70 will continue to carry mandatory licence disqualification and be a relevant offence for habitual traffic offender purposes. An education campaign aimed at informing drivers of their responsibilities will be developed prior to the commencement of the legislation. With these new sanctions, motorists who flee the scene of an accident will face tougher penalties and a greater chance of being caught. The new offence strips away any incentive that may exist in the current penalty structure to flee or evade police. Eighteen months ago on a sunny afternoon a small boy died in a terrible collision. Thanks to the long campaign of his father, this bill is a stepping stone of legal reform recognising that sad death. In a very real sense, this is Brendan's law. I commend the bill to the House.

**Debate adjourned on motion by Mr Daryl Maguire.**

### **CRIMINAL PROCEDURE AMENDMENT (PROSECUTIONS) BILL**

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

#### **Second Reading**

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.07 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Criminal Procedure Amendment (Prosecutions) Bill 2005. The bill proposes amendments to the Criminal Procedure Act 1986 to ensure that all prosecutions conducted on behalf of the Director of Public Prosecutions [DPP] are recognised as valid, and that the signing of an indictment by a private barrister who is acting on behalf of the DPP does not make invalid the proceedings based on that indictment. The bill is introduced as a result of the Court of Criminal Appeal's decisions in the cases of *Regina v Halmi* and *Regina v Janceski*, which were handed down in February and August 2005.

The cases decided that, where a private barrister was retained by the Director of Public Prosecutions to conduct a prosecution on the DPP's behalf, and the private barrister signed an indictment upon which a trial was then held, the indictment was invalid and so the trial was a nullity. The reason for the invalidity was that the indictments did not comply with the technical requirements of section 126 of the Criminal Procedure Act, which regulates who may sign indictments. This technical invalidity arose even though the defendants and their legal representatives were well aware that the DPP had retained a private barrister to prosecute on his behalf, and they were well aware of the actual case against the defendants. Both trials were fair.

The bill corrects any difficulties that might arise from the technical invalidity that was found in the decisions of *Halmi* and *Janceski* in two ways. First, the bill amends section 16 of the Criminal Procedure Act, which provides that indictments are not void or invalid for certain technical defects; for example, for misstating any co-accused's name, for failing to specify the exact value of any property, and things of that nature. The bill adds to the existing list in section 16 a further item: that an indictment is not invalid merely because the legal practitioner who signed the indictment did not have an authorisation in writing from the DPP to sign indictments on his behalf, provided that the legal practitioner was instructed by the DPP to conduct those criminal proceedings. Secondly, the bill contains transitional provisions that clarify that all indictments that had been signed and laid before the court on behalf of the DPP in the past, and all proceedings conducted on those indictments, are valid. However, the bill does not improperly interfere with cases decided by the courts. It does not interfere with the decisions of the Court of Criminal Appeal that Mr Halmi and Mr Janceski should have a retrial.

I will now turn to the detail of the bill. Proposed section 2 provides that, once passed and proclaimed, the bill is deemed to have commenced on the day the bill was first introduced into Parliament. This provision is consistent with the intention of the bill that all indictments signed by a legal practitioner on behalf of the DPP should be validated, but that existing court decisions should not be interfered with. Section 2 prevents any further decisions from being made from this day forward that would invalidate any indictment presented on behalf of the DPP merely because of the signature that appears on the indictment.

Schedule 1 of the bill inserts a new paragraph (i) into section 16 (1) of the Criminal Procedure Act. That new paragraph provides that no indictment is bad, insufficient, void, erroneous or defective for failure of the DPP to authorise a legal practitioner in writing to sign any indictment that is presented on his behalf, provided that the legal practitioner was instructed to prosecute the case on behalf of the DPP. The transitional provisions of the bill, which are also contained in schedule 1 of the bill, insert new clauses 46 and 47 into schedule 2 of the Criminal Procedure Act. Those clauses provide that all indictments presented at any point in the past—from the date of the creation of the office of the DPP up until the date that this bill was introduced into Parliament—are validated where they were presented in the circumstances set out in the new section 16 (1) (i) of the Criminal Procedure Act. Those circumstances are where the indictment was signed by a legal practitioner who had been instructed to conduct proceedings on behalf of the DPP, but the legal practitioner was not authorised under section 126 of the Criminal Procedure Act to sign indictments.

Proposed subclauses (2) and (3) of clause 47 make it clear that such indictments are valid, and that all proceedings related to such indictments are valid. Clause 47 (4) contains the rule that nothing in the transitional provisions does anything to overrule any existing judgment or order of a court. Put simply, the decisions of the Court of Criminal Appeal in Halmi and Janceski stand, but the gate will be closed. No more appeals will be able to be brought forward on the technical grounds argued in those cases. The bill will preclude, once and for all, any appeal against conviction following successful prosecution by the DPP based on the purely technical ground that the indictment was not signed by a person with the proper authority to sign indictments. I commend the bill to the House.

**Debate adjourned on motion by Mr Daryl Maguire.**

## **LOCAL GOVERNMENT AMENDMENT (STORMWATER) BILL**

### **In Committee**

#### **Clauses 1 to 3 agreed to.**

**Ms CLOVER MOORE** (Bligh) [9.16 p.m.], by leave: I move amendments Nos 1 and 2 standing in my name in globo:

No. 1 Page 3, schedule 1. Insert after line 18:

- (3) Subject to section 510A, the amount of an annual charge for the provision of stormwater management services for any parcel of rateable land is to bear the same proportion to the land value of the parcel as the ordinary rate for that parcel.

No. 2 Page 3, schedule 1, line 31. Insert "(not exceeding \$100)" after "charge".

I speak first to my first amendment. As I said during the second reading debate, I welcome the fact that the bill will allow councils to levy for vital stormwater works. However, I said I was concerned about the inherent inequity in the bill that arises because it imposes a maximum levy of \$25 per dwelling, which is a flat rate tax. I asked the Minister to support my amendment to allow the rate to be a proportional tax so that those who own more valuable dwellings will pay more, whereas people receiving lower incomes who own less valuable property will pay less. My amendments would ensure that the levy would be proportional rather than a flat rate, in the interests of equity.

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.17 p.m.]: The cost of managing stormwater is related to land area rather than the land value, on which rates are based. The stormwater run-off from a large warehouse or industrial estate is many times greater than that from a residential block. The stormwater management service charge should therefore relate to land area, for equity reasons. The charge should ideally vary according to the area of a residential block. However, the Government needs to ensure that the administrative cost to councils of raising the charge are low compared with the revenue received. The approach proposed to the amendment is complex and councils would have to spend more money ascertaining the relevant level of charge for each property in their area.

The most cost-effective approach is to have a flat charge for residential blocks. There will be a cap of \$25 for residential blocks in the regulation, but councils will be able to choose to impose a lower charge. The Independent Pricing and Regulatory Tribunal [IPART] has investigated appropriate stormwater charging arrangements. The tribunal considers that charges based on land value are inequitable. Its recommended

approach is for a flat charge to be applied to residential properties and for an area-based charge to be applied to business properties. IPART decision-making processes are very public, transparent, and robust. We should be guided by its work and ensure that a flat charge is applied to residential blocks and that area-based charges are applied to business land. Land value is not an equitable basis for stormwater charging.

Section 539 of the Local Government Act 1993 sets out the criteria that are relevant in determining the amount of a charge. Land value is not included. The proposal alters the revenue-raising mechanism from a charge to a rate. This fundamental change may necessitate other amendments to the bill to ensure consistency with existing revenue-raising options for councils. The Government opposes the amendment.

**Ms CLOVER MOORE** (Bligh) [9.20 p.m.]: I will speak briefly to the second amendment. Having said that the rate should be proportional, I am suggesting that the charge be increased above the \$25 cap. However, my second amendment would ensure that it would not exceed \$100 total charges. This wording was recommended by the Parliamentary Counsel in order to achieve what I was seeking to do. That maximum would give an average across an area similar to the Government's proposal. People who are able to pay more could do so; those who can only pay less would be able to do that too.

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.20 p.m.]: For the reasons noted for amendment No. 1, it is important that the charge for commercial land is related to land area. Using that approach, the average business charge will be about \$100, but the charge should not be limited to that amount. For very large commercial blocks, such as warehouses in Alexandria and Waterloo, the charge will be higher than that. If the charge is capped at \$100, councils will not be able to recover their cost of managing stormwater from very large commercial blocks. Therefore, households will need to cross-subsidise councils' cost of managing stormwater from large businesses. That is inequitable, and the Government opposes amendment No. 2.

**Ms CLOVER MOORE** (Bligh) [9.21 p.m.]: For clarification, my amendments related to residential properties, not to commercial properties. I said that in the second reading debate.

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.21 p.m.]: As I understand it, residential properties are capped at \$25.

**Ms CLOVER MOORE** (Bligh) [9.21 p.m.]: What I am proposing is that they not be capped at \$25, but that they would not go above \$100. My amendment related to residential properties, the ability of people to pay, and the value of their property. I think I have clarified that.

**Ms DIANE BEAMER** (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.21 p.m.]: The bill seeks to cap it at \$25, and the Government stands by that. We do not support the amendments.

**Amendments negatived.**

**Schedule 1 agreed to.**

**Bill reported from Committee without amendment and passed through remaining stages.**

## **SECURITY INTERESTS IN GOODS BILL**

### **Second Reading**

**Debate resumed from 15 September 2005.**

**Mr STEVE WHAN** (Monaro) [9.23 p.m.]: I support the Security Interests in Goods Bill, which should be particularly welcomed by farmers and the small business community, two groups that are very important to our rural economy. Before a lender will agree to lend money for a business, the borrower must provide an asset over which the loan can be secured. For a small business the asset might be stock in trade or machinery and equipment. For a farmer or primary producer the asset will include produce that may be in the course of production, wool still growing on the sheep's back, or crops maturing in the ground. At common law there has always been a difficulty with granting a mortgage or right over goods not yet in existence. The Bills of Sale Act

1898 and the Liens on Crops and Wool and Stock Mortgages Act 1898 overcame that problem but imposed a number of regulatory barriers which have not kept up with the modern marketplace.

The Security Interests in Goods Bill will replace both Acts with a regime more suited to current needs. Those parts of the bill dealing with agricultural goods were prepared with input from the New South Wales Farmers Association. It was at its suggestion that provision was made for a new type of security over farmed fish. The association also helped to identify the expanded definition of "stock" and "crops" over which a mortgage can be granted. The amendments take into account that farmers are continually diversifying into new products and seeking new markets in an effort to keep their farms viable. The bill should assist by enabling security interests to be adapted in line with agricultural diversity. As noted earlier, the bill deals with more than just mortgages over agricultural goods; it applies also to mortgages granted over personal property.

While the main users of that part of the bill will be people operating small businesses, it is by no means limited to them. A bill of sale or security interest may be granted over a private art collection, a mobile home, or a prized racehorse. However, the bill will not apply to loans secured over a motor vehicle or boat. The Register of Encumbered Vehicles, operated by the Office of Fair Trading, will continue to provide a central system enabling prospective car buyers to check for outstanding encumbrances before buying a vehicle. The Registrar General will maintain a register in which security interests in goods are to be recorded. The bill requires that all security interests granted over agricultural goods be registered.

Much of the formality of the current legislation has been simplified, and the time period within which an interest is to be registered has been extended from 30 days to 45 days, making registration easier to achieve. It will not be mandatory to register security interests in non-agricultural goods. Although registration is optional, it will confer priority over unregistered security interests granted over the same goods. Therefore, lenders will be encouraged to register rather than being compelled to do so. The bill simplifies and streamlines the procedures for the preparation and registration of security interests in goods. The bill offers many advantages for both lenders and borrowers and should result in savings in both time and cost.

As I said, the original legislation was enacted in 1898. It is quite amazing that we are modifying legislation that has lasted that long. I imagine that not even anyone in the upper House would remember the introduction of the original legislation—but who knows! I commend the bill to the House.

**Mr ADRIAN PICCOLI** (Murrumbidgee) [9.27 p.m.]: I echo the words of the honourable member for Monaro: it is incredible that legislation has survived for more than 100 years. The Security Interests in Goods Bill is interesting for another reason; it is not often that Parliament replaces two Acts with one Act. Politicians and parliaments are often criticised for overly regulating and overly encumbering business and everyday life by constantly introducing more legislation. In this case, we have replaced two Acts with one Act, and I am pleased to be part of that process. The Opposition will not oppose the bill, which simplifies a somewhat antiquated mortgage procedure over goods and chattels, farm crops, wool, and the like. The bill modernises the procedure, the paperwork, and the types of crops and livestock that can be used as security for a mortgage, including llama, emu and alpaca. That modernisation is indicative of the way agriculture has changed in Australia and I am pleased that the bill reflects that.

Crop liens can be entered into for a period longer than a year. That again acknowledges that agriculture in Australia is not only about wheat, rice and the grain crops we are used to. Agriculture includes other types of horticulture such as grapes, citrus fruit and olives that have growth periods of longer than a year. Those types of horticultural crops require a great deal of investment before there is any income. That is reflected in the bill. The legislation also takes into account the fact that farmers are able to mortgage agricultural products that are yet to come into existence in a saleable form, such as the fleece of goats and sheep that are still on the backs of those animals. That is a step forward. As I was a solicitor for a short period and had to deal with crop liens and bills of sale, et cetera, I support the bill. I have not yet seen the forms that have to be filled out, but as the original legislation was introduced in 1898 it appears as though the forms are the original forms that were used in 1898. I hope the paperwork reflects the intent of this bill, that is, to simplify an important piece of legislation.

**Mr MATT BROWN** (Kiama) [9.31 p.m.]: In supporting the Security Interests in Goods Bill I echo the sentiments expressed earlier by other honourable members who have contributed to this debate. In 2005 we are amending an 1898 Act of Parliament that consolidated two 1843 and 1862 Acts. I am impressed by the fact that this bill will enable markets, farmers and financiers to come up with new ways to secure loans. People on the land will be able to invest in their businesses and financiers will be a little more imaginative in securing loans. As a former property and financial lawyer I believe this bill has a number of interesting aspects. The bill is the result of negotiations between all interested parties, and it is always a pleasure to be able to resolve issues in the modern era.

More than 100 years ago security could be taken over livestock, wool and other things. The Liens on Crops and Wool and Stock Mortgages Act 1898 had its origins in the days of colonial New South Wales. Because of the limitations of the common law special legislation, the Liens on Crops and Wool and Stock Mortgages Act, was necessary to enable loans to be obtained in respect of growing crops, livestock and wool on the sheep's back. The first enabling legislation in New South Wales was enacted in 1843 to allow the grant and registration of security interests over wool and stock. That was followed in 1862 by an Act that permitted the creation and registration of security interests over crops. In 1898 the present legislation was consolidated in the Liens on Crops and Wool and Stock Mortgages Act, which is administered by the Registrar-General.

The Rural Issues Committee and the Property Law Committee of the Law Society of New South Wales, the New South Wales Farmers Association, the Westpac Banking Corporation, the Commonwealth Bank and staff of the Department of Lands made valuable submissions in relation to the reform of the Act. I pay tribute to all those people—whether they are lawyers, farmers, financiers or public servants—for working together to facilitate more financial activity on the farms of this State. For the most part the proposals that have been put forward have been adopted in this bill. The Bills of Sale Act also deals with mortgages granted over goods. A bill of sale is the name traditionally given to mortgages granted over goods, such as the stock in trade of a business, furniture or artworks. Bills of sale are also sometimes called security interests or goods mortgages.

The Bills of Sale Act requires that all bills of sale granted over personal chattels must be registered in the register kept by the Registrar-General. The original aim of the Act was to prevent prospective lenders from being misled as to a borrower's prosperity when the goods in the borrower's possession were in fact mortgaged to another. The existing legislation distinguishes between bills of sale given by traders, or trader's bills of sale, and other bills of sale, or ordinary bills of sale. Unregistered trader's bills of sale are absolutely void and confer no security on grantees over the goods to which they relate. However, unregistered ordinary bills of sale are valid as between the grantor and grantee, but void against certain judgment creditors and other third parties.

The existing legislation requires instruments to be registered within strict time frames and imposes elaborate procedures for signing. This overregulation hampers legitimate financial transactions without providing a significant benefit. A discussion paper was circulated proposing suggestions for change and calling for comments from industry. All respondents stressed the need for simplification of the legislative requirements. Some respondents suggested that the legislation be repealed completely as it has been in Victoria and Western Australia. Most, however, saw the benefits of retaining a register but they wanted the legislation modernised. Registration perfects a security interest and confers priority over unregistered security interests or later registered security interests granted over the same goods.

Bills of sale are a type of financial instrument commonly used by small businesses, partnerships and non-incorporated associations. They often secure large sums of money and registration gives the lender comfort as to the priority the loan will have. For that reason it was decided to retain a register but to greatly simplify the legislative requirements. The Security Interests in Goods Bill will repeal both these Acts, update the definitions and simplify the procedures for executing and registering security interests in goods, which will save time and costs for both lenders and borrowers. I hope this will give lenders of money a much greater degree of comfort when lending money to farmers and others working on the land, as well as giving farmers or small business persons on the land a greater variety of goods, stocks or crops for which they can seek money and have a guaranteed for it. For those reasons I support the bill.

**Mr WAYNE MERTON** (Baulkham Hills) [9.38 p.m.]: The Security Interests in Goods Bill will make monumental changes to the law relating to security interests in chattels. This bill will change two distinct Acts that were passed by this Parliament in 1898, namely, the Bills of Sale Act 1898 and the Liens on Crops and Wool and Stock Mortgages Act 1898. Both those Acts had a distinct purpose. The Bills of Sale Act, which dealt with general mortgages and bills of sale of chattels, was divided into two broad categories—a trader's bill of sale and a non-trader's bill of sale. A trader's bill of sale had to be registered, otherwise it was fundamentally flawed, void ab initio, and worthless.

As a young articled law clerk it was indelibly impressed upon me, a 17-year-old lad, that a trader's bill of sale had to be registered within 14 days. If it was not registered within 14 days—it might have been seven days—it was a question of the boss having to write out a cheque to compensate the person who had lent the money because the debt was irrecoverable, the security was void, and there were all kinds of problems. That was the situation relating to a trader's bill of sale. I can also recall that there were problems when one was not certain whether the document was a trader's bill of sale or an ordinary bill of sale because of the nature of some



intangible items included in the transaction. The safest course was to treat it as a trader's bill of sale and go through the registration formalities. This bill abolishes that legislation and introduces a different type of security. The outdated distinction between a trader's bill of sale and ordinary bills of sale is dispensed with and the concept of a security interest in goods is introduced.

The registration of certain instruments relating to the creation of security interests in goods, including interests created by bills of sale, will be optional rather than mandatory. The period of registration will not be limited to the current period of five years. The registration of a security interest in goods will generally confer priority over unregistered interests and subsequently registered interests over the same goods, but a failure to register an otherwise valid interest will not affect its validity. That is the fundamental difference between this legislation and the existing legislation as far as a trader's bill of sale is concerned. The year 1898 must have been a big one as far as the mortgaging of chattels and rural commodities was concerned. It is almost surprising and interesting that both pieces of legislation were passed by this Parliament in the same year and now, many years later, we are dealing with legislation that will effectively abolish the old legislation.

**Mr Barry Collier:** The Wills, Probate and Administration Act was also introduced in 1898.

**Mr WAYNE MERTON:** The people who were in Parliament in 1898 must have been very conscious of the need to codify matters to deal with problems that affected the community. The special significance of the Liens on Crops and Wool and Stock Mortgages Act 1898 was that our economy then was essentially rural. This bill repeals that Act and the regulations made under it. It modifies the existing law as follows: the registration of certain kinds of instruments will create mortgages over existing and future crops and wool instead of liens over such goods. It was an arguable proposition as to whether one could mortgage something that did not exist, in the case of growing crops, so I suppose in 1898 they settled for liens, as opposed to a charge by way of mortgage.

Now we are able to alter the law and say it is possible to mortgage a growing crop or a future crop or the wool growing on the sheep's back. That is an important step in the right direction. The bill also deals with the kinds of animals over which a stock mortgage may be granted. The definition now extends beyond cattle, sheep and horses, which in 1898 would have been the mainstay of rural Australia. Many different types of animals, such as alpacas, now form part of our rural industry. The same can be said about fish. Under the bill the owners of fish that are cultivated or kept for the purposes of aquaculture will be permitted to grant a mortgage over them.

I will not go through the other provisions of the bill. The bill certainly widens the type of asset that can be used as security for a mortgage and allows for goods that are yet to come into existence to be used as security for a loan, for example, wool while it is still on the sheep's back. There is strong support for broadening the options of primary produce that can be used as security for a loan. By expanding the definition of "stock", the bill will enable a mortgage to be granted against a much wider cross-section of animals. That provision acknowledges the increasingly diverse nature of agriculture, as well as the growing importance in rural New South Wales of some of the industries connected with that wider cross-section of animals. Likewise, the increase in the period for crop liens acknowledges the diverse range of crops that are grown, as well as the variance in crop establishment periods.

The Opposition does not oppose this legislation. I suppose many lawyers will now sleep much easier knowing there is not a trader's bill of sale in a cupboard somewhere that has not been registered by Friday evening and come Monday or Tuesday it will be out of time and they have to ring Law Cover and tell them. People must realise that because of the increases in prices, a firm could have traders' bills over stock for hundreds of thousands of dollars. They were the only security. If it was a shop and its contents or a business, it could be \$1 million. If the security was unenforceable, because of the effluxion of time or because of some error, the person who lent the money could not recover it. This legislation overcomes those deficiencies.

**Mr JOSEPH TRIPODI** (Fairfield—Minister for Roads) [9.47 p.m.], in reply: I thank honourable members for their valuable contributions to the debate. Obviously, it was informative and all members have learnt something from it. The bill will substantially reform the law as it relates to security interests granted over goods. While stock and crop mortgages are specialised forms of security interests, they provide a valuable means of raising finance within the rural sector. Similarly, bills of sale may not be widely used but within the small business community they provide a useful financial tool. The bill proposes numerous improvements in agricultural goods mortgages. A share farmer will now be able to grant a valid crop mortgage. It will now be possible to grant a stock mortgage over all kinds of farmed animals rather than being limited only to sheep, cattle and horses. Obviously, the capacity to leverage the purchase of these new assets is extremely important

for the growth of a business. A new category of agricultural mortgage is to be introduced, which will be known as an aquaculture fish mortgage.

These amendments will assist farmers in raising finance to support their businesses as they diversify into less traditional areas. The provisions as they apply to mortgages of non-agricultural goods have also been considerably simplified. Registration of such instruments will now be optional rather than mandatory. This has far-reaching consequences as failure to register will no longer render an instrument void, either in whole or in part. The register, which is kept by the Registrar-General, will remain a central feature of the legislation as registration will confer priority over unregistered interest and subsequent registered interests over the same goods. The bill will remove much of the unnecessary formality of the earlier legislation, offering savings in time and cost for both lenders and borrowers. I commend the bill.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **PROPERTY LEGISLATION AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 15 September 2005.**

**Mr ADRIAN PICCOLI** (Murrumbidgee) [9.50 p.m.]: I lead for the Opposition on the Property Legislation Amendment Bill and note that the Coalition will not oppose it. The bill amends the Conveyancing Act 1919, the Real Property Act 1900, the Strata Schemes (Freehold Development) Act 1973, the Strata Schemes (Leasehold Development) Act 1986 and the Local Government Act 1993. I note from the briefing provided by the Minister for Regional Development that the bill makes a couple of significant amendments as well as some minor ones that I will not address. The Coalition will not oppose the bill as we believe it offers an opportunity to simplify the sometimes overly technical requirements with respect to making notifications on title and other land dealings.

One such notification is the dedication of land as public reserves or drainage reserves by the property owner. The bill allows that dedication to be made by a transfer document only. A plan will not be required in every case, as occurs at present. The Coalition believes that is a step in the right direction. The New South Wales National and Liberal parties are about reducing red tape and bureaucratic requirements when appropriate. I note that under the bill a plan will still be required to be lodged in some cases, and the Coalition acknowledges that that should occur. Property developers must often hand over part of the land in line with council requirements and conditions, but when a transfer is non-contentious we believe it should be done as easily as possible.

Secondly, under the bill the Registrar General will be able to record references to Crown holdings in the Torrens register for related freehold land to prevent those Crown holdings being overlooked when the freehold land is sold. I understand that the Department of Lands has experienced some problems in this area that the amendment seeks to remedy in the future. Difficulties arise when freehold property is transferred but there is an interest in a parcel of Crown land of which the purchaser is not aware. This amendment will enable the Registrar General to note that interest on land title so that the interest is evident to the potential purchaser when he or she conducts a titles search. The Department of Lands has had problems in the past collecting unpaid rent from purchasers who claim to have been unaware that rent was owed by the previous owner. The Coalition supports this amendment if it will assist the department in clarifying people's interests in Crown land.

The third significant amendment is the bill's attempt to simplify the method by which easements and other restrictions on the use of land may be created when the same person owns the blocks of land involved by removing the need for a plan of survey in appropriate cases. The Coalition supports removing unnecessary technical and overly cumbersome requirements. As a practising solicitor, I dealt with plenty of subdivisions that created easements over lots and required the lodgement of plans when this was clearly unnecessary. The Coalition supports the amendment for that reason.

Some Coalition members have raised concerns about the fourth amendment, which converts qualified and limited title to full Torrens title. Qualified title is a difficult and technical area of the law. Solicitors and banks find qualified title unbelievably difficult. Fortunately, as a lawyer I dealt with only a few cases of

qualified title primarily because Griffith came into existence in 1930 so we did not have much qualified title land. But everything I know about this title suggests that it is a difficult and complex area that has given rise to many disputes. Following the root of title creates uncertainty and is obviously a major reason why this area is so difficult. Some Coalition members have expressed concern about the need for absolute certainty when transferring qualified title to full Torrens title. We understand that the amendment is intended to simplify the process and the law. We support the amendment in principle but we must ensure certainty in dealing with any encroachments on land. Nothing creates more problems than disputes over the ownership and occupation of land. As I said earlier, the bill makes other minor amendments that I will not address. The Opposition will not oppose the legislation.

**Ms LINDA BURNEY** (Canterbury—Parliamentary Secretary) [9.57 p.m.]: The Property Legislation Amendment Bill 2005 will amend various pieces of legislation affecting conveyancing and property matters to improve the efficiency and effectiveness of land-related transactions in New South Wales. I wish to highlight one of those changes, namely, the introduction of a simpler method of creating an easement, profit a prendre or restriction on the use of land when the land is in common ownership. In order to avoid repetition I will simply refer to easements but my comments apply to all three of those interests in land. This provision is designed to overcome the common law rule that a person could not create an easement when that person owned both the land to be benefited and the land to be burdened.

This meant that a landowner had to wait until the blocks of land were sold to create an easement in each transfer document—one for each block of land. It also meant that the seller had to trust that the purchaser would register the transfer that created the easement, because in a conveyancing transaction the seller hands the transfer document to the purchaser at settlement of the sale. It is then the purchaser's responsibility to register the transfer. One can understand from that description that a lot of people relied on goodwill and on people taking up their responsibility in such actions.

In 1964 section 88B was introduced into the Conveyancing Act 1919 to permit a person to create easements and covenants over his or her land by means of a plan and an attached document known as a section 88B instrument which sets out the terms of the easements and covenants. That method has proved to be very successful and is widely used by subdividers. However, this facility can be used only where a deposited plan is lodged. That requires a landowner to engage a registered surveyor to survey the land and prepare a plan of survey to show the easement site, and can be quite costly. It has been found in practice that it is not always necessary to have a full plan of survey, and in such cases it is a needless imposition on landowners. For example, if the site of the easement is simple and straightforward, a lower standard of plan will suffice. This bill will provide a much more streamlined and simple process so that people will not have to rely on others keeping their promises.

This amendment will provide an alternative to the lodgement of a plan and section 88B instrument by allowing a person to create easements over their own land by a simple Real Property Act dealing form, without the need to prepare a full plan of survey. That will be allowed only where the Registrar-General considers that a full survey plan is not necessary and will involve regulation to ensure that the process works. By requiring a full survey plan only where it is absolutely necessary, this measure will reduce costs for the land-buying public. This bill will simplify and tidy up the process so that it is not as complex as it has been. I commend the bill to the House.

**Mr WAYNE MERTON** (Baulkham Hills) [10.01 p.m.]: The Property Legislation Amendment Bill amends the Conveyancing Act 1919, the Real Property Act 1900, the Strata Schemes (Freehold Development) Act 1986 and the Local Government Act 1993. The bill appears to be complex in so far as it contains a lot of legal jargon, but it makes some very beneficial changes which are welcomed by members of the legal profession in relation to conveyancing practice and procedure. At present there are different titles to land in New South Wales. A common law title, which is called an old system title, was inherited from the English system which dates back to the early days. The Torrens title, which is pursuant to the Real Property Act 1900, is a registered form of title whereby a registered proprietor, subject to certain conditions, has a conclusive title. This legislation attempts to streamline the conversion of an old system common law title to a Torrens title by a specific primary application to convert the old system title—or, if the land has been sold, a Certificate of Title is issued.

The legislation provides that in certain cases when a qualified title is to be converted to an unqualified ordinary title within 12 years one has to produce a survey report. The purpose of producing that survey report to the Land Titles Office is to ensure that when the title becomes unqualified, no encroachments are on the land that should form part of a claim by a neighbour, by way of adverse possession, which should have been noted on the title. Assuming that section of the legislation does nothing more than that, and does not create the encroachment or give the encroachment any legal status it should not otherwise enjoy, the Opposition will not oppose it. The Registrar General is given power to record a note on the folio of the register indicating that the land has the benefit of a permit to enclose a road or watercourse, or a licence authorising the use or occupation of Crown land.

The creation of easements and the restrictions on the use of land where the person who is creating the easement or the restriction on the land actually owns the land that has the benefit of such restriction or such easement was traditionally carried out by what was known as a section 88B instrument. In many cases a plan was drawn up showing the easement and the section 88B instrument. From my reading of the legislation that can now be done by a transfer rather than a section 88B instrument, and that will save money. It is not necessary to have a deposited plan where the easement can be sufficiently identified. In some cases that could effectively mean that an easement is being created and transferred to oneself. For example, an owner may want to create an easement in favour of block A over block B, both of which he or she owns. Effectively that is a transfer relating to an easement on lands owned by the same person. This legislation will save the expense of having to register a section 88B instrument.

The bill also amends the Local Government Act 1993 to provide for the dedication and vesting in a council of land as a council public reserve, and the vesting in a council of land as a drainage reserve, on registration of a transfer or conveyance of the land to the council for that purpose. That is another way to create an easement without the registration of a deposited plan as a simple transfer. The Opposition welcomes those changes.

**Mr MATTHEW MORRIS** (Charlestown) [10.08 p.m.]: I will speak only briefly in support of the Property Legislation Amendment Bill. In doing so I acknowledge the support of Opposition members for the bill, and I thank them for that. This is a quite simplistic legislative amendment, but it is nevertheless important for the registration and management of property. The Real Property Act 1900 established and regulates the operation of the Torrens system of land registration in New South Wales. Under the Torrens system, the owner of land is the person shown in the register, the correctness of the register is guaranteed by the State of New South Wales, and anyone searching the register can rely on that information.

The Conveyancing Act 1919 deals with the law of conveyancing and property. It includes provisions governing general rules of law and equity affecting land, the sale of property, leases, mortgages and registration of deeds and plans. The bill aims to remedy a number of problems that have been identified in practice dealing with common law leases, qualified and limited title, Crown tenures and easements, as well as making some statute law revision amendments. The changes will simplify and streamline certain areas of conveyancing and registration practice. The bill was finalised after close consultation with the public, the Department of Local Government, the Department of Infrastructure, Planning and Natural Resources, Crown Lands NSW and the Law Society of New South Wales. This may be a simplistic legislative amendment, but it has important effects on the administration of public land. I wholeheartedly commend the bill to the House.

**Mr JOSEPH TRIPODI** (Fairfield—Minister for Roads) [10.11 p.m.], in reply: I thank honourable members for their valuable contributions to the debate on the bill. As was said in the second reading speech, the bill will make many worthwhile changes to the law governing real property and conveyancing. These amendments address problems that have been identified in practice. Some of the changes have been suggested by the public, some by the legal profession and still others by the department.

The proposed amendments will: simplify the method of dedicating land as public reserve or drainage reserve by allowing the dedication by a transfer document, instead of requiring a plan of survey in every case; simplify the recording of dealings with general law leases in the Torrens register; prevent associated Crown licences and permits being overlooked when freehold land is sold, by permitting the Registrar-General to record references to the Crown holdings in the Torrens register for the related freehold land; protect the rights of adjoining owners when an application is made to remove a caution from a qualified and limited title, by requiring an identification survey to be lodged; simplify the way in which easements, restrictions on use and other interests can be created, where the blocks of land to be burdened and benefited by these interests are owned by the same person; and undertake other minor amendments by way of statute law revision. This bill is evidence of the Government's commitment to ongoing reform and improvement in the area of conveyancing and real property. I commend the bill.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

#### **SPECIAL ADJOURNMENT**

**Motion by Mr Carl Scully agreed to:**

That the House at its rising this day do adjourn until Thursday 22 September 2005 at 10.00 a.m.

**The House adjourned at 10.12 p.m. until Thursday 22 September 2005 at 10.00 a.m.**

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