# LEGISLATIVE ASSEMBLY

Wednesday 14 November 2007

**Mr Speaker (The Hon. George Richard Torbay)** took the chair at 10.00 a.m.

**Mr Speaker** read the Prayer and acknowledgement of country.

## AUDITOR-GENERAL'S REPORT

**The Speaker** tabled, pursuant to section 52A of the Public Finance and Audit Act 1983, the report entitled "Auditor-General's Report 2007—Financial Audits—Volume Four", dated November 2007.

**Ordered to be printed.**

## WAR MEMORIAL LEGISLATION AMENDMENT (INCREASED PENALTIES) BILL 2007

### Agreement in Principle

**Debate resumed from 5 June 2007.**

**Mr FRANK TERENZINI** (Maitland) [10.03 a.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. This bill gives effect to the commitment made by Premier Morris Iemma during the election campaign to double financial penalties for damaging or desecrating war memorials. It proposes doubling relevant penalty provisions under sections 8 (2) and 8 (3) of the Summary Offences Act 1988, as well as penalties under the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937. This bill demonstrates that the Iemma Government is keeping its commitment to support our veterans and to protect the memory of those who have fallen for this great country during times of war. It will send a strong message to would-be vandals that if they damage or desecrate our sacred war memorials then they risk serious penalties.

I foreshadow the Government's intention to move a further amendment to this bill. As members are aware, this bill was first introduced earlier this year, before being adjourned for the winter recess. During that period the Government considered whether there was perhaps further room for additional penalty provisions to punish and deter war memorial vandals. In doing so, it took into account the fact that when an offence of this nature is serious enough a court may imprison an offender for up to five years if they are charged with malicious damage under section 195 of the Crimes Act. However, it also considered that there would be situations in which the nature of an offence is such that a court might consider the fines currently available to them to be too lenient but imprisonment too harsh. Accordingly, it formed the view that there is a need for a middle rung in the sentencing ladder to provide courts with a clear hierarchy of sentences for punishing an offender who damages or desecrates a war memorial.

The Government then examined a range of options. It looked at whether it would be effective to further increase financial penalties beyond doubling them, as already provided for in this bill. However, for incidents that are not deemed serious enough to warrant imprisonment it would be unlikely that a court would impose fines in excess of what is proposed in the bill. This is because people who carry out graffiti, damage, or behave inappropriately around war memorials are typically either juveniles or people of modest economic means. It was also considered that a fine, though effective for punishing offenders at the lower end of the scale, is in some ways an abstract penalty. It does not make the offender face the damage they have caused or the people they have hurt. Nor does it require them to make any kind of tangible reparation to the community.

The Government believes that courts should have the option of making vandals who desecrate or damage war memorials face up to the hurt they have caused and make serious reparation to the community. The Government amendment therefore provides that a court may order an offender to perform community service work as punishment for damaging or desecrating a war memorial under the Summary Offences Act 1988. A court could make this order instead of imposing a fine. In doing so, the court could recommend that the offender carry out community service work at a local Returned and Services League or by repairing or restoring

a damaged war memorial. This would require an offender to demonstrate to the community their remorse and make a commitment over an extended period to repay the community.

People who have been convicted of other types of offences for which community service orders can already be made have undertaken work at Returned and Services Leagues and memorials. For example, at Lightning Ridge, community service order workers attend to local parks and gardens, including gardens attached to a war memorial. At the South West Rocks Returned and Services League Sub-Branch Memorial Hall, a community service order worker mows lawns and builds shelving. Periodic detainees also currently perform clean-up work at the Kokoda Memorial Track in Concord.

I place on the record the fact that in developing this further proposal, the Government has consulted and worked closely with the New South Wales Returned and Services League. The Returned and Services League has given its support to this Government proposal. In a media release issued by the Attorney General earlier this week, the New South Wales Returned and Services League President, Don Rowe, who I notice is in the gallery this morning, said in relation to the Government's proposal:

> The RSL believes that offenders who commit this crime should make appropriate reparation to the community.
>
> They shouldn't just be able to pay for the problem to go away through the payment of a fine—they should be forced to face up to the damage that they have caused.
>
> We believe that forcing vandals to do community service work will be a much more appropriate punishment than a mere fine.

He went on to add:

> The RSL and its members are totally behind the Government on this issue.

The further amendment that I am foreshadowing would introduce an additional rung in the sentencing ladder between a fine and possible imprisonment, ensuring that there is a range of sentencing options at the lower, middle and higher end of the sentencing spectrum for punishing offenders who damage or desecrate a war memorial. More importantly, it would make an offender face up to their offending behaviour and make appropriate reparation to the community. I commend the amendment and the bill to the House.

**Ms PRU GOWARD** (Goulburn) [10.07 a.m.]: I speak on the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. War memorials are important to all Australian communities. That particularly applies to country areas where sometimes they are the physical centrepieces of the town. Most of the 14 villages in my electorate have war memorials. Often they are war memorial halls or, occasionally, an obelisk or artefact from a war as well as a hall and an honour role. It is significant that we are imposing community service orders on people who vandalise these premises that may require them to repair the damage they have done. Most members will have spent some time on Sunday with their community acknowledging what was once know as Armistice Day and is now Remembrance Day.

I had the benefit of doing that at Exeter. Interestingly, a local archivist and historian from the Berrima Historical Society addressed us. She had tracked down every family and the history of each of the six young men from Exeter who died in the First World War. She was able to point to the shop across the road and tell the children in the front row that one of the young men whose name is on the war memorial worked there when he was a boy because his father owned it. The children suddenly realised that there was more to the dingy, dark photographs of young soldiers. They could imagine those young men—some of whom were only 16 or 17 years old—as kids just like themselves working in the shop across the road. It was a very moving address. I think it made each of us recognise not only human frailties but also the humanity of each of the fallen dead.

It is time that vandals and people who desecrate war memorials, for reasons ranging from sheer foolishness and foolhardiness to an objection to war, respect those who died and those who built memorials. It is time that vandals recognise that those people died because, right or wrong, and whether or not one agrees with war as a way to resolve conflict, they were prepared to give their lives for it. One of the most telling arguments in favour of a special place for war memorials is what they meant to communities in World War I. Unlike the Americans, we did not bring our dead home; we left them all on the battlefields.

In a little town like Exeter, where one in six people went to war, that means that families, brothers, sisters, wives and parents had nothing to remember their boy—no bones, and no headstone to come back to. That is why they built these memorials with such love and care; it was their only way of having a place to go.

We must admit that when we die that is the end of it for us: we go to our maker or we rot in the soil, depending on our views. But the ceremonies of death and remembrance are for those who remain, not for the dead. How terrible it must be for a family not to have anywhere to go to remember their son!

That is why communities throughout Australia put such enormous time and effort and spend an inordinate amount of money on building memorials. It is important that the vandals, the young people of today who do these terrible acts, recognise that they are not only desecrating a public place and a symbol of something to which they might philosophically have an objection; they are desecrating a family and a generation's place to go to remember. When people do their community service orders and are working on the memorials I hope they receive a lecture from the local historian and the local head of the Returned and Services League to remind them that they have insulted not only the memory of the dead but also the communities that sacrificed so much to build halls, boards and obelisks.

My electorate of Goulburn has the biggest Vietnam memorial outside Canberra. It is a magnificent piece of granite on the banks of a stream. A cherry tree walk has been grown alongside the stream as part of the memorial. Each cherry tree represents a year of the Vietnam War. Why are those trees and that war memorial desecrated and vandalised more than any other place in the Southern Highlands? What does that say? Why do vandals pick on that memorial, particularly for a war that I think we as a society have taken so long to come to terms with? Why is that the case? It distresses and disturbs my community, and it should distress and disturb everybody that this is a hotspot for vandalism.

If it were possible it would be nice if those convicted of vandalism were required to contribute to the entire cost of the repairs. It would also be important that they be made to address the ownership and the significance of memorials as they toil in the sun doing the repairs. I cannot imagine what goes through the minds of young people—so often they are young—who wish to desecrate such significant artefacts and significant pieces of the local community. I trust that this legislation will go some way towards ensuring that vandalism is reduced and that when it occurs those responsible pay a price and learn a lesson. I commend this legislation.

[*Business interrupted.*]

## DISTINGUISHED VISITORS

**The SPEAKER:** I formally welcome to the Parliament Don Rowe, the New South Wales State President of the Returned and Services League, who is from Armidale.

## WAR MEMORIAL LEGISLATION AMENDMENT (INCREASED PENALTIES) BILL 2007

### Agreement in Principle

[*Business resumed.*]

**Mr ALAN ASHTON** (East Hills) [10.14 a.m.]: I, too, welcome Don Rowe. I also welcome the students in the gallery. As members would know, under the Carr Labor Government, and now the Iemma Labor Government, and recognising the Federal Government, it is compulsory to teach modern history to school students. So, essentially, they have much more background to the wars that Australia has fought than even my generation might have had. In supporting the War Memorial Legislation Amendment (Increased Penalties) Bill, which increases the penalties for defacing war memorials and structures of the like, I make the point that in the past few years there has been greater recognition by young people of how important it is to remember those who served and who died while fighting for this country. Not all of those wars were popular, and not all of them had an outcome that Australians might have liked to achieve.

In the years that I was a history schoolteacher—and everybody in this place knows that—I saw greater acceptance of the fact that, right or wrong, Australians did fight in these wars and many made that ultimate sacrifice. It goes back to the Sudan War, the Boer War and then through World War I and the other wars and conflicts in which we fought. My father, like many fathers of members in this Chamber, fought in the Second World War. His life was in many ways irreparably changed; before the war, he had an opportunity to become a chemist but he ended up being a bricklayer after the war. It is only through the advantage of time that people like me got the opportunity to go to university and change that.

I shall make a couple of comments that do not necessarily refer absolutely to the penalties for desecrating war memorials but they give a little history. Some years ago I read Leslie Carlyon's book *Gallipoli*. Not many of us do not know the story of Gallipoli, which has been well covered. There needs to be—and there will be—greater recognition of what happened to Australians when as Anzacs we ended up on Flanders Field, which spans northern France and southern Belgium, in World War I. In the past few months I have read Leslie Carlyon's follow-up book *The Great War*. *I* recommend the book, which is about five inches thick, to those who have not yet read it. I read every word. The book covers the terrible tragedy that Australians faced when they fought in places like the Somme and other battles that many Australians would not have heard of.

There is a new book out called *Fromelles 1916. I* have not noted the name of the author; someone else might be able to add that later in the discussion on the bill. I have been to Villers-Brettoneux, Fromelles and Broodseinde. I have just returned from a visit to the village of Passchendaele. When I was teaching history, Passchendaele was one word that described all the worst aspects of World War I. Horses drowned in the mud. That is how bad the mud was. It was not just a matter of the men drowning in the mud; horses drowned in it. Some 400,000 horses died in World War I, slaughtered on the Western Front.

Recently the member for Epping spoke about Beersheba, and the members for Blacktown and Riverstone referred to it. The battle at Beersheba was not a true cavalry charge: it was a charge by light infantrymen who rode horses to get to the place to fight on the ground. Only one horse came back. The men shot their horses rather than leave them to the enemy or even the supporters of the allied cause because they knew the horses would end up as food or worked to death. I am digressing when I talk about horses in battles, but my point is that many people thought that World War I would be fought with cavalry, because that is how previous wars had been fought. Often we repeat history by making the same mistakes.

One of the pleasing things that came up recently, within a couple of weeks of my returning from Passchendaele, two of what are known as the Zonnebeke Five were buried. These five Australian soldiers were unearthed in a field in the middle of Belgium in the Passchendaele, Zonnebeke area. These two Australian men were identified through DNA testing, and they were given a proper burial in early October in the Tyne Cot Cemetery for Commonwealth soldiers. The reference to them on the Menin Gate wall can now be removed. These men are no longer buried in a grave with a cross that says simply, "Known unto God". Even today at Ypres, where the Menin Gate is, the Last Post is played every evening—and this is 90 years after Anzac troops, Canadian troops and South African troops gave up their lives fighting in World War I.

It is appropriate that we recognise the contribution Australians played in World War II and in Vietnam. There was late recognition of what we did there because that war was so politicised. Let us remember that millions of Vietnamese died, but 500 Australians died there also. Because that war was unpopular, soldiers from that war did not return to Australia with any sense of recognition. There was a tendency to ignore that war because of the politics of it, and it took many years before Vietnam veterans gained the recognition they deserved. Many of my friends are Vietnam veterans. I did not know them as soldiers but I have come to meet them since in my capacity as a teacher, as a councillor on Bankstown council and now as a State member of Parliament. They suffer in a different sense from the soldiers who went to the first and second world wars because of the nature of that conflict. Many of them are now dealing with the horrors they went through in Vietnam.

When we increase penalties for defacing war memorials we should remember that if all you can get for fighting and dying for your country is your name on a plaque—and there are two names on a plaque in this Parliament—and if that is all your family has to remember you by, it is not much. So, it does not deserve to be defaced. When I was first elected to Bankstown council, the way into the council chambers was through the car park and through a long tunnel. I remember passing on a number of occasions a couple of wooden plaques. One day I stopped and had a good look at them. They were plaques celebrating the soldiers from the Bankstown area who had fought in World War I. It was my suggestion that we should clean up those plaques and place them in a more appropriate area. I understand those plaques are now at the Bankstown RSL. They had been hidden away for many years, when the old libraries in Bankstown had to move things out to provide space.

We have to be proud of many things, particularly with World War I. Australians made the greatest contribution to that war in the sense that we were the only nation in the war that did not introduce conscription. We were the only nation, under Billy Hughes—first as a Labor Prime Minister and later as a Conservative Prime Minister—that refused to allow any of our soldiers to be executed on the front for desertion, misbehaviour, not saluting a British officer, or whatever it might have been. It was a tremendous thing that they could be punished and dealt with but they were never executed. Equally, they were never executed for the offence of what we now

know as shellshock. A lot of research has been done on what that means. Australians were volunteers; there was no conscription. Some thought it would be exciting and a bit of fun, but most recognised after about five minutes at the battlefield that it was anything but. Many of them were overseas for years and years.

Two out of three of the 300,000 Australians in World War I were killed or wounded. Many of the one-third who came back were technically not injured, but they were mentally scarred for life. You do not go to war and come back the way you were. You come back terribly affected, if you come back. If you do not come back, your name is eternally remembered on a plaque. Because of my recent visits in the past couple of years to the Somme area, to Passchendaele, and one day I hope to go to Vietnam and places like that, and from my memories of my father's efforts in World War II—courtesy of the Japanese and Germans he had the trip of a lifetime to New Guinea, Milne Bay, Lae, Rabaul, places he did not want to go to, but he did survive to come back—Anzac Day means a lot. In a study tour report I just did, I said there is not one member of this place who does not go to all the Anzac Day ceremonies. You are up very early in the morning and it is very busy, not only on Anzac Day but also for a couple of weeks before and after, and then there is Remembrance Day as well.

I am glad our students are taught about this today. They have a greater recognition of what it is like to fight and die in wars because the history teaching is better. The resources are better thanks to Charles Bean and his idea to set up a war memorial in Canberra in the 1920s and the histories he wrote. I commend the bill. We need to increase the punishment. I taught and I know what vandalism is about, but the vandalism of a war memorial is one of the lowest things anyone can do. They are not just young kids; adults do it as well. If we catch these people, let us make them do the community service, let us get a crowd out there to watch them doing it, and make sure that vandalism does not continue.

**Mr MALCOLM KERR** (Cronulla) [10.26 a.m.]: I support this bill. On Sunday the member for Miranda and I went to a Remembrance Day ceremony at the cenotaph in Miranda. We were both very impressed with the number of young people there. Yowie Bay Public School was very much in evidence by participating in the ceremony. The crowds have become larger at Remembrance Day ceremonies now, and that is a reflection of the awareness of the sacrifice Australians have made in conflicts, as the member for East Hills said, going back to the war in Sudan, the Boer War and both world wars, followed by the conflicts after World War II in which Australians took part.

It was interesting to hear from the member for Goulburn about the way war memorials had a special emotional appeal to the families of persons who lost their lives in the First World War and whose remains are buried at Flanders Fields and other places overseas. That is why there is a need for protection. I am pleased the Government has sought the advice of the RSL in formulating this legislation. I also acknowledge the presence of the President of the RSL, Mr Don Rowe, in the gallery. Some years ago a school student wrote to me about a decision the RSL had made. I forwarded her letter to Mr Rowe, who took the trouble to write back and explain the reasoning behind that decision. It was also disturbing to hear from the member for Goulburn about the way vandals in her area had damaged trees that had been planted to remember the war. I commend the member for East Hills for making public again the plaques he mentioned and ensuring that they live on and are available to the public to see.

This legislation has the support of all sides of Parliament. It is important. It will continue to be important. Lest we forget. We should all remember the sacrifices that took place, that were made to ensure that we would enjoy the freedoms that we have, including the freedom to dissent from decisions made by governments. We are free to make those expressions without any punitive action only because people were prepared to make the ultimate sacrifice.

**Ms ANGELA D'AMORE** (Drummoyne) [10.30 a.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. The bill gives effect to the Iemma Government's election commitment to double penalties for anyone who defaces, vandalises, deliberately damages or behaves inappropriately around a war memorial. More than 100,000 Australians have died in war, and in New South Wales we have a proud tradition of honouring our veterans. Local communities and Returned and Services League clubs have built many memorials across the State to respect and maintain the memory of those brave men and women who fought and died to protect this country.

In my electorate the Kokoda Track Memorial Walkway is a unique tribute to the bravery of Australian troops who fought in Papua New Guinea during the Second World War. The soldiers who fought in Papua New Guinea overcame impossible conditions to defeat an enemy vastly superior in number. More than 1,000 were wounded, with hundreds left sick from disease. The Kokoda campaign was one of the vital elements that saved

this country from invasion during the Second World War. In fact, it has been said that if the Australian spirit was forged at Gallipoli it was saved at Kokoda. The Kokoda Track Memorial walkway, in Concord, pays fitting tribute to those who fought there.

The concept for the memorial was initiated in 1994 by the Concord Repatriation General Hospital under the Australia Remembers Program. It continues to enjoy a strong partnership with the State Government, Canada Bay Council, Concord Rotary and the New South Wales Branch of the Returned and Services League. I thank Rusty Priest, the former president, who attends many functions there as well, and the current president, Don Rowe, whom I have seen at many functions at the Kokoda Memorial Track Walkway. The walk covers more than 800 metres from Rhodes railway station to Concord hospital, running along the mangroves of Brays Bay on the Parramatta River. It contains a memorial centrepiece with large granite walls that bear photographic images of the campaign and along the walkway there are 22 stations or plaques.

Along with the 3,000-odd local community war memorials throughout New South Wales, the Kokoda Track Memorial Walkway is a wonderful tribute to our war veterans. Were it to ever be damaged or vandalised, it would be nothing short of a travesty. That is why this bill is so important. Those who fought on the Kokoda Track are entitled to our respect and deserve an everlasting place in our memory, and for future generations to recognise. We need to send a strong message that our communities will not tolerate violating the places that commemorate their courage and sacrifice. By doubling relevant penalties under the Summary Offences Act, the Anzac Memorial (Building) Act and the Anzac Memorial (Building) By-laws the bill reinforces the seriousness of defacing, deliberately damaging or behaving inappropriately around war memorials.

These changes will come on top of the serious criminal sanctions that are already available for malicious damage to war memorials. Depending on the seriousness of the conduct, such behaviour can result in a maximum of five years in prison. The Government will put forward a further amendment to the bill to give courts even more options for punishing people who damage war memorials. Under that amendment a court will be able to order an offender to perform community service work as punishment for damaging or desecrating a war memorial. Courts will be able to recommend that the offender carry out community service work at a local RSL or work to repair or restore a damaged war memorial.

People who have been convicted of other offences for which community service orders can already be made are carrying out work at RSLs and memorials across the State. In my electorate of Drummoyne periodic detainees currently perform clean up work on the Kokoda Track Memorial Walkway. By having that additional punishment option courts will be able to make vandals who damage war memorials actually face up to the hurt they have caused, and make serious reparation to the community. The men and women who have served this country and the cause of freedom in war have earned our eternal respect and a sacred place in our memory. The 3,000-odd places throughout this State that commemorate their sacrifice merit our protection. We need to send a strong message that ruining those hallowed places will not be tolerated. I commend the bill to the House.

**Mr PETER DRAPER** (Tamworth) [10.33 a.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. The bill will amend the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937, doubling the maximum penalty for offences under the Summary Offences Act 1988 relating to protected places, including war memorials. The amendments will double the maximum penalty for offences under the Anzac Memorial (Building) By-laws 1937 and double the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of their offence.

I strongly support the amendments put forward by the member for Epping that would further increase the penalties for such offences. The Government proposes to increase penalties under the Summary Offences Act 1988 to 40 penalty units, which is equivalent to $4,400, for anyone who wilfully defaces any protected place, including a war memorial. The Coalition's policy is to increase the penalty to 100 penalty units, that is, $11,000. I think that the Opposition's proposal more accurately reflects community expectations regarding protecting our war memorials. I note that the Coalition also proposes to amend the Summary Offences Act 1988 to increase the penalties for the desecration of shrines, monuments and statues, including war memorials, to match those provided for the desecration of Aboriginal sites under the National Parks and Wildlife Act 1974. That would see the penalty increase from $2,200 for wilful damage or defacing a memorial, to $11,000. Committing of any nuisance, offensive or indecent act in or on any war memorial would similarly attract an $11,000 penalty. That very much reflects community expectations.

Our war heritage is of great significance to the vast majority of Australians, but, unfortunately, there is still a minority who are prepared to desecrate or deface memorials to those incredibly brave fighting men and

women who sacrificed so much to allow us the privilege of living in a free society. I also welcome Don Rowe, the President of the New South Wales Branch of the Returned and Services League, to Parliament House. Don lives up the hill, in the cooler parts of New England. I have run into Don many times at different events in Tamworth. On Anzac Day and Remembrance Day the Tamworth community is extremely passionate about recognising our fallen and the people who have made such a strong contribution to our society. The local War Widows Guild holds a wonderful ceremony in its field of remembrance, acknowledging Australia's efforts in Sandakan, Beersheba, Korea and Vietnam, and holds a range of activities during the year. An organised tour bus visits all the local memorials; and that is why this bill is incredibly important to protect those memorials.

During the time I have had the honour of representing the electorate of Tamworth, sadly, there have been a number of instances of certain uncaring idiots treating with enormous disrespect places of great importance to our local communities. Most recently the memorial at Tambar Springs, which had a Vickers machine gun that was an integral part of the archway to the memorial, had its gun cut out and stolen by some fool. On the same night another Vickers machine gun was cut out and stolen from the Mullaley War Memorial. Both guns had been completely disabled and are of no use for anything except commemorating the strong links that those districts have with our service personnel. Both Mullaley and Tambar Springs are small communities that have only recently been included in the electorate of Tamworth, from Upper Hunter.

Residents are rightfully very proud of their villages, and equally proud of their association with war personnel and extremely proud of their memorials. The Tambar Springs memorial lays claim to being the first war memorial in Australia, because the funds used to construct it were provided by a local farming family to honour their son who lost his life defending our country. That memorial was completed before the war ended. I do not understand the mindless stupidity of someone who would desecrate something that is so important to local families and communities. Recently I visited the Tambar Springs local school. The Principal, Elizabeth Beer, and her support staff are very proud of their school, the community and their association with our serving personnel. The students were wonderful, taking time out to talk to me, then teaching me the finer skills of Ultimate Frisbee, which was extremely entertaining. I was an enthusiastic participant, but not particularly talented.

What came through very strongly during my visit was the affection and pride demonstrated by everyone I met regarding their community. A mindless act of vandalism has a significant impact on small places already struggling with the most devastating drought in our living history. Although we cannot turn back time, at least the bill will provide appropriate penalties for acts against war memorials. Similarly, everywhere across New England and the northwest, all the small communities have a hall where they gather and hold community activities. In every hall there is an honour board. The residents have great pride in those honour boards. It is wonderful to be able to look at the history of a place and learn about the people who made such a contribution. I commend the bill to the House.

**Mr DAVID HARRIS** (Wyong) [10.39 a.m.]: I am pleased to speak on the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. This bill sets out to double the maximum penalty for offences under the Summary Offences Act 1988 relating to protected places, including war memorials, double the maximum penalty for offences under the Anzac Memorial (Building) By-laws 1937, and double the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of the offence.

The bill forms a key part of the Iemma Government's election policy, Respecting Our Diggers. As part of that policy the Premier, Morris Iemma, made a commitment to double penalties for damaging or desecrating a war memorial. This legislative amendment is extremely important and welcomed as a necessary step towards keeping our war memorials sacred in the eyes of all Australians. I use the term sacred here for a vital reason. Not only are war memorials sacred, they are indeed sacred sites in our society. Whilst the term "sacred site" is popularly identified with Aboriginal spirituality—and quite rightly so—it can be used in this instance to refer to war memorials as they, too, are widely revered places of great significance, places of national importance. Furthermore, the word "memorial", according to Webster's online dictionary, means "serving to preserve remembrance". In fact, modern war memorials are markers of memory and history within our cultural landscape.

After the slaughter of the First World War, when more than 100,000 of our own were lost, Australians embarked on a remarkable program of war memorial construction. These memorials, large and small, stand everywhere in the Australian landscape. They embody what Australians have wanted to say about the service and death of their compatriots in overseas wars. Their design and placement act to remind and foster

understanding among members of the community that they represent. They symbolise so many things: pride, grief, gratitude, but above all they are a reminder of the price paid for peace.

Whilst Australia's past wars recede in memory, war memorials, and what they stand for, are becoming more cherished than ever. The increasing numbers of people, including young people, attending ceremonies such as Anzac Day and Remembrance Day are testament to this fact. I can personally vouch for this fact. At the Remembrance Day ceremony I attended at Toukley RSL last Sunday my pride as an Australian was revitalised by the many members of the general public in attendance. Young and old alike stood in humble reverence for the solemness of the occasion.

War memorials are indeed a focus for public commemorations and must be protected from any offence. The increasing numbers of people taking part in ceremonies commemorating significant wartime events all over the country can, be directly attributed to the "Australia Remembers: 1944-1995" initiative—a wonderful event to honour our veterans, launched back in August 1994 by the then Federal Labor Government, with the Hon. Paul Keating as leader. A total of $9 million was allocated for events in cities, suburbs and country towns across Australia to commemorate 50 years since the end of World War II. This initiative, as my esteemed colleague the member for The Entrance so aptly said at the time:

> … played a highly significant role in rekindling the flame of the tradition of Anzac and it burns brighter every year.

War memorials are not just bricks and mortar or plaques on walls or trees. War memorials are more than that. They have a special ability, as highlighted by David Todd Norden in his thesis on war memorial design, to act as curative mediators between people and tragic events that have impacted on communities. Just as hospitals, churches, private spaces and public parks often serve a range of healing roles from physical to emotional, war memorials can provide for deep emotional reflection and restoration about significant events in history that often had tragic implications for our society. Hence, war memorials are not just pieces of architecture. They have a much deeper meaning and significance in our society and any acts of vandalism that damage them or any offensive behaviour towards them are an outrageous affront that cannot go unpunished. The War Memorial Legislation Amendment (Increased Penalties) Bill cannot be applauded enough.

Offences relating to war memorials show a disturbing lack of respect for those who have laid down their lives so that we may live in the democratic and free country that we enjoy today. The small minority of people who perpetrate such deplorable acts fly in the face of the rest of Australian society. Their senseless acts deeply upset the entire community and have been condemned by all levels of government. In April this year New South Wales Premier Morris Iemma condemned vandalism carried out at the war memorial in Bathurst saying that those responsible "need a history lesson and a good kick up the backside as well." We are going much further than this. Penalties will be doubled—up to $4,400 in some cases. Indeed, the Leader of the Opposition, when discussing the Bathurst War Memorial vandalism in April of this year, also said:

> It's an incredible slap in the face for the people, who were probably not much older than the (alleged) perpetrators when they went overseas to fight for this country and keep democracy alive.

He was quite correct in that statement. The need to repair and replace items from vandalised memorials is never questioned, yet it must be questioned in the first place why vandals choose to commit such crimes. We need to increase, in fact double, the penalties imposed in an effort to reduce the incidence of such offences and raise the profile of our war memorials as significant, sacred places in our communities. I agree with Attorney General, John Hatzistergos, in saying:

> Doubling the penalties sends a message that we will not tolerate people disrespecting the sacrifices our diggers made by defacing their memorials.

The importance of this bill cannot be underestimated. The public that we so humbly serve deserves no less. We must make and have made a stand and I am sure that both sides of this House are in agreement about implementation of the bill. These new penalties come on top of existing provisions that can result in offenders who damage war memorials being imprisoned for up to five years if they are charged and convicted of malicious damage under the Crimes Act.

The Government also proposes further amendments to this bill to enable courts to punish offenders who damage or desecrate war memorials by ordering them to perform community service work. This will ensure that courts have the option of forcing vandals who desecrate or damage war memorials to face up to the hurt and damage they have caused, and to make serious reparation to the community. The Government has consulted

closely with the RSL in developing this further proposal, and the RSL has indicated its full support. The bill demonstrates that the Iemma Government is keeping its commitment to support our veterans and to protect the memory of those who have fallen for this great country during times of war. The bill, with the further amendment from the Government, will send a strong message to would-be vandals that if they damage or desecrate our sacred war memorials they risk serious penalties.

In Australia we do not celebrate any war or battle. War memorials do not glorify war. Rather, they serve to honour those involved in conflicts for their courage, valour, loyalty, and love of country and fellow man. War memorials instil within us deep pride of being Australian and what Australia stands for: freedom, in all its forms. They have an important role in our society. They store, by their very physical existence, not only our history but also our ideals and beliefs. They honour those who strived or suffered for our freedom. Protecting, maintaining and respecting the memorials is a debt that we must understand, repay and sustain for eternity. I quote from the poem *The Answer* by Liliard:

Fear not that you have died for nought,
The torch you threw to us we caught,
And our hands will hold it high,
Its glorious light shall never die,
Will not break faith with you who lie,
On many a field.

I commend the bill to the House.

**Mrs DAWN FARDELL** (Dubbo) [10.48 a.m.]: I am happy to support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. The objects of the bill are to double the maximum penalties for offences under the Summary Offences Act 1988, to double the maximum penalty for offences under the Anzac Memorial (Building) By-laws 1937 and to double the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of the offence.

Many members have spoken about the significance of memorials. I am fortunate to represent the large cities of Dubbo, Parkes, Forbes, which have large memorials, and also smaller hamlets, which have memorials that are an honour board in the village hall where services are held on regular occasions. The most poignant memorial in my electorate is in the hamlet of Bogan Gate, which is slap-bang in the middle of a road that goes to Trundle and Tullamore, right to Condobolin or left to Parkes. Many road trains and B-doubles travel either side of this towering memorial and although an officer from the Roads and Traffic Authority in Parkes sought to have the memorial moved, following representations to me by the villagers, a heritage order is about to be placed on the memorial to preserve it.

Let me remind members of the history of Bogan Gate memorial. In those days many families in the farming community lost more than one son who went off to war. Breaker Morant learned to ride horses in the Bogan Gate area, so the area has war-related history. The most poignant Anzac Day service that I ever attended was the dawn service at Bogan Gate, where the Light Horse brigade assembled. Recently I had the great pleasure of helping to finance John Bogey, a former light horseman, to return to Beersheba. The member for East Hills said earlier that the horses were killed, as they could not be brought back to Australia.

Last week John sent me a postcard from Israel in which he said that the temperature at Beersheba was 50 degrees. He also said that it must have been hard for the Light Horse brigades and for the rest of our Diggers at the time. No-one would not be horrified by the vandalism that occurred at Bathurst memorial prior to Anzac Day. I watched the local news broadcast from home on the day and saw elderly people cleaning up the damage that had been caused by those who had desecrated the memorial. It was heartbreaking to witness those elderly people needlessly having to clean up that damage. If offenders and their families were made to clean up any damage that they caused to our war memorials it would be much more adequate compensation for veterans and their families.

People in our communities are not after the blood of young people who have done something stupid. Offenders might be forced to pay large fines that would be adequate compensation for veterans and their families, but it would be preferable if offenders were made to clean up after their actions. Some people in the community have no respect for any law, so the imposition of fines of $11,000 or more would have no effect on them. If young people were made to clean up any damage that they caused, and not only to war memorials in our towns, they would think twice about taking such action in the future and they would not become repeat offenders.

Members would be aware that not all young people are vandals. Many young people from private and public schools attended Remembrance Day services on Sunday. They have attended such services throughout the year. As a result of the positive programs that are being put in place by the Department of Education and Training and RSL clubs we will remember forever those who lost their lives in wartime and those who died while serving their country. I acknowledge the presence in the gallery of Don Rowe, who runs a competition for young people and presents them with certificates. On Sunday, young James Riley from Dubbo received an award for his wonderful poem, which was moving and appreciated by all those concerned. RSL clubs are doing positive things to encourage young people to participate more positively in society. As I said earlier, this bill has my full support. However, all the laws in the world, even though they are enacted with good intentions, will not have the same effect as laws that ensure young people clean up any damage that they cause.

**ASSISTANT-SPEAKER (Mr Grant McBride):** I also acknowledge the presence in the gallery of Don Rowe. Some time ago I worked with Don to introduce legislation to provide for servicemen to qualify for entry into all service clubs in New South Wales. It is good to see Don again.

**Dr ANDREW McDONALD** (Macquarie Fields) [10.54 a.m.]: Every family in Australia and the families of every member in this House are affected by war or by the memory of war. The way in which we as a society look after our memorials is a testament to all those who visit them how we remember those who gave their lives for their country. Like many members in this place, I have visited the battlefields of the Western Front. Young people embarking on the new pilgrimage to Gallipoli are able to read the wonderful words of Kemal Ataturk explaining the consequence of war and what it means to future generations. I believe that the new generation—a wonderful generation—is more respectful than we were. Young people are eager to remember those who gave their lives for their country.

The story about the people of Exeter, which was so eloquently told by the member for Goulburn, is replicated all over Australia. Every small town has a memorial that people can visit, regardless of their race, colour or creed. On Anzac Day I was fortunate to be able to attend a ceremony at Ingleburn RSL. I was incredibly impressed by the large number of young people who attended that ceremony. The new generation is taking up the memory of what previous generations have done for us. We cannot possibly understand the mindset of those who deface memorials. I am pleased that this bill doubles the penalty points for those who deface our memorials. It will ensure the survival of the memorials. As our memories of war recede we need these memorials much more. In future they will serve to remind all children of the price of peace. At the going down of the sun and in the morning we will remember them.

**Mr ANDREW CONSTANCE** (Bega) [10.56 a.m.]: Nothing sickens members of our communities more than newspaper headlines reporting the desecration of our war memorials. Community members have strong sentiments about those who served our country and who put their lives on the line. Community members remain resolute in their commitment to honour those who served Australia, and are sickened by those who desecrate our war memorials. Opposition members will seek to amend the War Memorial Legislation Amendment (Increased Penalties) Bill 2007 to ensure that harsher penalties are imposed than the penalties proposed by the Government. That will send an important message to the wider community that this type of crime is not to be tolerated in any circumstance.

It is important to convey to the wider community that the desecration of any war memorial in our State is a very sick act. War memorials are incredibly important throughout our State but in particular in country areas, where they are more prominent and easily identified in the community. Every country town has some form of war memorial, which is usually prominently positioned in the middle of a street or next to a memorial hall. On Remembrance Day I had the great honour and privilege of attending the dedication of a memorial wall by the Moruya RSL sub-branch. The wall will depict the names of 740 veterans from around the district who served in the Boer War, World War I, World War II, Korea and Vietnam.

It was uplifting to be part of that ceremony knowing what work and research had been done by the Moruya RSL sub-branch. It was also terrific to see Dorothy Altman, the wife of the late Will Altman, who was heavily involved in establishing the project, dedicate that memorial wall on Sunday. No doubt the Government will move some amendments to the bill in the detail stage. However, I hope the Government sees fit to support the amendments proposed by the member for Epping, the shadow Attorney General. It is essential that we send a strong message that this type of crime will not be tolerated anywhere in the community. The legislation is important and no doubt has everyone's support, but it is necessary that the amendments be passed so we can send a strong message that we will not tolerate any war memorial in this State being damaged in any way by criminals.

**Mr GRANT McBRIDE** (The Entrance) [11.00 a.m.]: This debate is important both in protecting our war memorials and in honouring our service men and women and their role in forging the history and culture of our country. I would like to pay tribute to the RSL sub-branch at The Entrance. Over the years that I have been the local member, and before that, the club has particularly emphasised the importance of the celebration and recognition of both Anzac Day and Remembrance Day, which used to be Armistice Day when it was originally established. The club has a dedicated group of people who participate every year in both Anzac Day and Remembrance Day ceremonies.

During the time that I have been the local member, every year we have seen an increase in the general community's participation in the ceremonies. As referred to by a previous speaker in this debate, a cultural change has occurred in our youth. They now go regularly to places like Gallipoli and the Western front, in homage to the contribution that so many young Australians made in World War I. We know, for example, that about 62,000 young Australian men died during that Great War.

I should point out that my grandfather, like another member's, participated at Gallipoli, and he also went on to the Western Front. Those soldiers were away for 4½ years, at a time when going to the other side of the world was an enormous cultural change for them, not just a matter of hopping on an aeroplane and being there in 24 hours. Warfare then was different from battlefield conditions today. In those days, as servicemen would acknowledge, it was virtually slaughter. We have seen movies such as *All Quiet On The Western Front*, in which soldiers were simply ordered to run across the barbed wire into no man's land and risk their lives. Trench warfare caused enormous attrition of men and resources. At Gallipoli and the Western Front the cream of young Australians were slaughtered.

I do not think at any other time than the present has Australia been involved in so many different actions across the world. I refer to the wars in Iraq and Afghanistan, and actions in the Solomon Islands, Timor and Cyprus. Indeed, our soldiers have been in Cyprus for something like 50 years. Our soldiers are serving throughout the world, both in open battle in Afghanistan, where unfortunately a soldier recently died, and also in Iraq, where two soldiers recently passed away.

Our servicemen make a major contribution but what I would like to emphasise is the change in young people. Our young people are recognising that there has been a major cultural change. Every year the number of people participating at those two remembrance ceremonies is increasing. Last Sunday, for example, the RSL sub-branch president at The Entrance acknowledged the fact that an increasing number of young people are participating in our remembrance ceremonies. It was great to hear him acknowledge the presence of those young people and encourage them to participate. There is also a high participation from our local schools, including school principals and students who have been elected as school captains, house captains or to other positions.

I pay enormous tribute also to the long-serving people who have done all the logistical work associated with the Remembrance Day ceremony. Unfortunately, the monument has been damaged on various occasions. This issue relates not just to one event but to events across the State. I ask, as other speakers have, what is in the minds of those who do these sorts of things? No-one can answer that fully. But we have an answer in this legislation, in which we specifically target those who engage in this sort of behaviour. I again acknowledge the contributions of members in this debate in raising their concerns about this issue, which goes across all party lines and is really about our Australianness.

**Mr DARYL MAGUIRE** (Wagga Wagga) [11.05 a.m.]: Most towns, villages, hamlets and cities across Australia have a memorial to the fallen, whether it be a community hall, a set of gates, a cenotaph of grandeur, or a minute structure. All those structures are maintained meticulously by communities and they are respected. When you stand at a cenotaph, as I and many members did on Remembrance Day, and you reflect on the great deeds and sacrifices that Australians have given in war, you cannot help but have the greatest respect for the individuals who have fallen, for the men and women who have returned, and for the men and women who are serving our country today.

To understand the perils that these individuals went through, you have to read. When you read some of the articles that are available—about Gallipoli, the great Coral Sea battles, Kokoda, the youngest soldier, and the biographies of Sir Roden Cutler, VC, and others—you begin to understand the enormity of battle and the great sacrifice that these individuals made for our great country. That is why I join with my community of Wagga Wagga and the surrounding region in expressing my absolute outrage and disgust at the insult caused to our veterans last Friday night. In the early hours of Saturday morning or late on Friday night our cenotaph was vandalised. The front pages of the *Daily Advertiser* of Monday 12 November depict that fact. Not only was the

cenotaph vandalised but a plastic bag was thrown into the pond of remembrance and it blocked the flame that burns in memory of those who perished in battle—another senseless act of vandalism that has rightly been condemned by all people from the Wagga Wagga community and by the media.

Mr Kevin Kerr, the president of the Wagga Wagga RSL sub-branch, and I stood side by side and laid wreaths, along with other elected members in our community and service personnel from 1RTB Kapooka, the Home of the Soldier, from Wagga Wagga RAAF base, and from Wagga Wagga Navy base. Also with us, to our great pride, were local school leaders. After it was revealed in the newspapers that the cenotaph and memorial had been vandalised, the school leaders joined with our community members and were absolutely repulsed that someone had done this. This is not the first time that such vandalism has occurred in Wagga Wagga. To our great shame, this outrage has occurred before in our city. Our mayor has made pleas for information that will bring these people to justice. There has certainly been a determined approach by the local police officers, who will ensure, with the community's help, that these people are put before the courts.

That is the right thing to do. I am concerned about two things. The first is that this legislation has sat on the table of this House since May. This piece of legislation, important as it is, could have been dealt with at an earlier date. When you deal with an issue such as this there is support from all sides of the Chamber about the importance of it and it should be acted upon quickly. So why has the bill sat here? It sat has here because the member for Epping has put forward amendments, which I think are worthy of support.

It has been suggested that the penalty points will double to 40 but I do not believe that is enough as it only equates to $4,400. To seriously send a message to the community the penalty should be increased to the amended recommendations put forward by the member for Epping. Sacrilege of this kind deserves the very strongest message. When you look at the penalties that apply to other offences—council parking tickets and fines for speeding or for driving an unregistered vehicle—many of them are out of kilter. If you were to take this piece of legislation out onto the street, together with the amendments that the member for Epping is suggesting, I can tell you that 99.9 per cent of people would support the increase of penalty points to the amended recommendation of the member for Epping rather than simply a doubling. I will be supporting the amendments of the member for Epping, and I know my community will also support them, but I think more needs to be done.

I acknowledge, as have other speakers, Mr Don Rowe who is sitting in the gallery. I put to the RSL, through the Parliament, that in conjunction with authorities if necessary, or on its own, the RSL should create a database of these occurrences so that offenders can be tracked. If there is, as I suggest, an itinerant or fluid population of people who move from town to town or graffiti vandals who get a great kick out of desecrating memorials, the creation of such a database would be wise. If this type of vandalism were to occur in Wagga Wagga it could be photographed and tracked and then subsequently if it were to occur in a small country town, in Canberra or Melbourne, more information could be collected and added to the database. I suggest that once this vandalism is reported to the Wagga Wagga police station that will be as far as it goes. If these vandals are itinerant or are what I call a fluid population then vandalism will occur elsewhere. The collection of that information may be helpful at some stage in assisting to reduce the acts of vandalism on memorials.

Vandalism of memorials can occur in many ways, be it through someone writing mindless garbage on our cenotaph or union thugs deciding to use a memorial as a gathering point and then plastering the memorial with their paraphernalia. During the State election campaign our community was shocked and upset when the local candidate actually held a protest rally in front of a memorial and plastered their coloured union posters and banners on the memorial. The memorial was being politicised with union rubbish. People were offended but to date not a word has been said. The *Daily Advertiser* editorial of 13 November 2007 said:

> The senseless attack on Wagga Wagga's Victory Memorial Gardens monuments on the eve of the Remembrance Day ceremonies rates as one of this region's most disgusting crimes.

I agree. If there is a reward in place from the RSL, or others, I am prepared to make a personal contribution to ensure that these people are caught and dealt with. If this legislation goes through, including the amendments of the member for Epping, with some luck it will be in place to deal with the perpetrators of the disgraceful act that occurred in Wagga Wagga, when they are caught,

The Opposition does not oppose this legislation but I would urge the members on the other side of the House to support the amendments of the member for Epping. His amendments are good and will be another disincentive giving a clear warning that our community will not tolerate this behaviour. Memorials must be treated with great respect. We must never forget the great sacrifices that Australian men and women made for us, and are continuing to make today, in the service of this great country.

**Ms LYLEA McMAHON** (Shellharbour) [11.16 a.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. There is not one of us who has not had a husband, brother, uncle, cousin, father or, as in my case, a grandfather affected by war. As I mentioned in my inaugural speech, my grandfather was a Rat of Tobruk. My grandfather was lucky enough to be a returned soldier but many of those he fought with were not. This experience left my grandfather with permanent health issues that he battled with throughout his life. As a young man he went off to war to serve his country and returned to spend the rest of his life dealing with the consequences of that service. Many of those he went with made the supreme sacrifice of losing their lives. These men and women made a most selfless sacrifice. To remind us of that sacrifice and to thank them for their service, memorials and cenotaphs have been established throughout our community.

When I was a young girl my grandfather impressed upon me the importance of Anzac Day and other memorial services. In fact he used to get me up at 4 a.m. or 5 a.m. to attend such memorial services. He would be horrified and appalled, as we all are, to know these memorials have been vandalised and desecrated in such a way. It both disappoints and enrages me that people would senselessly vandalise a war memorial. It is on that basis that I support the amendments being debated here today. As a local member I attend many memorial services within my community. From discussions with other people attending those memorial services I know they too would be appalled and disappointed by senseless acts of vandalism. It is important that we pay the respect that returned soldiers and service men and women in this country deserve. It is important that those who commit senseless acts of vandalism on war memorials suffer the penalties. It is on that basis I support this legislation.

**Mr RAY WILLIAMS** (Hawkesbury) [11.19 a.m.]: I support any penalties that are imposed to limit vandalism on war memorials. No more disgraceful or shameless act can be perpetrated on war memorials than to desecrate the names adorned on them of the people who have given up their lives and fell courageously on behalf of our country and the freedoms and democracies we now enjoy and possibly take for granted. In the great electorate of Hawkesbury war memorials are located at Galston and Glenorie. An honour roll, which is kept by the Annangrove Progress Association in very good state of repair, is rolled out on Anzac Day at Annangrove Primary School as a history lesson for students, who can read the names of people who fell in battle. Various streets in the area bear the names of those local people. The names adorned on war memorials throughout the Hawkesbury area include those of some of my family members. As previous speakers have said, there are not too many families who have not been touched in some way by war.

On Sunday last I was privileged to be the guest speaker at a remembrance ceremony at Kenthurst, which was organised by Mr Wilf Edmondson of the Kentgrove Retirement Village at Kenthurst. Wilf undertakes the ceremony with military precision. I was honoured to be present and speak about the fallen. I said that the Armistice in 1918 signalled the end of four years of hostilities during which just under 62,000 Australian men and women perished at sea, in the air or on foreign soil. At that time not too many families were unaffected directly by those hostilities. In 1915 my grandmother's brother Reg Allen left these shores for Cairo and Egypt where he undertook battle. Fourteen members of his battalion were lost. In 1916 he saw war service at the Battle of Fromelles. I was reminded only a few short weeks ago by the Governor of New South Wales that at the site of the graveyard for the Battle of Fromelles is a small plaque which states: "Never Forget the Australians". That is a poignant statement because in one 24-hour period no less than 5,000 of our countrymen were casualties at that battle. My grandfather was a naval officer in the Battle of the Coral Sea, my uncle served in New Guinea and my father's uncle perished in Changi prison. Our family paid a heavy price in the war effort. It gives me great pleasure to be able to speak on their behalf today. I would never want to think that a shameless and disgraceful act of vandalism would desecrate their names on war memorials. I support any penalty to prevent such disgraceful acts.

**Mr ANDREW FRASER** (Coffs Harbour—Deputy Leader of The Nationals) [11.23 a.m.]: I refer to that great quote: "No greater love has any man than to lay down his life for his friends." I have spoken previously in the House about my grandfather's service with the First Australian Imperial Force in the 1916-18 war. Even though he returned from war, he later died from injuries sustained in the war and my grandmother was left to raise four children on her own. Those who are left tend to do it tough. My grandmother had to raise four children back in the days when war service loans were not part and parcel of life. She had to fight for many years before she was granted one. She had to work two jobs to educate her children. Two of the children, an aunt and an uncle, were educated by Legacy and the Masonic fraternity. People got together to support the families and communities who had lost loved ones.

My grandfather's name is on a memorial in a park in Hamilton, Newcastle. I take great pride when I am in Newcastle to visit the memorial. I take five minutes to remember the sacrifice he and thousands of others

made in many conflicts over the years to protect democracy in this country. Last weekend I attended the Armistice Day celebration, as it used to be known. Many returned men from many conflicts were present. The address was given by a fellow named Sandy Betts, who had served with the Australian Light Horse in Borneo. Sandy read a speech that had been given by a senior government official in 1993 when the body of the unknown soldier was recovered in France and laid to rest in the Tomb of the Unknown Soldier in Canberra.

It was a moving address about the trials and tribulations of Australian servicemen. The Tomb of the Unknown Soldier is a sacred site for all returned service personnel, those who did not return and their families. The desecration of any war memorial is totally unacceptable. I urge the Government to accept the amendments to be moved by the member for Epping. They give real sting to the penalties imposed on a person who desecrates, or contemplates desecrating, a war memorial. The Government proposes a doubling of the maximum fine to $4,400. The member for Epping proposes a fine of $11,000. I would like a penalty of public flogging because anyone who commits such an act does not understand that the democracy we enjoy today has been delivered to us by those who did not return, as well as those who did.

In making the speech today I remind the House of a tragic event that occurred on 25 October 2007 in Afghanistan when Matthew Raymond Locke was killed by a single gunshot wound to the chest. I have known Matthew since he was a kid. He worked with his father, Norm, in a bush mill in Bellingen. As timber dwindled and the quality of timber they were cutting was not good, Norm told Matthew to find another job. He joined the Army. I remember well the day I saw Norm 10 years ago at Sydney airport. He was as proud as you would ever see a father because Matthew had been accepted into the Special Air Service, the service with which our Governor-General served. Matthew had served in Timor and Iraq and this was his third tour of duty to Afghanistan. It was to be his last tour if he returned.

Unfortunately, it was his last tour because he was killed. He was to come back to Australia, remain in the Army but begin another career onshore. He had received the Medal of Gallantry. He is a man that the Bellingen community can be justly proud of. His mother, Jan, and father, Norm, are devastated, as is the whole community. He leaves behind wife Lee and son Keegan. How tragic it is that in a time of purported peace we lose a 33-year old young man of this calibre, a man so loved by his family and by his community but who came home from his last tour of duty overseas in a coffin.

I urge this Government—and I will start an appeal today—to erect a memorial inscribed with the SAS logo at the Returned Servicemen's Golf Club in Bellingen to remember Matt's dedicated service to this country and to his community. It will be a permanent reminder that even in peace our service men and women defend democracy in our country and other countries in many different battlefields across the world. I give credit to Greg Hamilton, who went to school with Matthew and who now lives in Sydney. I bumped into him the weekend before last and he said to me, "Wouldn't it be nice if we could get a memorial for Matthew in Bellingen?" I spoke to Matthew's mum, Jan, and his father, Norm, late last week and they said they would love to see a memorial in Bellingen.

The heinous louts who desecrate these memorials should face fines. The House should pass this amendment to increase those fines and they should be used for the maintenance of war memorials across New South Wales. There are many small country communities that have memorials but cannot afford to maintain them. They do their best, but with an ageing population and dwindling rural economies, especially in times of drought, sometimes these memorials fall into disrepair. Nothing would be better than setting aside the money resulting from any convictions for the maintenance and upkeep of was memorials and cemeteries across the State.

The legislation is not about politics; it is about sending a message that the desecration of any war memorial is totally unacceptable to the community. That message will get through only if penalties are increased to a level that will hurt the offenders. If the people who desecrate these memorials are young people—and quite often they are—their parents should be made to foot the $11,000 fine we propose. We must remember what service men and women have done for us: they are fellow Australians who often fought in overseas battlefields but did not understand the politics of the situation.

As someone said recently: Politicians never fight wars, our service personnel do. A politician may send Australia to war by decree, but it is our armed personnel, the men and women who go overseas to defend us, who will fight for democracy. I urge the Government to accept our amendments. I once again commend Matthew Locke for his unselfish service in the Australian Army from 1991 until 25 October 2007. I offer my sincere condolences to Norm and Jan, and especially to his wife, Lee, and his son, Keegan. I hope that as

Keegan grows up he will be looked after, as my mother was, by Legacy and other organisations and will come to realise what a true hero his father was.

**Mr WAYNE MERTON** (Baulkham Hills) [11.33 a.m.]: The War Memorial Legislation Amendment (Increased Penalties) Bill is important legislation. In some respects it should not be necessary, but inevitably there are people in the community who have little, if any, respect for war memorials. They have little, if any, respect for the significance of the tributes that have been erected by Australians over many years to honour those who made the supreme sacrifice in war and those who fought for the freedom and justice that each of us enjoys today.

In the middle of the tiny hamlet of Patonga, a small fishing village on the Central Coast, which from memory consists of one shop, there is a memorial at the only intersection. The memorial is inscribed with the words, "Acknowledging Richard Sutton Williams, DFC, killed over France 22nd August 1944 aged 29". Obviously I never knew Mr Williams and I do not know any members of his family. However, our family used to go to Patonga every year for holidays and I used to go and look up at the monument. I used to wonder what happened to Mr Williams. He was obviously a distinguished air force officer who made the supreme sacrifice when he was killed over France. I would think he was shot down in perhaps a fighter plane or a bomber. As a very young man the monument always held a fascination for me. I wondered whether Mr Williams' family still lived in the area or whether he had any family living close to the memorial. I made a few inquiries and discovered that his Excellency the Lieutenant Governor John Northcott unveiled the monument in 1948, three years after the end of World War II. It forms part of an honour roll of the residents of Patonga who served in World War II.

Last Sunday I attended the Castle Hill RSL club Remembrance Day service—the eleventh hour of the eleventh day of the eleventh month—acknowledging the armistice in World War I. The club has conducted this important service for many years, and the people in attendance were reminded that we were acknowledging peace after a war that was described at the time as the war to end all wars. History proved otherwise, and about 20 years from the end of World War I the world was again in conflict in the World War II. History has proved one thing. When the men and women of this century are unable to reconcile their differences and are faced with political agendas that often inspire and encourage great nationalism, which in some cases is often distorted and said to be patriotism, they resort to violence and war to resolve their differences: they have not progressed far from the primitive races. Whilst we do not and should not glorify war we must acknowledge and accept the contributions of those who fought for the freedom and peace that we enjoy today. In the context of those comments it is almost inconceivable to understand why people would seek to destroy or damage monuments and memorials that have been erected by Australians to acknowledge the contributions of those who made the supreme sacrifice in the many conflicts in which Australia has been involved.

This legislation is long overdue. It doubles the maximum penalty for offences under the Summary Offences Act and the Anzac Memorial (Building) By-laws 1937 relating to protected places. It also doubles the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of the offence. These are significant changes and the Leader of the Opposition and the shadow Attorney General will speak about further amendments. Clearly, people must be taught that we regard these monuments and war memorials as items that cannot and should not be interfered with. They are part of our national heritage because they represent Australia's contribution to world peace and the struggle, commitment and sacrifice that many Australians have made to preserve our community and the free society that we enjoy today. I certainly support the legislation and the amendments proposed by the shadow Attorney General. The Arthur Witling Park in my electorate has a very impressive and well-deserved war memorial on which the inscription states:

> Castle Hill RSL Sub Branch
>
> Dedicates this memorial to all those who paid the supreme sacrifice and all those who served in all wars and conflicts on duty for our country.
>
> Lest We Forget

Another inscription states:

> This Memorial is dedicated to the men and women from the Electorate of Mitchell who have served in the Armed Forces of Australia and to those who paid the supreme sacrifice.
>
> Lest We Forget

Lest we forget the sacrifice of these Australians. Let us contemplate the future knowing that we are involved in conflicts and in the hope that people are prepared to work for peace.

**Mr ROB STOKES** (Pittwater) [11.45 a.m.]: I support the War Memorial Legislation (Increased Penalties) Bill 2007. War memorials are scattered across our communities; we pass them every day travelling to and from work or home or wherever. In Pittwater we have war memorials at Palm Beach, Avalon, Newport, Mona Vale and Narrabeen. We have almost a living memorial at the war veterans' home at Collaroy Plateau and a somewhat unusual war grave in the midget submarine lying in the sand off Newport Beach.

Why are these places so important and why is it vital to send a message to the community that we must protect them? There are three reasons it is important to protect these sites. First, they are a powerful memory trigger and it is crucial that we remember what they represent. In fact, 88 years ago almost to the day the guns in Europe fell silent and a continent was left devastated and reeling from a cataclysm the like of which the world had never experienced. The British Empire lost one million men, including 60,000 Australians, and France lost 1,335,000 men. Of every Frenchman aged 30 or less, one in three was killed or crippled. It was a scene of utter devastation and it is vital that we remember that sacrifice and the loss of so many people.

A couple of years ago I had the opportunity to visit the Australian war graves in Flanders. As I stood looking at the war graves at Polygon Wood I was struck by the thought that more than 50,000 young Australian men and boys are buried in Belgium. In another version of the past they would have returned home and had families who would have gone to have families and so on. Many Australians would be here today if they had not died on that battlefield, and it is crucial that we remember their sacrifice for us and for our freedom.

I remember my grandmother telling me that as a young girl in southern England she would cry herself to sleep at night as she listened to the rumbling of the guns in Belgium and wondered whether one of her brothers was being killed. It is crucial that we remember these things and that we honour the loss of so many people. We should not only remember the men and boys who died; their families who were left behind also suffered. Mothers were left to cope with raising young children by themselves, and many servicemen were away from their families for many years. Often when I play with my young son I think of the wonderful privilege that my dad did not have because his father was away at war until my father was five years old. He never experienced the joy that my son and I experience every day.

So many people suffered so much loss, and it is vital that we remember that and protect their memory. That is why increasing the penalties imposed on people who mindlessly or wilfully vandalise these sites is so important. We must remember that our job in this place is to protect those who are not able to protect themselves, and that is what this bill is about: We are protecting the memory of those who are unable to protect their own memory because they are not here with us. This important legislation will protect these silent and permanent reminders of the enormous loss that our country has suffered in war.

It is important to support this bill because, while graffiti is a real problem everywhere—it certainly is in my community of Pittwater—the vandals who commit those crimes seem to apply some code of honour and tend to leave war memorials alone. Even they recognise the sanctity and importance of these places. The fact that vandals recognise that these places are hallowed suggests that even they realise they are special places and that damaging them is a particularly heinous form of vandalism. That is why we must send a clear message that attacking or harming the memory of those who died or served in war is unacceptable. For that reason, I support the amendment proposed by my colleague the shadow Attorney General to increase these penalties even further. It is vital that we send a clear message that graffiti, vandalism or damage to our war memorials will not be tolerated.

**Mr JOHN WILLIAMS** (Murray-Darling) [11.49 a.m.]: I support the bill. There is no doubt that a war memorial is a sacred remembrance of loss of life in the two major wars and, since then, wars in South-East Asia and the current conflicts in Iraq and Afghanistan. These memorials are a highly valued part of our community and of our history. My father was an ex-serviceman, my grandfather was an ex-serviceman and my great-grandfather was an ex-serviceman. I had the opportunity to speak to all of those people about what happens in war and to get their thoughts about it. My great-grandfather was able to remind me of the Crimean War, the battle of Alma, the thin red line and Balaclava. I was brought up to respect the values that have resulted from our country's engagement in war. Only yesterday the member for Blacktown mentioned the Light Horse Brigade, the fearless nature of the soldiers who served in that brigade and some of the battles they engaged in. Those things were stamped on our minds as students at school.

We need to educate young people that these values should be respected. They have to understand why we have war memorials, the history behind those memorials and the loss of life that occurred. Different things happen in battle. Some are sad, but some amusing things happen to soldiers engaged in battle. The next generation needs to be taught that servicemen engaged in war have some good memories. If that process is followed the sanctity of our war memorials will be retained and we will have an opportunity to avoid the desecration of these sacred emblems. Recently in Finley vandals desecrated a church and destroyed packages of food that were set up to help farmers in the area. It is amazing to think that that sort of thing can take place. The education of children is so important. They need to understand what our memorials are all about and why we place such a high value on them.

**Mr GREG APLIN** (Albury) [11.52 a.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill 2007, the amendments to be moved by the Government and the foreshadowed amendments of the member for Epping. War memorials honour those who have fought for the country and are a reminder of the bravery of individuals and the loss suffered by their loved ones and the nation. As the son of an ex-serviceman, as an ex-serviceman myself and as the father of a serviceman who has recently returned from a tour of duty in Afghanistan, I join others in this House in deploring the desecration of our treasured war memorials, wherever they may be throughout the State. Many of us would have been present, perhaps as guest speakers or as official representatives, at Remembrance Day services last Sunday, 11 November. Like many, I was present and I spoke as the guest speaker at the Albury service for Remembrance Day. I want to quote a few paragraphs of an address I gave on that occasion. It goes to the heart of why this bill is so important to so many people in Australia, particularly the older generation. I said:

> World War I remains our most costly conflict, in terms of the number killed and wounded. From a population of fewer than five million, over 300,000 Australians enlisted, of whom one in five were killed. In the trench warfare of the Western Front tens of thousands of Aussie soldiers died. At Pozieres, in one six-week period in July and August 1916, we suffered 23,000 casualties—almost the size of our entire regular Army today and almost half the entire population of the city of Albury.
>
> During World War II 39,000 Australian servicemen and women paid the ultimate price in defending Australia and preserving democracy. Following World War II Australians were called upon to participate in international operations in Korea, Malaya, Borneo and Vietnam. In these conflicts over 77,000 Australians served with distinction and courage, and 910 were lost.
>
> Only Australians 70 years and older would have memories of the horror of the Second World War and the enormous impact of the loss of so many young lives in such a short time. Every family would have been touched in some way by the tragedy. It is no wonder that, for our older Australians, the war is a benchmark against which life today is measured. It changed the whole Australian way of life forever, just as the devastating tsunami in 2004 changed forever the lives of our Indian Ocean neighbours.

That is something our younger generation can take on board. It remains a vivid representation of the devastation I am trying to portray that occurred in the wartime. I went on:

> Our younger generations can have no real understanding of the hardship that people endured in this country over those war years. They take for granted the peace and stability that we now enjoy and are shocked and resentful when restrictions are imposed and their tranquil lives are disturbed by bad news. They cannot see as clearly as their parents the value of sending our defence forces into dangerous parts of the world to help restore peace there.

That is why we so strongly resent people, particularly younger people, desecrating our treasured war memorials. I found it particularly ironic that the very day after the Government announced its intention to introduce this legislation there was an outrageous desecration of the Albury War Memorial over the weekend of 26 and 27 May this year. The RSL, the body that represents returned servicemen, has a sub-branch based in Albury. The acting president said that he was shocked, sickened and outraged at the senseless vandalism at the Albury monument over that weekend. The acting president, Mick Fowler, said:

> It's disrespectful …
>
> It shows someone has no respect for the sacrifice our diggers have made when they fought for our country.

As I mentioned, that incident ironically came the very day after the Government announced its intention to introduce this bill. It also came a month after five teenage girls were arrested on Anzac Day for painting peace signs and the slogan "Anzacs are murderers" on the Carillon war memorial at Bathurst.

**Ms Katrina Hodgkinson:** Disgraceful!

**Mr GREG APLIN:** A disgraceful act, as the member for Burrinjuck says, and one that probably triggered this legislation. Mr Fowler from the Returned and Services League remembered that incident well. He said:

> It's disrespectful and people like this need to be taught a lesson.

Returned and Services League secretary Des Bailey said that it is disappointing to see people desecrate something that means so much to the community. He said the war memorial represented people who put their lives on the line for the freedom Australia now enjoys. I conclude by reading the editorial from the *Border Mail*, because it goes to the very heart of what we are discussing here. The *Border Mail*, in its editorial of Monday 28 May, headed "Graffiti fools need a lesson in life" stated:

> The Albury Monument is one of this region's most recognisable structures.
>
> Standing like a sentinel over the city, it is a constant reminder of the sacrifice many of our residents have made in times of conflict across the world.
>
> The area around the monument is a popular spot for locals and visitors alike.
>
> And yet it seems there is always some idiot who just can't leave public places and structures like it and its surrounds alone.
>
> The graffiti that appeared on the monument over the weekend can only be described as a disgrace.
>
> There is no doubt the grubs who carried out this attack have no real idea, and probably don't care anyway, about how the vast majority of us feel about what they have done.
>
> Members of the Albury RSL are rightly outraged at the attack and hope, as we all do, that the police are able to find the culprits and have them brought to account for their actions.
>
> It is interesting that the vandals have done their dirty work on the same weekend that the NSW Government has announced it intends to legislate to double the penalties for offences involving damage to war memorials. It seems the Government is well in tune with the majority public feeling on this issue. Unfortunately the offenders in this case are not. We can only hope that someone knows who they are and wastes little time in passing their names on to the police.

I join all people who share that sentiment and wholeheartedly support this bill.

**Ms KATRINA HODGKINSON** (Burrinjuck) [12.00 noon]: In speaking to the War Memorial Legislation Amendment (Increased Penalties) Bill 2007 at the outset I state that I support the increase of penalties for the desecration of any war memorial, which is a crime and should not be tolerated. I support also the foreshadowed amendments of the shadow Attorney General. This bill amends the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937 to double the maximum penalty for offences under the Summary Offences Act 1988, to double the maximum penalty for offences under the Anzac Memorial (Building) By-laws 1937 and to double the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of the offence.

The member for Coffs Harbour made a thoughtful and emotional speech about a constituent who tragically passed away in recent times, another casualty of war, fighting for his country. The member for Coffs Harbour stated that the proceeds from the penalties should go into maintenance of memorials around the State. That suggestion is commendable and worthy of consideration. I have attended the opening of many memorials in the Burrinjuck electorate since I became the local member and acknowledge the difficulty in keeping those memorials in the appropriate condition that befits the people to whom they are dedicated. I actually thought there were memorials in every town and village across New South Wales until I was invited to the opening of a memorial at Reids Flat a few years ago that previously had not had a memorial. It was with great pride that I was able to be present with members of the community for that special occasion. In times of drought it is difficult to ensure that the gardens surrounding memorials are lovingly maintained, so the suggestion by the member for Coffs Harbour is admirable and worthy of consideration.

The reminders of war and battles fought are prominent in the Burrinjuck electorate. Thousands of people who have lived in the electorate have fought for our great nation. Probably the most significant incident would be the prison breakout in Cowra in August 1944 involving 1,104 Japanese prisoners in number 12 prisoner-of-war compound near Cowra, an area heavily involved in agricultural in the mid-west of this great State. The establishment was divided into four camps: A was for the Italians, B was for the Japanese, C was for the Koreans, and D was for the Indonesians. The whole compound formed an octagon about 800 yards across and the four camps were separated by two intersecting roads fenced with thick barbed-wire entanglements about eight feet high.

The 22nd Garrison Battalion guarded the prisoners and its commander, Lieutenant Commander Brown, also held the appointment of commander of the Cowra prisoners of war and internment group. Six 30-foot observation towers overlooked the compound and at night lights from these towers swept the camp while fixed

lights lit up the wire and the roads. It was quite a sight. Today people can visit the site of the prisoner-of-war camp and the memorials that have been built. The breakout was quite horrific. It was discovered that the Japanese were planning to have a mass breakout and particular precautions were taken. It was decided to move all the Japanese privates from Cowra to Hay, where there was another big prisoner-of-war group.

The Geneva Convention provided that prisoners had to be given 24 hours notice of such a move. On 4 August notice was given to the Japanese camp leaders that all Japanese at Cowra except officers and non-commissioned officers were to go to Hay on 7 August but that night the guards were alert and obviously very tense. At about 2.00 a.m. one of the Japanese ran to the camp gates and shouted what seemed to be a warning to sentries. Then a Japanese bugle sounded. A sentry fired a warning shot. More sentries fired as three mobs of prisoners shouting "Banzai" began breaking through the wire, one mob on the northern side, one on the western side and one on the southern side. They flung themselves across the wire with the help of blankets. They were armed with knives, baseball bats, clubs with nails and hooks, wire stilettos and garrotting cords. It was on for young and old.

About 400 of the Japanese broke through the wire on the north-west side. Australians who were on guard duty fired into the groups of prisoners. Most of the men who were not on guard duty slept fully clothed with their rifles and 50 rounds beside them. They raced out to reinforce the guards. Two privates in particular, Private Hardy and Private Jones, punched their way through the prisoners, manned a Vickers gun and fired it until they were knifed and clubbed to death. Not a single Japanese survived that horrific breakout attempt in Cowra that night and it has gone on to be one of the hallmarks of our wartime heritage. To this day we have the beautiful Japanese gardens in Cowra in memory of this particularly tragic event. I urge any members who have not visited the gardens to do so.

The two policemen involved were Constable A. P. McGovern of Mandurama and Constable C. H. R. Cooper of Woodstock, both towns in the electorate of Burrinjuck, who promptly informed all residents of the two small towns and outlying settlers what had happened and then worked long hours for several days searching for Japanese who might have escaped. Of course, none did. Many of the Japanese killed themselves, hundreds were wounded, hundreds were killed—burned to death. It was a horrific event. Obviously, we are aware of the Australians who fight for their country and give their very lives so that we might preserve our liberty and freedom. We often take this for granted but we must hold so dear the thousands of Australians who, over consecutive wars, have made this great sacrifice and who to this day continue to serve our nation. We are very grateful. However, it is also important that we remember the history of our own country in relation to war. It is not all overseas; quite a lot has happened here in rural and regional New South Wales.

We have memorials to remember, not only to be thankful for our liberty and freedom but also to reflect on the thousands of Australians who laid down their lives for us. I know that many members have relatives who fought in successive wars. My husband's father fought with the Light Horse brigades in World War I. He was shot during the war but eventually he came back to Australia and went on to have 16 children. But it was a near thing.

**The DEPUTY-SPEAKER:** It did not seem to handicap him, did it?

**Ms KATRINA HODGKINSON:** No, it did not handicap him. He was quite a remarkable gentleman and made a very significant contribution to the Australian economy. Once again I stress the importance of ensuring that the dignity of these very important memorials throughout our great State is preserved. Increasing the maximum penalty for offences sends a strong message to those who would vandalise the memorials to our historical events. Indeed, we should make the penalties as strong as possible. For that reason I believe the amendments foreshadowed by the shadow Attorney General are worthy of commendation and the support of the entire House.

**Mrs JUDY HOPWOOD** (Hornsby) [12.10 p.m.]: I wish to make a brief contribution to the debate on the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. The objects of the bill are to amend the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937 to increase penalties for offences relating to war memorials. I do not think anyone would disagree that the war memorials dotted around our wonderful country are extremely precious to the communities in which they have been built. I would like to comment on a number of different aspects of the legislation, which I believe is most important.

In Hornsby we have a wonderful cenotaph, which is surrounded by a grassed park area, and a memorial wall. The community loves that part of the Hornsby central business district. We are reminded of the importance

of that cenotaph and everything it stands for. Last Sunday, on Remembrance Day, in our commemoration of the eleventh hour of the eleventh day of the eleventh month we had a wonderful ceremony. I congratulate once again the Hornsby RSL sub-branch and its members on organising such a wonderful event. I also pay tribute to Barker College and its cadets. The cadets formed a wonderful catafalque party and everyone who attended was in admiration of their performance.

My husband's grandfather, Thomas Charles Hopwood, was an Anzac. I have no memory of this man: he died when my husband was a very small child. was 16 years old when he went onto the beaches at Anzac Cove. He sustained severe shrapnel injuries, which permanently took his sight at that very early age. He married and had two children, a boy, Eric, and a girl, Ilva. Eric joined the army and retired as a colonel after a celebrated career. Thomas Hopwood had a number of grandchildren before he passed away. My husband's grandfather is just one example of the many people who have served our country, and served it selflessly. He worked as a piano tuner when he finally recovered from his injuries, but one would have to say that he died earlier than he would have had he not sustained the injuries he sustained on that day at Anzac Cove.

We on this side of the House support the legislation, and the amendments that have been foreshadowed by the shadow Attorney General. We hold our memories of battles that Australia has entered into fondly in our hearts. It is abhorrent that anyone in this country could desecrate, damage or place graffiti on any memorial that recognises and assists us to remember always the sacrifices of those who fought in any war on behalf of this country.

**Mr MICHAEL RICHARDSON** (Castle Hill) [12.14 p.m.]: I wish to make a brief contribution to this debate to express, along with other members of the House, my absolute abhorrence of the practice of desecrating war memorials. As many members have said, these are the places that are sacred to the memories of those who have given their lives to protect this country. War memorials are an enormously important and integral part of local communities. The member for Baulkham Hills spoke about the Castle Hill RSL sub-branch and the great work it does in reminding people of the sacrifices made by so many Australians. Indeed, he and I attended a Remembrance Day service at Castle Hill RSL sub-branch last Sunday. I am pleased to say that considerably more people attended the service this year than had been the case in previous years. It is a clear reflection of the greater degree of importance the Australian community in general places on our history and on the sacrifices that have been made by so many Australians in the past.

My great uncle, Percy Baxter, emigrated from England before World War I. He enlisted in the Australian Imperial Force and went off to fight at Gallipoli and on the Western Front. He returned to Melbourne subsequently and went on to live to the ripe old age of 103. At that stage he was, we believe, the last surviving person in the world to have attended the Crystal Palace rally that founded the boy scout movement in 1908. But it is his war record that many people would have remembered him for. It is indicative of the mindset of Australians at that time that he would have emigrated here and immediately enlisted to fight an enemy on a far shore.

They are the things that become even more important in the multicultural Australia we are living in now. Many Australians do not come from an Anglo-Saxon heritage and therefore perhaps would not be aware of the history of this country, the way in which it was founded, and the way in which so many Australians were so enthusiastic about signing up to fight in the First World War, essentially for what they regarded as mother England. I cannot comprehend the mindset of those who would desecrate war memorials. We have had a couple of outrageous instances of this occurring in the past. The Government wants to increase the penalties for this offence. We certainly support the application of increased penalties, and indeed the use of community service orders to get the offenders to clean up their mess. The House would be aware of my long-running campaign to deal with the issue of graffiti, which is primarily what we are talking about here.

The member for Epping and other Opposition members believe that penalties for such offences should be greater. We believe that the maximum penalties should be increased from 40 penalty units to 100 penalty units to send a very clear message to those who would deface war memorials that the community, the Government and members of Parliament view this practice as being totally abhorrent.

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [12.18 p.m.], in reply: I thank members representing the electorates of Epping, Maitland, Goulburn, East Hills, Cronulla, Drummoyne, Tamworth, Wyong, Dubbo, Macquarie Fields, Bega, The Entrance, Wagga Wagga, Shellharbour, Albury, Murray-Darling, Pittwater, Baulkham Hills, Hawkesbury, Coffs Harbour, Burrinjuck, Hornsby and Castle Hill for their thoughtful, sincere and heartfelt contributions to this important debate. Remembering our fallen and those who

served our nation in times of war and other conflicts is clearly important for all members of this House, whether they represent city or country areas. I acknowledge the presence in the gallery earlier today of Mr Don Rowe, the President of the New South Wales Returned and Services League. On behalf of the Government I formally thank him for his contribution to the development of the amendments that were foreshadowed earlier by the member for Maitland.

The bill doubles the maximum penalty for desecrating or damaging war memorials to $4,400. During the earlier debate the Opposition foreshadowed that it would be moving amendments to increase the maximum penalty for damaging a war memorial fivefold to 100 penalty units; that is, $11,000 under the Summary Offences Act. The Government has given close consideration to this proposal and has determined we will not support the Opposition's amendment. In reaching this position we have kept in mind that for more serious offences involving damage to a war memorial an offender can be charged with malicious damage under section 195 of the Crimes Act 1900 and can be imprisoned for a maximum of five years.

We have also taken into account the fact that not all incidents are seen as serious enough to warrant imprisonment and it is unlikely that the court will impose fines in the order of what is being proposed by the Opposition. This is mainly because in imposing fines courts consider a person's ability to pay. People who damage, graffiti or behave inappropriately around war memorials are typically either juveniles or people with limited financial capacity. Accordingly, the Government is of the view that the financial penalty provisions being proposed in the Government's bill—that is, the proposal to double the relevant financial penalties—are sufficient for the purposes of punishing offences at the least serious end of the spectrum.

The Government also believes that, while fines can be an effective punishment option for offences at the lower end of the scale, they do not actually make offenders face up to the damage they have caused or make any kind of tangible reparation to the community. I remember well the person who burnt the Australian flag at the Brighton-le-Sands RSL club in southern Sydney and his remarkable change in attitude once he had walked the Kokoda Trail and had conferencing and met with officials from the Brighton-le-Sands RSL sub-branch. The Government does, however, accept that there is a need for a more serious penalty option for the courts to apply in situations where they might consider a fine too lenient but a term of imprisonment too harsh.

I therefore foreshadow that the Government will be making further amendments to the bill to provide a mechanism to the courts to force an offender to make appropriate reparation to the community by carrying out community service work. I note that Opposition members were almost unanimously in favour of offenders being forced to undergo community service orders in appropriate cases. In making such an order the court could recommend that the offender carry out community service work at a local RSL or repairs or restorations to a damaged war memorial. This would require the offender to demonstrate their remorse and make a commitment over an extended period to repay the community. The Government has consulted closely with the RSL in developing this proposal and has the RSL's full backing on the issue.

Last Sunday, along with the member for Cronulla, I attended the Remembrance Day service in my electorate of Miranda. The service was conducted by the Southern District RSL sub-branch and attracted 1,000 people. What was most pleasing and most promising was the large number of young local school children who attended and participated in that very important ceremony of remembrance. Looking at those children, and indeed the children in the gallery today in the company of the member for Tamworth—I think they were from Werris Creek—I can truly say that when it comes to remembering the fallen, those who have contributed in many ways to the service of this country and laid down their lives, our future is in good hands with those children.

The member for Goulburn has suggested that vandals should be made to contribute towards the cost of repairing the damage they cause. Section 77B of the Victims Support and Rehabilitation Act 1996 allows the court to make an order for reparation or compensation. Accordingly, offenders can be ordered to pay for the damage they caused. A good example of this was the offenders who painted "no war" on the Opera house sails being ordered to pay $151,000 to the Opera House Trust. It is always open to an offender to show true contrition and remorse for actions in relation to war memorials by offering to pay for the damage and making that a submission in any plea of guilty before a magistrate or District Court judge.

The bill forms part of the Government's Respecting Our Diggers policy, which is designed to ensure ongoing respect for our war veterans and to increase the legislative capacity to penalise criminal or inappropriate activity around war memorials. The reform is also one important component of the respect for our war veterans policy. The member for Baulkham Hills referred to the need to be taught and the need for children

to be told. A major component of our war veterans policy is an early intervention education program which aims to foster respect for war veterans and hence reduce the reliance on criminal sanctions, such as fines, by introducing a new program where students visit, interview and record the experience of a war veteran as part of their studies; equip schools with grants to purchase equipment, facilitate meetings with veterans and allow the necessary supervision to record living history; and provide the work of the student to the veteran, the veteran's family and the State Library, ensuring the future cataloguing of war stories—some of which have never been heard before. We are trialling the program in 20 high schools in New South Wales and will be evaluating its success before extending the initiative across the State.

The bill will double the maximum financial penalties currently available to the courts and, with the Government's proposed future amendment, enable a court to order an offender to perform community service work as punishment for damaging or desecrating a war memorial. There is a community expectation that monuments will be protected and penalties imposed for any disrespect shown to war memorials and the memories they represent. The bill responds to this sentiment and reinforces the Government's commitment to respect our diggers and to preserve the memory of those who have given their life for this country in times of war. I commend the bill to the House.

**Question—That this bill be now agreed to in principle—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill agreed to in principle.**

**Consideration in detail requested by Mr Barry Collier.**

**Consideration in Detail**

**Clauses 1 to 6 agreed to.**

**Mr GREG SMITH** (Epping) [12.27 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [1], line 6. Omit "40 penalty units". Insert instead "100 penalty units".

No. 2 Page 3, schedule 1 [2], line 9. Omit "20 penalty units". Insert instead "100 penalty units".

Today we had the privilege of the New South Wales President of the RSL, Don Rowe being in the gallery. Our former leader, the member for Vaucluse, stated in January that the Opposition would seek to increase the penalties for attacks on war memorials. The member commented that the penalty for desecrating an Aboriginal site is a fine of $11,000 but the penalty for desecrating a war memorial is a fine of $2,000. He said, "That is wrong and we are going to change that." The New South Wales RSL backed the Opposition pledge. Mr Rowe agreed that war memorials need better protection and was quoted in the ABC News as saying:

> I hope that these penalties when they are legislated will ensure that nobody dare touch those sites and they should remain as they are, as a symbol of sacrifice.

I note that the Parliamentary Secretary said that the Government had looked carefully at the Opposition's proposed amendments but considered them too high. We show great respect for Aboriginal sacred sites and every day we honour the Aboriginal people whose land the Parliament sits on. We also honour our fallen dead every day in many ways. We have war memorials in Parliament House and Martin Place and throughout the State. The suggestion that the protection of war memorials is a less serious matter than the protection of Aboriginal sacred sites is erroneous and should be rectified. I do not mean any disrespect to Aboriginal sacred sites when I say that. The same penalties for malicious damage to property, such as jail sentences, apply to Aboriginal sacred sites. The Opposition believes that the amendment is appropriate given the seriousness of the crime. It will have an educative effect and send the message that the Parliament does not trivialise this serious offence.

Last Sunday I was at the Epping RSL cenotaph for a Remembrance Day service. I am happy to say that the memorial is to be upgraded, thanks to a grant from the Howard Government and assistance from Parramatta City Council and Epping RSL. Many people attended the service and it was a great honour for me to be there. I am a patron of the Epping RSL sub-branch and I am pleased to support it in any way I can. The sub-branch

currently has a project to identify and chronicle all war memorials in the Epping area, including at churches, cemeteries, halls, parks and schools. Last Friday I made a speech in the House about the Remembrance Day ceremony. I referred to a song, part of which I sang, called the *Green Fields of France*. I wish to refer again to that song because it sets the tone for the way we should regard war memorials. The song is by Eric Bogle, who wrote some of the greatest war music and modern folk music that has ever been written. Referring to the graveyards in France, the song goes:

> … that's still No Man's Land
> The countless white crosses in mute witness stand
> To man's blind indifference to his fellow man.
> And a whole generation who were butchered and damned.

I could argue that "damned" is not the appropriate word. As has been said by previous speakers, our society has no idea of the extent of deaths and casualties that occurred in the First World War and also in the Second World War when many more citizens were killed in various countries around the world. It is a tragedy whenever anyone is killed. Today the member for Coffs Harbour referred to a young man who was killed in Afghanistan. He had known him and his parents for a long time. Last Friday I referred to Trooper David Pearce, who was recently killed in southern Afghanistan defending freedom and fighting for his country. His nickname was Poppy. I quoted the part of the *Green Fields of France* song that referred to poppies. I note that the member for Macquarie Fields is wearing a poppy, which symbolises "Remembrance, lest we forget". The member for East Hills reminded me of something I have been told many times by those who have visited the war graves in France. He and others expressed shock and horror at the large number of graves of teenagers—Australian teenagers and teenagers from other nations who died for their country.

Young people receive much greater instruction in schools about the symbolism of remembrance than when I was growing up. Students write essays, stories poems and songs and do drawings on the topic. Many of them attend ceremonies on Anzac Day and Remembrance Day. For some reason the message fails to get through to a proportion of our society. We see that not just in the desecration of war memorials but also in the senseless crimes of rock throwing and the lighting of bushfires. Why do people, mainly young people, desecrate war memorials? Have they had instilled in them a sense of national pride or loyalty to a nation that was formed in blood, sweat and tears? Has our society lost a sense of sacredness?

People who gave up their lives for their country showed no greater love. As has been quoted in scripture, "No greater love has any man than to lay down his life for his friends." We also see this in our own society away from war with the killing of police. Some years ago I had the privilege, although it was a difficult task, to prosecute the men charged with the murder of Constable David Carty, who was slaughtered early one morning outside a hotel in Fairfield in 1997. He is not the only officer who has been killed. We have a remembrance wall for police and an annual day to remember the police who have given up their lives and suffered just as our ex-servicemen suffered for their country. What is wrong with our society that we produce these crazy people who do these things? Do we speak enough about the issue? Do we do enough to deter these people from committing such crimes? Do we do enough to educate them? I do not believe so.

The bill recognises that the current penalties are inadequate. The Opposition supports the Government's amendments in the bill. They are a sensible addition to the sentencing penalties that apply to this offence. As with graffiti-type offences, we need to implement measures to fix the damage. One of the more effective ways is to make the offenders clean up the mess. We also need heavy penalties that send a message and address the idiocy that seems to infect their brains that it is fun to destroy a war memorial. I refer again to an earlier verse of the *Green Fields of France*. I did know it by heart—

**The DEPUTY-SPEAKER:** The verse is:

> And did you leave a wife or a sweetheart behind
> In some loyal heart is your memory enshrined?

**Mr GREG SMITH:** Another line is: "To that loyal heart are you forever 19." Naturally people remember the dead at the age they die. There would not be many people today who remember 19-year-olds from the First World War, but there would be plenty who would remember 19-year-olds from other wars. Our war memorials are for us to remember the people who died for this country, who gave up everything for their country. This legislation seeks to address the desecration of those war memorials. Damage to Aboriginal sacred sites carries a greater penalty and the general criminal laws apply to those sites. I ask the Government to give to the ex-servicemen, their widows and their children, to all of us who remember the people who gave up their

lives for this country, the same recognition and apply the same penalties to the offence of damage to war memorials.

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [12.37 p.m.]: The Government does not support the Opposition's amendments. We have given the proposal serious and close consideration and have formed the view that it is ill-conceived and would not be effective in punishing and deterring people who damage or desecrate war memorials. The provisions put forward in this bill will already double the maximum financial penalties for people who damage or desecrate war memorials. This will mean that offenders will face potential fines of up to 40 penalty units, which currently equates to $4,400 for vandalising a war memorial.

It is worth keeping in mind that for more serious offences of this nature offenders can be imprisoned for up to five years if they are charged with malicious damage under section 195 of the Crimes Act 1900. The Government acknowledges, however, that there may be situations where the nature of the offence is such that the court might consider a fine to be too lenient but imprisonment too harsh. Accordingly, we are putting forward a further amendment to this bill that will provide a middle rung in the sentencing ladder between fines and imprisonment: the three rungs being fines, community service orders and imprisonment.

Under this amendment, to which I will turn in a few moments, the court will be able to order an offender to perform community service work as an alternative to a fine. The Government believes that this approach will be much more effective than simply jacking up the maximum fines, because the reality is that no court is likely to impose the kinds of maximum penalties that have been put forward by the Opposition in its amendment. As the member for Epping would be aware, when imposing a fine a court will take into account the ability of the offender to pay it. Those who damage, graffiti or behave inappropriately around war memorials are typically either juveniles or persons with a limited financial capacity; for example the recent vandalism of the war memorial in Bathurst.

In that particular instance the young offender, aged 16, received a 12-month good behaviour bond. The magistrate took into account the young person's remorse, prior good character, the caution received by the three co-offenders and the young person's career aspirations, and decided to issue a good behaviour bond. The magistrate noted also that in the juvenile jurisdiction the court is more concerned with the welfare of the juvenile than using the person as an example to stop other people offending. The member for Bathurst tells me that the young offenders have had a number of counselling sessions with the Bathurst RSL officials. The girls made a genuine apology and said they realised the hurt they had caused the community. They said they had certainly learnt from their interaction with the RSL and that they now have a better appreciation and respect for both the war memorial and the ex-servicemen who served our country in times of war and conflict.

The Government is of the view that while fines can be effective in punishing offenders at the lower end of the scale they do not make offenders face the damage they have caused or the people they have hurt, or force them to make any kind of tangible reparation to the community. This view was put forward by the RSL also. In a media release issued by the Attorney General this week, the New South Wales President, Mr Don Rowe, who was present in the gallery earlier, said:

> The RSL believes that offenders who commit this crime should make appropriate reparation to the community.
>
> They shouldn't just be able to pay for the problem to go away through the payment of a fine - they should be forced to face up to the damage that they have caused.
>
> We believe that forcing vandals to do community service work will be a much more appropriate punishment than a mere fine.

The Government does not support the Opposition's amendment. We believe there is a need for a clear sentencing ladder in relation to the offence. We will provide this for the courts by giving them punishment options at the lower, middle and upper ends of the scale. At the lower end courts will be able to issue appropriate fines up to a maximum of $4,400—not an insignificant sum. The Government's further amendment of this bill will provide a middle rung, giving the courts the option of sentencing an offender to perform community service work as an alternative to paying a fine. Finally, if an offence is considered to be serious enough, an offender can be charged with malicious damage under the Crimes Act 1900 and be sentenced to up to five years imprisonment. The Government believes the package we put forward, which I remind the House is supported by the RSL, is a measured and realistic approach to deal with this very real problem. Accordingly, we do not support the Opposition's amendment.

**Mr DARYL MAGUIRE** (Wagga Wagga) [12.43 p.m.]: The Parliamentary Secretary's response to the Opposition's amendment to the War Memorial Legislation Amendment (Increased Penalties) Bill is outrageous. In his response he did not explain why fines for desecrating sacred Aboriginal sites are different from fines for

desecrating a war memorial. I, along with every other Australian, respect the history of our great Aboriginal culture—much of it, sadly, now lost. We should make every effort to protect the history that exists. I believe fines of up to $11,000 are appropriate.

The Parliamentary Secretary's response failed to adequately explain why the Government believes a fine should be up to only $4,000 when the Opposition suggests a fine of up to $11,000, equalling the importance of the sacredness of both Aboriginal sites and war memorials. Aboriginal people fought in our services to defend our country; they are part of memorials. Why can the Parliamentary Secretary not explain to this House why these two pieces of legislation are treated differently when both of these sites are of equal importance? Aboriginal history is important to our community and to our culture, and so are war memorial sites.

I have listened very carefully to both sides of this debate, and I know I said I would support the amendments. But I believe the Parliamentary Secretary owes it to the citizens of this State to explain why the fine for desecrating an Aboriginal site is $11,000 while the fine for desecrating a war memorial is only $4,000. He should explain the reason for the Government's bloody mindedness in not treating the two offences equally and adopting these amendments. The Parliamentary Secretary said there were opportunities for magistrates and judges to give good behaviour bonds and to take into account people's ages and so on. All those things are important. They are all tools to enable the judiciary to be able to consider the seriousness of the events that have occurred and to meet the community's expectations in the application of the fines or punishment, as they so desire. But unless they are given the tools to do the job the judiciary is frustrated. I say support this amendment, give them the tools to do the job and allow them to be able to meet the community's expectations with regard to the desecration of war memorials and treat war memorials with the same respect as applies to our Aboriginal heritage. Should that occur we will support the fines available to the judiciary.

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

**The House divided.**

**Ayes, 51**

| | | |
|---|---|---|
| Mr Amery | Mr Greene | Mr Morris |
| Ms Andrews | Mr Harris | Mrs Paluzzano |
| Mr Aquilina | Ms Hay | Mr Pearce |
| Ms Beamer | Mr Hickey | Mrs Perry |
| Mr Borger | Ms Hornery | Mr Rees |
| Mr Brown | Ms Judge | Mr Sartor |
| Ms Burney | Ms Keneally | Mr Shearan |
| Ms Burton | Mr Khoshaba | Ms Tebbutt |
| Mr Campbell | Mr Koperberg | Mr Terenzini |
| Mr Collier | Mr Lynch | Mr Tripodi |
| Mr Coombs | Mr McBride | Mr Watkins |
| Mr Corrigan | Dr McDonald | Mr West |
| Mr Costa | Ms McKay | Mr Whan |
| Mr Daley | Mr McLeay | |
| Ms D'Amore | Ms McMahon | |
| Ms Firth | Ms Meagher | *Tellers,* |
| Ms Gadiel | Ms Megarrity | Mr Ashton |
| Mr Gibson | Ms Moore | Mr Martin |

**Nos, 36**

| | | |
|---|---|---|
| Mr Aplin | Mr Hazzard | Mrs Skinner |
| Mr Baird | Ms Hodgkinson | Mr Smith |
| Mr Baumann | Mrs Hopwood | Mr Souris |
| Ms Berejiklian | Mr Humphries | Mr Stokes |
| Mr Cansdell | Mr Kerr | Mr J. H. Turner |
| Mr Constance | Mr Merton | Mr R. W. Turner |
| Mr Debnam | Mr O'Dea | Mr J. D. Williams |
| Mr Draper | Mr O'Farrell | Mr R. C. Williams |
| Mrs Fardell | Mr Page | |
| Mr Fraser | Mr Piccoli | |
| Ms Goward | Mr Provest | *Tellers,* |
| Mrs Hancock | Mr Richardson | Mr George |
| Mr Hartcher | Mr Roberts | Mr Maguire |

**Question resolved in the affirmative**.

**Motion agreed to.**

**Amendments negatived.**

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [12.57 p.m.], by leave: I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1. Insert after line 9:

**[3] Section 8 (3A)**

Insert after section 8 (3):

(3A) Instead of imposing a fine on a person under this section, the court:

(a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, or

(b) may make an order under section 5 (1) of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work,

as the case requires.

No. 2 Page 4, schedule 2. Insert after line 5:

**[2] Section 9 (4A)**

Insert after section 9 (4):

(4A) Instead of imposing a fine on a person for an offence under a by-law that results in damage to, or the defacing of, the Memorial Building or any part of the land described in the schedule, the court:

(a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, or

(b) may make an order under section 5 (1) of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work,

as the case requires.

The first amendment builds on the Government's respecting our diggers' legacy by making available to the courts an additional and more onerous punishment for offenders who have damaged a war memorial. The amendment will enable a magistrate to direct an offender to perform community service work for up to 500 hours for damaging or desecrating a war memorial. This amendment provides a middle rung in the sentencing ladder to give courts a clear hierarchy of sentences for punishing an offender who damages or desecrates a war memorial. An offender serving a community service order is required to perform up to 500 hours of community service work.

Community service orders punish offenders by placing restrictions on their time and liberty and requiring them to carry out community work. At the same time, community service orders promote rehabilitation by allowing offenders to remain in the community and address factors that have contributed to their offending. Perhaps most importantly, community service orders enable offenders to make tangible reparation to the community through unpaid community work. The Government has consulted closely with the Returned and Services League in developing this legislation and it has given its full support. In a media release issued by the Attorney General earlier this week, the New South Wales Returned and Services League President Don Rowe said of the Government's proposal:

> The RSL believes that offenders who commit this crime should make appropriate reparation to the community.
>
> They shouldn't just be able to pay for the problem to go away through the payment of a fine—they should be forced to face up to the damage that they have caused.
>
> We believe that forcing vandals to do community service work will be a much more appropriate punishment than a mere fine.

He went on to add:

> The RSL and its members are totally behind the Government on this issue.

The second proposed amendment would further strengthen the courts' position in terms of sentencing offenders who have damaged war memorials. I commend the amendments to the House.

**Mr GREG SMITH** (Epping) [12.57 p.m.]: As earlier indicated, the Opposition does not oppose these amendments. Although if the courts were doing their job they would make it a condition of a bond that the offender clean up the mess they have made. Mention was made of a recent case in Bathurst or somewhere in the Blue Mountains involving a young man who was released on a bond because of his previous good character, contrition and so on. I did not hear that a condition of the bond was that he clean up the mess. The trouble is that many people in positions of authority in this State do not exercise that authority. If a magistrate can impose such a condition then he should ensure that he does. Obviously if someone does not comply with the terms of a bond, that person can be brought back before the court.

However, magistrates have to impose those conditions in the first place. It is all very well for these young people to say that they are sorry; they might have done thousands of dollars of harm and caused great offence. The young fellow who did the damage at the Brighton memorial ended up having to do a large amount of reparation and to demonstrate that he was contrite, and he seemed to wake up to himself. Few people who commit these acts are given such an opportunity to show contrition and to gain some learning. That should not be necessary. I appeal to those in courts and places who have these powers to start using them, particularly when they are dealing with the community's combined memory about the fallen and those who have suffered.

A song Eric Bogle wrote refers to watching the parade go by and the old soldiers struggling on, and one of these days they will not be there any more. We are seeing more of that now. Most of our old soldiers are getting too old to take part in marches, and many of them suffer enormously from injuries and psychological scarring. People who commit these offences and damage war memorials have to realise that; they have to be told that. It might not be a bad idea to put offenders through some educative courses similar to those available as penalties for driving offences. They would have to pass exams at the end of the course to show that they understand the significance of the freedoms they have, as well as fulfilling community service orders.

**Mr DARYL MAGUIRE** (Wagga Wagga) [1.00 p.m.]: I support the amendments. Earlier I suggested that the judiciary needs the tools to do its job. The greater array of tools the judiciary has, the more effect it will have in sending the message to offenders that the community will not tolerate the desecration of war memorials. While I support the comments of the member for Epping, many of the sentences given by the judiciary do not meet community expectations. As I said earlier, if Mr and Mrs Average on the street were asked what they expected the judiciary to do with someone who has desecrated a war memorial, and there was a law to ensure that graffiti could be cleaned off, that is what they would expect: a fine and an order to clean off the graffiti.

Last week in this place we had a debate about graffiti. I referred to the Victory Memorial Gardens being attacked by graffiti. The two culprits were caught by a resident and reported to police, together with their addresses. The cans were confiscated, and the culprits were arrested and taken to court. What happened? Absolutely nothing except a 12-month good behaviour bond. Where is the graffiti? It is still on the wall for those vandals to admire. Twelve months later it is attracting the ire of the resident who caught the culprits. The judiciary did not impose an appropriate sentence: it did not direct that the graffiti be cleaned off. That is the important message that should be included in this legislation. We want restitution. The community wants the courts to make these people clean up their mess and to fix what they destroy. Contrary to what the Parliamentary Secretaries and Ministers have said in other debates, that is not happening under other legislation dealing with graffiti. In the debate last week I referred to the evidence that it is not happening: the graffiti is still on the walls of the Victory Memorial Gardens. The offenders might have shown contrition and remorse, but they should have been ordered to get out there with a scrubbing brush and clean off. that filth

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [1.04 p.m.]: I thank the members for Epping and Wagga Wagga for their further contributions to the debate. As the member for Epping well knows, judges and magistrates have a wide discretion, including the right to impose good behaviour bonds with conditions. As he rightly said, it is always open to a judge or magistrate to bring offenders back to court if they have not complied with the conditions of their bonds and to sentence them as though they had not been sentenced in the first place. It is always open for an offender to be given a bond and it is always open to the magistrate, having a wide discretion, to order someone to clean off graffiti as a condition of the bond.

The member for Wagga Wagga talked about the tools given to judges and magistrates. The bill gives judges and magistrates the tools: it gives them the power to impose fines. It puts in place the power to impose community service orders, and that is clearly the intention of Parliament. In addition, the Crimes Act provides

for the imposition of prison sentences. The young offenders in Bathurst have been referred to. The member for Bathurst tells me that there has been a change of attitude on the part of those young girls. It is common for young people to be dealt with under the provisions of the Young Offenders Act, and they can be directed to clean off graffiti. They can be directed to take other steps to change their attitude and to give due deference to those who have given their lives for their country in times of war or who have suffered for years from war injuries. I thank members for their contributions. I note their support for the Government's amendments and I commend them to the House.

**Question—That the amendments be agreed to—put and resolved in the affirmative.**

**Amendments agreed to.**

**Schedule 1 as amended agreed to.**

**Schedule 2 as amended agreed to.**

**Schedule 3 agreed to.**

**Consideration in detail concluded.**

**Passing of the Bill**

**Motion by Mr Barry Collier agreed to:**

That this bill be now passed.

**Bill passed and transmitted to the Legislative Council with a message seeking its concurrence in the bill.**

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2007**

**Bill introduced on motion by Mr John Aquilina.**

**Agreement in Principle**

**Mr JOHN AQUILINA** (Riverstone—Leader of the House) [1.08 p.m.]: I move:

That this bill be now agreed to in principle.

The Statute Law (Miscellaneous Provisions) Bill (No. 2) 2007 continues the well-established statute law revision program that is recognised by members as a cost-effective and efficient method for dealing with minor amendments. The form of the bill is similar to that of previous bills in the statute law revision program. This session the bill reflects efforts made to repeal a large number of Acts that are no longer necessary. The bill repeals, in total, 158 Acts. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister considers does not warrant the introduction of a separate amending bill. That schedule contains amendments to 24 Acts and instruments. I will mention some of the more notable amendments to give members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the Hunter Water Act 1991 to insert a standard provision that allows penalty notices to be issued in respect of offences under that Act that are prescribed penalty notice offences so that Hunter Water has the same power to issue penalty notices as Sydney Water. A consequential amendment is also made to the Fines Act 1996 to provide for the enforcement of any such penalty notice. Schedule 1 amends the Police Integrity Commission Act 1996 to extend the time within which proceedings may be brought against a person for not complying with a notice to provide evidence to the Police Integrity Commission. This period is extended from six months to three years, in line with the time limits applying to a similar offence under the Act. For both these offences, an early prosecution may jeopardise the commission's ongoing investigations.

Another amendment made by schedule 1 is to the Local Government Act 1993 to enable reports on investigations of local councils authorised by the director general under that Act to be laid before Parliament when neither House is sitting. Similar provision is currently made in relation to reports on public inquiries into local councils under that Act. The amendments made by schedule 1 to the Stock Diseases Act 1923 abolish the

Board of Tick Control, which was established in 1920 to eradicate cattle ticks in New South Wales. An advisory committee will replace it. This was recommended in the Tick Fever Inquiry Report of June 2005 and has been the subject of public consultation. The schedule also makes a number of consequential amendments to that Act and other legislation.

Schedule 1 also amends the Growth Centres (Development Corporations) Act 1974 to enable members of a development corporation to participate in meetings of the corporation by telephone or other means of electronic communication. This is consistent with existing provisions in Commonwealth and State legislation. Schedule 1 will remove an unnecessary requirement contained in the Residential Parks Act 1998. The provision required the Consumer, Trader and Tenancy Tribunal to give written notice of a decision in relation to a dispute about park rules within 30 days. However, the tribunal's procedure is already set out in the Consumer, Trader and Tenancy Tribunal Act 2001.

The last schedule 1 matter that I will mention is the amendments made to the Succession Act 2006. The Act makes a number of important changes to the law of wills in New South Wales and represents a closer step to achieving consistency of succession laws across Australia. The commencement of the Act has been delayed to provide a reasonable period to educate the legal profession and the community about the reforms and to make arrangements for their implementation. In the course of the process a small number of technical amendments have arisen. These amendments were developed in consultation with the implementation committee of expert legal practitioners and are now included in schedule 1.

Schedule 2 deals with matters of pure statute law revision that the Parliamentary Counsel considers are appropriate for inclusion in the bill, for example, amendments arising out of the enactment or repeal of other legislation, those correcting duplicated numbering and those updating terminology. Schedule 3 contains statute law revision amendments that are consequential on a new edition of *Planning for Bush Fire Protection* by the New South Wales Rural Fire Service, which will update references to this publication and to certain terms used in it in various environmental planning instruments. Schedule 4 transfers a number of provisions from amending Acts into the relevant principal Acts. As the remaining provisions of the amending Acts are spent, this will allow those Acts to be repealed by schedule 5.

Schedule 5 repeals 158 Acts that are spent or are of no practical utility, for example, the Newcastle Tattersall's Club Act of 1945 and the National Oil Proprietary Limited Agreement Ratification Act 1937 because these entities no longer exist. The Acts and instruments that were amended by the Acts being repealed are up-to-date and available electronically on the legislation database maintained by Parliamentary Counsel's office. Schedule 6 contains general savings, transitional and other provisions. In view of the large number of repealed Acts in schedule 5, the schedule contains, for more abundant caution, a power for the Governor, by proclamation, to revoke the repeal of any Act repealed by the bill.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the schedule concerned. If any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill. I commend the bill to the House.

**Debate adjourned on motion by Mr Daryl Maguire and set down as an order of the day for a future day.**

## COAL ACQUISITION LEGISLATION REPEAL BILL 2007

**Message received from the Legislative Council returning the bill without amendment.**

[*The Deputy-Speaker left the chair at 1.15 p.m. The House resumed at 2.15 p.m.*]

## NATIONAL STATE EMERGENCY SERVICE WEEK

**The SPEAKER:** On behalf of all members I acknowledge that this week is National State Emergency Service Week. As members would be aware, there are more than 10,000 State Emergency Service volunteers in 227 locations. Today, 14 November, has been declared Wear Orange to Work Day around Australia. I acknowledge that many members have taken the opportunity to wear orange today. I acknowledge the

presence in the gallery of members of various units of the State Emergency Service: Andrew Hall from Blacktown State Emergency Service Unit, Pat Purcell from Sydney Southern Region, George Abdo from Holroyd State Emergency Service Unit, Dale Harley from North Sydney State Emergency Service Unit, Geoff Harley from North Sydney State Emergency Service Unit, Catherine Moyle, the Community Education Officer at the State Emergency Service headquarters in Wollongong, Philip Campbell, the Public Relations Officer at the State Emergency Service headquarters in Wollongong, and Adam Rogers from the City of Sydney State Emergency Service Unit in Erskineville. I welcome them to the New South Wales Parliament and congratulate them on their contribution to the welfare of the people of New South Wales.

## CRIMES AMENDMENT (CONSENT—SEXUAL ASSAULT OFFENCES) BILL 2007

**Bill received from the Legislative Council and introduced.**

**Agreement in principle set down as an order of the day for a later hour.**

## CRIMES AMENDMENT (SEXUAL PROCUREMENT OR GROOMING OF CHILDREN) BILL 2007

**Bill received from the Legislative Council and introduced.**

**Agreement in principle set down as an order of the day for a later hour.**

## BUSINESS OF THE HOUSE

### Notices of Motions

**Government Business Notices of Motions (for Bills) and General Business Notice of Motion (General Notice), to be the subject of a motion or reorder, given.**

## QUESTION TIME

## DEPARTMENT OF COMMUNITY SERVICES CHILD PROTECTION SPECIAL COMMISSION OF INQUIRY

**Mr BARRY O'FARRELL:** I direct my question to the Premier. After 12 years, five Ministers, multiple reports and reviews, a five-year $1.2 billion so-called improvement program, an ever increasing number of children who are dying or injured are notified to the Department of Community Services. How many more children have to die before the Premier admits he is utterly incapable of fixing the problem and establishes a royal commission to provide some future for the State's child protection system?

**The SPEAKER:** Order! I draw the attention of the Leader of the Opposition to the length of the question. I will allow the question, but I ask members to consider the length of their questions and ensure that they comply with standing orders.

**Mr MORRIS IEMMA:** I know that often the Leader of the Opposition's defence when matters are decided, or even voted upon in this place, or when Ministers make announcements, is to say, "Well, it went through late at night" or "We did not actually scrutinise the legislation" or "We were asleep". Last Friday the Minister for the Department of Community Services announced that Justice Wood would head a special commission of inquiry into systemic issues to do with Department of Community Services.

**The SPEAKER:** Order! I call the member for Clarence to order.

**Mr MORRIS IEMMA:** The Government wants to have systemic issues identified and reformed and we will then drive reform for improvement. For the Leader of the Opposition to get up here and—

**Mr Barry O'Farrell:** Point of order: My point of order relates to relevance. My question referred to a royal commission; it also referred to numerous reviews and reports that have not been acted upon. These are the reports here. These reports have been commissioned by this Government with nothing having been done—

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

**Mr Barry O'Farrell:** People are still dying and being injured despite all of the reports that have been commissioned. A royal commission cannot be ignored. The Premier knows that and that is why he is scared of it.

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

**Mr MORRIS IEMMA:** So what he asserts is—

**Mr Paul Gibson:** Point of order: My point of order is that over the past six to eight months we have seen a practice in this Chamber of people thinking they can move a point of order, which gives them the excuse to make a speech for two or three minutes. My point of order is that we only have a short period of time left in this session, and before the next session of Parliament, Mr Speaker, you will have to make a determination on what a point of order is. There is no way in the world members should be able to say, "Under section 129" and then make any speech they want for two or three minutes.

**The SPEAKER:** Order! I will not hear anything further on the point of order. The member for Blacktown will resume his seat. Members may take points of order and it is appropriate that the Chair listens to points of order before ruling on them. However, if members continue to take points of order that do not comply with the standing orders I will rule them out of order, and there may be consequences. The Premier may continue his answer.

**Mr MORRIS IEMMA:** A special commission of inquiry has been established. I have sought advice on what is the difference between a special commission of inquiry and a royal commission. It appears that the one major area of difference is that a royal commission automatically has the power to override claims of privilege. The power is not likely to be necessary in this type of inquiry. However, it can be given to a special commission of inquiry if it is shown to be necessary. As I said this morning, if Justice Wood wants additional powers he will get them. The special commission of inquiry will have every other power—to call witnesses, to take submissions—that some of the ferry inquiries, some of the rail inquiries and the Campbelltown-Camden hospital inquiry had.

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

**Mr MORRIS IEMMA:** Members opposite can tell us, perhaps the member for Willoughby, whether the Walker inquiry into ferries was an effective inquiry. Perhaps the shadow Minister for Health can give us a critique on the Walker inquiry into Campbelltown-Camden hospital. Does she claim that was not effective?

**The SPEAKER:** Order! The member for Willoughby will stop calling out.

**Ms Gladys Berejiklian:** He asked me a question.

**The SPEAKER:** Order! I call the member for Willoughby to order.

**Mr MORRIS IEMMA:** Are you saying that Justice Wood is not the type of person to head up an inquiry; that Justice Wood will not seek out answers?

**The SPEAKER:** Order! I call the member of Epping to order.

**Mr MORRIS IEMMA:** Are you saying that Justice Wood, if he does identify gaps, will not make those sorts of recommendations?

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

**Mr MORRIS IEMMA:** The Leader of the Opposition does not want to talk about the police royal commission, because that is the royal commission he voted against. Is he saying that Justice Wood does not have the professionalism or the background in this area to conduct a searching inquiry into the agency? Is that what he is saying? Is that the proposition he is putting forward?

**The SPEAKER:** Order! The Leader of the Opposition will cease calling out.

**Mr MORRIS IEMMA:** It is a special commission of inquiry. The Opposition has gone to the last two elections with no policy on the Department of Community Services at all. That is not surprising because the last

time the Opposition had the chance to run the Department of Community Services portfolio we saw the closures of Department of Community Services offices and a reduction of about 1,000 Department of Community Services workers. There has been a $1.2 billion reform program in the Department of Community Services—

[*Interruption*]

**The SPEAKER:** Order! The member for Burrinjuck will cease interjecting.

**Mr MORRIS IEMMA:** The $1.2 billion reform of the Department of Community Services includes training extra Department of Community Services workers and recruiting extra Department of Community Services workers. Yes, we have come to the end of the five-year program. The challenge now is to work towards further reform to improve the system. As part of that, Justice Wood's work will be invaluable in highlighting the areas that require further reform and change in addition to the other terms of reference of his inquiry. The distressing nature of cases that have been highlighted recently is precisely why, last Friday, the Minister announced a special commission of inquiry into the Department of Community Services.

**The SPEAKER:** Order! I call the member for Burrinjuck to order.

**Mr MORRIS IEMMA:** The special inquiry will be headed up by a person with an outstanding reputation in this area: the man who headed the police royal commission and the man who has done so much work in tracking down paedophiles and reforming our laws in relation to the care and protection of children. He has the powers of a special commission of inquiry and the flexibility and capacity exists to add to those powers should he wish.

## AIR POLLUTION

**Mr DAVID BORGER:** My question is directed to the Premier. Will the Premier update the House on what the Government has done to make the skies over Sydney cleaner and healthier?

**Mr MORRIS IEMMA:** It is estimated that the health costs from air pollution are around $4.7 billion per year. Air pollution comes from a variety of sources. Understanding where and what the sources are is the first step towards fighting air pollution. The 2007 Air Emissions Inventory for the Greater Metropolitan Region is the culmination of three years work. It looks at human sources of air pollution, such as factories, power stations and motor vehicles, as well as natural sources, such as bushfires and wind-borne dust. It identifies and reports on more than 90 different pollutants.

**The SPEAKER:** Order! I ask the Leader of The Nationals to stop interjecting.

**Mr MORRIS IEMMA:** It can forecast emissions data up to the year 2031 and model the impact of the policies we introduce. Comparing the 2007 and 1992 inventories gives us the first comparative look at air pollution in the greater metropolitan area. Today I can report that despite very strong growth in the economy—in fact the economy has doubled in that time—and car use, most pollutants are on the way down. Over that time frame Sydney's population grew by approximately 375,000 people, while an additional 640,000 cars are on our roads, each one travelling slightly further than the previous year.

As I mentioned, it is significant that over that time the New South Wales economy doubled in size. Yet, despite all this, the total amount of harmful air pollutants being pumped into the skies over Sydney fell by almost one-third. Clearly, our efforts to protect both human health and the natural environment from air pollution are having an impact, but they have not been at the expense of economic growth or jobs.

**Mr Andrew Stoner:** What did you do exactly?

**Mr MORRIS IEMMA:** I will come to that in a second. That is a key point backed up by our strategies on cleaner air. As the Leader of The Nationals asked, since 1992 the noticeable improvement in Sydney's air quality has been driven by declining annual emissions of all the principal pollutants: carbon monoxide fell by 34 per cent; sulphur dioxide fell by 30 per cent; volatile organic compounds fell by 23 per cent; fine particles fell by 16 per cent; and oxides of nitrogen fell by 9 per cent.

These results—for the benefit of the Leader of The Nationals—can be attributed to the following actions: reducing lead in fuels by the smoky vehicle enforcement program, which issues 1,500 fines and

2,000 warning letters each year; introducing new regulations for industry, which slash pollution levels by up to five times and will result in the equivalent of 100,000 diesel trucks being taken off New South Wales roads over the next 20 years; and load-based licensing, which each year cuts thousands of tonnes of pollution from the air.

New technologies, together with the use of market-based incentives and tough anti-pollution laws have made a difference, preventing hundreds of thousands of tonnes of harmful emissions ending up in the air we breathe and, more importantly, in the air our kids breathe. It is also clear that new programs and ongoing vigilance is needed to further reduce pollution. Significant challenges remain. The latest study has revealed that the biggest contributor of potentially harmful volatile organic compounds in New South Wales today is—

**Mr Andrew Stoner:** The desalination plant.

**The SPEAKER:** Order! Members will stop calling out.

**Mr MORRIS IEMMA:** That's right, he wanted it in Botany.

**The SPEAKER:** Order! I place the Leader of The Nationals on two calls to order.

**Mr MORRIS IEMMA:** If not Botany, he wanted it at Malabar.

**The SPEAKER:** Order! I call the member for Cessnock to order. The House will come to order.

**Mr MORRIS IEMMA:** The study found that harmful volatile organic compounds in New South Wales today do not come from industry or vehicles but from commercial and domestic sectors such as construction sites, auto repair shops, motorboats and two-stroke engines. They all contribute to Sydney's summertime smog and have shown only a 5 per cent reduction. At the same time, vehicle emissions fell by 31 per cent and industry emissions fell by 13 per cent.

It is important to note that climate change will exacerbate ozone formation, making national standards even more difficult to achieve. High ozone events in Sydney occur when the temperature exceeds 30 degrees, and the CSIRO predicts that the number of days in Sydney where the temperature will exceed 30 degrees will double by 2030 and quadruple by 2060.

**The SPEAKER:** Order! The member for Willoughby will cease interjecting.

**Mr MORRIS IEMMA:** The Government is dealing with these challenges by setting ambitious air quality targets in our State Plan and committing to an honest and open exchange with industry. Our actions to protect the community need to be based on the very best science, and this new report gives us the best basis for action. It is only through significant investment in this sort of analysis and planning that we can continue to improve our understanding of air pollution and make the best possible decisions for the future.

## DEPARTMENT OF COMMUNITY SERVICES CHILD PROTECTION INTERNAL REVIEW

**Mr ANDREW STONER:** My question is directed to the Minister for Community Services. Now that a 14-month-old boy under the supervision of the Department of Community Services at Blacktown has died from suspected head injuries, why has the Minister failed to implement recommendations from an internal review into similar injuries sustained in 2003 by a two-year-old girl who was also under the supervision of the Department of Community Services at Blacktown?

**Mr KEVIN GREENE:** The death of any child is a great tragedy. We have a system in New South Wales where the Ombudsman investigates any deaths that are suspicious. I am sure the Leader of The Nationals is well aware of that fact. However, we can play this game of plucking a case out of the air—any of the 280,000 reports to the helpline last year; any of the 300,000 New South Wales children known to the department; any of the seven matters that Opposition members have written to me about in the last month—but that will not help anyone.

I share the community's concerns about the safety of children. I acknowledge that we need to do better to protect them. The special commission of inquiry to be headed by former royal commissioner James Wood will determine in what direction we need to head. I take very seriously all concerns raised with me or with my office about the handling of cases by the department. I also take very seriously the recommendations made by

the Ombudsman. Certainly, the Department of Community Services continues to work with the Ombudsman to make sure that we put in place any recommendations that the Ombudsman makes following the death of an individual child. We welcome the Ombudsman's oversight. We gave him the job of reviewing child deaths.

**Mr Andrew Stoner:** Point of order: I refer to Standing Order 129. I think the Minister may have misunderstood the question. It is not about the Ombudsman's inquiries; it is about an internal inquiry into the serious head injuries suffered by a two-year-old in 2003 and whether those recommendations were implemented prior to the death of this 14-month-old boy.

**The SPEAKER:** Order! The Leader of The Nationals has made his point. He will resume his seat. I am confident that the Minister understood the question, and his answer is relevant to that question.

**Mr KEVIN GREENE:** The Department of Community Services has undergone a significant overhaul over the past five years. That work continues and the Government continues to work with the Ombudsman as it will work with Justice James Wood to ensure that we provide the best possible child protection system for the State of New South Wales.

## POLICE CRIME FIGHTING OPERATIONS

**Mr PAUL PEARCE:** I direct my question to the Minister for Police. Will the Minister update the House on the recent success of the New South Wales Police Force in fighting major crime?

**Mr DAVID CAMPBELL:** I thank the member for Coogee for his ongoing concern that we have a strong police force in New South Wales. I congratulate the New South Wales Police Force on its outstanding efforts in recent weeks—saving lives, locking up one of the State's most wanted criminals and taking dangerous weapons and millions of dollars worth of drugs off our streets. Those activities are all in a day's work for these everyday heroes. This Government is giving police officers the tough backing, strong powers, resources, equipment and support they need to keep up this all-important work, and they are using them to great effect.

Police attached to Operation Mega Vikings targeting drunken and antisocial behaviour in central Sydney arrested 126 people in a three-day operation aimed at keeping the streets safe. The operation ran on Melbourne Cup day and over last weekend. It sent a clear message that drunken violence and antisocial behaviour will not be tolerated on our streets. The Premier and Commissioner Scipione warned these thugs before the operation, but those warnings fell on deaf ears.

That is not the only focus of the New South Wales Police Force. Just last week diligent policing led to the arrest of a suspect on the State's most-wanted list. Police officers swiftly responded to reports of a person attempting to break into cars at St Leonards and arrested a man who was wanted for serious armed robbery offences. He is a suspected dangerous criminal who is now off the streets. Recently two officers from Flemington were called to a car crash on the M4, where they put their lives on the line fighting through the flames to rescue a man from a burning vehicle and saving his life. Every day police officers in New South Wales go beyond the call of duty and they should be commended in this House for their amazing efforts.

This week persistent detectives tracked down a man accused of making disturbing threats against lives on the Internet, targeting a Sydney high school. In the past fortnight police have also made significant murder arrests, charging two family members over the 1992 murder of Revesby man Wayne Chant, and laying charges over the 2006 murder of a Yagoona cafe owner. Yesterday police from Strike Force Emily smashed what they will allege was a drug distribution ring, arresting five people and raiding numerous homes. It is alleged that this group was supplying ice and other illicit drugs in Newcastle, on the mid North Coast and across western New South Wales. Last week police officers used tough laws introduced by this Government to smash their way into suspected fortified drug houses in Redfern, arresting four people and targeting a heroin supply network. While this great work goes on, members opposite are running down our police and trying to remove the tough powers—

[*Interruption*]

**The SPEAKER:** Order! I call the member for Terrigal to order.

[*Interruption*]

**The SPEAKER:** Order! I call the member for Terrigal to order for the second time.

[*Interruption*]

**The SPEAKER:** Order! I call the member for Terrigal to order for the third time.

[*Interruption*]

**The SPEAKER:** Order! I warn the member for Terrigal for the final time. If he pulls another stunt like that he will be removed.

**Mr DAVID CAMPBELL:** Last night in this place, the member for Epping was seeking to do just that. Added to his long list of attacks on the New South Wales Police Force was his low attempt to water down the tough laws that this Government is introducing to help our elite police fight terrorism and serious crime. In debate on the Surveillance Devices Bill the member for Epping showed once again that the Opposition does not back the police and it does not trust our police officers.

**Mr Adrian Piccoli:** Point of order: I have two points of order. First, an attack on a member must be done by substantive motion. Second, the Minister is talking about a bill that was introduced yesterday. If he were not so lazy—

**The SPEAKER:** Order! The member for Murrumbidgee will resume his seat. The next time he takes a point of order, he should simply state the point of order and not debate the matter or call other members names. There is no point of order. His points of order should comply with the standing orders.

**Mr DAVID CAMPBELL:** If the member for Murrumbidgee had been awake last night he would know that I made that point in my reply. The Opposition tried last night to reduce 90-day warrants to 21 days because the member for Epping said that he did not trust "the bad eggs in the Police Force not to misuse them". He refused to back five-day emergency warrants because I believe he hates police.

**Mr Adrian Piccoli:** Point of order: A well-established standing order in this Parliament is that attacks on members must be done via substantive motion. The last thing the Minister said was that the member for Epping hates police. I do not think anyone in the Parliament can be accused of that.

**The SPEAKER:** Order! The member for Murrumbidgee has stated the point of order. I ask the Minister to consider his comments in relation to reflections on other members and ensure that he complies with the standing orders.

**Mr Greg Smith:** Point of order: I want two comments to be withdrawn—the comment that I hate police and the comment that I committed a low act, which was made earlier.

**The SPEAKER:** Order! The member for Epping is entitled to ask that those comments be withdrawn. I ask the Minister for Police to respond.

**Mr DAVID CAMPBELL:** If those comments offend the member for Epping, I withdraw them. The Opposition last night refused to back five-day emergency warrants in this place. Members opposite ignore the safeguards and oversight that the Government will put in place and they want to tie police officers' hands with red tape. This Government will continue to back the NSW Police Force in its fight against crime despite the Opposition's attempts to derail it. The Iemma Government is delivering record police numbers, a record budget and tough powers, and the police are responding with great achievements such as those I have outlined today. Those achievements do not even scratch the surface of the great work that they do day in and day out to keep communities in New South Wales safe and to put criminals behind bars. Unlike members opposite, the Government will always support our police officers.

**The SPEAKER:** Order! I call the member to Lismore to order.

**Mr DAVID CAMPBELL:** We are backing our police officers with the powers they need to keep New South Wales families safe.

## TCARD INTEGRATED TICKETING SYSTEM

**Ms GLADYS BEREJIKLIAN:** My question is directed to the Minister for Transport. Why did the Minister mislead Parliament by claiming that no payments had been made under the Tcard contract when ERG has publicly revealed that it has been paid $6 million?

**Mr JOHN WATKINS:** I stand by my comments regarding the Tcard project. I have been upfront right from the start.

## STATE EMERGENCY SERVICE

**Mr PAUL McLEAY:** My question is to the Minister for Emergency Services. What is the latest information on community and government support for the 10,000 volunteers of the State Emergency Service to recognise their efforts in serving the people of New South Wales?

**Mr NATHAN REES:** I thank the member for his longstanding interest in emergency services and the Rural Fire Service. I extended a genuine thankyou to everyone in this place who so enthusiastically embraced today's wardrobe additions. On the June long weekend this year an east coast low pressure system slammed into New South Wales coastal areas from the Illawarra in the south to Port Stephens in the north and right throughout the Hunter Valley. It brought torrential rain—450 millimetres—gale force winds, cyclonic conditions and the worst floods in the Hunter since 1971. It also brought more than 20,000 calls for assistance to the State Emergency Service, and a damage bill estimated at $1.5 billion. The Premier and I made a number of visits at the time to the Hunter and Central Coast. We were shocked by the devastation, but we were also deeply impressed by the professionalism and generosity of spirit demonstrated by all our emergency service volunteers.

**The SPEAKER:** Order! I am disappointed to say there is far too much audible conversation in the Chamber. The Minister has the call.

**Mr NATHAN REES:** While most of the physical damage is now repaired, for us there are two enduring images: firstly, the spirit of the people and businesses of the communities who were pitching in, cleaning up and rebuilding. For example, when we visited Wallsend shopkeepers who were literally picking up the pieces, they were already talking of when they would reopen. The second image is the sight of the orange overalls of the State Emergency Service volunteers, working alongside our other emergency services—the Rural Fire Service, Fire Brigades, the Volunteer Rescue Association and the Department of Community Services. Everyone involved rolled up their sleeves and, with quiet efficiency, went about setting things right, not looking for thanks or plaudits and in many cases leaving family and work behind to put the plight of others ahead of all else. Our appreciation of these efforts and the appreciation of the affected communities is expressed in the letter from a Central Coast couple, Max and Marylyn Caddis, who said:

> I would like to take the opportunity to thank, most sincerely, the SES team who visited us. They were a young crew of 3 gentlemen and a lady from the Ryde depot—the chap in control was named "Nugget".
>
> It is impossible to speak too highly of these dedicated people who worked with great speed, care and professionalism. It was a bitterly cold night, torrential rain and howling winds yet these brave people graciously refused a cup of hot tea or coffee advising that they had another 140 odd jobs still to do and wanted to get moving as quickly as they could.
>
> Would you please pass on our thanks and gratitude to these wonderful people and to the many hundreds of volunteers who work quietly and continuously in the background taking care of us.

Jill and Graham Halton from Merewether wrote:

> We are extremely grateful for the marvellous effort, expertise and professionalism of the group of SES volunteers from Corindi—Neville, Lisa and Chris—who removed a fallen tree from our roof and ensured that the roof was waterproof. It would be appreciated if you could forward this note to the group and a donation to go towards their end of year events. No amount of money could ever repay their willingness to help people in need.

The State Emergency Service motto says it all—the Worst in Nature, the Best in Us. This week, National SES Week, is an opportunity for all of us to pay tribute to our dedicated and hardworking State Emergency Service volunteers. Today, as we can see, is Wear Orange to Work Day, again a way of signifying to our State Emergency Service volunteers our level of appreciation. It is also an opportunity for us to acknowledge the support our volunteers receive from their families and employers. They could not do this without their backup. I pay tribute to the State Emergency Service members in the gallery today. They have already been named by Mr Speaker but I thank them on behalf of everyone in this Chamber. The Iemma Government has a strong and proud record of supporting our emergency volunteers with a record budget this year of $51.5 million for the State Emergency Service.

**Mr Brad Hazzard:** So does the Opposition, if you haven't noticed, too.

**Mr NATHAN REES:** It does. It is one of those rare occasions on which you will see bipartisan support. But, equally, the role of Government is straightforward. We need to make sure our volunteers get the

gear they need and then get out of their way. We should also say thanks in a practical way. Today I can inform the House that thanks to the efforts of my colleague the Minister for Climate Change, Environment and Water the Iemma Government is able to give something back to our State Emergency Service volunteers. At the Minister's suggestion, we have agreed in principle to give State Emergency Service volunteers free entry to our national parks, and over coming weeks we will develop a memorandum of understanding between the State Emergency Service and the National Parks and Wildlife Service which will ultimately give State Emergency Service volunteers who meet agreed criteria free access to New South Wales national parks so they can enjoy their outdoor pursuits, including the camping and bushwalking that they enjoy so much. This is a terrific initiative from the Minister. He is to be commended for it. Once again, to all the State Emergency Service volunteers across New South Wales I say thank you.

## BELLINGEN HOSPITAL HYGIENE

**Mr ANDREW FRASER:** My question is directed to the Minister for Health. Given that last month a patient in Bellingen Hospital complained to my office about cockroaches in her food, and toilets being so putrid that she is deliberately not drinking liquid to avoid using them, does the Minister acknowledge that the problems uncovered by the Royal North Shore Hospital inquiry are not unique to that hospital but are reflective of the crisis in the New South Wales health system?

**Ms REBA MEAGHER:** I will seek further details on the issue the member has raised but I make it very clear that the New South Wales Government is investing record amounts in health across New South Wales—$12.5 billion, nearly a third of the State budget—and we are investing record amounts across rural and regional New South Wales. Not only that, this year's capital works budget is $714 million. Over the next five years New South Wales Health will spend $2.4 billion on major capital works. This Government is committed to upgrading our hospitals around New South Wales and we are committed to delivering the best health care possible.

This Government also makes no secret of the fact that there is pressure on New South Wales Health. There is pressure right across the system because of increasing demand, but that pressure is exacerbated by the underinvestment and lack of commitment by the Federal Government. Members in this House are well aware that the funding of public hospitals around Australia is a partnership between State and Territory governments and the Federal Government.

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

[*Interruption*]

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

**Ms REBA MEAGHER:** Recently we sought an independent report from the Australian Institute of Health and Welfare. The report demonstrated quite clearly that the Federal Government is underfunding public health by $2.2 billion a year—$750 million for New South Wales, the equivalent of 9,000 additional year 8 registered nurses. It is also the equivalent of the operating budget of Royal North Shore Hospital for two years. The neglect of the Federal Government is being felt not only in New South Wales but right around the country. What is the Federal Government's reaction? When confronted by these figures Tony Abbott demonstrated cavalier indifference: he just acknowledged that the burden on the States and Territories would be increasing but outlined no plans to address the problem.

**Mr Andrew Fraser:** Point of order: The point of order is under Standing Order 129. The question was specifically about cockroaches and other disgusting conditions at Bellingen Hospital. It was not about Federal funding; it was about what the Minister is going to do to address those problems. I ask you to draw her back to the question asked.

**The SPEAKER:** Order! The answer is relevant to the question.

**Ms REBA MEAGHER:** I reiterate the point that the New South Wales Government is committed to meeting its obligations to public health in New South Wales. That is why our record budget is nearly a third of the State budget and continues to grow. The delivery of first-class public health care requires a genuine commitment from our Federal partners. That commitment is sorely lacking under John Howard.

## RURAL MENTAL HEALTH

**Mr STEVE WHAN:** Can the Minister Assisting the Minister for Health (Mental Health) update the House on the Government's efforts to provide improved emergency care for mental health patients in rural communities?

**Mr PAUL LYNCH:** I acknowledge the longstanding interest of the member in this matter and, indeed, I acknowledge the meetings I have had with him in his electorate dealing with these issues. In rural and remote New South Wales the delivery of quality emergency mental health care is inevitably affected by large distances and dispersed populations. The recent launch of the Greater Southern Area Health Service Mental Health Emergency Care Program is a major step forward in improving access to specialist mental health care for people in rural areas. It is one of a number of initiatives undertaken by this Government to improve emergency mental health care.

The program is part of the Rural Critical Care initiative being implemented across the State. The program aims to support hospital emergency departments in the management of mental health presentations. It will assist in transporting patients to specialist in-patient care where that is required. The particular model developed in Greater Southern and Greater Western area health services represents a major innovation in service delivery. It establishes 24-hour, 7 day a week specialist mental health support centres linked by telehealth technology to remote hospital emergency departments. The project is the first of its type in New South Wales.

Recently I launched Greater Southern's Mental Health Emergency Care Program through the telehealth site at Narrandera Hospital. It is linked to the support centre in Wagga Wagga Base Hospital. This model enables emergency departments to have a direct link to specialist mental health assessment and assistance. It results in greater coordination of care. The project enables faster patient diagnosis by eliminating delays in obtaining a specialist comprehensive mental health assessment, it eliminates unnecessary travel by reducing transfers from remote hospitals to base hospitals for assessment, it enables the remote assessment of mental health patients and it involves their local doctor in the management of their care.

For example, if a family is concerned about a relative's behaviour and suspect they might be depressed they can take them to the local emergency department, where they would be medically triaged and identified as needing a mental health assessment. Contact is then made with the 24-7 telehealth resource centre and a face-to-face interview can be conducted with a psychiatrist. A mental health and risk assessment is made during the interview and a provisional diagnosis made, leading to a management plan. The psychiatrist would then liaise with the emergency department staff and assist in arranging follow-up care by the community mental health service.

In the Greater Southern area this can save four to six hours travel to a major base hospital. It may also avoid admission to a psychiatric unit. Patients do not need to be in their home towns. As well, treating practitioners are present during the diagnosis, which must inevitably assist ongoing care. In addition, police and ambulance time can be dramatically reduced. Support centres are being developed at Wagga Wagga, Albury, Goulburn and Orange. The launch at Narrandera featured a display of this program. It was an impressive demonstration of how technology can overcome the tyranny of distance and of how technology can provide remote hospitals with immediate access to specialist mental health assessment of their patients, and clinical advice and assistance to the local emergency department staff.

The initiative, which is currently being rolled out across the Greater Southern area, will be available in 43 hospitals by the end of 2008. When fully implemented it will provide 24-hour, 7 day a week mental health support to all of these hospitals. To date, eight sites—Junee, Temora, Narrandera, West Wyalong, Leeton, Hay, Hillston and Griffith—have been linked to the Wagga Wagga Base Hospital Support Centre at the in-patient mental health unit, Gissing House. Rollout of the next phase across the Albury region will begin in the next few months.

In other rural areas the Rural Critical Care Program has supported the employment of specialist mental health staff to be available on site to support hospital emergency departments in the management of mental health presentations for extended hours and weekends. These services have been established at sites such as Tweed Heads, Lismore, Coffs Harbour, Port Macquarie, Taree, Tamworth and Armidale. It is worth making the point that this information has been provided in response to a question from Country Labor, whilst on the other side of the House the people who purport to represent the country are demonstrating complete disinterest in what is a very important initiative.

**Mr John Watkins:** They are frauds.

**Mr PAUL LYNCH:** As the Deputy Premier reminds me, they are indeed frauds.

**The SPEAKER:** Order! The member for Wagga Wagga will cease interjecting.

[*Interruption*]

**The SPEAKER:** Order! I call the honourable member for Wagga Wagga to order.

[*Interruption*]

**The SPEAKER:** Order! I call the honourable member for Wagga Wagga to order for the second time.

**Ms Katrina Hodgkinson:** Point of order: I am listening to what the Minister has to say but when he starts to politicise mental health in New South Wales—

**The SPEAKER:** What is the point of order?

**Ms Katrina Hodgkinson:** I ask him to withdraw that last comment because I find it offensive, as I am sure would many other members on this side.

**The SPEAKER:** Order! The member for Burrinjuck has requested the Minister withdraw the remark.

**Mr PAUL LYNCH:** I withdraw no remark, Mr Speaker. I was responding to interjections from the Opposition, who clearly were not listening to what I was saying.

**Mr Kevin Humphries:** Point of order: Again I ask the Minister to withdraw that statement. He knows that issue will be debated tomorrow, and we look forward to that. To call someone a fraud in relation to mental health is a disgrace and I ask him to withdraw it.

**The SPEAKER:** Order! The member for Barwon will resume his seat. I have asked the Minister to withdraw and he has declined to do so. The Minister has the call.

**Mr PAUL LYNCH:** I was responding to interjections from the other side. The reality is very clear. In metropolitan areas the Government has implemented psychiatric emergency care centres in nine major hospitals—St Vincent's, St George, Hornsby, Wyong, Blacktown, Liverpool and Wollongong. A unit at Nepean will open late this year and one at Campbelltown will open early next year. I opened the unit at Blacktown last week. These services provide mental health staff in the emergency department 24-7, as well as capacity to admit patients for short-term observation. A recent evaluation of the first 12 months of operation has indicated the success of this program in improving quality of care and reducing delays in access to specialist care.

Both the rural and the metropolitan initiatives build on an earlier initiative by this Government providing specialist mental health clinical nurse consultant positions in around 50 hospital emergency departments across the State. In addition to these initiatives to support emergency departments the Government has instituted the Community Mental Health Emergency Program.

**The SPEAKER:** Order! The member for Hornsby will cease interjecting.

**Mr PAUL LYNCH:** This program enhances the capacity of mental health services to respond in the community to mental health emergencies outside business hours. The program also supports partner agencies such as police and ambulance. These major funding initiatives and the development of innovative approaches reflect the Government's commitment to continuing to improve emergency mental health care. They reflect the implementation of a coherent and resourced plan to turn around what has been decades of neglect by all levels and persuasions of government. It is a significant investment in an area of significant need.

## CENTRAL WEST LAND USE PLANNING

**Mrs DAWN FARDELL:** My question is to the Minister for Planning and concerns the recent review of land use planning in the Central West. Shires, councils and constituents have requested that I ask the Minister when the recommendations on the review will be adopted and the review released?

**Mr FRANK SARTOR:** I acknowledge the member for Dubbo as one of the prime movers for having the independent inquiry established.

**Mr Gerard Martin:** And the member for Bathurst.

**The SPEAKER:** Order! The member for Bathurst will stop praising himself.

**Mr FRANK SARTOR:** The member for Dubbo was one of the prime movers, amongst a number of my colleagues. This issue is one of the most difficult planning issues in the State, particularly as regional communities struggle with ongoing drought. It is in response to growing conflicts with land use in regional areas that the inquiry was established. Garry West chaired the inquiry, which included four people—an independent panel—to look at all these issues and ways of securing regional economies while allowing a greater degree of flexibility for rural land use.

On the one hand, we want to protect the viability of agricultural industries. On the other hand, some farmers want to diversify their income. The income from agriculture in the Central West was $840 million in 2001. The inquiry recommended a number of things. One was retaining existing minimum lot sizes, which may be varied by councils, but only based on appropriate criteria, which would mean that various proposals to increase lot sizes would not be pursued; retaining existing rights to build new homes on rural land based on subdivisions that have already been approved; and preparing a new State policy to support a strategic approach to rural planning across councils and to manage land use conflicts. By all accounts the recommendations of the panel were well received by the community and councils in the Central West. I can advise the member for Dubbo that the Department of Planning has made good progress preparing a draft rural land use planning policy.

**Mr Andrew Fraser:** Point of order: I draw your attention to chapter 10 of the Standing Orders, Standing Order 128 and Standing Order 132, and to the excellent book *Practice, Procedure and Privilege*, which refers to dorothy dixers. It is quite obvious the Minister has a written answer to a question. It is obviously not a question without notice; it is a question with notice and should have been put on notice.

**The SPEAKER:** Order! The member for Coffs Harbour will resume his seat. There is no point of order.

**Mr FRANK SARTOR:** This issue is a standard item in my folder, because it is an important issue for the people of rural New South Wales. The member for Coffs Harbour is too busy swanning around—

[*Interruption*]

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

[*Interruption*]

**The SPEAKER:** Order! I call the member for Coffs Harbour to order for the second time.

**Mr FRANK SARTOR:** As I was about to advise the member for Dubbo and the House, draft instructions have been issued to Parliamentary Counsel to prepare this State policy. Indeed, I discussed the matter with Parliamentary Counsel recently. The matter is progressing and these issues will be addressed. I can also advise the House that the policy will include the following provisions. It will allow councils to retain existing minimum lot sizes, or to vary them through a set of criteria which will be articulated in the policy; it will retain existing rights to build new homes on rural land, based on subdivisions which have already been approved; it will remove concessional lot provisions on rural land—which have been misused in the past—consistent with the report's recommendations; it will create a framework to allow independent hearing and assessment panels to advise councils on development applications that are at variance with planning controls dealing with minimum lot sizes but that may have merit; it will require new local environmental plans to recognise the changing face of agriculture, such as smaller farms, share farming, and the leasing or farms, which may consist of a number of separate holdings—recognising the fact that a significant proportion of farming income is now derived off-farm and it will establish criteria for managing land use conflict between working farms and residents.

I would expect the new planning policy to be in place by early next year, if not sooner. It will apply to rural areas across New South Wales. At this stage I do not believe there is a need to establish similar inquiries in

other regional areas. Once the planning policy has been implemented we will carefully monitor its effectiveness in addressing rural land use issues. I will review the policy after six months. If there is a need for further action, further inquiries or further reviews in other parts of the State that will be considered. These matters are complex. It is important that we strike the right balance and it will take us a little time to get there. However, I am satisfied that my department is working hard to finalise the policy, and we will release it soon.

## BOATING SAFETY

**Ms JODI McKAY:** My question is addressed to the Minister for Ports and Waterways. With summer just a few weeks away, will the Minister update the House on what is being done in relation to boating safety on New South Wales waterways?

**Mr JOSEPH TRIPODI:** This question is particularly relevant following two recent boating tragedies, one last weekend near Broughton Island and one on the Georges River just over three weeks ago. The Iemma Government takes safety on the water very seriously.

**The SPEAKER:** Order! The member for Upper Hunter will cease interjecting.

**Mr JOSEPH TRIPODI:** The number of people using boats has risen by more than 25 per cent over the past 10 years. A total of 445,000 people now hold a licence to drive recreational powerboats and 213,000 people own a registered recreational vessel. We expect these figures to continue to grow. The marine industry estimates that in total more than 1.5 million people get out on our waterways each year. That is why the Government is dedicated to achieving the highest possible standards of public safety.

Whilst New South Wales Maritime sets the regulations, a large part of our focus is education and prevention. Raising awareness is a priority for the Government. For the majority of people boating is a wonderful and enjoyable experience often shared with family and friends. However, there is a small minority that flout the rules, and these people will be subject to the full weight of the law. The majority of serious boating incidents can be attributed to poor judgment. For this reason New South Wales Maritime has revamped its licence testing procedures, which now include a compulsory safe boating education course on top of a more robust licence exam required for the driving of powerboats at a speed of 10 knots or more or a jet ski at any speed. The safe boating course can be undertaken by studying online, viewing a DVD-video, or attending a course conducted by New South Wales Maritime or an accredited agency.

People are becoming more responsible and putting much more effort into learning about safer boating. Since the new tougher test was introduced the pass rate of around 50 per cent has risen to around 74 per cent, indicating a positive change in attitude towards boat safety and awareness. This is similar to the pass rate applying to motor vehicle licence tests. By raising the bar for the level of knowledge required to obtain a boat driver's licence we are setting the foundations to reduce the number of accidents on our waterways.

The New South Wales Government is funding a wide range of programs and services aimed at improving safety. The public face of New South Wales Maritime is our team of boating safety officers, who are located strategically throughout the State near popular boating areas. Four new boating officers have been recruited since 1 July, with another to commence tomorrow—part of the Iemma Government's drive to boost New South Wales Maritime's on-water presence statewide for the boating season.

Our boating officers patrol the waterways daily, ensuring safety by executing random safety checks on all kinds of vessels. In 2006-07 more than 41,000 vessels were pulled over by a New South Wales Maritime boating officer. The skippers were required to demonstrate that necessary equipment was on board, such as a lifejacket for each person. Infringements were issued to more than 2,500 skippers during this time—equating to 6 per cent of all vessels checked.

Many young people are involved in boating. That is why we are increasing our efforts to educate students. In the last financial year boating officers conducted and hosted school visits, and these visits will continue. Targeted educational material to help take boating safety even further into the State's classrooms is now being provided free to primary schools in the form of a New South Wales Maritime water safety activity book, which I had the pleasure of launching at Toukley Primary School last month.

A 2007 survey of New South Wales boaters found that almost 90 per cent were either satisfied or very satisfied with the general level of safety that exists on New South Wales waterways. The survey revealed that

the biggest concerns for boaters were speed, alcohol and unsafe behaviour. New South Wales Maritime is addressing these concerns in the development and review of regular on-water education and awareness campaigns targeting speed and alcohol, and dealing with hypothermia, capsizing, and the protection of the environment. This summer a series of statewide compliance campaigns will be carried out, along with dozens of regional campaigns.

A new safety awareness program is being rolled out. It is aimed at the masters or skippers of vessels, who are responsible for the safety of their craft and the people on board. By improving people's understanding of the need for skippers to be constantly aware of their responsibilities and to observe maritime regulations and safety requirements we aim to reduce boating incidents. The program is called "You're the skipper—you're responsible". New South Wales Maritime is targeting all major safety priorities, including alcohol, speed, lifejackets and responsible behaviour. The message has been incorporated in a statewide television and radio safety awareness campaign for this summer.

The campaign promotes the wearing of a lifejacket when boating at times of heightened risk, such as when people go boating alone, when conditions turn rough, or when crossing coastal bars. It will reinforce the knowledge that the skippers of boats are responsible for the safety of their vessels and the people onboard and that they should be alert to times of heightened risk. The Government is committed to improving boating safety. The campaign is part of an enormous effort by New South Wales Maritime to increase safety on our waterways.

**Questions without notice concluded.**

## STATE EMERGENCY SERVICE

**Mr BARRY O'FARRELL** (Ku-ring-gai—Leader of the Opposition) [3.08 p.m.], by leave: On behalf of all non-government members of this House I join the Minister for Emergency Services in the sentiments expressed in his statement concerning the State Emergency Service. On behalf of every member of this House, including my colleagues on the Independent benches, and our communities I extend to the State Emergency Service officers who are in the gallery our thanks for the job they do and have done over the past 50 years. Through them I extend our thanks to Brigadier McNamara for the amazing job he does in leading the volunteers. To make the obvious point, so much of what we enjoy as Australians is only able to be enjoyed because of the efforts of volunteers, people like you, who give up freely of your time, and put yourselves in situations of danger to enable the rest of us to get on with our lives.

Every community represented in this place has been touched by storm, earthquake, flood and the like, and understands the importance of the State Emergency Service. We are grateful that the State Emergency Service, born out of the 1955 floods in Maitland, is still in such good shape. A similar emergency took it back there this year as well as to other places on the North Coast and elsewhere. The State Emergency Service in many ways represents the civilian essence of the Diggers' courage, endurance, mateship and sacrifice, and for that we are very grateful.

**The SPEAKER:** Are there any ministerial statements?

## DEPARTMENT OF COMMUNITY SERVICES HELPLINE RESPONSE

**Mr KEVIN GREENE:** Yesterday I undertook to advise the House on a matter raised during question time. I can advise that I received a letter from the member for Tweed on 31 October regarding a family in Tweed Heads that had approached the Department of Community Services for assistance. The office of the Department of Community Services at Tweed Heads acted promptly and appropriately when they were approached for help. When this family contacted the Tweed Heads office on 13 October they were provided with support and advice as to how to handle an emerging situation in their family. Between 17 and 19 October I am advised that Department of Community Services workers were again in contact with the family, both to provide assistance to the family in terms of accommodation, and to provide advice on the situation with their children.

On 24 October a request was made by the Department of Community Services workers for specialist therapeutic assistance to be provided to the family and specialist health staff accepted this referral. I am advised that the family was advised of this action on 26 October and that the specialist health worker is continuing efforts to contact the family. I can assure the House that the concerns raised by this family were, and continue to be, taken very seriously. I have raised the matter with the Director General of the Department of Community Services and suggested he monitor the provision of support to this family.

**The SPEAKER:** Order! That was clearly a supplementary answer.

**Mr Adrian Piccoli:** He made a ministerial statement. That is what he said.

**The SPEAKER:** Order! I am advised that it was a supplementary answer, but the member is free to seek leave if he wishes to do so.

**Mr Adrian Piccoli:** If he jumped at the wrong spot I would suggest he learns the standing orders. He jumped when you called for ministerial statements.

**Mr John Aquilina:** Point of order: The Minister did not jump at the wrong spot. He rose at precisely the right time and it was very clear from his response and in his opening remarks that he was providing a supplementary answer to a question that was asked yesterday.

**The SPEAKER:** Order! It was clearly a supplementary answer. The Minister made that clear when he rose to speak. I called for ministerial statements and the Minister responded with a supplementary answer. If members wish to make a contribution they can seek leave. The conclusion of question time is the appropriate time for Ministers to provide supplementary answers. That did not occur today, but that is clearly what the Minister was doing.

**Mr Andrew Stoner:** In the light of your ruling, given that the Opposition understood it to be a ministerial statement, I seek leave to respond to the supplementary answer.

**The SPEAKER:** Order! The Leader of The Nationals is entitled to do that.

**Leave not granted.**

## PETITIONS

### CountryLink Pensioner Booking Fee

Petitions requesting the removal of booking fees charged to pensioners on CountryLink services, received from **Mr Greg Aplin, Mrs Shelley Hancock** and **Mr John Williams**.

### Hornsby and Berowra Railway Stations Parking Facilities

Petition requesting adequate commuter parking facilities at Hornsby and Berowra railway stations, received from **Mrs Judy Hopwood**.

### Hawkesbury River Railway Station Access

Petition requesting improved access to Hawkesbury River railway station, received from **Mrs Judy Hopwood**.

### Pets on Public Transport

Petition requesting that pets be allowed on public transport, received from **Ms Clover Moore**.

### South Coast Rail Services

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

### Ballina High School Bus Shelter

Petition requesting that a bus shelter be constructed on public land outside Ballina High School to protect students from the weather, received from **Mr Donald Page**.

### Breast Screening Funding

Petition requesting funding for breast screening to allow access for women aged 40 to 79 years, received from **Mrs Judy Hopwood**.

**Hornsby Palliative Care Beds**

Petition requesting funding for Hornsby's palliative care beds, received from **Mrs Judy Hopwood.**

**Lismore Base Hospital**

Petitions requesting funding for stage 2 of the Lismore Base Hospital redevelopment, received from **Mr Thomas George** and **Mr Donald Page**.

**Morisset Hospital Services**

Petition requesting funding for a general public hospital to service the Morisset area, received from **Mr Greg Piper.**

**Shoalhaven Mental Health Services**

Petition requesting funding for the establishment of a dedicated mental health service in the Shoalhaven, received from **Mrs Shelley Hancock**.

**Nioka Palliative Care Unit, Tamworth**

Petition requesting that the Nioka Palliative Care Unit remain a stand-alone unit within Tamworth Hospital, received from **Mr Peter Draper**.

**Tumut Renal Dialysis Service**

Petition praying that the House support the establishment of a satellite renal dialysis service in Tumut, received from **Mr Daryl Maguire**.

**Shoalhaven Local Area Command**

Petition requesting additional resources for the Shoalhaven Local Area Command, received from **Mrs Shelley Hancock**.

**Licence Laws for Older Drivers**

Petitions asking for an inquiry into licence laws for older drivers and the implementation of a suitable licensing system for senior citizens, received from **Mr Greg Aplin** and **Mrs Shelley Hancock.**

**Rural School Bus Safety**

Petition requesting the provision of seats and seatbelts for all students on rural school buses travelling in speed zones of 80 kilometres per hour or higher, received from **Mrs Shelley Hancock**.

**Termeil Bridge Realignment**

Petition requesting that the Princes Highway and Termeil Bridge be realigned to the east of the existing road, received from **Mrs Shelley Hancock**.

**Tomerong Traffic Arrangements**

Petition requesting an upgrade of the Island Point Road and Princes Highway intersection, Tomerong, received from **Mrs Shelley Hancock**.

**School Crossing Safety**

Petition requesting that all school crossings be upgraded to improve safety, received from **Mr Greg Aplin.**

### Pet Shops

Petition opposing the sale of animals in pet shops, received from **Ms Clover Moore**.

### 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**.

### Public Housing

Petition requesting that the Government not sell any inner city public housing stock and that it increase funding for public housing maintenance, received from **Ms Clover Moore**.

### Liquor Licensing Process

Petition asking that the liquor licensing process be amended to encourage and promote the development of small, local venues and a diversity of venues, received from **Ms Clover Moore**.

## BUSINESS OF THE HOUSE

### Re-ordering of General Business

**Mr ADRIAN PICCOLI** (Murrumbidgee) [3.25 p.m.]: I move:

> That the General Business Notice of Motion (General Notice) of which I gave notice of today [2007 Federal Election] have precedence on Thursday, 15 November 2007.

It is important for the people of New South Wales to know why Kevin Rudd does not want to have anything to do with the Premier of New South Wales or the New South Wales Labor Party. He is too embarrassed! Do you know what he has done? He has arranged for all of them to leave the country. He has booked a flight called the Kevin 747. The Kevin 747 is leaving tomorrow apparently with everybody who is an embarrassment to the Federal Labor Party. The pilot, of course, will be Morris Iemma—the biggest embarrassment to the Labor Party in New South Wales. The co-pilot will be none other than Reba Meagher. Who would honestly want to be seen with Reba Meagher?

**Mr Steve Whan:** Point of order: My point of order goes to relevance. I know the member for Murrumbidgee is aspiring to be the class clown over there but really that is not justification for why this matter should be accorded priority. There seems to be an obsession with airport lounges that I am starting to see from The Nationals. The member is not justifying why the matter should be accorded priority but simply trying some silly clown trick over on the other side.

**The SPEAKER:** Order! I always allow members a little latitude in debates of this sort. However, bearing in mind the points of order that were taken in question time about calling other members names and other matters, the member for Murrumbidgee should consider whether his remarks are inconsistent with those points of order. I ask him to address the substance of the motion.

**Mr ADRIAN PICCOLI:** It is indeed important that we discuss this in the Chamber tomorrow and that it takes precedence. The very reason the Federal Labor Party does not want to have anything to do with the State Government is because of the way it has failed New South Wales. They want to get rid of you. They do not want the public of New South Wales to be reminded on Saturday week of what Labor means to everyday life. They do not want to know what Labor means when they go to a public hospital in New South Wales and seek assistance, whether in an emergency department or as elective surgery. They want to be rid of you. They want to send you to China—as far away as possible. The Minister for Roads, Eric Roozendaal, is another one that is going. The Minister for Roads is going to lead the procession in the bus lane. We know the Minister's history of driving through bus lanes. The Deputy Premier is going. Mr T—$65 million later—is going. Mr T is going to be standing at the door of the plane manually clipping the tickets in the old fashioned way.

**Mr Gerard Martin:** Point of order: My point of order is to relevance. The people of New South Wales had a referendum on 24 March and on 24 November they will have another one. Kevin Rudd will be Prime Minister and you will have egg all over your face!

**The SPEAKER:** Order! I ask the member for Murrumbidgee and the House to come to order. There is no point of order.

**Mr ADRIAN PICCOLI:** It is important to know why the Federal Labor Party does not want to have anything to do with you. They have been on a 12-month deception campaign in Australia and New South Wales and they want to continue the deception by hiding you lot. Kevin Greene, the Minister for Community Services, will be on the plane as well. Nobody wants to sit next to him because nobody likes anyone to be asleep on their shoulder the whole way. He will take up a couple of seats.

**Mr Steve Whan:** Point of order: It is really disappointing to hear a National party member trying to knock off the excellent motion on mental health.

**The SPEAKER:** Order! I ask the member for Monaro to state his point of order or resume his seat.

**Mr Steve Whan:** The point of order is again relevance.

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

**Mr Steve Whan:** It is just a string of one-liners.

**The SPEAKER:** Order! There is no point of order. The member for Monaro should not take any further points of order in that regard.

**Mr ADRIAN PICCOLI:** I seek an extension of time.

**The SPEAKER:** Order! The standing orders do not provide for that. The member for Murrumbidgee will resume his seat.

**Mr JOHN AQUILINA** (Riverstone—Leader of the House) [3.30 p.m.]: The real question to be asked today is why no-one in New South Wales—

**The SPEAKER:** Order! I place the member for Hawkesbury on three calls to order.

**Mr JOHN AQUILINA:** —wants to associate themselves with the Opposition, and particularly the Opposition Leader of the House, the member for Murrumbidgee, who has an appalling reputation in his own electorate and an even more appalling reputation here in this Parliament. The Opposition Leader of the House time and time again stands up and says absolutely nothing of substance.

**Mr Andrew Fraser:** Point of order: My point of order is under Standing Order 129. The member for Riverstone told the media last week that Labor cannot win in New South Wales.

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

[*Interruption*]

**The SPEAKER:** Order! I place the member for Coffs Harbour on three calls to order.

**Mr JOHN AQUILINA:** Every time members of the Opposition make points of order under Standing Order 129 they talk about relevance. The reason why they are over that side of the Chamber and we are over here is because they are totally irrelevant to the people in this State.

**Mr Chris Hartcher:** Point of order: My point of order relates to the disclosure of interest provision in the standing orders. The member for Riverstone is going on the trip next week and he has not revealed that.

**The SPEAKER:** Order! The member for Terrigal will resume his seat.

**Mr JOHN AQUILINA:** Not only are members of the Opposition irrelevant, they cannot even get their facts straight. I am not going on any trip next week. I would have liked to because this is a very important trip the Premier is going on and one that is going to give great kudos to the State.

**Mr Andrew Stoner:** Point of order—

**The SPEAKER:** I hope this is a new point of order.

**Mr Andrew Stoner:** It is a new point of order; it is about relevance. The issue at hand—

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

**Mr Andrew Stoner:** You have not heard my point of order.

**The SPEAKER:** I have heard your point of order.

**Mr Andrew Stoner:** The issue at hand is whether the motion of the member for Murrumbidgee—

**The SPEAKER:** Order! I ask the Leader of The Nationals to resume his seat.

**Mr Andrew Stoner:** You did not hear my point of order.

**The SPEAKER:** Order! The member for Terrigal has just taken an unacceptable point of order. The Leader of The Nationals has said his point of order relates to relevance. Although the remarks of the Leader of the House are relevant, in my view this debate cannot conclude soon enough.

**Mr JOHN AQUILINA:** Time and time again the Leader of the House for the Opposition talks about time wasting in this Parliament, but what is he doing now? We have got important legislation to debate. Not only that, but the next item to be debated tomorrow, once this item is denied—

**The SPEAKER:** Order! I warn the Leader of The Nationals for the final time. He might note that Standing Order 129 relates to the relevance of the answers to questions.

**Mr JOHN AQUILINA:** —is the motion of the member for Barwon, whom I exempt from the comments I made earlier about the Opposition generally because he actually has got a good motion to be debated tomorrow. The motion says:

> Notes the devastating impact of the current drought on mental health of people in rural New South Wales, particularly young men, and also calls on the Government to recognise this epidemic and provide adequate resources to curb the increasing suicide rate in rural New South Wales.

**The SPEAKER:** Order! I warn the member for Murray-Darling for the final time.

**Mr JOHN AQUILINA:** That is a good motion, but that is the motion the member for Murrumbidgee wants to put off with his silliness and his guttersnipe tactics in this Parliament. Members of the Opposition keep stating that the Government is out of touch with the community. As the member for Bathurst reminded them, there was a referendum on 24 March this year and the people of New South Wales wholeheartedly endorsed the State Government to be here doing what we are supposed to do, legislating on behalf of the people, and committed this bunch of no-good no-hopers to another four years on the Opposition benches. All they can come up with is the sort of guttersnipe tactics of the Opposition Leader of the House, the member for Murrumbidgee, and his friend, the equally disgusting member for Hawkesbury, who must be learning a lot from the member for Murrumbidgee because he is unable to come up with any good policies.

**The SPEAKER:** Order! I ask the member for Lismore not to scream out.

**Mr Greg Smith:** Point of order: I ask the member for Riverstone to withdraw his most offensive comments when he called people on this side of the House "no-hopers". It is unparliamentary to say that.

**The SPEAKER:** Order! If members intend to start asking for comments to be withdrawn we should perhaps review the last 10 minutes of debate. However, I ask the Leader of the House to deal with the comments to which the member for Epping has taken offence.

**Mr JOHN AQUILINA:** I am sorry he has taken offence, but my speaking time has expired. [*Time expired.*]

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

**The House divided.**

**Ayes, 39**

| | | |
|---|---|---|
| Mr Aplin | Mrs Hopwood | Mrs Skinner |
| Mr Baird | Mr Humphries | Mr Smith |
| Mr Baumann | Mr Kerr | Mr Souris |
| Ms Berejiklian | Mr Merton | Mr Stokes |
| Mr Cansdell | Ms Moore | Mr Stoner |
| Mr Constance | Mr Oakeshott | Mr J. H. Turner |
| Mr Debnam | Mr O'Dea | Mr R. W. Turner |
| Mr Draper | Mr O'Farrell | Mr J. D. Williams |
| Mr Fraser | Mr Page | Mr R. C. Williams |
| Ms Goward | Mr Piccoli | |
| Mrs Hancock | Mr Piper | |
| Mr Hartcher | Mr Provest | *Tellers,* |
| Mr Hazzard | Mr Richardson | Mr George |
| Ms Hodgkinson | Mr Roberts | Mr Maguire |

**Noes, 51**

| | | |
|---|---|---|
| Mr Amery | Mr Greene | Mrs Paluzzano |
| Ms Andrews | Mr Harris | Mr Pearce |
| Mr Aquilina | Ms Hay | Mrs Perry |
| Ms Beamer | Mr Hickey | Mr Rees |
| Mr Borger | Ms Hornery | Mr Sartor |
| Mr Brown | Ms Judge | Mr Shearan |
| Ms Burney | Ms Keneally | Mr Stewart |
| Ms Burton | Mr Khoshaba | Ms Tebbutt |
| Mr Campbell | Mr Koperberg | Mr Terenzini |
| Mr Collier | Mr Lynch | Mr Tripodi |
| Mr Coombs | Mr McBride | Mr Watkins |
| Mr Corrigan | Dr McDonald | Mr West |
| Mr Costa | Ms McKay | Mr Whan |
| Mr Daley | Mr McLeay | |
| Ms D'Amore | Ms McMahon | |
| Mrs Fardell | Ms Meagher | *Tellers,* |
| Ms Firth | Ms Megarrity | Mr Ashton |
| Mr Gibson | Mr Morris | Mr Martin |

**Question resolved in the negative.**

**Motion negatived.**

## CONSIDERATION OF MOTIONS TO BE ACCORDED PRIORITY

### Ports Growth Plan

**Mr MICHAEL DALEY** (Maroubra—Parliamentary Secretary) [3.40 p.m.]: This motion should be accorded priority today because businesses in New South Wales rely on our ports as their gateway to international markets. The mining and agriculture industries particularly depend on our trading ports to get their products to market while creating jobs and prosperity for New South Wales. The people of New South Wales are benefiting from the Iemma Government's Ports Growth Plan, which is delivering jobs and economic growth. The hard-working families of New South Wales require assurances that the Prime Minister will not put their livelihood and standard of living at risk through his reckless and fanciful moves to take control of our ports. This motion should be accorded priority because the people of New South Wales are demanding to know whether members of the State Opposition will for once stand up to their Federal counterparts and the Federal Government's advances and support the Iemma Government's Ports Growth Plan.

**Department of Community Services Child Protection Royal Commission**

**Mr BARRY O'FARRELL** (Ku-ring-gai—Leader of the Opposition) [3.44 p.m.]: My motion should be accorded priority because of the final words of the answer given by the Minister for Community Services in question time today when he said that the Government would continue to work with the Ombudsman as it will with Justice James Wood. The Ombudsman has now produced four reports into flaws in the State's child protection system; four reports to which the Government and the relevant Ministers have responded to by saying, "We will implement those reports"; four reports that time and again have been ignored.

Over the four years during which those four reports from the Ombudsman have been ignored another 422 children who the Department of Community Services knew were at risk have died in this State. That is why the Opposition believes a royal commission is the only appropriate vehicle to force this State Government to implement changes to protect children today and into the future. The Premier today tried to argue that there is no difference between a royal commission and a commission of inquiry. I refer the Premier back to one of his predecessors, the Hon. Neville Wran, who introduced the concept of commissions of inquiry in New South Wales. In his speech introducing the relevant legislation he said:

> An inquiry under this legislation—

that is, a commission of inquiry—

> —will differ from a royal commission in that the evidence adduced in public will be limited to evidence which would be admissible in a court of law in criminal proceedings.

In other words, despite what the Premier told the House today, the evidence that can be provided to a commission of inquiry is less than can be provided to a royal commission and is, indeed, less than can be provided to some of the other State watchdogs, including the Independent Commission Against Corruption. We have had 12 years of this Labor Government and five different community services Ministers and report after report. This Government has continued to claim that it will fix the State's child protection system. The State Government has recently claimed that it is in the fifth year of a $1.2 billion program to improve the system. As a result we have an increasing number of deaths and injuries involving children who are known to the Department of Community Services. I remind members opposite, who seem to think that the death of children in this State is not important—

**Ms Noreen Hay:** Point of order: I ask that that comment be withdrawn. This is hypocrisy. There were cries of foul and demands earlier that comments be withdrawn. Members opposite are trying to make political points out of tragedy. That is a disgrace. The Leader of the Opposition should withdraw that comment.

**Mr BARRY O'FARRELL:** If the member is offended, I am happy to withdraw. I made a point of saying "seem to". I am sure that no member of this House is happy with four reports from the Ombudsman having been presented to this Parliament, nothing having done and 422 children having died. My basis for saying that nothing has been done is a comment in the Ombudsman's latest report, which states:

> Last year we reported our concern about DOCS not conducting comprehensive risk assessments for some children who live in circumstances where there is a high risk of harm. Some of our investigations this year indicate that this continues to be of concern.

That is why a royal commission is required. Only a royal commission will force this State Government finally to take the steps needed to protect the children of this State. As the member for Sydney knows, a ministerial commission of inquiry would have been unacceptable if it had been the response to allegations of corruption in the Police Force. A police royal commission headed by Justice James Wood—not "Woods" as the Premier called him three times today—got to the bottom of those corruption problems and established a legacy for this State. We owe the children of this State no less; we owe them a fair dinkum royal commission into this matter to ensure that those who are being notified to the Department of Community Services on as many as 14 occasions continue to live and are not injured and that all of our children enjoy the same security in the future.

**Question—That the motion of the member for Maroubra be accorded priority—put.**

**The House divided.**

**Ayes, 49**

| | | |
|---|---|---|
| Mr Amery | Mr Harris | Mrs Paluzzano |
| Ms Andrews | Ms Hay | Mr Pearce |
| Mr Aquilina | Mr Hickey | Mrs Perry |
| Mr Borger | Ms Hornery | Mr Rees |
| Mr Brown | Ms Judge | Mr Sartor |
| Ms Burney | Ms Keneally | Mr Shearan |
| Ms Burton | Mr Khoshaba | Mr Stewart |
| Mr Campbell | Mr Koperberg | Ms Tebbutt |
| Mr Collier | Mr Lynch | Mr Terenzini |
| Mr Coombs | Mr McBride | Mr Tripodi |
| Mr Corrigan | Dr McDonald | Mr Watkins |
| Mr Costa | Ms McKay | Mr West |
| Mr Daley | Mr McLeay | Mr Whan |
| Ms D'Amore | Ms McMahon | |
| Ms Firth | Ms Meagher | *Tellers,* |
| Mr Gibson | Ms Megarrity | Mr Ashton |
| Mr Greene | Mr Morris | Mr Martin |

**Noes, 40**

| | | |
|---|---|---|
| Mr Aplin | Ms Hodgkinson | Mr Roberts |
| Mr Baird | Mrs Hopwood | Mrs Skinner |
| Mr Baumann | Mr Humphries | Mr Smith |
| Ms Berejiklian | Mr Kerr | Mr Souris |
| Mr Cansdell | Mr Merton | Mr Stokes |
| Mr Constance | Ms Moore | Mr Stoner |
| Mr Debnam | Mr Oakeshott | Mr J. H. Turner |
| Mr Draper | Mr O'Dea | Mr R. W. Turner |
| Mrs Fardell | Mr O'Farrell | Mr J. D. Williams |
| Mr Fraser | Mr Page | Mr R. C. Williams |
| Ms Goward | Mr Piccoli | |
| Mrs Hancock | Mr Piper | *Tellers,* |
| Mr Hartcher | Mr Provest | Mr George |
| Mr Hazzard | Mr Richardson | Mr Maguire |

**Question resolved in the affirmative.**

## PORTS GROWTH PLAN

### Motion Accorded Priority

**Mr MICHAEL DALEY** (Maroubra—Parliamentary Secretary) [3.56 p.m.]: I move:

That this House:

(1) notes the New South Wales Government's ports growth plan is delivering jobs and driving economic activity;

(2) condemns the Federal Government's lack of investment in New South Wales ports and reckless moves to take control; and

(3) calls on the New South Wales Opposition to stand up for the people of New South Wales and support the New South Wales Government's ports growth plan.

New South Wales ports deliver access to global markets for local businesses and exporters. Our ports are key pieces of infrastructure handling $60 billion worth of trade every year. The Iemma Government understands the importance of our economic infrastructure and is investing $34 million a day on building infrastructure over the next four years. The New South Wales ports growth plan provides a clear direction for the development of our ports and the Government's plans to support continued growth in port capacity and trade. That is in stark contrast to the Federal Liberal Government, which, instead of investing in our infrastructure and ports, is playing politics and putting our economy at risk. Mr Howard and Mr Costello have made threats to take over the regulation of ports in Australia but—surprise, surprise—like their moves in health in the Devonport hospital foray, which is a debacle, they have no plan on how to manage this important infrastructure.

John Howard says he wants to take over key ports in New South Wales and Queensland, but he has produced no plans and no details as to how this would lead to any benefit, any efficiency or any extra growth—no plan, no benefits, nothing at all. Mr Howard has no plan for the country, only a plan to retire, to bale out mid-term, or whenever it is, and hand over to Peter Costello. He has ignored the national issues of infrastructure and ports and his only response, as usual, is to blame the States. John Howard is reverting to form and saying and doing anything he can to get re-elected, but the truth is there to be seen.

Having had 11 years to do something about the critical challenge of providing infrastructure to the nation, John Howard is only doing something now—or saying something now—because he is desperate to get re-elected. Mr Howard's claims and his desire to take over our ports simply do not stand up to scrutiny. Industry representatives who know their businesses back to front, as one would expect, are lining up to set the record straight and to mug John Howard on the issue of ports management. Mr David Anderson, the Executive Director of the Association of Australian Ports and Marine Authorities, has called John Howard's attack on our ports a spate of rhetoric. Mr Anderson stated:

> It is also unfortunate that the Federal Government has endeavoured to portray a failure on the part of ports to meet the needs of our growing bulk and container trades.
>
> This perception does not stand up to scrutiny …
>
> Our ports all have strategic plans to improve vital infrastructure, preserve transport corridors and address issues of community amenity.
>
> We need planning procedures to fast track and fund those plans, we do not need to be distracted by political adventures about ownership and control.

John Howard obviously lacks an understanding of our ports and his shipping policy is, if anything, worse. The Chief Executive of the Australian Shipowners Association, Mr Lachlan Payne, has also lambasted the Federal Government for its failure to support the shipping industry in Australia. In an article for *Lloyd's List Daily Commercial News* published 1 November 2007 entitled "A decade of 'doing nothing' for shipping"—a scathing assessment from a national industry on a national government—Mr Payne said:

> … by not having done anything [the Federal Government] has achieved its desired outcome … for the [Australian shipping] industry to diminish in size;
>
> … [for] reliance on international operators to increase;
>
> … regulatory constraints on Australian [ship owners] to continue imposing competitive disadvantage on them;
>
> … [and] it's encouraged shipowners to resituate themselves outside Australia.

When it comes to delivering export capacity the Howard Government does not fare any better, costing New South Wales and the Hunter region $360 million in lost exports. And this is a Government that prides itself on its economic management! Chief Executive of Pacific National, Mr Don Telford, has pointed out the failure of the Howard Government to spend just $5 million to upgrade train signalling in the Hunter Valley, a failure that is costing the Hunter coal industry up to two trainloads of coal each and every day, a loss estimated at $360 million of coal exports every year. Our health system could certainly do with an additional $360 million each year. Mr Telford said of the signalling system:

> It's a disgrace that this type of technology still exists on major freight routes …
>
> You would think you were living in a Third World country.

Mr Telford also called for the billions of dollars committed by the Howard Government to be converted into improvements to infrastructure. As usual the Howard Government is full of empty promises. Members opposite are complicit in John Howard's plan to rob the people of New South Wales each and every year of its fair share of GST, of key infrastructure and of economic stability by jeopardising the growth and management of our key trading ports. The Opposition sits idly by, refusing yet again to stand up for the people of New South Wales, refusing to demand a better deal from its Federal Liberal colleagues.

On this subject the new Leader of the Opposition has not shown any leadership, spine or ticker. Instead, members opposite are happy to let the Prime Minister use the people of New South Wales as a tool for electoral deception in Queensland marginal seats. John Howard seeks to get re-elected by duping people in marginal seats with ports in or near them. He is governing the country for his own self-interest at the cost of the people of New South Wales. New South Wales deserves better; the people of New South Wales demand better. The Iemma

Labor Government demands Federal investment in the economic infrastructure of New South Wales that is needed to drive economic growth. That is exactly what the Government is delivering.

The New South Wales Government has approved the $1 billion expansion of Port Botany, which is critical for New South Wales, and will ensure that Port Botany has the capacity to meet future demand. The Iemma Government is not afraid to make the tough decisions now for the long-term benefit of New South Wales. This long-term project will deliver 9,000 new jobs to New South Wales and boost the State's economy by $16 billion over the next 20 years—an $800 million per year injection into the New South Wales economy. We are also investing in infrastructure to support our ports, with the Government approving plans for the $150 million Enfield intermodal logistics terminal. When complete, this terminal will remove up to 300 truck movements each day in suburbs around Port Botany and will help achieve the Government's target of increasing cargo transported by rail by 40 per cent.

The relocation of containers, general cargo and car stevedoring from Port Jackson to Port Kembla is also a vital part of the ports growth plan. An estimated 1,000 jobs are anticipated in the Illawarra from this trade relocation alone. In the Hunter the New South Wales Government has expanded approvals for a massive $1 billion expansion of coal-loading capacity. The Iemma Government is meeting its commitments and driving economic activity in New South Wales while the Howard Government is playing dangerous politics with our State's economy and, once again, the State Opposition is letting John Howard get away with it. The message is clear, Mr Howard: Stop playing politics with our ports and with our future. Our ports are best managed by the State Government, which has a plan for their growth and management. I note that the member for Vaucluse appears to be about to speak in the debate. He showed no ticker, no spine, and did not intervene on behalf of the people of New South Wales when he was Leader of the Opposition. Perhaps he will show some leadership in this debate because the present Leader of the Opposition has failed to do so.

**Mr PETER DEBNAM** (Vaucluse) [4.05 p.m.]: I have to ask again, as I asked before, who wrote that speech? The member for Maroubra makes his office available to the bureaucrats. Walt Secord is running around Australia but he is still writing his speeches. Delivering speeches like that is the reason for the 7.4 per cent swing against him. That is his problem. The member for Maroubra is making a bid for the frontbench or trying to make amends for the massive swing against him in the State election. People vote against him because he is not doing his job, which is to represent the community, not to read ridiculous speeches written by Walt Secord or some bureaucrat that pretend to paper over all the problems the Government has created in 12 years. There was a statewide swing against the Government because it has done a lousy job over the past 12 years, especially the member for Maroubra, who had a 7.5 swing against him.

**Mr Steve Whan:** Point of order: I know that the member for Vaucluse is having trouble talking about this issue. He is two minutes into his speech and he has not mentioned the substance of the debate. I ask you to draw him back to the motion. I also remind him that he lost the last election quite embarrassingly.

**ACTING-SPEAKER (Ms Diane Beamer):** Order! I am sure the member for Vaucluse is about to deal with the motion.

**Mr PETER DEBNAM:** The point of this motion is to cover over the problems of State Labor, but they cannot be covered over because they are evident to us all. One only need ask the member for Newcastle. Every day she is in Newcastle what does she see when she looks out to sea?

**Mr Michael Daley:** Water.

**Mr PETER DEBNAM:** No, she does not. She does not see the water because the port is covered by about 60 to 80 ships.

**Ms Noreen Hay:** Point of order: You have already advised the member for Vaucluse to speak to the motion. He has not mentioned the port. He should speak to the motion.

**ACTING-SPEAKER (Ms Diane Beamer):** Order! I am sure the member for Vaucluse will move to the substance of the debate right now.

**Mr PETER DEBNAM:** I know that I have their attention because I am talking about the real problems with ports in New South Wales. They should talk to the member for Newcastle because when she looks out to sea, she does not see water; she sees 60 to 80 ships. The member for Mount Druitt might remember back in the

early 1980s all the ships moored off Newcastle. They were called Wran's navy. There were 40 to 50 ships weighing in the order of 50,000 tonnes. Today there are about 60 to 80 ships weighing about 100,000 to 150,000 tonnes but it is not called Iemma's navy because those ships have been there so long. It is called Iemma's mothball fleet. They even park some of them on the beach. There are so many ships because the Government cannot manage or invest in infrastructure.

Why has this motion been moved today? In moving this motion today members opposite are trying to attack John Howard yet again because they are embarrassed that Kevin Rudd turned his back on them. What is today about? Kevin Rudd is in Queensland. Why is he in Queensland? It is as far as he can go to get away from Morris Iemma! Some of the members opposite are relatively new but a few of them have been here for a while. This motion is about all the problems that Government members have created in this State. Members opposite are simply embarrassed about the failures of State Labor.

**Mr Frank Terenzini:** Point of order: I am going to try something different. I am going to mention Standing Order 76, for the member for Vaucluse's benefit. He can look it up—

**Mr PETER DEBNAM:** Which one?

**Mr Frank Terenzini:** He doesn't know. Of course he doesn't know! We have been trying to tell him that it is there in bold letters: "relevance".

**ACTING-SPEAKER (Ms Diane Beamer):** Order! The member for Vaucluse will speak to the motion.

**Mr PETER DEBNAM:** This motion is about the failure of State Labor to invest in ports and infrastructure. The Minister for Police, who is now at the table, will not even back up his own police. You swear at police. We are talking about the Hunter and the fact that the member for Newcastle cannot even see any water in the ocean at Newcastle because it is covered with ships. The Government sends you to the Hunter, and you betray police with regard to a commitment that was made to them many times in relation to police staffing matters. What did you do? You lost your temper and swore at front-line police. You then have the hide to come into this place and pretend to your mother that you support the police.

**ACTING-SPEAKER (Ms Diane Beamer):** Order! The Minister will come to order.

**Mr PETER DEBNAM:** The Minister, David Campbell, swears at New South Wales front-line police. That is the bottom line. You are an absolute disgrace in his portfolio. It is a disgrace that the rest of the members opposite will not acknowledge—

**Mr Steve Whan:** Point of order: I have taken pity on the member for Vaucluse. He does not have anything to say, so we will waste a bit of time by taking another point of order on him. The member for Vaucluse must address members by their title, through the Chair. Saying "You, you, you" and pointing at the Minister for Police is disorderly.

**ACTING-SPEAKER (Ms Diane Beamer):** Order! I am sure the member for Vaucluse will comply with parliamentary procedure and address members by their proper titles.

**Mr PETER DEBNAM:** One of the points that one of the members opposite will make in the next contribution to this debate is that there will be a third coal loader in Newcastle. A third coal loader has certainly been approved, but by the time it is built we will need a fourth coal loader! Government members are totally behind the times in everything in relation to infrastructure. They should ring any of their constituents who might now be on the M4 or the M5 to see how they feel about the Government's investment in infrastructure. They dearly love Carl Scully and the fact that he constrained the M5 to two lanes. Members opposite should ask them today what they think about anything the Government does with infrastructure in this State, including ports.

**Ms Noreen Hay:** Point of order: Simply throwing in the word "ports" after waffling on about police and other matters that are not referred to in the motion is not good enough. As has been said in this House before in decisions by former Speakers, members speaking to the motion must keep their comments to the motion. I ask you to ensure that the member for Vaucluse, who we know is on his way out, complies with the standing orders.

**ACTING-SPEAKER (Ms Diane Beamer):** Order! I remind the member for Vaucluse that Standing Order 76 provides that members' contributions must be relevant to the subject matter of the debate. I draw the member for Vaucluse back to the substance of the motion.

**Mr PETER DEBNAM:** As a member of the Labor Party, Madam Acting-Speaker, you know that everything I have said today is relevant to this topic. The member for Wollongong got a swing against her in her seat. If she wants to talk about Wollongong, she should talk to her constituents about all the problems. Every time I went to her electorate to talk about policing problems, she got upset. Her constituents were absolutely delighted!

**The SPEAKER:** Order! Government members will cease interjecting.

**Mr PETER DEBNAM:** This motion is about a couple of things. First, it is about attempting to embarrass the Prime Minister. Members opposite are not going to do that.

**The SPEAKER:** Order! Government members will cease interjecting.

**Mr PETER DEBNAM:** Members opposite are simply covering up their embarrassment about the Government's failures in infrastructure. Ports are an issue for everyone in New South Wales because the Government has failed. Ask the member for Newcastle. I am sure she will not give a prepared speech today written by Walt Secord. I am sure she will speak on behalf of her constituents and highlight the fact that there are 60 to 80 ships, every one of them 100,000 tonnes-plus, off Newcastle. Why? Because the Government has failed in managing infrastructure.

Government members talk about economic reform in this State generally. I think the member for Maroubra, who suffered a 7.5 per cent swing against him in the last State election, made mention of the New South Wales economy. Members opposite have fought against every single bit of economic reform in Australia for the last 11 years. They have taken every opportunity to avoid doing the right thing by the people of New South Wales and Australia when it comes to economic reform. I refer to improving efficiencies in delivering services, improving efficiencies in using infrastructure, and improving investment in infrastructure.

Members opposite simply have not been interested. The lot opposite have the hide of an elephant! They are extraordinary. They are absolutely world-class hypocrites, led by the Minister at the table, who swears at front-line police. What members opposite ought to do in their contributions this afternoon is simply apologise. David Campbell should be the first to apologise to the front-line police he blasphemed. The Minister is a disgrace. Every single member opposite ought to make a contribution on behalf of their communities—not from prepared speeches written by bureaucrats or spin doctors.

**Ms JODI McKAY** (Newcastle) [4.15 p.m.]: The Iemma Government has pushed ahead with massive infrastructure investments into regional New South Wales. If the member for Vaucluse has taken the time to read the State Plan he will know that the plan has confirmed this priority by setting stronger rural and regional economies as a key goal to be delivered through increased business investment in rural and regional New South Wales, and through better access to training in rural and regional New South Wales to support local economies. These are clear goals; they are clear business growth targets. They are real outcomes for regional areas. The Iemma Government's State Infrastructure Strategy, which was released last year, reinforces the State Plan's focus on infrastructure investments across the whole of New South Wales.

The member for Vaucluse is probably not aware that the Hunter is identified as a key region for investment under this strategy. Central to the future of the Hunter are the developments at the port of Newcastle. These developments include the expansion of Port Waratah coal services, which will increase capacity from 77 million tonnes per annum to 120 million tonnes per annum, and the approval of a $1 billion new coal export terminal to be built by the Newcastle Coal Infrastructure Group, with a capacity of up to 66 million tonnes per annum. The project will create more than 3,000 direct and indirect jobs in the Hunter region.

These are real outcomes and real jobs for the hardworking families of the Hunter. When I look out off the coast of Newcastle I see one of the best coastlines in New South Wales. Yes, I see coal ships. They are something that we in Newcastle are proud of. We are proud of the fact that Newcastle is a coal export port and that it is the largest exporter of coal in the world. We are investing significant amounts of money in improving the infrastructure in the port of Newcastle. As I have said publicly on many occasions, unlike the Opposition, I will not turn my back on the hardworking Hunter families who depend on the coal industry for their living. The Iemma Government has a plan for our ports.

One of the interesting things I noted in the election campaign was the member for Vaucluse did not have a plan for ports. He failed to acknowledge the contribution that the port of Newcastle makes to this State. The Iemma Government is facilitating the growth of the port of Newcastle. Newcastle is identified in the Government's ports growth plan as the next major container port for New South Wales once Port Botany reaches capacity. The former BHP steelworks land is the strategic site for that growth. I can report to the House that the Government is facilitating private sector investment in this important strategic site, which is at Mayfield. We are undertaking a $110 million clean-up of the site, we are investing $30 million in infrastructure, and we have developed a master plan to guide the use of the site and the expression of interest process.

For the benefit of the member for Vaucluse, the site we are speaking about is 150 hectares. It is an incredibly valuable site for port, commercial and industrial developments. The master plan acknowledges that commercial and industrial uses will occur at the back of the site. It has a deep-water frontage, which means that the front of the site will provide a strategic location for the development of a container terminal in the near future. I am pleased to say that three proponents have been short listed to develop the site: Mirvac, Buildev Intertrade Consortium and Intertrade Development Group, and the Government is currently involved in discussion with those three proponents. Given the size, location and strategic importance of the site we need to ensure that we get the development right to realise the long-term potential of this important and valuable piece of land in Newcastle.

I speak from the heart, as the member for Vaucluse told me to do, in telling the member that the Hunter community has an expectation about jobs, investment, and the ability of the site to deliver real port diversification for Newcastle. We are working hard to ensure that that is the case. My job as the member for Newcastle is to ensure that jobs, investment and diversification in the port of Newcastle are delivered to the people of Newcastle. I assure the member for Vaucluse that we are working hard to ensure that it does happen. [*Time expired.*]

**Mr DARYL MAGUIRE** (Wagga Wagga) [4.20 p.m.]: I support the remarks of the member for Vaucluse in speaking on the motion put before the House by the member for Maroubra. Paragraphs (1), (2) and (3) of the motion have been read onto the record but I want to focus on paragraph (2), which seeks to condemn the Federal Government's investment in ports. I refer to the regional rail upgrade plan suggested by none other than Labor's Martin Ferguson in a recent visit to Wagga Wagga. I quote from an article in the *Daily Advertiser* of 13 November:

> Mr Ferguson said that the grain and wheat industry was worth $6 billion each year, but the rail network had been neglected and needed to be upgraded.

Martin Ferguson, a Federal Labor Party candidate and shadow Minister, was visiting the Wagga Wagga regional area that ships grain to the ports that the members opposite are purporting to represent. He went on to say something that I find most interesting:

> … the Federal Government should control movement of freight, and state governments could focus on public transport.

He was referring to the New South Wales Government. The article also stated:

> Mr Ferguson said improved rail services would cut costs for growers, who currently have to move produce by road while railways are used to transport coal.
>
> "It will give them the best price in terms of getting wheat to market," Mr Ferguson said.

Mr Ferguson is right on the money in bagging the Labor Government for neglecting branch lines and infrastructure. There is a picture of him walking down the main street with Ursula Stephens, the Shadow Minister for Primary Industries, Fisheries and Forestry, Kerry O'Brien and the Riverina candidate for the Australian Labor Party. It is very hard for Government members to argue against when the shadow Minister is condemning the appalling state of infrastructure in New South Wales.

**Mr David Harris:** That is not what he said.

**Mr DARYL MAGUIRE:** It is what he said. Here it is in black and white. He is condemning the 12 years of mismanagement of this Government. If you want more advice about the way you have mismanaged rail infrastructure let me point to the Boree Creek to The Rock rail line and the other 17 grain lines that have been closed, or partially closed, under the State Labor Government. The shadow Minister is advocating investment in those lines and he is further suggesting that because of the State Government's neglect the Federal

Government should take over responsibility for that infrastructure. He is condemning the last 12 years of mismanagement. I say to the member for Vaucluse that articles such as this are like absolute gold. The subject of the motion has not been researched and Government members are trying to blame others for their mismanagement and misfortune. A Federal potential—potential in his mind—Minister is trying to con the public and correctly blaming the State Government for 12 years of absolute neglect and mismanagement. I have seen a lot of motions come before this place but never have I seen such an outrageous attempt to interfere with a Federal campaign, to give their mob a leg up—

**Ms Noreen Hay:** Point of order: My point of order is that I am still trying to work out where the port at Wagga Wagga is. Nonetheless I remind speakers opposite that when they were in Government they closed down 18 railway lines.

**ASSISTANT-SPEAKER (Ms Alison Megarrity):** That is not a point of order.

**Mr DARYL MAGUIRE:** I also point out that the Federal Labor candidate is the same one who had to travel 1,400 kilometres to Sydney because there was not a doctor in Griffith or Wagga Wagga who could treat him. He is the one that said the health system under the New South Wales Government is an absolute mess and that the infrastructure needs investment. He was bagging the New South Wales Government for its lack of investment in infrastructure.

**Ms NOREEN HAY** (Wollongong—Parliamentary Secretary) [4.25 p.m.]: I will not bore everybody here by repeating the comments that have been made about the continual failures of the Howard-Costello Government in investing in the people of New South Wales, with absolute silence from the lot on the other side. We will not talk about the failure of the Federal Government to invest in health or anything else. I am going to talk about ports, and we have a great story to tell. We have a great story in my electorate of Wollongong about the port of Port Kembla. As we pointed out, the member for Vaucluse did not want to talk about the position of the New South Wales Opposition in relation to car imports through Port Kembla.

The Iemma Government is delivering on its commitment to grow our ports and is delivering jobs and opportunities to the Illawarra. The New South Wales Ports Growth Plan, announced in October 2003, set the direction for the Government's investment in our ports. The plan will ensure New South Wales continues to grow with strong future trade levels and expanding port capacity to meet demand. The results from implementing the New South Wales Ports Growth Plan can already be seen in Port Kembla and the Illawarra. The first stage of the massive expansion is complete. This included the construction of general cargo and container facilities. The new terminal commenced operations in May this year. In October the Premier welcomed the first two fully laden vessels, signalling the completion of the second stage of the expansion and allowing the transfer of RORO or roll on-roll off vessels from east Darling Harbour to Port Kembla.

Stage three will see the construction of a fourth berth to accommodate break bulk and bulk cargo. When complete Port Kembla will be capable of receiving an additional 400 ships, bringing in more than 323,000 vehicles and 10,000 containers. This will transform Port Kembla into a dynamic twenty-first century port with world-class facilities and generate 1,000 jobs for the Illawarra region, and $167 million will be directly invested into new port infrastructure, bringing over $345 million to the region's economy. The State Government is building world-class facilities that demonstrate that New South Wales is open for business. Amongst all of this, the Howard Government is nowhere to be seen. In fact it does not even recognise that Port Kembla exists. Port Kembla is not eligible for funding under the Federal Department of Transport and Regional Services AusLink Funding Program. That is right: the Howard Government does not even consider investing AusLink funds into the port.

It is a bit rich for Howard and Costello to poke their noses in and say they are going to take over New South Wales ports. Howard has had 11 years to do something on the critical challenge of providing economic infrastructure and he still does not acknowledge funding for Port Kembla under AusLink. It is not much of a contest: In terms of who is best placed to manage our ports in New South Wales—weighing up the ignorance and empty promises from Howard, who ignores Port Kembla when it comes to the Federal Government's transport funding program, and the massive investment program undertaken by the Iemma Government that delivers jobs and opportunities to Port Kembla and the Illawarra—it is clear who has the best interests of the Illawarra in mind.

We will not accept Mr Howard playing politics with our future. The State Government has shown its commitment to the economy and the people of the Illawarra region, and we will stick with the real investments

being delivered by the Iemma Government's port growth plan that brings real jobs and prosperity to the Illawarra. I remind people that under the leadership of the Opposition by the member for Vaucluse there was a position publicly announced that there would be no investment in an expansion of Port Kembla and there would be no cars imported through Port Kembla. During an election campaign the Opposition indicated it would put at risk 1,000 jobs. Of course, that is nothing new: the Opposition was going to cut 29,000 public service jobs.

The member for Wagga Wagga had the cheek to talk about what the shadow Minister said about railways being closed, but he had nothing whatsoever to say about the failure of the Federal Howard-Costello Government to invest in infrastructure across the board yet, in a state of desperation trying to be re-elected, going on a spending spree promising money to fix everything it did not fix in its 11 years of government. But the Opposition is horrified if there is any criticism of the Federal Howard-Costello Government.

**Mr MICHAEL DALEY** (Maroubra—Parliamentary Secretary) [4.30 p.m.], in reply: What I found seminal about this debate this afternoon was that there was no talk whatsoever about the future from any member opposite—not a single syllable. The member for Vaucluse was happy to stand there and throw bombs across the table at us, but he did not speak of his plans as the shadow Minister and there was no mention of the Federal Coalition's plan for ports going ahead.

I went through some of the records in my office to look at the history of the State Coalition's port plans, particularly for the port in my electorate, Port Botany. What I found astounded me. The last record of any coherent plan for ports that I saw was in the early 1970s when Ian Armstrong was the Minister. And what was his plan for Port Botany? Whilst members of the Opposition criticise our port expansion plan, their plan was to concrete the entire western side of Botany Bay for a port expansion. You would have been able to walk from the Brotherson docks to the third runway. That was their only plan, and it was scuttled.

What was also seminal about this afternoon was that neither the member for Vaucluse nor the member for Wagga Wagga was able to mount any spirited defence of the so-called ports plan of John Howard and Peter Costello. Why were they unable to do that? I suggest there are two reasons. The first reason is there is no plan. This so-called ports plan put forward by John Howard is a red herring. Just as he has threatened to take over a hospital in Devonport—a plan that has not materialised and that will not materialise—this so-called ports plan is a simple excuse to bash the Labor States.

Our $34 million a day infrastructure program should be lauded by the Federal Government. The Federal Government criticises us for not spending enough on infrastructure but when Michael Costa announced the biggest infrastructure spending in the history of New South Wales this year what was Peter Costello's response? That it will put up interest rates and it will increase inflation. What a load of bunkum. The second reason for the Opposition not knowing anything about the so-called ports plan of John Howard and Peter Costello is that even if John Howard had a ports plan he would not be dumb enough to let those people on the other side know anything about it.

It is all right for the member for Vaucluse to talk about how the Premier is going to China and for him to ask why Kevin Rudd does not have the Premier in his campaign, but I do not see John Howard walking around with the Leader of the Opposition in tow. It would hardly fit the image of the little tin-pot soldier to be seen strutting around the nation or around New South Wales with one of the most spineless Coalition leaders we have seen in the past 10 years. The Opposition can criticise Kevin Rudd as much as it likes but I do not see John Howard walking around with the Leader of the Opposition and I do not see Malcolm Turnbull—that great bastion of political wisdom—strutting around with the member for Vaucluse in his campaign. Surely the member for Wentworth—someone touted as being a future Prime Minister—would know the value of having this fine, upstanding gentleman, the member for Vaucluse, on his election paraphernalia?

The power of budgie smugglers has already been apparent in an election this year in New South Wales. Surely Malcolm Turnbull would like to see the member for Vaucluse in his campaign. The Opposition went to the election with no transport policy and was drubbed in the so-called unlosable election on 24 March. That election will consign the member for Vaucluse—the Coalition's equivalent of John Hewson, although that is an insult to John Hewson—to political history forever, still with no transport plan or ports plan. The major ports of New South Wales are not simply items of State infrastructure; they are significant infrastructure items to this nation. Because the Opposition still has no ports policy, no ideas and no plan, it will probably be condemned again to another four years in opposition.

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

**The House divided.**

**Ayes, 48**

| | | |
|---|---|---|
| Mr Amery | Ms Hay | Mr Pearce |
| Ms Andrews | Mr Hickey | Mrs Perry |
| Mr Borger | Ms Hornery | Mr Rees |
| Mr Brown | Ms Judge | Mr Sartor |
| Ms Burney | Ms Keneally | Mr Shearan |
| Ms Burton | Mr Khoshaba | Mr Stewart |
| Mr Campbell | Mr Koperberg | Ms Tebbutt |
| Mr Collier | Mr Lynch | Mr Terenzini |
| Mr Coombs | Mr McBride | Mr Tripodi |
| Mr Corrigan | Dr McDonald | Mr Watkins |
| Mr Costa | Ms McKay | Mr West |
| Mr Daley | Mr McLeay | Mr Whan |
| Ms D'Amore | Ms McMahon | |
| Ms Firth | Ms Meagher | |
| Mr Gibson | Ms Megarrity | *Tellers,* |
| Mr Greene | Mr Morris | Mr Ashton |
| Mr Harris | Mrs Paluzzano | Mr Martin |

**Noes, 40**

| | | |
|---|---|---|
| Mr Aplin | Ms Hodgkinson | Mr Roberts |
| Mr Baird | Mrs Hopwood | Mrs Skinner |
| Mr Baumann | Mr Humphries | Mr Smith |
| Ms Berejiklian | Mr Kerr | Mr Souris |
| Mr Cansdell | Mr Merton | Mr Stokes |
| Mr Constance | Ms Moore | Mr Stoner |
| Mr Debnam | Mr Oakeshott | Mr J. H. Turner |
| Mr Draper | Mr O'Dea | Mr R. W. Turner |
| Mrs Fardell | Mr O'Farrell | Mr J. D. Williams |
| Mr Fraser | Mr Page | Mr R. C. Williams |
| Ms Goward | Mr Piccoli | |
| Mrs Hancock | Mr Piper | *Tellers,* |
| Mr Hartcher | Mr Provest | Mr George |
| Mr Hazzard | Mr Richardson | Mr Maguire |

**Question resolved in the affirmative.**

**Motion agreed to.**

## CORPORATIONS POWER

### Matter of Public Importance

**Mr ROBERT OAKESHOTT** (Port Macquarie) [4.40 p.m.]: I thank both the Speaker and members of this place for allowing debate on this important topic on the 12-month anniversary of the High Court five to two decision in the WorkChoices case. I seek leave to table some post-judgment interpretations of the decision from the Victorian Government Solicitor's Office.

**ACTING-SPEAKER (Mr Wayne Merton):** Order! I am advised that the document should be placed on the table for the information of members.

**Mr ROBERT OAKESHOTT:** I sought leave to table it.

**ACTING-SPEAKER (Mr Wayne Merton):** Order! Leave is granted for the document to remain on the table.

**Mr ROBERT OAKESHOTT:** This advice is probably the best summary of the post-judgment implications of the case. We are 10 days from the Federal election and one aspect of the WorkChoices case has been discussed at length, and I am sure that those discussions will continue over the next 10 days. I refer to the implications of the WorkChoices case on industrial relations. We have heard nothing in New South Wales about the other important aspect of the judgment; that is, the scope of the Commonwealth's corporations power over State agencies. The Victorian Government Solicitor's Office advice about the implications of the decision is worth reading. That advice makes three critical points. It states:

> The decision does not concern the characteristics of corporations covered by s51(xx), and does not shed light on what kinds of corporation fall within the constitutional expression 'trading or financial corporations' formed within the limits of the Commonwealth.

Now, 12 months later, that is still an open legal question. The advice continues:

> The decision upholds the Act—

That is, the Workplace Relations Amendment (WorkChoices) Act—

> —in issue but does not define the outer boundaries of the scope of s51(xx).

Again, that is an open legal question facing the State and Federal parliaments. The Victorian advice most significantly states:

> The decision is likely to have significant ramifications for the applicability of State legislation. This is because the Commonwealth's power to enact legislation regulating matters with a relationship to constitutional corporations is confirmed by the decision. State legislation inconsistent with Commonwealth legislation within the meaning of s 109 of the Constitution will be inoperative to the extent of the inconsistency.

Essentially, State laws that we all think come under the authority of the State were obliterated 12 months ago by the High Court decision in the WorkChoices case. I find it astonishing that when I asked the Premier in this place last week whether he had received legal advice about this matter over the past 12 months and whether he could produce that advice he responded that it would be impossible. I have just produced exactly that advice, which has been given to the Victorian State Government by the Victorian Government Solicitor's Office. I ask the New South Wales Government, the Executive and, in particular, the Premier to provide the advice. Either the Premier has it and he misled the House last week, or he has been extremely derelict in his duty to look after the people of New South Wales as Premier. We need the advice about the extent of the corporations power as it affects New South Wales. This has significant implications.

The Auditor-General released the State sector accounts last week and half of them deal with financial or trading enterprises in New South Wales. This huge legal issue—which it has been confirmed the Auditor-General did not consider when he audited those accounts—calls into question the constitutionality of the total State sector accounts. The finances that the Treasurer is producing and telling us are the records of accounts of this State are open to legal question until we get good solid legal advice and until this Chamber asserts its political will on the extent of the corporations power in New South Wales.

I ask the Premier to explain whether he has been derelict in failing to get that advice; and if so, to get it immediately and urgently, or to quickly correct the record in regard to his misleading the House by saying he has not received that advice. The fairytale of them all is that leading up to the High Court judgment $2 million of taxpayers money was spent fighting industrial relations ideological trench warfare between a State government and a Federal government, which was really trench warfare between the Labor Party and the Liberal Party over industrial relations. It was a landmark judgment for a number of reasons. Constitutionally it is considered the most important case ever to come before the High Court because of its corporations power implications. Also, more lawyers and wigs were seen in the High Court than ever before. The fairy tale continues in that so much time and effort was put in pre-judgment, only to be followed by complete silence and ignorance of the implications of the judgment post 14 November last year.

Therefore, I ask the Premier to clarify his position and the position of the Executive. I also ask the Treasurer to account for the total State sector accounts, and to answer why exactly his accounts were not qualified and why the Auditor-General himself did not qualify those statements. These questions go to the very foundations of this place. When researching the powers of this Parliament and executive agencies such as Treasury, I looked at other sites including the New South Wales Parliament website. That website suggested there are conflicting issues about the history of New South Wales: Is it a sovereign State, and was it a colony

before Federation? There is conflicting advice on how our children should be taught about the history of Parliament and the significance of this decision.

Twelve months down the track we have heard absolutely nothing, legally or politically, from the Executive. That should be a huge concern to all, given that this case is without doubt the landmark issue of our time in this place. Over the past six weeks I have spoken three times on this matter. I have asked the Premier directly about it but I have been frustrated by his answer as it focuses only on industrial relations, on interpreting the High Court WorkChoices decision in terms of the Federal WorkChoices Act, and on staying completely focused on ideological warfare. This issue is all about defining exactly the extent of the corporations power in New South Wales and Australia, following the interpretation by the High Court, the authoritative court in Australia that is relevant to all of us.

We can hide away with a victim's mentality within New South Wales and not ask the question because we do not want the answer, but we have to deal with it at some stage. It is not all about the New South Wales Government being derelict in its duty, for the same question may be asked of the Commonwealth. Given the extent of its far-reaching authority and powers 12 months ago, why has it chosen only to pick off industrial relations, yet it seems to be ignoring the very implications of its authority. This debate has to go beyond an ideological battle between the Labor Party and the Liberal Party. They have to get down to finding the best outcome for the people of New South Wales. If we give a damn about that we will start to work on it and produce better Commonwealth-State relations as defined 12 months ago.

**Mr DAVID HARRIS** (Wyong) [4.50 p.m.]: The New South Wales Government is steadfast in the fight against John Howard's WorkChoices legislation. Whilst the High Court may have found that John Howard's WorkChoices may be valid, the fact remains that these regressive laws are unfair and unproductive. For workers, wages and conditions of employment are being stripped away in the take it or leave it WorkChoices environment of Australian workplace agreements. Data on Australian workplace agreements, leaked from the department late last year, revealed that 75 per cent of them cut shiftwork loadings, 68 per cent exclude penalty rates and 52 per cent exclude public holiday pay. We know wages have been cut, as peer-reviewed research by the University of Sydney reveals the average weekly wage for workers on Australian workplace agreements is $106 less per week than for employees on similar collective agreements.

The latest data from the Howard Government's Workplace Authority reveals that a record number of businesses are in limbo and are drowning in red tape as a result of the Howard Government's hopelessly flawed fairness test. These laws are proving to be a bureaucratic nightmare for small business. In some cases they could be described as being anti-small-business. According to Howard Government data for October, 142,140 workplace agreements under WorkChoices have yet to be approved, an increase of about 15,000 from September and 30,000 more than August. This massive blow-out demonstrates that Mr Howard is not serious about providing timely and proper advice to small businesses, and this is damaging their productivity and leading to growing uncertainty.

I am proud to state today that the lemma Government has been at the forefront of the defence of fair and productive workplaces—something I was passionate about and fought very hard for during the State election campaign. We have implemented child labour laws to ensure young workers receive fair conditions of employment. We have established minimum wages and entitlements for school-based apprentices in more than 50 awards in key trades. We have ensured that injured workers cannot be unfairly dismissed; and we have enabled employers and employees to enter into common law referral agreements allowing them continued access to our fair and efficient industrial relations system. The New South Wales Government continues to provide essential assistance to workers and employers.

Since the commencement of WorkChoices in March last year we have recovered in excess of $7.1 million in back-payments to workers; undertaken 720 workplace compliance campaigns, covering 18,700 employers and 71,000 employees; hosted seminars and workshops for 6,200 managers, supervisors and employers to assist their understanding of workplace rights and responsibilities; and delivered 227 presentations on workplace rights and entitlements to 5,854 young people and people from culturally and linguistically diverse communities including employees, job seekers and students. We have received 3.8 million visits to our industrial relations website, allowing workers and employers to readily access information on rates of pay, employment conditions, and annual and long service leave calculators; and answered over 310,000 telephone calls from employers and employees.

The New South Wales Government remains firmly committed to our industrial relations system that has served workers and employers fairly for over 100 years. To this end we have engaged Professor George

Williams to conduct an inquiry and to make recommendations into a truly national scheme for industrial relations. We look forward to working with Mr Rudd after 24 November to overturn WorkChoices and restore fair, efficient and balanced workplace laws for all employers and Australian working families.

**Mr CHRIS HARTCHER** (Terrigal) [4.58 p.m.]: The matter of public importance introduced by the member for Port Macquarie is not about industrial relations or WorkChoices. It is about the implications of the High Court decision for future Commonwealth-State relations. That is the point the Premier failed to understand when the question was put to him by the member for Port Macquarie and also the point that the member for Wyong has failed to understand in his presentation. The High Court has now made two fundamental decisions relating to constitutional corporations. One is the earlier case that involved trade practices legislation and the other is this most recent case, which involves WorkChoices legislation.

The matter before the High Court for determination concerned the powers of the Commonwealth Legislature in relation to corporations. The High Court has determined that the Commonwealth Legislature has plenary powers in relation to financial, trading and foreign corporations under section 51 of the Constitution. The New South Wales Parliament must address how those powers affect local government and universities, which are constituted as corporations under State law, and other State instrumentalities that are carried out in corporate form, and what that means with respect to the powers of the New South Wales Legislature.

An argument was put using the electricity industry as an example. The supply of electricity, a State matter, is governed through trading corporations that sell electricity. As a result of the High Court decision, those corporations are subject to Federal law. Universities, which have always been State incorporated, are trade corporations because they run bookshops and sell services; they do not merely carry out an educational role. Therefore, one could reasonable assume that they will be caught, although it has not been tested yet, by the High Court decision.

Local government is also caught by the decision because councils are set up as corporations under the Local Government Act and carry out services in return for a reward. Money is paid to local government for childcare, library and other services, not just as rates but also as special payments for something that is received in return. That is trade and one could reasonably assume that under the High Court decision, by extension, local government may fall under the jurisdiction not of this Parliament but the Federal Parliament. That is what is at stake. Unfortunately the New South Wales Labor Party, as ever blinded not by its ideology but by its self-serving, self-seeking desire to retain office at all costs, simply sees it as a WorkChoices issue. The very paper produced by the New South Wales Parliamentary Library addresses this very point at page 22, where it states:

> One possibility might involve the extensive regulation of State local governments, all of which, like universities, take corporate form under State legislation and all of which could be viewed as trading corporations.

Local government—and I speak as the shadow spokesman for Local Government—is now in no man's land as to its future legal basis. That affects the whole third tier of government across this State. What is the future role of local government if, in fact, the Federal Legislature now has power over it as it is reasonably arguable that local government constitutes a trading corporation? We seek clarity on that point. It is appropriate that the honourable member raises that point and that the House debate it. The Coalition asks for a clear tabling of all advice that the Premier has received as to the implications for this State, not just generally but specifically in relation to local government. What will this mean for every council across New South Wales? Local government is aware that there is a potential problem. Let us find out about it, gain an understanding of it, debate it and work through it. This is not necessarily seen as a Liberal-Labor issue. It is related to the future powers of the Legislature in New South Wales.

**Mr PETER DRAPER** (Tamworth) [5.03 p.m.], by leave: I congratulate the member for Macquarie on raising this important issue.

**Mr Chris Hartcher:** And the member for Terrigal.

**Mr PETER DRAPER:** And I note also the contributions made by the member for Terrigal and the member for Wyong. The implications flowing from the 2006 High Court regarding WorkChoices does require clarification for many concerned entities and residents of our State, as does the possible flow-on effects on existing constitutional arrangements. The member for Port Macquarie has raised this issue several times in the Parliament and despite his best efforts the responses elicited so far have failed to inform the people of New

South Wales of the ramifications of this decision. As was pointed out, it has been 12 months today since that decision was handed down.

While acknowledging the steps taken by the New South Wales Government to protect workers from the flow-on effects of this decision, there are many grey areas that are still unclear and may have serious consequences for the ongoing provision of services to the people of New South Wales. Many people believe that the High Court's acceptance of the Federal Government's position on corporation powers has implications that will extend well beyond the specific field of industrial relations.

Justice Kirby, when dissenting on the High Court's five-to-two decision, suggested that there were many potential areas in which the Commonwealth would seek expansion of its powers. The areas he identified included education, town planning, health, local transport, energy, security and protective services, aged and disability services, agricultural activities, land and water conservation, gaming and racing, sport and recreation, corrective services, fisheries and even Aboriginal activities. The world as we know it may be a very different place in the future should his concerns be realised. Justice Kirby said:

> All of the foregoing fields of regulation might potentially be changed, in whole or in part, from their traditional places as subjects of State law and regulation, or Federal legal regulation through the propounded ambit of the corporations power.

A Statement by Professor Greg Craven on this decision perhaps puts the implications more bluntly:

> The decision changes federalism and constitutionalism in this country, from being determined by the Constitution to really the political will of the Commonwealth.

For many of my constituents and myself this is a truly frightening scenario. Many people see the High Court decision as having implications that extend far beyond the specific field of industrial relations. They want to know what the State Government's position is, and what further action will be taken to protect their interests. South Australian Premier Mike Rann said:

> The decision will allow the Commonwealth to use corporation powers to essentially take over what they like in the States.

On the other hand, the Prime Minister said:

> We will not interpret this decision as being any kind of constitutional green light to legislate to the hilt. We have no desire to extend Commonwealth power except in the national interest. I have no desire for takeover's sake, to take over the role of the States. The only occasions when I support the use of Commonwealth power to extend its role and influence are where it is clearly for the benefit of all the Australian people.

We have seen recently in Federal politics that when a Government controls both Houses of Parliament, it seems that looking after their own vested interests is seen to be much more important than considering the needs and desires of the Australian people. At some time in the future, it seems almost certain that a Federal administration will try to use these powers to further undermine the State's position on one or more issues of importance. The member for Port Macquarie recently asked the Premier if he would reveal to the House details of advice received on which New South Wales agencies are now defined as constitutional corporations following the landmark High Court ruling in the case of the States and the Commonwealth, otherwise known as the WorkChoices case While the Premier spent sometime expounding the broader issue of WorkChoices in his reply, the actual answer to the question ended up being:

> Given the number of agencies and the wide range of activities that they undertake, it was impossible to obtain advice on each individual Government entity.

That answer in itself raises serious concerns as to the future implications of the decision. Surely it would not be that difficult to define exactly what New South Wales agencies are considered constitutional corporations under the High Court's ruling. More importantly, the people of New South Wales expect their State Government to have clear answers to such a question, to define the changes this could bring about for their operations, and to be able to advise New South Wales residents as to how the Government intends to deal with any further incursions by Commonwealth powers, following the decision. Earlier in debate the member for Port Macquarie referred to the New South Wales versus Commonwealth of Australia and Western Australia versus Commonwealth of Australia WorkChoices decision paper. I seek leave to incorporate this document in *Hansard*.

**ACTING-SPEAKER (Mr Wayne Merton):** Order! As I understand it, Standing Order 264 precludes private members from tabling documents. That is why I gave the member for Port Macquarie leave to place a

document on the table for the information of members. That was the extent of the leave given to the member for Port Macquarie. Standing Order 271 provides that incorporation of material into *Hansard* shall be by the leave of the Chair. I have looked at the precedents so far as this matter is concerned and, having spoken to the Clerk, I have formed the opinion that I cannot give leave to incorporate the document into *Hansard*. However, I will raise the matter with the Speaker, as a legal opinion is not in the usual category of documents sought to be incorporated.

**Mr ROBERT OAKESHOTT** (Port Macquarie) [5.08 p.m.], in reply: Obviously, I am disappointed that the Parliament does not see the significance of acknowledging legal advice—legal advice we cannot find in New South Wales and that we had to go to Victoria to get. If we cannot incorporate the document, I will read onto the *Hansard* record some of the matters referred to in it. Before I do that I want to emphasise, as was mentioned by some of the other speakers, that whilst this debate has become caught up in ideological warfare, I would hope that, like a cheese platter, it binds together all of us in this Chamber.

The Victorian case looks at the foundation blocks of this Parliament—which surely is an issue for every member of Parliament who cares about their electorate and the delivery of services to it. I hope members will take the Victorian case seriously, on its merits, and will even perhaps Google the case and some of the information that has been circulating following it. I hope they will then ask themselves the very obvious question: Why has this issue not been raised in this House over the last 12 months? Why, during question time last week, did the Premier say that he has not received legal advice on what is the landmark judgment to ever come from the High Court, a decision that constitutional experts are saying is bigger than Mabo and bigger than any other decision?

This landmark decision has more implications for Commonwealth-State relations than any other judgment. There are heaps of blogs and information on the Web. I encourage members to have a look at that information and to start asking some of those questions. I again encourage the Premier to explain to this House the answer he gave last week. First, did he mislead the House? If so, could he correct his answer quickly and demonstrate the legal advice he has received? Second, if he has not received legal advice 12 months after the biggest decision in the court's history, could he quickly get advice and bring it back to this Chamber? We as members of Parliament need that advice. The Victorian decision has far-reaching implications.

I return to the Victorian Government Solicitor's Office advice. We have heard a lot about industrial relations consequences. The Victorian advice says that there are two key issues. Those issues have been spoken about to death. With regard to the Corporations power, the Victorian advice sets out nine points of legal significance regarding Commonwealth-State relations and two points regarding industrial relations consequences. That alone should drive home the message that this decision has bigger implications and that it was more about Commonwealth-State relations than industrial relations. I go back to the implications raised in the Victorian Government Solicitor's Office advice, and I repeat them. It should drive the message home to everyone. This is the big implication of the Victorian decision for New South Wales, as outlined in the advice:

> The decision is likely to have significant ramifications for the applicability of State legislation. This is because the Commonwealth's power to enact legislation regulating matters with a relationship to constitutional corporations is confirmed by the decision. State legislation inconsistent with Commonwealth legislation within the meaning of section 109 of the Constitution will be inoperative to the extent of the inconsistency.

The advice highlights that every single decision that has been taken by the Executive in the last 12 months—whether it is regarding the privatisation of the electricity industry, a range of gaming issues, or the TAFE college fee increases that the Teachers Federation is lobbying against—is open to legal questions. Until we get answers to those legal questions, the decisions are open to constitutional challenge as being simply unconstitutional because they come under the authority of the Commonwealth.

Unless the Premier, the Executive and this House begin to show political will, the residents of this State will live through very interesting constitutional times and suffer from a whole heap of problems. The law was brought forward by the High Court 12 months ago; we have to acknowledge it; it is reality; we cannot hide from it. I ask this House once again, for the fifth time in the last six weeks, to deal with this law rather than hide from it.

**Discussion concluded.**

**Pursuant to standing orders business interrupted.**

## BUSINESS OF THE HOUSE

### Notices of Motions

**General Business Notices of Motions (General Notices) given.**

## PRIVATE MEMBERS' STATEMENTS

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### SOUTHERN HIGHLANDS ELECTORATE VANDALISM

**Ms PRU GOWARD** (Goulburn) [5.18 p.m.]: The people of the Southern Highlands know vandalism for what it really is—the beginnings of community breakdown, disengagement, and disillusionment. There can be no-one in this Chamber who has not noted the correlation between vandalism and poverty, vandalism and disconnectedness, vandalism and unemployment, vandalism and other crime. The people of the Southern Highlands are united in their alarm at what they see as a growth in vandalism, including graffiti, in their area. Vandalism is also not without its economic price. Vandalism attacks are costly to individuals, businesses, community organisations, councils, and of course the State Government.

A group of concerned business and community-minded residents in the Southern Highlands have become so concerned they have formed the Vandalism Network Committee. It is auspiced by the Southern Highlands Business Chamber. The President is Terry Oaks-Ash and the committee is chaired by Charlie Johns. All Chambers of Commerce are represented, along with local business people, community organisations, the local *Southern Highlands News*, a doctoral student, local councillors and concerned residents. The committee was formed to address what the community saw as a growing and unacceptably high incidence of vandalism.

Examples include the continual vandalism of the Vietnam War Memorial and the Cherry Tree Walk, where each tree planted commemorates an Australian who died in the service of their country during the Vietnam conflict. Vandals continuously tear down these trees. There is also a large amount of reoccurring graffiti on public and private property. Mindless attacks on business properties result in broken store windows and smashed signs. Individual homes that have their letterboxes torn out or bottles smashed over their roofs.

This is a committee concerned not only with the damage vandalism causes and determined to find solutions, it is also concerned about the lack of prosecutions for vandalism and petty crimes. The people of the Southern Highlands blame the lack of prosecutions for vandalism and petty crimes on the progressive reduction in police numbers. In 1994 we had one police officer for every 275 people; now we have one police officer for every 319. That is over the entire Camden command, which takes in a considerable amount of outer metropolitan Sydney, and the Southern Highlands certainly does not get its fair share of the local force.

The Minister for Police, David Campbell, attended a Vandalism Network Committee meeting some weeks ago and dismissed its concerns. He parried with the statistics, the arguments and the fears. When a committee member complained that there was not enough visible policing, he told them we should not want a police State. When another member complained that often there was no police officer to take a complaint over the phone, he told them they should want the police to be out fighting crime, not manning a desk—contradictory, destructive, baffling and infuriating! Even crime figures were not agreed on. There seemed to be two sets of figures, the Minister's and the committee's. The Minister failed to agree to the request for additional policing and said:

> Police cannot handle everything. We treat crime the same way as council treats pot holes.

I disagree, the Southern Highlands Vandalism Network Committee disagrees. and I know the people in my electorate also disagree. As the New York broken windows policy shows, the effects of not catching people for petty crimes encourages more serious crimes. It is an issue most unlike potholes, unless one can argue that not mending a pothole leads to the breakdown of the road. Crime should be addressed proactively. The community and council need to be involved—and they are. We need to ensure public areas are well lit. We need to discourage drunks from collecting in the main streets. We need to ensure our youth are active and feel part of the communities in which they live—and we do. We have a program for at-risk youth, great sporting facilities and volunteering. We know we need to do more, but we also need sufficient police to act as a back-up, a deterrent and as enforcers. Let us hope that the movement of the Southern Highlands into the Goulburn Local Area Command will result in improved police resourcing of the Southern Highlands and a greater level of

confidence in the community. This community says no to vandalism. It expects and deserves the support of the State Government.

## CESSNOCK GREYHOUND RACING TRACK

**Mr KERRY HICKEY** (Cessnock) [5.23 p.m.]: I bring to the attention of the House the impact the board of Greyhound Racing New South Wales has had upon the community of Cessnock. The greyhound track at Cessnock has been reduced to non-TAB race meetings because of a personality issue between the board and the local club. That will have a devastating impact upon this community asset. Months after allocating hundreds of thousands of dollars to upgrade facilities, the board of Greyhound Racing New South Wales resolved not to allocate racing dates to the non National Coursing Association Limited and the non Greyhound Traders, Owners and Trainers Association track at Cessnock. Cessnock was arguably the most successful TAB track in terms of betting turnover. When greyhounds were racing at Cessnock the greyhound percentage of the TAB turnover was 17.5 per cent. However, since the closure the TAB turnover has dropped to 15 per cent.

The Cessnock greyhound track was financially sound. The TAB takings were high and all the functions were going swimmingly until the racing authority decided to take the TAB days off the track. The board now claims that the only way the greyhound track can get its TAB days back is to pay court costs to the board. That is not sound business. If greyhound racing is to survive the board needs to look at it from a business perspective, not a personal one. The reasoning behind the removal of the track is the propping up of The Gardens establishment, which was running at a loss. The question must be asked: What people in their right mind would close down a financially sound track, with more nominations than could be raced, which was of major benefit to the community of Cessnock? The Gardens has been given millions of dollars to prop it up. When the board decided it needed more help, it closed Cessnock. To my mind that is not good business sense, nor was it a rational decision.

The board of Greyhound Racing New South Wales comprises two warring factions: the National Coursing Association Limited and the Greyhound Traders, Owners and Trainers Association. The two bodies appear to take advantage of the changes in industry, and independent tracks such as Cessnock have not received racing dates or funding. Many have been closed. We need to look at the way the funds are allocated through the National Coursing Association Limited and Greyhound Traders, Owners and Trainers Association. The funds should be dispersed in prize money instead of being used to fund the management infrastructure of these two private bodies. This problem needs to be addressed. Who is the chairman of the board? Mr Percival Allan.

This is the same man who is screaming that there is not enough infrastructure funding going to councils, the same person who is helping councils to invest their money into higher risk investments and losing tens of millions of dollars. The same person who prepared a report into local government at considerable cost and told them they were in financial difficulties. Yet he makes judgments on greyhound tracks that must be based on personality, not on financial decisions and not in the best interests of communities, and invests millions of dollars into an unfinancial greyhound track that has to be propped up with funding, to the detriment of the industry.

Mr Percival Allan is constantly on paper beating up business with local government. We already know about the financial crisis and about infrastructure; we have been raising it for quite some time. In the *Sydney Morning Herald* last Tuesday, in an article headed "Time to face financial facts" Percival Allan again raised the issue of the $6.3 billion infrastructure backlog. Mr Allan's constant media focus on the financial viability of councils and the way he seeks more work for his consultancy concerns me. One must wonder what his self-promotion is all about. I quote from the article in the *Sydney Morning Herald* :

> Naturally, we would like to help those councils that on a desktop analysis don't pass the sustainability test do a more in depth review to more accurately gauge the situation and come up with a long-term strategy for dealing with it as Newcastle Wollongong, Albury and the Great Lakes Council have done.

That is self-promotion. Councils should be looking at how they should address the situation. Do they need another consultant who wants to line his pockets with ratepayer's money? Mr Percival Allan is promoting himself as a guru for local government when, in fact, he helped run the Treasury for years. He created the long-standing problem of money coming from the State sector. People need to be financially switched on. That is what Mr Percival Allan is saying about local government, but in the next breath, as Chairman of Greyhound Racing of New South Wales, he wants to make decisions that will ultimately affect the financial situation and the longevity of the industry. If all the small country tracks are closed down, how does a greyhound prepare itself for a major race? I have not been involved in the greyhound industry—I do not even bet—but I do

understand that tracks are needed across New South Wales to allow dogs and dog owners access to the industry. Without those tracks there will be no industry.

## DENILIQUIN HOSPITAL RENAL DIALYSIS SERVICES

**Mr JOHN WILLIAMS** (Murray-Darling) [5.28 p.m.]: I draw to the attention of the House and the Minister for Health a situation causing a great deal of concern and frustration to the sick residents of the Murray-Darling community. Currently the Deniliquin hospital does not have facilities available to administer renal dialysis to patients who are unable to use home dialysis. Consequently, the residents of Deniliquin who are in need of home dialysis have to travel three hours by car to Shepparton in Victoria every second day to have renal dialysis administered. That equates to a 1½ hour drive to Shepparton, followed by four hours of renal dialysis and then another 1½ drive home.

Needless to say, the impact of this on the patients and their families on a day-to-day, week-to-week, month-to-month basis is huge—financially, socially, emotionally and physically. It also causes a great deal of angst and inconvenience to the patients and their families. The community of Deniliquin has been calling for a renal dialysis service for some years now and is fully supportive of the idea. But the Greater Southern Area Health Service has resisted all attempts, including an offer of funding from local service clubs. The former area manager, Robyn Harberecht, did not want a dialysis machine at Deniliquin and rejected approaches from service cubs to provide funding for it.

I have had personal pleas from constituents, including Linda Rumble, for a dialysis unit to be set up in Deniliquin. Linda is a Deniliquin resident who is about to start receiving renal dialysis. She attended a meeting on Monday 5 November with the Greater Southern Area Health Service, the community, the council and local service clubs regarding the provision of a locally based hospital dialysis unit. According to the Area Renal Services Manager of the Greater Southern Area Health Service, Deborah Gration, a minimum of six to eight dialysis patients who cannot dialyse at home would be required at a location for it to be considered for a dialysis centre. However, Linda Rumble says that in Cohuna, Victoria, which has a population of just 2,000 people, the hospital has two chairs for dialysis and less than six to eight patients. The Greater Southern Area Health Service said it could not comment because that is a Victorian hospital and cross-border differences would apply. It must be confusing for patients who are already being treated in Victoria to be told that their health service cannot comment on the Victorian health system.

Furthermore, Ms Gration says she has been in discussion with Echuca hospital about accommodating patients from Deniliquin. However, Echuca is also in Victoria—confusing, confusing, confusing. Games are being played with people's lives. The Greater Southern Area Health Service says that just one person from Deniliquin currently requires non-home dialysis. However, according to Linda Rumble, up to five people currently require non-home dialysis in the town, with a further three due to begin treatment in the near future. The number of people in the area who require non-home dialysis needs to be clarified immediately. The reason that the Greater Southern Area Health Service cannot provide the service seems to be related to funds or a lack thereof.

With regard to staffing, Brenda Johnson, acting manager of Deniliquin hospital, claims to have asked all nurses at the hospital if they would be interested in training in the provision of renal services, and only one nurse registered interest. However, the local media says a nurse told them that no-one at the hospital had contacted her and that other nurses were not contacted either. The nurse also said she would be interested in renal services training. The issue of non-home renal dialysis in Deniliquin is an important one and has had quite a deal of publicity in the local press, including a page 3 story on Friday 2 November, a front-page story on Tuesday 6 November, and a page 3 story on Friday 9 November.

The Deniliquin Hospital and Community Health Service provides a great service to the town, as well as to numerous outlying areas, including, but not limited to, Hay, Moulamein, Finley, Jerilderie, Wakool and Mathoura. Why has the Greater Southern Area Health Service continued to block attempts by the community for a number of years to get a renal dialysis service up and running at the Deniliquin hospital? I call on the Minister for Health to provide some answers to the sick and needy members of the Deniliquin community in relation to why a renal dialysis machine cannot be immediately established at the Deniliquin hospital.

## MINGALETTA ABORIGINAL ELDERS DEBUTANTE BALL

**Ms MARIE ANDREWS** (Gosford) [5.33 p.m.]: On 6 October 2007 it was my great pleasure to be a guest at the Mingaletta Aboriginal Elders Inaugural Debutantes Ball held at the Everglades Country Club, Woy Woy. This was a very joyous and at times emotional evening. It was certainly a special ball that will be

recalled by those in attendance with much fondness. Everyone was delighted to have in their midst my parliamentary colleague the Minister for Fair Trading, Minister for Youth and the first Minister for Volunteering in this State. She is also the hardworking member for Canterbury and the first Aboriginal person to be elected to the New South Wales Parliament. As members on both sides of the House know, the Minister has a very pleasant disposition and is an outstanding role model for the Aboriginal community.

The former Mayor of Gosford, Councillor Laurie Maher, and his good wife, Helen, were also special guests at the ball. There were 11 debutantes who all looked spectacular in their beautiful evening gowns in various colours of the rainbow. Councillor Ray Ah-See of the New South Wales Aboriginal Land Council was the master of ceremonies, and he did an excellent job. Annie Vanderwyk of the Mingaletta Corporation announced the entry of the debutantes and their partners. The evening commenced with the acknowledgement of country by Keith "Chubby" Hall. Keith is a cheerful person and is the Aboriginal Development Officer at Gosford City Council. Leading the formal presentation were flower girls Rikki Hamilton and Isabella Champley, accompanied by page boys Isaac Jones and Lachlan Champley respectively. These youngsters were delightful and won the hearts of the large audience.

The debutantes were Dianne O'Brien, affectionately known as Aunty Di, who was partnered by Uncle Bob Williams; Christine Blakeney, or Aunty Chris, who was partnered by Craig Foreshew; Yvonne Bowden, who was accompanied by her husband Uncle Bob Bowden; Judy Bridges, or Aunty Jude, who was partnered by her son Jason McColl; Betty Bugg, or Aunty Betty, who was partnered by her grandson Nathan Murray; Elaine Chapmen, or Aunty Elaine, who was partnered by Uncle Tex Skuthorpe; Joyce Dukes, or Aunty Joyce, was partnered by Uncle Jack Wilkinson; Barbara Vandenberg, or Aunty Barb, was partnered by her son Brian Vandenberg; Fay D'Louhy, or Aunty Fay, was partnered by James Porter; Trish Stuart, or Aunty Trish, was partnered by Uncle Ray McMinn; and Anita Selwyn, or Aunty Anita, was partnered by her grandson Kye Hodgetts.

The idea for the elders debutantes ball came from the elders themselves. There was a general feeling among the elders that they had been precluded from making their debut when coming of age due to financial circumstances and/or social discrimination. It has been a long wait for the elders, but they all agree that making their debut was like a dream come true for them. The old cliché "never too old" certainly rang true of the debutante elders. Kylie Cassidy of Mingaletta issued a media release in which she wrote:

> In the true spirit of reconciliation, the elders took part in presenting the Pride of Erin, which was followed by traditional Aboriginal dancing performed by the Peninsula Indigenous Performing Arts Dance group.

Aunty Anita Selwyn, debutante and committee member of the Mingaletta Aboriginal and Torres Strait Islander Corporation, and Aunty Jane Anderson of the New South Wales Reconciliation Council had the honour of cutting the debutantes' cake. The Mingaletta Aboriginal and Torres Strait Islander Corporation Incorporation is to be congratulated for making the elders debutantes ball come to fruition. The corporation was formed in July 2002 through a community forum and was incorporated in November 2002. It is a service provided for all Aboriginal and Torres Strait Islander people and families, particularly those residing at Woy Woy, Ettalong, Umina, Umina Beach, Patonga, Kariong, Point Clare, Kincumber, Killcare and all suburbs in between. Formerly situated within the Umina Campus of Brisbane Water Secondary College, Mingaletta now operates out of premises at the rear of Gosford City Council's Umina library.

Until recently Loretta Hardcastle was Mingaletta's community development officer and under her guidance the services provided by the corporation were strengthened and widened. Loretta is held in high esteem by both the Aboriginal and non-Aboriginal communities. I was very pleased to nominate Loretta as 2007 Woman of the Year for the former Peats electorate, which is now the Gosford electorate. I acknowledge Loretta's great contribution to her community and I wish her well for the future. Denise Markham has also provided outstanding service to Mingaletta, and both Loretta and Denise were given special mention at the debutantes ball for helping to ensure that the evening was a great success. I congratulate all the elders debutantes and wish them well for the future.

## BATEMANS MARINE PARK

**Mr ANDREW CONSTANCE** (Bega) [5.38 p.m.]: I have been asked by the Coastal Rights Association, a very active and community-focused environmental group from the electorate of Bega, to ask the Government why it deliberately misled not only the people of this State but also the Governor in relation to the zoning of the newly established Batemans Marine Park. I have in my possession the relevant section of the

Marine Parks Act 1997, as at 8 June 2007, which states the Government's obligation with regard to any proposed draft for a zoning plan for the park.

Section 16 (2) to (5) states that the relevant Ministers at the time, Minister Debus and Minister Macdonald, are to cause public notice to be given of proposed regulations containing a zoning plan for the marine park. The section describes what notice must be given and what to consider before any further action can be taken in respect to the proposed regulations. Section 6 states what must happen if any amendments are proposed. I have also the relevant sections of both the Marine Parks Amendment (Batemans) Regulation 2006 public consultation draft, which went to the public for submissions, and the Marine Parks Amendment (Batemans) Regulation 2007, which was given to the Governor to sign.

The public is currently being forced to accept this as the regulation setting out zoning for Batemans Marine Park. There were many changes made between the original draft zone plan which went on display and was available for comment and the final plan that was adopted. One such major change from the 2006 draft was the complete removal of commercial trawling from the park. Division 6, General Permissions and Prohibitions, section 21, Fishing Prohibitions, subsections (1) and (4), on page 37 of Marine Parks Amendment (Batemans) Regulation 2007 currently in force, states:

> A person must not, while in the marine park, take or attempt to take fish by trawling;
>
> ... A person must not, while in the marine park take or attempt to take fish by use of a dredge or any device similar to a dredge.

The corresponding section in Marine Parks Amendment (Batemans) Regulation 2006—the public consultation draft—on page 45, division 6, Fishing Prohibitions, subsection (21) contains no mention of trawling. At this point the Marine Parks Act section 16 regulations relating to zoning for marine parks should have been applied. Instead, the amended zoning plan was taken to the Governor for her signature. Section 6, subsections (2) to (5), apply to any proposed regulations that amend a zoning plan for a marine park, unless under paragraph (a) the relevant Ministers are of the opinion that the amendments are minor in nature. If that is the case, I wonder why Minister Macdonald made a statement on 13 December 2006 in which he said:

> Removing commercial fish trawling and dredging for shellfish is a major change from the draft zoning plan and a big win for the recreational fishing industry. Paragraph (b) states that the relevant Ministers have consulted with the advisory committee for the marine park about the proposed amendment.

The advisory committee had very little input into the plan and when Minister Debus presented the final plan to the committee, an hour before publicly announcing it, a committee member had planned to move a motion of no confidence in the Minister, but that was halted by the committee chairman. The Coastal Rights Association has consistently asked that the Government be honest and open in its dealings with the public on the creation and zoning of Batemans Marine Park and has, in particular, been calling for scientific justification for the apparently predetermined approach to the creation of zoning regulations for the area. These calls have been met with statements such as "The science is there", "There is general consensus that marine parks are needed" and "We are meeting our obligation to create marine protected areas".

After repeated calls for specific scientific studies showing that the measures proposed were needed and would be effective in the Batemans Marine Park area, the Marine Park Authority released what it called "the science paper", which selectively quoted sections of several scientific papers from around the world in an effort to make its case for the style of marine protection it was forcing on the State. Recently Emeritus Professor Bob Kearney presented a paper in which he stated that many may have been hoodwinked into believing that the proposal for this park was based on sound science and that the park would deliver considerable benefits to biodiversity conservation and recreational fishing. Mysteriously the science paper can no longer be found on the Marine Park Authority website.

Why has the Government continued to mislead the people of this State and the Governor on this issue? The Coastal Rights Association calls on the Government to immediately revoke Marine Parks Amendment (Batemans) Regulation 2007 and begin a thorough scientific study of the Batemans Marine Park area, including a detailed assessment of any threatening processes, and to determine the best practice to address them. It should then return to the public to begin a true negotiation process. The Government should dismiss all marine park advisory bodies and take responsibility for the marine park mess before appointing anyone to any body openly consulting with the public on the parks. Members should compare the Batemans Marine Park with the Jervis Bay Marine Park, which is a quarter of its size and for which the consultation process took four years. This park was brought into being six months prior to a State election. That is unjust and inequitable and it has resulted in what could be a disaster for the marine environment on the far South Coast.

## NELSONS GROVE RETIREMENT VILLAGE

**Mr NINOS KHOSHABA** (Smithfield) [5.43 p.m.]: I speak today about a recent visit to the opening of stage one of Nelsons Grove Retirement Village at Pemulwuy in my electorate of Smithfield. I had the pleasure of visiting this retirement village with the Hon. Kristina Keneally, Minister for Ageing and Minister for Disability Services, who officially opened the facility. During the visit, Mr Paul Melrose, the project director at Delfin Lend Lease, showed us the first stage of the stunning new $85 million retirement village. At the same time we were fortunate enough to speak to some of the retired residents who have purchased units. All of them were happy with their investment and shared some of their plans with us. Taking holidays and spending time with their children and grandchildren were the most popular activities mentioned.

Most of the residents were also happy that they no longer had to try to keep up with the everyday maintenance that is involved in looking after a house, and all of them were looking forward to having more recreation time. The first stage of the village features 25 new apartments and a state-of-the-art clubhouse where residents will have exclusive access to a heated swimming pool, spa, gymnasium and library. This retirement village is part of the $350 million Delfin Lend Lease project in Nelsons Ridge that is providing a major boost to the Western Sydney economy. For my esteemed colleagues who may be unfamiliar with the area, Nelsons Ridge is in the new suburb of Pemulwuy. The name "Pemulwuy" was derived from the Darug word "pemul", meaning earth. Pemulwuy is a neighbouring suburb of Greystanes and sits seven kilometres south-west of the Parramatta central business district and 30 kilometres from the Sydney central business district. Nelsons Ridge is the highest point between the Blue Mountains and central Sydney. This new community covers 110 hectares and is expected to have up to 1,575 new homes.

The new development for the elderly members of our community will provide a great opportunity for those who wish to enjoy their years in retirement with a high quality of life in a family atmosphere. Some of the many services that are on offer to the residents include door-to-door delivery of prescriptions and groceries and home visits by the local general practitioner. Nelsons Grove Retirement Village will, more importantly, provide an opportunity for the resident retirees to continue to lead active lives in an area that has dedicated open space and several recreation facilities. This development is a recognised eco-friendly construction with 40 per cent of the land dedicated to parks and other recreation facilities. It certainly allows retirees to enjoy an active lifestyle, a goal that is shared and promoted by the Iemma Government.

The Iemma Government is committed to creating a society in which people of all ages are valued and independent and which fully utilises the skills, experience and wisdom that come with maturity. The planning, construction and design of this impressive facility will no doubt provide a healthy and enjoyable lifestyle for its residents. The development at Nelsons Ridge is one example of the needs of the residents being addressed. It helps to maintain an active population while providing the appropriate services. Ageing people offer rich life experiences, well-developed skills, knowledge and wisdom, all of which significantly contribute to the rich fabric of the community. Specifically, ageing people make a considerable contribution to the local community by being actively involved in voluntary work. They have much to pass on to the next generation. Within my electorate there is enough open space for social, cultural and recreational activities.

Statistics show that we are rapidly becoming an ageing population. Australia now has the highest number of ageing people in history, and that number will continue to increase considerably in the coming years. Currently in New South Wales 13.4 per cent of the population is aged 65 years and older. Statistics also show that these rates will increase to around 26.9 per cent by 2051. At the Government's recent Ageing 2030 roundtable speakers noted that there would need to be a significant increase of retirement facilities to keep up with predicted growth. I take this opportunity to thank Mr Paul Melrose, the project director at Delfin Lend Lease, for his kind invitation to the official opening. I also extend my heartfelt thanks to all those residents who shared their stories with us. I welcome this eco-friendly development to my electorate and congratulate all those who were involved in its design, planning and construction. These types of developments need to be encouraged and supported as we plan for the future. I wish all the residents of this new community a long, healthy and enjoyable retirement.

## PORT HACKING DREDGING

**Mr MALCOLM KERR** (Cronulla) [5.48 p.m.]: Last week I spoke about the need to dredge the channel at Port Hacking. Tonight I will speak about the effect of channels in my electorate. I said that I had received a letter from a resident at Bundeena, who said:

> I have heard with some dismay that a decision has been taken to not dredge the ferry channel as part of the present dredging operation in Port Hacking. I understand that the implications of not dredging this channel are that it will progressively silt, requiring the ferry to change its route adding a further 5-10 minutes to the crossing time.

The *St George and Sutherland Shire Leader* reported:

> PUBLIC pressure has led to a belated decision to include the Bundeena ferry channel in the Port Hacking dredging program.

I received a fax from Cronulla and National Park Ferry Cruises saying:

> Firstly we would like to thank you for your time and support regarding the additional dredging in Port Hacking. I might add until today you were the only person that acknowledged any of our letters or concerns …
>
> We received a phone call from Scott Renwick of Environmental Services last Thursday advising that dredging had been approved. They commenced yesterday.
>
> Once again thank you.

There is another danger in respect of the Port Hacking channel, and the Minister for Climate Change, Environment and Water needs to explain to this House, to the people of my electorate and to the people of Bundeena why the decision was, to quote the *St George and Sutherland Shire Leader*, belated. Surely he should have been aware of the dangers posed there. It may well be that he was influenced by one of the characters in his favourite novel, *Wind in the Willows*, Ratty, who said about boating:

> In or out of 'em it doesn't matter. Nothing seems really to matter, that's the charm of it. Whether you get away, or whether you don't, whether you arrive at your destination or whether you reach somewhere else, or whether you never get anywhere at all …

That is not good enough for the people of the shire. When they get on a ferry they want to get to either Cronulla or Bundeena. It is not good enough to take the approach from *Wind in the Willows* to dredging in Port Hacking. I am pleased the member for Heathcote has taken an interest in this matter. He said he asked for the work following community representations. No doubt somebody is waiting for a phone call from him at the moment because he went on to say that the Maianbar channel was not included in the memorandum of understanding between the State Government and the Sutherland Shire Council. It was up to the council to seek to have the Maianbar channel included. He would be very happy that Councillor Kevin Schreiber, who pushed for the Bundeena channel work, said that not dredging the Maianbar channel risked the safety of boat users and residents. We need to think back only a few years to when bushfires forced the evacuation of residents in a flotilla of boats. The Minister for Climate Change, Environment and Water should be well aware of the dangers of bushfire and the need for evacuation. I strongly urge that the State Government become involved with the Sutherland Shire Council to make that dredging occur.

The other channel that affects my electorate is Channel 10, which has the show *Australian Idol*. Along with Scott Morrison, we hope that Matt Corby wins *Australian Idol*. Any votes that can be channelled his way would be greatly appreciated. He is the shire's singing sensation and I know I can carry your best wishes in relation to his idoling. We hope he becomes the winner of that landmark television channel show.

**ASSISTANT-SPEAKER (Ms Alison Megarrity):** Order! The member is supposed to raise only one matter relating to his electorate in a private member's statement. However I will make an exception in this case.

**Mr MALCOLM KERR:** You being a shire patron.

**ASSISTANT-SPEAKER (Ms Alison Megarrity):** That is the reason for the exception.

## LICENCE LAWS FOR OLDER DRIVERS

**Mr STEVE WHAN** (Monaro—Parliamentary Secretary) [5.53 p.m.]: Several months ago I sent out a letter to all people who were over 70 in the Monaro electorate. That letter was to alert them to the Roads and Traffic Authority's older driver discussion paper and to ensure they had seen it, considered it and were able to provide comment if they wanted to. I received a big response to that letter and sent out many copies of the Roads and Traffic Authority paper, and many people accessed it from the Internet. A lot of locals from the Monaro electorate put in comments. I understand about 22,000 comments have been put to the Roads and Traffic Authority. The Roads and Traffic Authority is now considering those comments and is yet to go to the Minister with a submission or recommendations. The time for submissions on that discussion paper has closed. A significant length of time was allowed, and if members did as I did and sent out letters in time their constituents had plenty of time to put in submissions.

Imagine how surprised I was when, after submissions had closed, and after people had had an opportunity to have a say, people in the Monaro electorate received a letter from a member of the other place

asking them to come along to a public meeting in Cooma to discuss the Roads and Traffic Authority discussion paper. I will return to the timing of that meeting in a moment, but I thought it was odd that it was after the submissions process. I raise this today because after receiving that letter I had a number of calls from people who were worried as the impression they gained from the letter—it was obviously carefully worded and did not tell any fibs—was that when they turned 85 they would not be able to drive any more than 10 kilometres from their home.

I have talked to a lot of people in the electorate about the proposal. I am not sold on the proposal overall, but one of the things I think is positive is the option for a step-down licence for people who choose not to take a test. For those people, being able to drive to their main centre would be useful. I know some people, including one recent resident of Adaminaby, who, had this provision been in place previously, would still have a licence and be able to drive to her local regional centre. That would be a positive thing for her. So I was disappointed to see that misleading impressions had been put out, and I now feel compelled to send out another letter to the over 70s in the electorate to correct some of the misleading impressions—and I suspect I will. One of the interesting letters I received about this—I think it sums up what has been happening—is from a constituent of the member for Bega. He wrote:

> Dear Mr Whan,
>
> Please ignore my letter of 20th September—

Which he had written to me because many people think I am the one who can get results for them—

> Having now read the RTA letter 25th September I realize that I had been told only part of the story.

He then went on to refer to Shylock from the *Merchant of Venice*. He had been told only part of the story by, shall we say, some of the propaganda that had been put out by the Coalition on this issue and by his local member. The public meeting that was held in Cooma last week was interesting because it was on a State issue. It was after the closing date for submissions. I was not invited, and neither was the Roads and Traffic Authority. I cannot understand that. Who was invited? The Federal Liberal member was invited. Is that not interesting? Only two weeks out from the Federal election and there he was to talk about a State issue. I find that a bit suspicious.

Even more suspicious is an interesting advertisement I saw on television recently in which the Federal Liberal member was being put forward as fighting against crime in Eden-Monaro. In the 11 years he has been in Federal Parliament he never once mentioned crime in Eden-Monaro in any speech to Parliament. I can only presume, as he has turned up at this public meeting about the Roads and Traffic Authority's older driver discussion paper but not at any of the public meetings to talk about industrial relations—which I think is a Federal issue—

**Mr Nathan Rees:** That is the real crime.

**Mr STEVE WHAN:** And that is the real crime, as the Minister says. I can only presume that he is far more interested in talking about State issues because that will mean people will not scrutinise his record of having voted 23 times for the draconian Federal industrial relations laws. That is something he is desperately trying to hide. What he has done, as collateral damage, is worry a lot of older drivers. I do not think that is fair, and that is why I wanted to clarify it. Some of the proposals in the Roads and Traffic Authority paper could benefit people in my local area, and I hope they are considered properly.

## JOHN FITZROY, FORMER ALP CANDIDATE, COWPER ELECTORATE

**Mr ANDREW FRASER** (Coffs Harbour—Deputy Leader of The Nationals) [5.58 p.m.]: There is an old expression from America: truth, justice and the American way. Tonight I am standing up for a constituent of mine on truth, justice and the Australian way. This man, whom I have seen on many occasions and have had many discussions with, especially during the State election campaign, votes for the Australian Labor Party and is not enamoured of the industrial relations laws of John Howard, but now he is taking action under those laws. He has asked me to raise the issue, as have hundreds of other people by way of letters to the editor in Coffs Harbour, in State Parliament. This man has had an unfair dismissal under State laws.

This man's career was savagely snatched away from him. To use his words "the tentacles from Sydney reach out to overturn democracy". I believe the Parliament has an obligation to support this man in his quest to

get on with his life. Yesterday he said that if this had taken place at the State level, it would be a matter for the Independent Commission Against Corruption. He has appealed to me to make representations to the Parliament for democracy because the tentacles from Sydney reached out to overturn democracy in his bid to become the Federal member for Cowper.

Mr John Fitzroy said that he was going to sue the Australian Labor Party for unfair dismissal using WorkChoices legislation and that it was time to change Australian Labor Party culture. He decided on the move after a statement was made through the media that the Labor Party leader, Kevin Rudd, was going to explain and apologise to him, which never happened. It was a publicity ploy. Mr Fitzroy stated:

> He did not ring or contact me or my family—I'm sick and tired of being used as a political football.
>
> He said he had won preselection fairly, been endorsed by the ALP and had the letter to prove it, before being dumped.

It is interesting that the member who dumped him under an N40 preselection was Paul Sekfy. At the Federal election two elections ago Mr Sekfy had the same thing done to him and threatened to take action under industrial relations laws but did not do so. As I said to Paul when I was talking to him not long ago, the usurped has become the usurper, and he agreed. Fitzroy said that Mr Rudd cannot be trusted. He promised, via the media as a publicity stunt when he was in Coffs Harbour, to come and see John and his family to explain to them.

Mr Fitzroy said also that Mr Foley actually offered him an inducement if he would stand aside. He said he would not stand aside; he would not allow that to happen. He said he would not be looked after; he was going to stand anyway, and he had the preselection taken away from him. To offer an inducement to any political candidate in any way, shape or form to stand aside from any position is a breach of electoral laws, State or Federal. I remind the House that in Franklin it was stated:

> Despite offers of an elevated union position, increased salary and a future Senate seat, Mr Harkins is determined not to quit voluntarily.

This is another illustration of the Australian Labor Party forcing its will upon a locally elected candidate in what is supposed to be a democracy. We have seen it happen with State seats where the local Australian Labor Party branch has preselected the candidate but the decision has been overturned by the tentacles from Sydney, as John Fitzroy said. Premier Iemma and the Government should take a stand. They should pull Labor Party head office into line and allow preselections on an open and democratic basis, in the same way Coalition parties do. I saw John Fitzroy on many occasions throughout the State campaign. He did not like the Howard Government's industrial relations laws but now he sees them as the only way in which he can seek retribution for unfair dismissal as the Australian Labor Party candidate for the seat of Cowper. I support John Fitzroy. I will raise the issue with the Australian Electoral Commission. I will make sure that Mr Fitzroy is given a fair hearing and that Mr Rudd, who in Mr Fitzroy's estimation cannot be trusted, receives a strong message from the people in Cowper.

**Mr NATHAN REES** (Toongabbie—Minister for Emergency Services, and Minister for Water Utilities) [6.03 p.m.]: If the member for Coffs Harbour is so keen to help this gentleman perhaps he could also encourage Mr Towke down in Cook to join the action.

## WOLLONDILLY COMMUNITY NURSERY

**Mr PHILLIP COSTA** (Wollondilly) [6.04 p.m.]: As Wollondilly is a new seat and I am the new member I will systematically introduce into Parliament many of the attributes of my electorate, the people and the natural environment that we live in. Tonight I present to Parliament the Wollondilly Community Nursery in Wonga Road, Picton. It originally started on an old tennis court at Victoria Oval in Picton and in 2001 moved into a resource centre constructed by council in Wonga Road.

Wollondilly Regenerators and Propagators, WRAP, started the nursery. The group comprised local residents who had a passion for their local environment and realised the importance of replacing weed-degraded areas along Stone Quarry Creek with native provenance plants. They recognised the need for local provenance native plants. Local nurseries had native plants that were not local to the area and the cost of buying native plants was very high. The group understood the need for revegetating communities not just by planting trees but also by restoring the diversity of provenance plants that existed in the area. This led to an award-winning project called Roadside Reserves, led by Brad Staggs of Wollondilly Shire Council.

Many pockets of roadside verges have been restored to excellent condition, including only local species. The group started out with recycled materials, building workbenches, shade houses and soil bays.

Recycling materials and reusing used goods are still fundamental practice. Wollondilly Shire Council supports the group by providing property and infrastructure. Only this year the local rotary club constructed and completed an excellent extension to the facility.

Eileen Burnus, the nursery coordinator, runs the centre and is a qualified horticulturalist. Scott Soper from Wollondilly Shire Council is a bush regeneration officer who collects seeds across the shire for propagation. Alexandra Stengl, also from Wollondilly Shire Council, is the environmental officer who supports the volunteer team, the heart of the organisation. A group of 40 dedicated members, with a core of 20 frequent volunteers, regularly visit the nursery propagating plants and caring for them. Volunteering is open two days a week to people who want to learn how to propagate plants.

The nursery sells and gives away over 40,000 tube stocks annually to people in the Wollondilly region. The aim is to support environment projects in the Wollondilly area by providing local native tube stocks. They are the preferred supplier of local native plants for local developers. The nursery holds also the seed bank for the Macarthur region. The collection, processing and recording of native seed is done to Florabank standards. An electronic database has been derived to store all information regarding collection. This seed bank ensures that we will always have access to an endangered species such as the acacia pubescence found in only one part of my electorate.

The nursery is not for profit. As a result of a motion passed in 2001 no money goes to council: any money earned goes towards the running of the nursery and revegetation projects. Wollondilly Regenerators and Propagators were successful in receiving a grant for long-stem propagation from the Sydney Catchment Authority, and long-stem plants have been planted at local areas in need of revegetation projects, such as Werri Berri Creek, Razorback Mountain and the agricultural institute at Camden. Long-stem plantings give plants a much better chance of surviving as they are planted deeper than conventional tube stocks.

The nursery supports land care activities in Wollondilly and assists upper catchment groups with their expertise and the use of nursery facilities. The group has seen the nursery transform from a small project based on a disused tennis court to a thriving facility responsible for the revegetation of much of Wollondilly and the seed bank for the whole of Macarthur. These days it is a very modern facility. The environmental and educational resources that the group supports are a demonstration of a positive and committed local community working with local government in developing a great resource for the area. Our children's children will be the beneficiaries of such a wonderful team.

## ROADS AND TRAFFIC AUTHORITY VEHICLE REGISTRATION SUSPENSION

**Mrs DAWN FARDELL** (Dubbo) [6.09 p.m.]: I raise a matter that was brought to my attention on Monday this week by one of my constituents. On 31 August this year my constituent received from the Roads and Traffic Authority a notice to show cause regarding a 28-day suspension of vehicle registration. There were three incidents altogether, involving the same vehicle. On 22 August 2005 a person was detected driving the vehicle over the speed limit in Silverwater. On 20 January 2006 the same person was detected driving the vehicle over the speed limit. On 19 July 2007, about 18 months after the previous offence, at 9 o'clock in the evening a different driver was detected speeding in the vehicle. The notice to show cause stated:

> In the interests of public safety, the Roads and Traffic Authority is considering suspending the registration of the vehicle described above—

not the driver, but the vehicle—

> for 28 days, on the grounds that you have failed to use or manage the vehicle so as to effectively prevent repeated violations of traffic law.

The notice was sent pursuant to the Commonwealth Interstate Road Transport Act 1985 for breach of clause 5C of the Interstate Road Transport Regulations 1986. My constituent was given the opportunity to submit reasons why such suspension action should not be taken under the regulation. The notice was dated 31 August 2007. On 25 September, after receiving the notice to show cause, my constituent wrote to the Roads and Traffic Authority requesting that consideration be given to not suspend the registration of his truck. He said that his express service is a small family company and as such does not have spare vehicles that could be used to replace the truck if the registration is suspended. My constituent also wrote:

> Over the past five years we have found business to be extremely difficult due to the prolonged drought in our area which has severely affected freight volumes and hence our profitability.

> We … take any road offences seriously and under no circumstances are drivers forced to drive to deadlines that require them to break the law at any stage. All our employees work a 3 day working week and have every second day off.
>
> In regards to the three mentioned traffic offences we have made the following disciplinary measures:
>
> 1. The employee was counselled regarding the seriousness of the offence and warned that if another offence occurred it would be grounds for dismissal. Also the employee was told how important it is to keep to the speed limits and that if tired, a rest break must be taken;
>
> 2. The same employee committed the second offence as the first offence and was dismissed on these grounds; and
>
> 3. Again, the employee was counselled regarding the seriousness of the offence and warned that if another offence occurred it would be grounds for dismissal. Also the employee was told how important it is to keep to the speed limits and that if tired, a rest break must be taken.
>
> In light of the above matters I would like to plead with you for leniency in this matter. I am embarrassed and concerned about the seriousness of the offences and am very concerned that we would lose the valuable customers that have taken us years to build up.

As at 5 November there was no response to my constituent's letter. Instead, he received another notice of suspension with the three instances recorded, informing him that under the same Act the suspension would commence on 4 December 2007. Apparently, his letter was not good enough for the authority. I consider that my constituent's letter is more than good enough, in light of the shortage of operators on the road. Notwithstanding that, why should his vehicle registration be suspended for 28 days? The drivers should be suspended rather than the vehicle's registration.

My constituent wrote to me on 12 November to seek my assistance in the matter. He told me about the letter he wrote to the Roads and Traffic Authority. He also told me that the company had dismissed one driver, that all drivers had been counselled regarding the seriousness of speeding, that a road speed limiter had been fitted to the vehicle concerned, and that the company is proactive with all its staff regarding rest periods and rosters to make sure adequate rest periods are taken. He also explained that the vehicle in question travels to Sydney five days per week with two drivers on a roster system every second day and that the small family business cannot afford the vehicle to be taken off the road.

On the same day, 12 November, on behalf of my constituent I wrote to the Minister for Roads, the Hon. Eric Roozendaal. Indeed, I delivered the letter to the Minister's staff. I advised the Minister of all the issues raised by my constituent and asked him to urgently have the matter overturned. Meanwhile, my media researcher ascertained that the Interstate Road Transport Act is the only Commonwealth regulation that the Roads and Traffic Authority is responsible for and that the regulations cited in the letter from the Roads and Traffic Authority are under a Commonwealth Act. For this reason the legislation does not fall under the jurisdiction of the New South Wales Minister for Roads.

In my view it is absolutely ridiculous that the Roads and Traffic Authority can issue such a suspension under a Federal regulation when the vehicle is driven on a New South Wales road. I do not condemn the New South Wales Roads and Traffic Authority for this—obviously it is instructed under Federal legislation to do that—however, the issue needs to be addressed and I will ask the Minister to do so. Meanwhile, keeping this vehicle on the road is now the main issue for my constituent. I have raised the matter with Tony Windsor, the Federal member for New England. My Federal member, John Cobb, is not available these days; he is too busy in Orange. In any event, Mr Windsor's office assures me that it will be able to assist my constituent. I bring this serious matter to the attention of the House in the hope that other constituents will be assisted should the issue arise again in the future.

## NEW ENGLAND INSTITUTE OF TAFE YOUNG OUTBACK CHEF SCHOLARSHIP

**Mr PETER DRAPER** (Tamworth) [6.14 p.m.]: Following the graduation of Nick Richard of Tamworth from the New England Institute of TAFE Certificate III in Hospitality he became one of the five finalists for the 2007 Young Outback Chef Scholarship. The founder of the scholarship, Scott Webster, devised the award to create an opportunity for young chefs in regional Australia. Scott admitted that entering a cooking competition as a first-year apprentice had opened doors around the world for him so he wanted to give today's young chefs a similar chance.

As part of the Young Outback Chef Scholarship Nick Richard spent five days working in kitchens at the Sydney Convention and Exhibition Centre, plus the Amora and Westin hotels, including the fine-dining

Mosaic restaurant. He also undertook an introduction to viticulture and cheese making in the Hunter Valley. Nick said of his time at the convention centre:

> It was an amazing experience to see how the centre operated and was co-ordinated so successfully. I found it inspirational.

Our local TAFE college plays a vital role in skilling people such as Nick Richard to compete in these events, and I commend the New England Institute for the excellent training it provides across a wide range of subjects, including Certificate III in Hospitality and Commercial Cookery. TAFE allows young apprentices to learn and develop their skills locally then in many instances go on to make their mark in workplaces around the world. Nick Richard began the Certificate III in Hospitality at the Ryde campus of TAFE in 2000 before relocating to the New England Institute in 2001. He successfully completed his commercial cookery off-the-job apprenticeship training in June 2002.

The Tamworth campus tourism and hospitality unit is the New England Institute's commercial cookery training venue for all cookery apprentices. The unit educates and trains apprentices from across the New England and north-west region. Students come from as far away as Walgett in the west, Tenterfield to the north, and Scone and Muswellbrook in the south, and there are 55 commercial cookery apprentices currently enrolled. The commercial cookery apprenticeship qualification is delivered two days per fortnight as a block release to meet the growing needs of the region's hospitality industry. This model reduces the amount of time spent on the road for young apprentices who need to travel long distances. The 2½-year course provides practical extension skills and enhances the students' theoretical knowledge as they are guided by their industry mentor through the apprenticeship.

Ellen Scanlon, Senior Head Teacher Tourism and Hospitality at Tamworth TAFE college, told me that as a country institute they are very mindful both of the costs to students and their duty of care. TAFE is to be commended as this course is both user friendly and successful. Nick Richard's success in his chosen career is a credit both to him and to his teachers from Tamworth TAFE. He joins many other successful graduates who have completed the course. The Tamworth campus tourism and hospitality unit is proud of its current and past commercial cookery apprentices. Former students now featuring as executive chefs and chefs within a variety of venues regionally, in metropolitan areas and overseas.

Current apprentices and graduates have earned many State and national cookery awards through various industry competitions, including from the New South Wales Restaurant and Caterers Association and Worldskills, plus the prestigious Golden Chef's Hat Award, which was awarded to Jamie Exman, past executive chef of the Tamworth Powerhouse Hotel. Several former apprentices have come home after years of enhancing their culinary skills. Some are involved in teaching cookery apprentices at the TAFE campus, where their own training began. The Certificate III in Hospitality is just one of the areas in which the New England Institute of TAFE is using innovative programs to meet the needs of its students and provide skilled graduates with help to meet the nation's skills crisis.

In 2007 20,553 students participated in New England Institute of TAFE courses, 8,132 of them at the Tamworth campus. Projections for 2008 indicate a 4 per cent increase on last year's record results. The New England Institute of TAFE has successfully developed e-learning, with 1,200 students now enrolled in 46 subjects. These online programs benefit rural and remote students in particular, with 140 students enrolled for the certificate IV veterinarian nursing. All the students currently work in clinics, and studying on line meets their work requirements, allows their workplace competency to be checked by their supervisors and only requires three two-day workshops in Tamworth for practical skills. These programs are being constantly extended, developing flexibility in education and delivering nationally recognised qualifications.

As part of developing a trade school at the Tamworth TAFE college the New South Wales Government has provided $2.2 million for the auto and auto electrical unit and $3 million for the electro technology unit. This is a much-appreciated and sensible investment in local educational facilities. Committed students such as Nick Richard, dedicated teaching staff and a TAFE institute that is prepared to try innovative concepts are the right ingredients to develop a well-trained workforce that will continue to address workforce skills shortages.

**Private members' statements noted.**

## MURRAY-DARLING BASIN AMENDMENT BILL 2007

**Message received from the Legislative Council returning the bill without amendment.**

[*Assistant-Speaker (Ms Alison Megarrity) left the chair at 6.20 p.m. The House resumed at 7.30 p.m.*]

## ASSISTED REPRODUCTIVE TECHNOLOGY BILL 2007

### Agreement in Principle

**Debate resumed from 7 November 2007.**

**Mrs JILLIAN SKINNER** (North Shore—Deputy Leader of the Opposition) [7.30 p.m.]: I lead for the Coalition on the Assisted Reproductive Technology Bill, which prevents the commercialisation of human reproduction and protects the interests of persons affected by assisted reproductive technology, commonly known as ART. Those persons are both gamete—sperm or egg—providers, those receiving treatment or those born as a consequence of the treatment. The bill requires providers to be registered—with treatment provided by a doctor and counselling available—in order to collect information from them. The bill restricts the use of gametes and embryos, prohibits commercial surrogacy and makes surrogacy agreements void. It involves the creation of a central assisted reproductive technology donor register, which will allow a person born as a result of this treatment to obtain information about his or her donor. A voluntary register is to be established for those previously involved in assisted reproductive technology.

Since 1996 I have met regularly with families affected by assisted reproductive technology. I have been particularly impressed by the stories told to me by the children born as a result of assisted reproductive technology, particularly those who are concerned about the prospects of their unintentionally forming relationships with unknown siblings. Some young people have had that concern for many years. In fact, a few years ago I attended a conference at which I met a young woman who has since moved overseas because she was so worried about that prospect. It is terrible for the families concerned, and I have tried my best to help them lobby for the introduction of legislation. It is a tragedy that the Government has taken so long to introduce this bill.

The Donor Conception Support Group has met with Government representatives and agitated for a long time for the introduction of legislation in this area, particularly since Victoria introduced such legislation in 1995—which is a very long time ago. NSW Health released a discussion paper in 1997 and an exposure bill was tabled in Parliament in 2003. I, on behalf of the Donor Conception Support Group, placed questions on notice in an attempt to ascertain when the Government intended to proceed with the matter. On 5 December the member for Kogarah—who was then Parliamentary Secretary—acting on behalf of the then Minister for Health, Morris Iemma, said in this place:

> I seek leave to table the draft exposure bill on assisted reproductive technology. I also seek leave to table an information guide that has been prepared to assist in understanding the bill and to provide background to some key issues raised by the bill.

That was in December 2003. When nothing happened, and following another meeting with the group, on 10 November 2005 I placed the following questions on notice:

> 1. Why has legislation on Assisted Reproductive Technology not been tabled in parliament, when the exposure bill was presented in 2003?
> 2. When will legislation be put before the parliament?
> 3. What steps is the government taking to secure the records of donor offspring already conceived in NSW?
> 4. Will the NSW government put in place a voluntary register to enable donor offspring and past donors to lodge their details, so that identification may take place if desired by both parties?

The answer was provided on Tuesday 28 February 2006—some time later—and it was:

> The Government is currently considering the submissions made in response to the exposure draft Bill and is developing legislation for introduction into Parliament.

It continued:

> I am advised that all public Clinics must keep all patient records relating to Assisted Reproductive Technology in accordance with the General Retention and Disposal Authority, Public Health Services: Patient/Client Records published by the State Records Authority of NSW in May 2004. Private clinics, in order to obtain accreditation from the Reproductive Technology Accreditation Committee (RTAC), should comply with the guidelines endorsed by the National Health and Medical Research Council.

The answer did not provide much information. It concluded:

> This proposal is being considered in the context of reviewing responses to the exposure draft Bill.

How long did the Government need to consider responses to a draft exposure bill tabled in 2003? My concern with this bill is that it has been so long in coming. Those whom I have consulted, particularly the Donor Conception Support Group, have expressed concerns about details regarding counselling in particular. They are concerned about information provided to spouses, extended obligations about registering births when donated gametes or embryos were used, and the length of time that records will be kept on the central assisted reproductive technology register. They believe those details should be kept indefinitely—as would occur with any registered birth—rather than for 50 years, as the bill provides.

Concerned parties point out that there is no mention of how often a provider of assisted reproductive technology—that is the clinic—must forward information to the central register. The Victorian legislation, for example, requires reports to be made every six months. They are also very critical of the lack of information in the bill, which allocates no resources for the creation of the voluntary register. The bill is not retrospective—the Coalition does not support retrospective legislation—and that will cause a real problem for those who were conceived through anonymous donations of sperm. People want some indication as to the amount of money that will be spent advertising the fact that there is a voluntary register and encouraging people to identify themselves on the register.

I have also consulted with the psychologist and family therapist who has worked with these families, a woman by the name of Miranda Montrone. She has suggested that counselling should be made available at the time of the information release from the register as well as before the assisted reproductive technology treatment, and that is in fact covered by the bill. I have consulted the Australian Medical Association, which responded with several comments. In particular, it pointed out that one of its ethics committee members was in favour of the Australian Medical Association supporting this bill because:

> It places in the paramount position the child's right to know who both its biological parents are. The doctor also strongly supports the outlawing of anonymous donations. A potential donor's anonymity is preserved by choosing not to donate. The child's anonymity is preserved and the express wishes of the donor prior to implantation is made clear.

I think those are comments would very much reflect the views of most of the people I have spoken to. I would like to relate to the House a story as presented to me in an email from a young woman who knew the bill was being introduced. She said she had read the Minister's speech and that it was still "not entirely what we are after re offspring knowing identity of donors". She said she emailed the Minister about her situation and that the Minister's office "has raised a ministerial on my behalf at Royal Prince Alfred and Concord Repat". The situation is that a person was born five and a half years ago after the woman obtained an anonymous sperm donation at Royal Prince Alfred Hospital. For several years letters were exchanged between the sperm donor and the mother, passed on via the fertility and andrology sections of respective hospitals. She said:

> I discovered that, sadly, the sperm donor father … had been unable to have children with his wife despite years of trying. Then, in 2006, I received a card via the fertility unit from the sperm donor informing me that he had at last had a son with his wife. The card included a photo of newborn babe.
>
> I replied to the happy news. Unfortunately, the Andrology unit had made a decision in the interim not to forward any more letters between donors and recipient families. This decision was made following a situation where a recipient family identified their donor and made contact. (I might add that this contact was well received between all parties and is still positive in nature).
>
> Despite our best efforts, the Andrology Unit absolutely refuses to budge on this issue: they refuse to allow any contact between parties, even where that exchange of letters has been friendly and positive in nature.
>
> Further to this they refuse to let my donor know that I have responded to his letter and card from last year. They stated that if he rings them they'll let him know there are letters there on file for him from me.

That is a tragic situation. It would appear that two people want to make contact but there is a barrier preventing that happening. I would appreciate it if the Government could advise how it would respond in this case not only to the offspring, who is only a child at this point, but also to the mother. I think it is in the interests of all that, as a doctor in the Australian Medical Association said, we put the rights of the child to the forefront. We will protect privacy. We will not expose people where it is not wished, but we need to be careful to ensure that a child does have the right to know who his or her siblings are, in particular, so that we do not have a situation in which offspring of anonymous donation feel they have to leave the country to avoid having a relationship unknowingly with a sibling. On behalf of the Coalition I support the legislation.

**Dr ANDREW McDONALD** (Macquarie Fields) [7.44 p.m.]: The Government thanks the Opposition for its support for this important bill. Extensive consultation has been undertaken regarding the practice of assisted reproductive technology in New South Wales. The bill has been developed following the release of a discussion paper, the formation of a reference group and the tabling of an exposure draft bill in December 2003.

The bill was well received and many of the suggestions contained in submissions on the exposure draft have been incorporated into the bill.

The Assisted Reproductive Technology Bill 2007 provides a broad framework for the regulation of the social and ethical aspects of assisted reproductive technology. It strengthens the primacy of the interests of the children conceived using assisted reproductive technology. It will allow donor-conceived children to access information about the donor parent, the biological father, once the child turns 18 years of age. The bill is consistent with the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research. These were published in September 2004 and revised in June 2007. It provides for regulation of surrogacy arrangements. The bill will help all those involved in assisted reproductive technology to make informed choices about their decisions when they embark on assisted reproductive technology.

I will speak on three areas: informed consent, the regulation of assisted reproductive technology providers and counselling. With regards informed consent, the bill provides that gametes can only be collected with the consent of the person providing them, and may only be used in accordance with that consent. A person who donates gametes can vary or withdraw their consent at any time up until those gametes are used. The bill does not restrict the matters about which a person's consent is required. Therefore, part of the consent process involves in the case of a gamete donation a decision as to whether the class of people who are able to be given the gametes is to be restricted or unrestricted.

In practice, this will mean that a donor may choose to restrict who may receive their gametes on any grounds, including race, religion or physical characteristics. It is possible, for example, for a donor from a particular ethnic or cultural background to request that their genetic material only be provided to persons of the same ethnic or cultural group. Of course, individual clinics may have their own policies relating to gamete donation. The bill does not prevent a clinic from refusing to accept donations from people who place certain restrictions on their donated gametes. The main reason for allowing donors to direct their donations to a certain person or class of people is to safeguard the wellbeing of the child. That is because it is certainly not in a child's best interests to have a genetic parent who is opposed to the child's conception.

This is especially important now that children are to have a right to find out information about their genetic parents. It would be potentially devastating for a child to attempt to contact a donor and then be rejected because the donor disapproved of some characteristic of the child's birth parents. Allowing donations to be directed in this fashion is consistent with part 6.9 of the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research.

I now move to the regulation of practitioners. Clause 11 of the bill provides that all assisted reproductive technology services are undertaken by or under the supervision of a registered medical practitioner. Medical practitioners are subject to the strict provisions of the Medical Practice Act 1992. This regulates their clinical and ethical behaviour. This is in addition to the legislative provisions set out in the bill. If clients have a concern or a problem with a particular practitioner or clinic they are free to lodge a complaint with the Health Care Complaints Commission, which can fully investigate those complaints. If the legislation has not been complied with the commission can launch a prosecution against the responsible party.

Furthermore, if a registered assisted reproductive technology provider is convicted of an offence under the Act or other relevant legislation, or if the provider has had their accreditation cancelled by the Reproductive Technology Accreditation Committee, the Director General of the Department of Health may prohibit that person from carrying on the business of providing an assisted reproductive technology service. I have talked about informed consent and regulation. Finally, I turn to counselling. This bill makes it mandatory for assisted reproductive technology providers to make counselling services available to all parties involved in assisted reproductive technology treatment, that is, the woman seeking treatment, her spouse and the gamete donor.

Counselling is considered to be particularly beneficial for people involved in assisted reproductive technology treatment because of the ethical dilemmas that it involves. Also, sensitive personal, familial and social issues may arise during treatment and in later life when a child born as a result of that treatment inquires about their genetic background. It is important that participants in assisted reproductive technology treatment are given access to counselling services at the place where the treatment is offered. This provision ensures that recipients—that is, donors and spouses—are made aware of the importance and availability of counselling to assist them if required.

However, the bill does not make it mandatory for people to undergo counselling as people have a right to choose whether or not to undergo any health care treatment. Counselling is no different, and it is doubtful that counselling would be of any benefit to someone who did not want it. It is important to offer people a choice and to respect that choice. This bill will help those involved in assisted reproductive technology treatment to make informed choices about their decisions when they embark on the treatment. It has good provisions for counselling, informed consent and regulation of practitioners. I commend the bill to the House.

**Mrs JUDY HOPWOOD** (Hornsby) [7.52 p.m.]: The Assisted Reproductive Technology Bill 2007 relates to the regulation of assisted reproductive technology services, the registration of assisted reproductive technology service providers and the prohibition of commercial surrogacy. The overview of the bill states:

> The objects of this Bill are to prevent the commercialisation of human reproduction, and to protect the interests of certain persons affected by assisted reproductive technology (***ART***) treatment. In order to do this, the Bill:
>
> (a) requires ART providers to be registered by the Director-General of the Department of Health, and
>
> (b) makes certain requirements in relation to the provision of ART services, including requirements that ART services be undertaken by, or under the supervision of, a registered medical practitioner and that counselling services be made available, and
>
> (c) places a number of restrictions on the use of gametes and embryos, and
>
> (d) requires ART providers to collect information from persons involved in ART treatment and from donors, and
>
> (e) requires the Director-General to establish a central ART donor register that permits persons involved in ART treatment and donors to obtain certain information about other persons, including permitting a person born as a result of ART treatment using a donated gamete to obtain information about the donor of the gamete, and
>
> (f) prohibits commercial surrogacy and makes surrogacy agreements void, and
>
> (g) provides for enforcement of the proposed Act.

The Coalition will be supporting this legislation, which has been a long time coming. There is quite a time line for the bill before us today. I have a piece of correspondence submitted by the Donor Conception Support Group which lists the time line relating to that group, and I shall address it briefly. In January 1993 the Donor Conception Support Group was formed in Sydney. In 1995 it began its first course for legislation to protect donor conception records and give donor offspring the right to access information. Members of the support group continued that course with successive health Ministers, including Andrew Refshauge, Craig Knowles, Morris Iemma, John Hatzistergos and more recently the member for Cabramatta.

In 1996 the Department of Health released its discussion paper on the review of the Human Tissue Act and from this formed a reference group in 2000, which was created to go over the issues raised in the discussion paper and express the different views that might exist. A draft exposure bill was tabled in Parliament in December 2003. The bill was available on the parliamentary website and was titled "Assisted Reproductive Technology Bill 2003". The group then met with the then health Minister in 2004 and wrote to every member of Cabinet expressing its views. The group was later informed that the health Minister was "committed to providing a register for donor offspring". We later heard that the then Premier Bob Carr had called for yet another report on the issues from the health department.

In 2006 and 2007 the group found itself at the end of a long haul in relation to its initial belief about the protection of donor conception records and the rights of a child born as a result of such a conception. I shall comment on the excessive length of time it has taken to get to this point. Three principles guide the development of the bill: first, to recognise obligations already imposed on assisted reproductive technology providers by existing laws, that is, the Medical Practice Act 1992; secondly, to recognise the rights of individuals to have control over the use of their genetic material; and, thirdly, the best interests of the child.

The bill complements and enhances the current system to clarify and protect the rights and obligations of people involved in assisted reproductive technology treatment. It does not appear to duplicate the existing regulatory system that currently applies to the clinical aspects of assisted reproductive technology practice. Interestingly, the definition of "embryo" in the bill is different from the definition of "human embryo" in the Human Cloning for Reproduction and Other Prohibited Practices Act. It is alleged that the bill is aimed at regulating the social aspects of assisted reproductive technology treatment, while the human cloning for reproduction and other prohibited practices legislation is designed to prohibit certain ethically unacceptable

practices. The Legislation Review Committee made certain points during its deliberations on the bill. The committee stated:

> The Committee considers that an appropriate privacy balance has been achieved between the privacy rights and needs of donor-conceived children, parents, donors, ART providers, and the primacy of the best interests of children conceived using the assisted reproductive technology, with respect to circumstances in aiming to save their lives or preventing serious damage to their health. Therefore, the Committee does not consider personal rights such as privacy concerns have been unduly trespassed.
>
> …
>
> The Committee notes that Part 5 sets out the appointment of inspectors with the issuance of a certificate of authority to authorise the inspector's exercise of functions; limitation on self-incrimination; search warrants applications; and provides for disallowance of seizures including applications to the Local Court.
>
> The Committee considers that given the above context of procedural rights, along with monetary penalties rather than imprisonment, as well as the overall aims of the Bill to recognise the rights of individuals to have control over the use of their genetic material, to promote the best interests of the child, and to prevent the commercialisation of human reproduction and commercial surrogacy, the reversal onus of proof on defendants that they had a reasonable excuse, does not trespass unduly on personal rights.

This includes agreements made before the legislation commences. The committee will always be concerned with the retrospective effect of legislation that may impact on personal rights. However, as a key part of the objective of the bill is to prevent the commercialisation of human reproduction by prohibiting commercial surrogacy, which is also consistent with existing law, by making all surrogacy arrangements void and unenforceable, the committee was of the view that, in the circumstances, the retrospective effect of the proposed section did not trespass unduly on personal rights.

The final area of deliberation was related to the commencement by proclamation. This was noted as being necessary because a lengthy and detailed implementation period was required, during which the Department of Health would consult with stakeholders on regulations under the bill. The committee noted that it was important for stakeholders to be involved in the development of the donor register and for a donor to be provided with information on their rights and obligations before the Act commences. Therefore, the committee considered that the bill commencing by proclamation rather than on assent was not an inappropriate delegation of legislative power.

The bill deals with the social aspects of assisted reproductive technology. It is an important addition in that it assists those born in this way to avoid the risk of inadvertently marrying a sibling. Considering the number of people accessing this type of reproduction, somebody could inadvertently meet up and form a relationship with their half-sister or half-brother. Under the requirements in the bill any person conceived in this way has the ability to access his or her health history, which will alleviate many fears in that regard.

I ask the Minister to comment on how the Government will solve the problem of those bypassing the legislation and providing the service illegally. I can remember doing a course at the New South Wales College of Nursing when a group addressed the class. I was quite shocked to learn that people provided sperm specimens that were taken immediately to people who wished to conceive but not by a normal relationship. The bill regulates the technicians and people involved in providing this type of technology but it may not cover those who seek to conceive in a manner that does not require the placing of one's name on a register. The Coalition supports the legislation and the points made by the shadow Minister for Health about concerns raised with her during the lengthy formulation of this bill. No doubt this will assist individuals conceived from gamete donation from assisted reproduction technology.

**Mr TONY STEWART** (Bankstown) [8.03 p.m.]: I strongly support the Assisted Reproductive Technology Bill 2007. In particular, I thank the Minister for Health, Reba Meagher, for promoting the bill when it is very much needed and has been talked about for many years. In fact, New South Wales is the second or third State to introduce legislation to protect siblings from donor-conceived situations. The rights of siblings must be protected and this has not been the case in this country for many years. While it is important that New South Wales leads the way, it is a pity that we do not have umbrella legislation from the Federal Government in this regard because it is important to have uniform legislation. At present it has been ad hoc, to say the least. Victoria was the first State to introduce legislation, Queensland was second, and New South Wales is on par with that State. I thank the Minister for Health, who has listened to the needs of those involved in donor conception, and introduced legislation to protect their legal rights now and into the future.

The bill limits the regulation of surrogacy and outlaws commercial surrogacy. Also, preceding arrangements will become void and therefore unenforceable. I point out that this situation is critical in New

South Wales. There are 37,000 plus people born as a result of donor conception programs. In my electorate of Bankstown—in fact in the Georges Hall area—one constituent has 29 half-siblings as a result of donor conception. As I mentioned in a previous speech that I gave to the Parliament on this issue some two weeks ago, one man running around New South Wales has successfully provided sperm donation 376 times. One does not need to be an actuarial genius to work out the ramifications of that. It is alarming and needs to be dealt with. In particular, it is important that those involved in donor-conceived programs have knowledge of their father's identity because it is important to their health history and genetic background. Also, the possibility of meeting a half-sibling and unknowingly entering into a relationship with that person is also of concern. This bill provides measures to enable siblings to know the identity of their donor father and that is very important.

I emphasise the input that the Donor Conception Support Group has made in my local area. This group has been around for over 15 years and is headed by Leonie Sheedie. The group operates out of Georges Hall and has been an advocate of donor-conceived issues for many years. Leonie Sheedie, in particular, has put every effort into ensuring that all government agencies are aware of the needs of donor-conceived situations and that all Australians understand what has happened to donor-conceived siblings who have not had the proper rights they deserve and need over many years. Also, I refer to a constituent by the name of Melinda Harrington, who approached the group. Melinda has a child Marnie, who was born 5½ years ago following an anonymous sperm donation at the Royal Princes Alfred Hospital. Melinda stated:

> For several years, letters were exchanged between the sperm donor and myself, passed on via the Fertility and Andrology Sections at respective hospitals.

That is fair enough.

> I discovered that, sadly, the sperm donor father of Marnie [she says] had been unable to have children with his [own] wife despite years of trying. Then, in 2006, I received a card via the fertility unit from the sperm donor informing me that he had at last had a son with his wife. The card included a photo of the newborn babe.

This woman needs to know this important history and what her child needs to know of her donor-conceived sibling. I replied to the happy news. Unfortunately, the Andrology unit had made a decision in the interim not to forward any more letters between donors and recipient families. This decision was made following a situation where a recipient family identified their donor and made contact. I might add that this contact was well received between all parties and is still positive in nature.

> Despite our best efforts, the Andrology Unit absolutely refuses to budge on this issue: they refuse to allow any contact between parties, even where that exchange of letters has been friendly and positive in nature.
>
> Further to this they refuse to let my donor know that I have responded to his letter and card from last year.

The donor does not know about the progress of his own child. She goes on:

> They stated that if he rings them they'll let him know there are letters there on file for him from me.

But they cannot show him the letters. What a ridiculous situation in the twenty-first century. This is an individual situation but it is repeated hundreds of times over, particularly later on when siblings want to know about their real identity and who their birth father is, not because they want to take any legal action or because of legal ramifications but simply because, as I said at the outset of my contribution, they need to have an understanding of the genetic health issues they may confront later in life or they need to know of their chances of meeting a half-sibling at some stage during their life.

This legislation is long overdue and I thank the Minister for Health for bringing forward this bill. The bill establishes two separate donor registers. The first is a mandatory prospective register; the second is a voluntary retrospective register. The Department of Health will establish and maintain the registers. The establishment of the registers is entirely consistent with the National Health and Medical Research Council's ethical guidelines, which do not allow for anonymous donation.

The establishment of a voluntary retrospective register acknowledges that in the past many donors were given guarantees of anonymity. Arguments have been put that the establishment of the prospective mandatory register and the outlawing of anonymous donations will adversely affect the availability of donated gametes. There is, in fact, no real evidence for these claims and the experience of other jurisdictions is that there is no long-term impact on the availability of donated gametes. In addition, since 1996 the National Health and Medical Research Council's ethical guidelines have directed assisted reproductive technology providers that it is unethical to receive and use anonymous donations.

Clause 29 of the bill prohibits the provision of assisted reproductive technology treatment to children. The only exception to this rule is the situation where the assisted reproductive technology treatment is the collection and storage of gametes for the child's future use in circumstances where a medical practitioner has certified that there is a reasonable risk of the child becoming infertile before becoming an adult. This scenario is likely to arise in cases such as the treatment of cancer in children. The bill is entirely consistent with the most recent edition of the National Health and Medical Research Council's Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research. Those guidelines were most recently updated in June 2007.

The bill is silent on the subject of sex selection. Sex selection is a controversial issue and people of good conscience and strongly developed ethical principles can easily find themselves on opposite sides of the debate in this area. The National Health and Medical Research Council's Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research acknowledge the controversy in this area. Notwithstanding the ethical debate in this area, it should be stated in no uncertain terms that while there may be valid reasons to undertake gender screening such as to prevent a child being born with a debilitating genetic disorder, entry to life should not be conditional upon a child being of a certain gender.

Importantly too, I have been contacted by Leonie Hewitt in relation to the outcome of this bill. Leonie is concerned that there will be no compulsory counselling prior to assisted reproductive technology treatment. She said it would be difficult for people who are focused on having children to be made aware of long-term issues for not only themselves but also the child they are planning to have if they do not have to have at least one session of counselling. She said there is also an issue about what resources and counselling there will be for donor offspring when they use the register. Leonie asked who will support them when they are told how many half-siblings they have. She gave an example of a boy who has four half-siblings in a New South Wales clinic. When those children or adults apply to the register, who will tell the children about the other 20 half-siblings in South Australia, and how will it be done? Will the register have trained counsellors? Leonie also asks who will support the supporters of the Donor Conception Support Group of Australia. That is an important issue. It is a concerned group of people who have supported donor offspring and their families and it will not be given automatic funding under this legislation and other programs that are being instigated. But they have to receive funding to continue their commitment to support those in need.

There are tens of thousands of siblings as a result of donor support programs and they have to beg for support from governments, not just in New South Wales but on a nationwide basis, to continue the hard work they are doing. They need support. There needs to be some ongoing funding program that recognises that this group is out there on the front line meeting the people who are part of this assisted reproductive technology. I mentioned an example this evening of just one person with a child and the difficulties she has faced. There are tens of thousands of others out there who need support and it is Leonie Hewitt's group that is providing that in terms of the Donor Conception Support Group that is based in New South Wales and has been fundamentally at the forefront of providing the incentive for this legislation in New South Wales with the support of the Minister for Health. I commend the bill to the House.

**Ms REBA MEAGHER** (Cabramatta—Minister for Health) [8.17 p.m.], in reply: I thank honourable members for their contributions to the debate on the Assisted Reproductive Technology Bill 2007. I also thank the many people and organisations who have contributed to the development of this legislation by sharing their professional expertise and personal experiences. In this respect I particularly mention Leonie and Warren Hewitt and their daughter Geraldine, as well as Caroline and Patrice Lorbach and Henry Wellsmore, who have unstintingly devoted their time and energy to this issue. Of these individuals I single out Leonie Hewitt for particular mention.

As many members will be aware, Leonie Hewitt was recently awarded the Order of Australia Medal for her selfless work with Care Leavers of Australia Network. The network is a support and advocacy group for people brought up in care as state wards or raised in children's homes, orphanages or other institutions. Leonie has brought the same dedication and passion to her advocacy work for donor-conceived children and while she may have been a thorn in the side of many Ministers and public servants it has never been for personal gain or glory. I take this opportunity to publicly congratulate Leonie Hewitt on the receipt of her Order of Australia Medal and to thank her for her tireless efforts in helping to drive public policy forward in the area of assisted reproductive technology regulation.

The bill recognises the primacy of the best interests of the children conceived using assisted reproductive technology. Children have a right to know about their identity and their genetic heritage. There will

be no more anonymous gamete donation in this State. In the early years during the development of assisted reproductive technology treatment the focus was very much on protecting the rights and privacy of the adults involved in the procedure, the prospective parents and the donors. Now the children conceived in the early years have grown into adults and have demanded their rights, most importantly the right to know their genetic parentage. Advances in medical science, particularly increasing knowledge about the links between genetic material and certain medical conditions, have raised people's interest in and awareness of their genetic inheritance.

The bill allows all adult offspring conceived using donated gametes after the commencement of this legislation to find out information about their genetic parents and their siblings and half siblings, but only if they choose to do so. Identifying information about offspring and siblings will be provided only if the children consent. Providing information to the register will be mandatory. The bill also recognises the interests of the children who have already been conceived or born from donated gametes. Schedule 1 makes provision for a voluntary register so that donors and offspring conceived prior to the commencement of this legislation can voluntarily be part of the register by making an application. I emphasise the fact that the provisions dealing with the voluntary register being in a schedule to the bill does not indicate that they are of lesser importance. The voluntary retrospective register is an extremely important part of this legislation, and I give an undertaking that it will be established at the same time as the mandatory register and that it will operate in the same way.

The bill also recognises the rights of gamete donors. It provides that their gametes can be used only in accordance with their express consent. It is important that people have a say in the use of their own genetic material. It is also in the best interests of any donor-conceived child that the donor consented to the circumstances surrounding the birth. This will be especially important after the legislation commences because there will be a greater likelihood that donors and offspring may identify and contact one another. The bill provides a sound regulatory framework for the ethical and social issues raised by assisted reproductive technology procedures. It addresses the concerns of donors, parents and offspring while complementing the regulatory requirements already in place.

The member for North Shore raised concerns about the ability of donor offspring to obtain information about their donor and any half siblings they may have. The bill expressly provides that adult offspring have a right to obtain information about their donor. The bill does not provide a right for donor-conceived children to obtain identifying information about their siblings but does facilitate the exchange of such information if the adult offspring give their consent. This approach is considered to be in the best interests of the offspring and allows the offspring themselves to control the exchange of their information. The member for Hornsby has raised concerns about sperm donation via private or underground means. While I agree that that is an undesirable practice, I do not believe that this type of private arrangement between individuals can be prevented or regulated. Again I thank members for their valuable and thoughtful contributions to this debate. I commend the bill to the House.

**Question—That this bill be now agreed to in principle—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill agreed to in principle.**

**Passing of the Bill**

**Bill declared passed and transmitted to the Legislative Council with a message seeking its concurrence in the bill.**

## CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2007

**Agreement in Principle**

**Debate resumed from 24 October 2007.**

**Mr GREG SMITH** (Epping) [8.24 p.m.]: The Opposition does not oppose the bill, which amends the Crime (Forensic Procedures) Act 2000 to allow a police officer or magistrate to request or order a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of a suspect's hair or the carrying out of a self-administered buccal swab in connection with the investigation of any offence. In the agreement in

principle speech the Parliamentary Secretary said that this bill has been introduced as part of the Government's election commitment to expand the range of offences in respect of which DNA samples may be taken without a person's consent. The bill will extend the power of police to request non-intimate forensic procedures. Instead of being able to request this form of investigation only in relation to indictable and other prescribed offences, the power will be extended to any offence.

Forensic procedures will be carried out only when there are reasonable grounds to believe that a suspect has committed an offence, and the purpose of the sample is to prove or disprove that they have committed the offence. Changes to section 88 (2) (c) of the Act also ensure that the forensic material taken in relation to one offence will be available in cases where proceedings are taken in relation to another offence arising out of the same act or omission by the subject. These changes will provide the police and the courts with greater powers to acquire forensic evidence in relation to proving or disproving guilt of an offence. These powers will allow the courts to put new technology at the forefront of crime fighting and should lead to greater certainty in the prosecution of criminals.

The arguments against the bill include that these changes may result in an unwarranted and substantial encroachment on civil liberties and will not provide adequate safeguards to ensure that individuals have the right to defend themselves. These changes challenge the principle that people have a right to remain silent or to ensure that they are not compelled to say anything that may impugn them. The compulsion to supply forensic evidence could be equated with a breach of that right. There are other issues of concern. For example, the Government, although it has committed to spending a great deal of money in the budget on improving DNA testing and forensic resources generally, still has not recruited nearly enough biologists and others to carry out the testing, which has led to a considerable backlog. This is frustrating operational police officers, particularly in relation to those carrying out serial burglaries and robberies. Police cannot catch offenders because they do not have enough evidence. When DNA analysis is done suspects often end up being charged with many offences.

The irony is that this legislation has been introduced at the same time as the Government has introduced criminal infringement notices—that is, penalty notices—for offences such as fraud, shoplifting and breaking into cars. The Government says that it wants to rid the police of the red tape involved in charging and prosecuting. It is providing for the service of a criminal infringement notice and police officers will act as investigators, prosecutors and judges, and an offender will be able to avoid a conviction by paying a fine. Ironically, fingerprints taken at the time of those infringements are to be destroyed. Similar activity can involve the taking of a DNA sample which, of course, involves a great deal of red tape and a lot of extra work on the part of forensic scientists and support staff. Nevertheless, the Opposition does not oppose the bill and the criminal justice system appears to generally support it. However, the Law Society, the Bar Association and the Council for Civil Liberties opposed the original legislation when it was introduced in 2000. Other groups such as the police support the legislation. It should improve the crime clearance rate because it is often when police are investigating minor crimes that major criminals are detected.

**Mr MALCOLM KERR** (Cronulla) [8.29 p.m.]: This is an important bill. I hope the Parliamentary Secretary, when he responds, can give the House particulars about the forensic backlog. As the member for Epping said, this is a serious matter and victims of crime and the police are frustrated by that backlog. I take the House to the agreement in principle speech of the member for Miranda in which he said there were already other safeguards—

**Mr Barry Collier:** I did not make that speech; the Minister for Police did. I am sorry, I did deliver it.

**Mr MALCOLM KERR:** Another attempt to mislead the House. Fortunately I was here; otherwise I am sure the member for Miranda would feel honour bound to resign.

**Mr Barry Collier:** It was me.

**Mr MALCOLM KERR:** Are you resigning?

**Mr Barry Collier:** Don't be silly. Stop wasting the time of the House.

**Mr MALCOLM KERR:** Be careful. That constituency is quite fickle. You never know what would happen in a by-election.

**ASSISTANT-SPEAKER (Mr Grant McBride):** Order! Government members should cease interjecting.

**Mr MALCOLM KERR:** I am resigned to his interjections. In the agreement in principle speech the member for Miranda said:

> There are already other safeguards in the Crimes (Forensic Procedures) Act. Part 10 of the Act requires that a suspect's forensic material be destroyed if the suspect is acquitted of the offence or no criminal proceedings are commenced within a 12-month period. Exceptions to this rule include where a magistrate has approved the extension of this period or the person is the subject of an arrest warrant. The bill makes a related amendment to ensure that the destruction provisions apply in the same way to a sample taken for one offence, where proceedings are taken in relation to another offence arising out of the same act or omission by the suspect.

This is the key point:

> This will ensure that the forensic material is available for those criminal proceedings.

Forensic evidence should be to assist the search for truth, not to assist the most powerful party, the Crown. That criticism is valid so long as the State's facilities are confined to use by the Crown. With the best will in the world there can be a mistake in forensic evidence, quite bona fide and not resulting from lack of care. The member for Miranda and other members of the House will remember that the McLeod-Lindsay inquiry ultimately disclosed such a mistake by further scientific experiment. We must be aware of these things. Good forensic evidence is becoming more and more accessible because science is continually improving and graduates in forensics science are becoming more and more available.

An important lesson in the administration of justice has gone unimpeded in New South Wales. The State should have an excellent, fully integrated forensic laboratory capable of doing accurate work and manned by capable and impartial scientists. There should be access to these facilities by the defence so that results can be checked out if in doubt and so that forensic investigations assisting the defence case can be performed. Reform has already been implemented at the New South Wales Institute of Forensic Medicine, which, among other things, performs post-mortem examinations. The facilities of the Victorian Forensic Laboratory are available to the defence, even though it is a police laboratory, as are those in South Australia. In Queensland it was the State laboratory, the John Tonge Laboratory, which ultimately saved Frank Button.

It is ridiculous if the State laboratory is limited to assisting the Crown. It is not only an important means of preventing error, but it also casts doubt on the impartiality of any work done in the laboratory. Scientific assistance should not be available only to the Crown or to wealthy defendants, and I am sure the member for Wakehurst would agree with me, given his social outlook. That is not the situation in New South Wales.

**Mr Brad Hazzard:** Do you want me to interject on you now?

**Mr MALCOLM KERR:** No.

**ASSISTANT-SPEAKER (Mr Grant McBride):** Order! Members will keep the interjections orderly, so they can be recorded by Hansard.

**Mr MALCOLM KERR:** I refuse to acknowledge interjections. In putting these views forward I am simply quoting from a book which is no doubt bedside reading for the member for Epping and the member for Miranda, *The Conviction of the Innocent* by Chester Porter, QC. No doubt the member for Maitland is waiting for the movie to come out, but it would be of great assistance to members who are interested in the administration of justice. With those few words I support the bill.

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [8.34 p.m.], in reply: I thank the member for Epping and the member for Cronulla for their contributions to the debate. I must admit I did deliver the agreement in principle speech; it slipped my mind for a moment. In any event the Government is pleased to introduce the bill. It amends the Crimes (Forensics Procedures) Act 2000 and implements a 2007 Government election commitment to expand the range of offences in respect of which DNA samples may be taken without a person's consent. It is important to recognise—and I point this out for the benefit of the member for Cronulla—that currently police can only take DNA samples from people accused of indictable offences like murder, sexual assault and robbery, unless they consent to the forensics procedure. The changes will expand this to include all offences, including non-indictable offences such as loitering by a convicted child sex offender and minor drug offences.

It is also important to point out—and I remind the member for Cronulla of this particularly— that the amendments also clarify the legal test that must be met before a police officer can take a DNA sample from a suspect without his or her consent. The test has two important limbs. First, the police officer must reasonably suspect that the person committed an offence and, second, there must be reasonable grounds to believe that the DNA sample might produce evidence tending to confirm or disapprove that the suspect committed that particular offence. The police will not be taking DNA samples from suspects for the sake of it. Police will not be able to compel a person to provide a DNA sample if there is no information indicating that there is DNA material taken from the scene.

The member for Cronulla raised the issue of the defence having access to the material. The defence can have access to the material for independent analysis if it requires it. The member for Cronulla should not be impugning the credibility or independence of the forensic scientists at the laboratory. They are subject to independent accreditation. In relation to the DNA database, in most cases a person's details will be removed from the database if they are not charged with an offence within 12 months. Exceptions to this rule include when a magistrate has approved an extension of the period or the person is the subject of an arrest warrant. If the person is convicted of the offence for which a DNA sample was taken, the DNA profile will remain on the DNA database unless the conviction is later overturned.

The amendments also clarify that forensic material does not need to be destroyed if a person is prosecuted for an offence other than that for which the DNA sample was obtained, if they were prosecuted for an offence arising out of the same circumstances. For example, if a person's samples are taken in relation to an offence of inflicting grievous bodily harm and the victim later dies from the injuries, the forensic material does not need to be destroyed simply because the suspect is charged with murder instead of inflicting grievous bodily harm. The bill will enable police to take DNA samples from people suspected of summary offences as well as indictable offences. Obviously, taking crime scene material is complex and its analysis can be time-consuming, but enhancements in forensic areas generally result in improved police investigations and a greater number of prosecutions. It is interesting to note that over the four-year period from 1 January 2001 to 31 December 2004 police conducted 9,455 forensic procedures on suspects, 77 per cent of which were to obtain DNA samples.

New South Wales has been participating in the national DNA database since March and as at October 2007 had uploaded over 64,000 DNA profiles into the national DNA database for comparison with DNA profiles from other jurisdictions, including more than 33,000 profiles from serious indictable offenders and almost 31,000 profiles recovered from crime scenes. We are sharing that information with Victoria, Western Australia, the Commonwealth and the Australian Capital Territory. As from October this year we are also sharing it with Tasmania, which together creates a DNA-sharing network comprising more than 72 per cent of the Australian population. The bill implements an important election commitment and assists police by expanding the range of offences in respect to which DNA samples may be taken. I commend the bill to the House.

**Question—That this bill be now agreed to in principle—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill agreed to in principle.**

**Passing of the Bill**

**Bill declared passed and transmitted to the Legislative Council with a message seeking its concurrence in the bill.**

## CRIMES AMENDMENT (CONSENT—SEXUAL ASSAULT OFFENCES) BILL 2007

**Agreement in Principle**

**Ms VERITY FIRTH** (Balmain—Minister for Women, Minister for Science and Medical Research, Minister Assisting the Minister for Health (Cancer), Minister Assisting the Minister for Climate Change, Environment and Water (Environment)) [8.41 p.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007, as amended by the Government in the Legislative Council. The bill is substantially the same as that introduced in the Legislative Council on 7 November this year, and I direct members to the second reading speech on this bill in *Hansard* for more information about its provisions. The bill has been amended by the Government in the Legislative Council to require a review to be carried out to determine whether the policy objectives of the Crimes Amendment (Consent—Sexual Assault Offences) Act 2007 remain valid and whether the terms of the amendments made by the Act remain appropriate for the securing of those objectives.

That review is to be undertaken as soon as possible after the conclusion of four years from the date of commencement of the legislation. A report on the outcome of the review is to be tabled within 12 months after the end of that period of four years. This has been done because it is necessary to have a sufficient number of cases go through the courts after the introduction of the bill to provide enough material on which to base a review. On advice that the Government has received it will require a time frame of four years for these cases to progress through the courts. It is the Government's intention to have the review, although a ministerial review, conducted by the Sexual Offences Task Force. Those same stakeholders will have the opportunity to review the work and contribute to debate and discussion on the issue. Given their level of experience in such matters and their excellent contribution to the report, that will be appropriate. I commend the bill to the House.

**Mr GREG SMITH** (Epping) [8.42 p.m.]: I lead for the Opposition on the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007. The Opposition will not oppose the bill but will seek to amend it to substitute the Law Reform Commission as the investigator after three years. The bill amends the Crimes Act 1900. It defines consent for the purposes of sexual assault offences as "free and voluntary agreement to sexual intercourse". Previously common law prevailed and the definition is consistent with most definitions given by trial judges in this State.

The bill also repeals section 61R, which currently provides that a person who has sexual intercourse with another person without consent of the other person, or who is reckless as to whether the other person consents to the sexual intercourse, knows that the other person does not consent to the sexual intercourse. The bill replaces that provision with section 61HA (3), which retains "recklessness" but also provides that the person knows that the other person does not consent to sexual intercourse if the person has no reasonable grounds for believing that the other person consents to the sexual intercourse. The judge or jury must have regard to all the circumstances of the case, including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but not including any self-induced intoxication of the person.

New section 61HA (4) contains provisions that negate consent when complainants do not have the capacity or opportunity to consent because of sleep or unconsciousness or when a person is exposed to threats or being unlawfully detained. New section 61HA (5) provides that consent is not given when a complainant acts out of a mistaken belief or fraud. These provisions replicate current section 61R (2). New section 61HA (6) provides that the grounds on which it may be established that a person does not consent to sexual intercourse include if that person is substantially intoxicated by alcohol, is induced to have sexual intercourse because of intimidatory or coercive conduct, or is subject to abuse of a position of authority or trust. New section 61HA (7) provides that the lack of physical resistance by a complainant is not in itself sufficient to constitute consent.

Although it has been said that the bill is a response to the recommendation of the Sexual Assault Task Force, the task force made no such recommendation, and I will come to those recommendations shortly. When the *Daily Telegraph*, particularly Janet Fife-Yeomans, commenced a series of articles on behalf of various women's groups, including the Rape Crisis Centre, entitled "Justice for Women Now" the Government provided a response, to which I shall return shortly. The *Daily Telegraph* sought four key reforms. First, it asked that there be no delay and that there be a limit of 12 months from the date charges are laid to the end of the appeal process. It would not be possible for the Government to comply with that request because the criminal process would prevent a guarantee that everything would be completed in 12 months.

Second, the *Daily Telegraph* asked that lawyers represent victims. Under the current system the Crown appears for the community while a lawyer usually represents the accused. As far as I am aware, the Government has not responded to that request and it would be unusual in our system of justice unless a victim has a claim for privilege or something similar. The third request was codification of the idea that "No" means no. The simple statutory definition of consent is that the person has the capacity to consent and did so freely and voluntarily. Indeed, new section 61HA (2) states:

> A person ***consents*** to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse.

The fourth request was for a one-stop shop with all government services being available to the rape victim rather than the victim attending appointments. I do not believe that system is in place. Indeed, it would be difficult to achieve in remote areas. However, I commend the initiative and, hopefully, when the Coalition is in government we will strive to achieve that. In response to the campaign the Attorney General said that the system had failed all rape victims, and he launched a discussion paper on the meaning of consent. However, it was not all about the meaning of consent. There is no evidence that changing the definition of "consent" and including an objective test will improve the situation for women. In England in 2003, under the Sexual Offences Act, the British Parliament did away with the subjective aspects of lack of knowledge of consent and brought in an objective requirement similar to that set out in paragraph (c). As a result there has not been any significant increase in the number of convictions obtained in the British courts. I will come back to that.

Throughout the campaign the Opposition has called on the Government to increase funding to the criminal justice system to remove delays, provide further assistance to victims, set up one-stop shops, and provide special courts for sexual assault offences. One of the primary recommendations of the Criminal Justice Sexual Offences Task Force was that there be specialised courts with training judges, prosecutors, witness assistance officers and other people so the trauma of giving evidence in a rape case would be reduced to a certain extent. Such trauma can never be eliminated because of the subject matter and the fact that where there is a trial there is inevitably conflict between the accused and the complainant and undoubtedly there will be attempts to test the credibility and accuracy of the complainant.

The Government has failed to respond to the Opposition's request for specialised courts. It has also failed to respond to the call for one-stop shops, and it has failed to respond to calls to streamline the system to remove delays. The Government has not responded by simply asking the Bar Association to somehow clip the wings of defence counsel by telling them, "Don't get involved in lengthy cross-examination. Don't get involved in offensive cross-examination." The Government has enacted provisions in the Criminal Procedure Act, which it is now translating into the Evidence Act, which require judges to stop offensive cross-examination. That is a good thing. But in my experience there is not a lot of offensive cross-examination, because it is almost forensic suicide for the defence counsel to be too offensive with the complainant. The jury will get its back up immediately, and that will be a big weight in the consideration of guilt: it will weigh heavily in favour of the Crown.

With regard to the Opposition's call for the Government to provide further assistance to victims, the real assistance it could provide to victims would be to bring in laws that restrict pre-trial applications to the extent that there is a limit to how long a person has to bring such applications and how long the applications last. In the case of *The Queen v. G*—who was named originally but was not named in his second trial—I led Ms Cuneen in the Court of Criminal Appeal. The pre-trial proceedings had taken place 12 to 18 months before that, and the decision was made by the trial judge to exclude the identification evidence, which basically killed the Crown case. It took nine months for the Court of Criminal Appeal to decide that case, which it decided in our favour. In the meantime, however, Ms Cuneen had made her famous speech at Newcastle university about which there was a public outcry.

After the case went back to the judge—a different judge may have heard the further matters—further pre-trial applications were made. Looking from the outside, one might suspect that, this man having already been through a trial where the issues had been largely decided, these pre-trial applications were really trial by attrition, to try to wear out the victim, as they did. The victim eventually refused to give evidence. It was only then that the operation of the other amendments—which allowed evidence to be given by way of the transcript or by way of a tape of the evidence given in the first trial—were allowed to be used. Ultimately Ms Cuneen was excluded from the case after defence counsel objected to her continuing to prosecute because of her comments at Newcastle university. Another extremely able prosecutor took over the case—but without a victim, as it were. The new prosecutor simply had to use a transcript, which of course does not have any emotion. The trial involved someone monotonously reading out days and days of transcript. The original trial involved multiple accused, including Bilal Skaf, Mohammed Skaf and others. Ultimately the jury acquitted the accused and the case was thrown out.

The real assistance the Government could give to improve the situation for sexual assault victims would be to cut back on these prolix pre-trial applications and stop the filibustering, which wears out the resolve of a victim who has already been under enormous pressure through the tragedy of a vicious rape. Certainly convictions were confirmed against most of the accused in that matter. However, the victim was put through an enormous ordeal, one that would infuriate every decent member of the community. Yet the lawyers dragged those proceedings out for more than two years. This is where the Government must step in rather than asking the

Bar Council to do something—which most of its members would be against because an accused person is entitled to a fair trial and most Bar Council members are more in the defence bar league than in the prosecution league. The Government has failed to do that. Indeed, the Government has conned the women's movement by saying that these changes to consent laws will fix everything. They certainly will not. I will return to the bill's definition of "consent", which is in line with the definition proposed by the Commonwealth's model criminal code, that being "by free and voluntary agreement".

Wisely, recklessness as to whether the complainant is consenting is preserved and the common law is not altered by statutory definition. I will return to the aspect of recklessness and will refer to the High Court's decision in the case of Banditt, which I do not think the Government has given sufficient consideration to in its drafting of the legislation. The bill effectively creates a new crime of negligent sexual assault, inserting section 61HA (3) (c), which states, "The person has no reasonable grounds for believing that the other person consents to the sexual intercourse." The significance of this provision is enhanced by the fact that section 61HA (3) (e) states that the court cannot have regard to any self-inducing detoxification of the person committing the act. I think this is part of the area where England now has a battle between the judges, the politicians and the lawyers about the extent to which people have been affected, regarding their clarity of mind and to what extent that can be taken into account by the jury.

The Attorney General claimed in his second reading speech that these changes are in line with what was recommended by the Sexual Assault Task Force. Indeed, task force recommendation 14 was not nearly as definite as some of the others, asking the Attorney General's Department to give "further consideration to whether the common law should be modified to adopt an objective fault element for offences of sexual intercourse without consent, or by introduction of a new provision creating a separate offence". The separate offence aspect had been raised in the task force, I think to some extent by Mr Odgers for the Bar Association but by others as well. The Law Society objected to the objective standard and rejected the Canadian model, from which this was to some extent being taken. Asking that further consideration be given to the aspect of consent or to the introduction of a new provision creating a separate offence is hardly a recommendation that one should do what has been done here.

The Government has used the review of the consent laws as its response to the *Daily Telegraph* campaign. There is no reason to think it will result in increasing conviction rates, which is what the women's movement and society want. They would like to see a higher conviction rate. Wouldn't we all? Higher conviction rates are being achieved not by this—because it has already happened. They are being convicted because the Court of Criminal Appeal and the High Court have clarified the law in recent years. We have a good standard of Crown prosecutors, public defenders and defence counsel who are well on top of the intricacies of the Evidence Act. We have good witness assistance people who are helping the victims. We also have courageous victims who are willing to give evidence.

Probably one of the reasons for the increase in the rate of conviction is that there are probably not as many historical sexual assault cases coming through now. There was a period when there were many women generally, but sometimes men, talking about interference by relatives, people in positions of trust and others 20 to 30 years ago. It was very difficult to obtain a conviction in those instances or to get any corroboration. With the warnings that had to be given according to the High Court and the other courts it was very difficult to obtain a conviction and, if a conviction was obtained, it was very difficult to hold it.

My observation is that there are fewer cases coming through now. I might be wrong but I think that is the fact. Also the law has been improved. Some of the improvements have been because of the Opposition's attitude. For example, the Opposition proposed that the evidence given in the first trial be used in the next trial to save trauma to the victim. At first the Government pooh-poohed that but ultimately after the Skaf matter was set down for retrial—after the two jurors went to the park and created a successful appeal point—the victim refused to give evidence, the case was no billed and the Government had to capitulate and enact a law that allowed the transcript of the previous evidence to be used. A conviction was obtained the second time. That change, as will some of the other changes that have been made, has made things easier for women and other victims. It is not all women; it is mainly women. Those improvements are to be applauded.

It is wrong to think the solution to the current conviction rate will come from changing the consent clause. I think it will make it harder to get a conviction. The Bar Association believes there will be more convictions, and it may be right. It will be a much easier test to satisfy with the person having no reasonable grounds for believing that the other person consented—that is negligence effectively. The problem is that negligence is being mixed in with the subjective standards of actual intention or recklessness. It is hard enough

at the moment with intention and recklessness mixed together. "Recklessness" can mean that it is not given any thought; one just proceeds willy-nilly with the act without giving a moment's thought to whether a woman is consenting, or the person might have some doubt about it but goes ahead anyway. That is an example of two types of recklessness. When that is mixed up with intention it causes confusion. Including that a person has no reasonable grounds for believing that the other person has consented creates a very confusing summing-up.

I am not trying to big-note myself but we have to draw on people who have had the experience of running these cases in courts, calling witnesses, examining the accused, and then arguing these cases in the Court of Criminal Appeal and the High Court. Often it is the direction of the judge that decides whether someone is convicted. It becomes very difficult when you have confusing directions. We have this new concept of an objective ground, a negligence offence. The criminal law has always recognised that negligent actions attract lower penalties. Negligently causing grievous bodily harm has a maximum penalty of two years. Recklessly inflicting grievous bodily harm has a maximum penalty of 10 years. Deliberately or intentionally causing grievous bodily harm—what used to be called "maliciously"—has a maximum penalty of 25 years if there is intent. There is a gradation in the fault situation. If it is a negligent offence only a small penalty is imposed. Negligent driving causing death or grievous bodily harm attracts smaller penalties than dangerous driving, which is in between simple negligence and criminal negligence. Dangerous driving is an objective offence, as in paragraph (c)—how a reasonable person would consider the behaviour of the driver.

We are now introducing one offence, with one penalty—in some cases 25 years but generally 14 years for simple sexual assault, if I can call it that, without the aggravating circumstances. We are saying that what appears for grievous bodily harm with a 2, 10 and 25 gradation will now be 14 years. I wonder whether juries and society will jack up because of boys who have one-night stands with girls, which is part of our culture these days when alcohol is involved. There may appear to be consensual intercourse, but if the man then acts unkindly or brashly and just walks away, girls may change their mind. That is the example that the Bar Association has given.

**Ms Verity Firth:** You know that it is not saying that.

**Mr GREG SMITH:** I see that we have people who are wiser than I am, so they can keep talking because they will blindly follow whatever they are told to follow. The Opposition is not opposing the legislation but we have a duty to society.

**Ms Lylea McMahon:** Arrogant dinosaurs who think women cannot think for themselves.

**Mr GREG SMITH:** Women deserve as much help in sexual assault cases as society can possibly give. Women deserve as much sympathy, comfort and as much, as it were, restoration of a sense of justice for what has happened to them. In many cases I do not think we can restore a sense of justice because what has happened to them is something that some women will never recover from. I think a man can do nothing worse than to deliberately rape a woman. I think that is about the worst thing he could do except, perhaps, kill someone. In some cases it is like a killing. In fact sometimes, unfortunately, they kill the woman as well to stop evidence from being given.

We are genuinely concerned about the Government's mixture of onuses. This is something they have not tried in Britain because they have done away with the subjective test; they only have the objective test. It is something that has not been done in the other States. How is it a solution? Is it just done to get the *Daily Telegraph* off their back? Is it done to appease the Rape Crisis Centre and the women's groups, or is it done with wisdom? I think the former rather than the latter. It does not show an appreciation of sexual assault cases and of the law as decided by the courts.

The United Kingdom Sexual Offences Act 2003 sought to clarify the law on consent by defining the offence of rape as being committed if a person deliberately penetrates the vagina, anus or mouth of another, when that person does not consent to penetration and the perpetrator has no reasonable belief that consent was given. There is no question that this person knows that consent was not given—but undoubtedly the person would be caught by it. That the person is reckless seems to have been eliminated. It is an objective test and is to like effect as the third limb of the definition of consent. In favour of this legislation, the law provides certainty in relation to definitions of consent and may improve the number of convictions. We do not oppose making the meaning of "consent" a statutory definition rather than a common law definition.

The arguments against are that the cumulative effect of the bill criminalises actions that should not be subject to the severe penalties that are currently imposed on sexual assault. Such scenarios could include two

people being intoxicated, one giving consent and then alleging rape the next day once that person has sobered up and feels they have been used. Under the changed law this may be considered sexual assault if the person has suffered from cognitive incapacity, and the person alleged to have committed the assault is to be assessed by the standards of a sober, reasonable person and may be found to have lacked reasonable grounds for believing the other person had the capacity to consent. The changes will add also an objective element to a criminal test, which is not in line with the criminal tenet of mens rea—guilty mind—which applies to most criminal offences, and, as such, will criminalise actions that are not necessarily criminal in nature. The introduction of an objective test in a predominantly subjective field may have the effect of confusing juries rather than clarifying the position. In the current legislation section 61R states:

> A person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse is to be taken to know that the other person does not consent to the sexual intercourse.

A number of situations are set out where consent is vitiated, and I have mentioned those. This legislation adds a couple of extra examples that are not set out here but the common law always recognises, for example, that if someone was mistaken in who they were having sexual intercourse with that could not be consent. For example, if a woman thought she was having consensual sexual intercourse with her husband but it had been with his twin brother, that woman may well have been raped because there has been fraud—it was not true consent.

As a result of the Attorney General's wish to respond to newspaper articles the Criminal Law Review Division put out a discussion paper and various stakeholders responded—the Director of Public Prosecutions, the New South Wales Bar Association, the Rape Crisis Centre, the Law Society of New South Wales, various women's groups, and I think the Legal Aid Commission and probably the Public Defenders Office. It has been said that the Director of Public Prosecutions supports the proposal. I do not believe that is correct, although it does support an element of objectiveness. In a letter dated 20 July 2007 the Office of the Director of Public Prosecutions said it would be prepared to support a definition of consent—not the one contained in the draft consultation bill but one drafted without the consequent need to prove double negatives beyond reasonable doubt.

Secondly, the Office of the Director of Public Prosecutions said it would support an inclusion of unlawful detention as a factor that negates consent—and I do not think anyone would argue with that. It supported the inclusion of non-violent threats as negating consent but with modifications as to the drafting. It supported the introduction of intoxication as a factor that may negate consent if it is considered necessary, but not in the manner set out in the draft bill, and it supported the introduction of the concept of reasonable belief as to consent, but not without concurrent introduction of provisions for alternative verdicts, depending on the basis established by the evidence.

This is one of the problems when I compare it with inflicting grievous bodily harm. I saw that a man pleaded guilty today to the throwing of a rock that hit the lady in the Wollongong area and tragically caused her grave damage. He was originally charged with maliciously inflicting grievous bodily harm and was later charged with negligently inflicting grievous bodily harm—two separate offences. I note from the newspaper report that the lesser offence of negligence has been withdrawn and he has pleaded guilty to the serious charge.

In criminal cases it is not uncommon for the Crown to have in its indictment a charge of aggravated sexual assault, alternative sexual assault and alternative indecent assault because sometimes the evidence is not entirely clear as to whether there has been penetration. In such a case the Director of Public Prosecutions is suggesting that with the reasonable belief aspect of the case it really should be the subject of a separate offence, which the task force discussed. Mr Odgers was a member of the task force and he is an eminent criminal lawyer who regularly appears in the Court of Criminal Appeal and the High Court and is the author of a leading book on evidence. His proposal was, among other things, that the proposed section, which was then called section 61I, be redrafted so that the person who has sexual intercourse with another person without the consent of the other person and either knows that the other person does not consent to the sexual intercourse, paragraph (a), or is indifferent or reckless as to whether the person does or does not consent to sexual intercourse, paragraph (b), is liable to imprisonment for 14 years. That is the current penalty and there is no proposal to change that.

His second proposal was that section 61R, which deems "recklessness" to be knowledge, be repealed. Mr Odgers has covered that in his second point. There would be no need to keep "recklessness" when he has already put it in. The third proposal was that a new offence be created, namely 61IA, that says:

> Any person who has sexual intercourse with another person without the consent of the other person and who failed to take reasonable steps to ascertain whether the other person consented, is liable to imprisonment for five years.

He then said a new section should be created so that if in a trial for an offence under section 61I the jury is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under section 61IA, it may find the accused guilty of the latter offence and the accused is liable to punishment accordingly. That is a standard provision that appears when people are charged with murder or manslaughter over a driving offence. There can be an alternative charge of dangerous driving if the jury is not satisfied that the elements of those more serious offences are satisfied. The task force accepted Mr Odgers' recommendation to an extent by recommending in 14:

> The New South Wales Attorney General' Department should give further consideration to whether the common law should be modified to adopt an objective fault element for offences of sexual intercourse without consent or by introduction of a provision creating a new offence.

It is given equal status. In 15 the task force recommends:

> There should be no legislative attempt to define recklessness.

In effect, what has happened is that the new provision involving the reasonable belief concept has been put in as of equal standing in the offence to absence of consent. Anyone convicted of that third leg still faces a maximum sentence of 14 years, or 25 years if it is the extreme aggravated offence or 20 years if it is not. There is much to be said for putting that in. However, it has not been. By keeping them together in the one summing up it means that some person who may previously have not been convicted, because the Crown could not have established either recklessness or intent—he might have an honest belief, often caused by his own intoxication, and a jury would think, applying its own, not a reasonable belief, and it was not reasonable for him to go ahead—faces the full consequences of a sexual intercourse without consent conviction: a rape conviction.

The Bar Association submission has been discussed at length in the other place, and I will not go into great detail about it because most of the points have been outlined. However, I draw the attention of the House to *R v Banditt*, a case decided on 15 December 2005 by the High Court. It is educational for members to hear how a real case is conducted. Banditt was the cousin of the victim. They had been out with friends—not together but they met each other at several pubs—and I think they both consumed a bit of alcohol and some marijuana may have been ingested. The victim went home and went to bed. While she was asleep Banditt broke through the bathroom window and she woke up with him on top of her having sex intercourse with her vaginally.

Her version—it is the version that the jury, the court and I accepted—was that ultimately she realised what was happening. She felt the perpetrator's head and noted the lack of hair and realised that he was not who she might have wanted it to be. She told him to get out. Thereupon he picked up some of his apparel, leaving his glasses and his mobile phone. He went out through the back door. He claimed that he went into the house and she was awake. He said that she welcomed him and they had foreplay and consensual sexual intercourse and then she changed her mind and asked him to leave, and he did. He said there had been a sexual relationship between them in the past but that she had rejected him recently when he had come knocking on the door late one night and the neighbours yelled out telling him not to make so much noise and he went away. In summing up that matter the trial judge referred to the substance of section 61R (1) and said to the jury:

> So, if you just go ahead and do it willy-nilly, not even considering whether the person is consenting or not, you are reckless and the law says you are deemed to know that the person is not consenting.

No objection to that statement was taken at the trial or on appeal. Later in the summing up His Honour said:

> Now, recklessness is a [failure] to advert to … the question of whether the person is consenting or not. It does not have to be the product of conscious thought. If the offender does not even consider whether the woman is going to consent or not then that is reckless and he is deemed to know that she is not consenting. If he is aware there is a possibility that she is not consenting but he goes ahead anyway, that is recklessness. But it is his state of mind that you are obliged to consider and include[ed] in that is the concept I discussed with you yesterday about the fact that he had had something to drink, just how drunk he was, how much he had sobered up, how capable he was of making this decision and so on.

Transplanting those facts to this amendment, the judge would then have to tell the jury to ignore what the accused thinks. There would be a third way to convict. The judge could tell the jury that if they think that the accused had no reasonable grounds for believing that the other person—his cousin—had consented to the sexual intercourse then they could convict him. However, it would be up to them as to what they think a reasonable person, being sober and looking at all the facts, would decide.

I ask members to imagine how clear that would be to a jury when there is all this other stuff about willy-nilly and being aware of the possibility that she was not consenting. The judge would probably have to

provide all of that information because, if the accused is claiming there was consent, the difference in the versions offered by both the complainant and the accused would mean that it could cover without consent or recklessness. The judge would have would have to provide all three versions in his directions to the jury. That is a difficult direction and it is one that the High Court said was correct. The trial judge then went on to refer to the evidence of the complainant:

> So the Crown relies on her evidence to say that she was not consenting and the Crown suggests that you will be persuaded beyond reasonable doubt that he either knew, because he penetrated her before she woke up, or he was reckless in the sense that he did not even consider whether she was going to consent or not, or at least he recognised that there was a possibility that she may not consent but he went ahead and he did it anyway and the accused['s] case is that he thought she had consented, and he had this belief.

In the Court of Criminal Appeal and in the High Court counsel for the appellant, Mr Odgers, submitted that recklessness cannot be satisfied by an awareness of a risk; it is a satisfied by a discrete mental state, which is, "Even if I knew I would continue. It does not matter to me." The Crown—represented by me—said that the respondent counters that the appellant's submission set up a false dichotomy between proceeding regardless of an awareness of a possibility of lack of consent and proceeding regardless of indifference as to whether there is consent. When used in the particular circumstances of the case, the term "reckless" may encompass various formulations, including "indifference as to whether or not there is consent", "determination to have intercourse with a person whether or not that person is consenting", "awareness of the possibility of absence of consent and proceeding anyway". The court said that it would be necessary to come back to that submission. It did so and said the submission was correct.

At paragraph 20 of their judgement, Justices Gummow, Hayne and Heydon referred to a commentary on the 1981 Act entitled *Sexual Assault Law Reforms in New South Wales*, which was issued by the Director of the Criminal Law Review Division of the Attorney General's Department and the Department of Justice with a foreword by the New South Wales Attorney General. Unlike the second reading speech in the Legislative Council, this included a consideration of section 61D (2). The director at the time was Dr Greg Woods, who is now a judge of the District Court. The commentary states:

> … section 61D (2) was not an attempt to reintroduce a notion of "sexual assault by negligence" which might be thought to have been supported by a case call the *R v Sperotto*.
>
> That section 61D (2) should be interpreted subjectively is supported by the statutory expression of the rule in the R v Morgan in section 1 of the UK *Sexual Offences (Amendment Act)*, 1996.

They go on to discuss that. At page 12 of the judgement they refer to the 2003 amendment in England, which covers A not reasonably believing that B consents and provides that whether such a belief is reasonable is to be determined having regard to all the circumstances, including any acts A has taken to ascertain whether B consents.

> This provision has been said to be designed to reverse the common law position established in *Morgan* and implemented in the 1976 UK Act.

In other words, what we are doing with this legislation is putting in two opposites. In England they sought to reverse paragraphs (a) and (b) of subsection (1) by inserting paragraph (c), but we are putting them all together. What confusion that is going to cause is anyone's business. It does not simplify the situation at all; it confuses it. If we were to insert paragraph (c) and leave the others out, it would be simpler, but by leaving in the subjective test as well, that confuses the provision more than it is at the moment. I know members are finding this riveting, but in the Banditt case the court decided:

> In the present case the trial judge properly emphasised that it was not the reaction of some notional reasonable man—

That is paragraph (c)—

> but the state of mind of the appellant which the jury was obliged to consider and that this was to be undertaken with regard to the surrounding circumstances, including the past relationship of the parties.
>
> The respondent's submission, recorded earlier in these reasons, is to the effect that in a particular case one or more of the expressions used in *Morgan* and by Professor Smith—

No relation—

> as well as those recorded in the respondent's submission, may properly be used in explaining what is required by s61R (1). That submission, as explained below, should be accepted.

So, it is not the reaction of a reasonable man that applies in the case of recklessness or in the case of intent. But when that is put into the mix enormous confusion is created. As I say, the English situation is not improved by enacting those provisions, as they did, bringing in the negligence concept. They have now created more trouble and there is a big debate going on in England at the moment. I will not bother the House with that, but the Opposition will propose an amendment in the following terms:

> Page 5, schedule 1[4]. Insert after line 8:
>
> Review of amendments
>
> (1) The Law Reform Commission is to inquire into, and report on, the amendments made to this Act by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* to determine whether the policy objectives of the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* remain valid and whether the terms of the amendments made by that Act remain appropriate for securing those objectives.
>
> (2) The inquiry and report is to be undertaken as soon as possible after the period of 3 years from the date of commencement of section 61HA (as inserted by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007*).
>
> (3) The Minister is required to table or cause to be tabled in Parliament the report as soon as practicable after the report is made by the Law Reform Commission.

If the Law Reform Commissioner, Mr Jim Wood, is good enough to be the Department of Community Services special commission of inquiry to try to help sort out the tragedies occurring to children and families, I suggest he is good enough to be the objective person to make the decisions about this. How one reconstitutes the sexual assault task force with the same people, I do not know. Does it have to be exactly the same? It is absurd. I suggest the Attorney General did that on the run yesterday. I was listening to him. He did not want to have the responsibility himself. He knew he would be accused of having partisan attitudes because he would want to make sure his own legislation was upheld so he gets some other group that is basically chaired by the director of the Criminal Law Review Division, and that person, who is a very skilled lawyer currently and always, is liable to have enormous effect. We submit to have the Law Reform Commissioner, Justice Wood, do it is a better suggestion. When we reach the detail stage we will commend the amendment to the House but we have not reached that stage of the debate. We do not oppose the legislation

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [9.34 p.m.]: I welcome the bill and the changes to the law of sexual assault it seeks to implement. I also acknowledge the presence in the gallery of Karen Willis from the New South Wales Rape Crisis Centre. The bill arises out of the report of the Attorney General's New South Wales Justice Sexual Offences Task Force—*Responding to Sexual Assault: the way forward*—and the subsequent, widely circulated draft bill. As a member of the bar and a former Director of Public Prosecutions and legal aid solicitor, I know only too well that one of the most common and key issues arising in sexual assault trials is the issue of consent.

For lawyers, and, indeed, for complainants, the most controversial area is the state of mind or the mens rea which the Crown must prove to establish sexual intercourse without consent. Until now the prosecution has had to prove beyond reasonable doubt that the accused knew the complainant did not consent. This is a completely subjective—as opposed to an objective—test requiring an assessment of what was going on in the mind of the accused. If the accused believed the complainant was consenting, the accused would have to be acquitted, whether or not there were any reasonable grounds for that belief.

This test derives from the old House of Lords case of *DPP v Morgan [1976] AC 192* and confirmed recently by the Court of Criminal Appeal in *Regina v Banditt [2004] NSWCCA at 208*. The subjective test, solely from the accused's viewpoint, has come in for much criticism. For example, the accused can simply assert that he or she had an honest belief in consent, which is difficult to refute, no matter how unreasonable that belief is. Problems with the test and the increasing recognition that sexual assault is a crime that is seriously underreported have led other jurisdictions—in Australia and overseas—to change their laws in relation to consent in sexual assault matters.

One of the most important changes introduced by the comprehensive reform of the United Kingdom law on sexual assault was to override the common law test as set out in the *DPP v Morgan*. In late August, and as part of a Commonwealth Parliamentary Association study tour, I visited the United Kingdom with my wife, Jeanette, who is in the back of the House tonight. In London we met with Assistant Commissioner Tim Godwin of the Metropolitan Police and Chairman of the London Criminal Justice Board. We also met with Minister Tony McNulty from the Home Office, Helen Musgrave, Head of the Home Office Sexual Assault Team, and a

specialist rape casework lawyer, Claire Ward of the Crown Prosecution Service. We discussed the law reforms in the United Kingdom and our draft New South Wales bill. Both the police and the Crown Prosecution Service commented favourably on the proposed bill and, in particular, the provisions regarding intoxication, which, they felt in hindsight, would have been better spelt out in their own legislation.

My wife and I also visited "The Haven", which was a sexual assault referral centre discreetly attached to St Mary's Hospital in Paddington. The Havens are specialist centres attached to hospitals providing medical assistance, counselling and forensic services for sexual assault victims. Victims either self-refer or are referred by police. The Crown Prosecution Service also comes on board at a very early stage, and the whole team works with the complainants from the time they first report to the Haven until the conclusion of the court case and beyond. This is all part of the Government supporting victims of sexual assault and encouraging more and more victims to come forward.

This bill amends part 3 of the Crimes Act in relation to the law of consent in order to make it clear to the community and the courts what is meant by consent and to provide further protections to victims of sexual assault by extending the legislative meaning of what does or may not negate consent. In particular, the bill amends section 61R and introduces the objective fault test. The present common law test, as I have said, is subjective, requiring the Crown to prove that the accused knew the complainant was not consenting or was reckless as to whether the complainant was consenting, solely from the viewpoint of the accused.

Under the proposed objective fault test a person will be taken to know that the other person does not consent to the sexual act, not only in a situation where the person knows that the other person does not consent, but also where the person is reckless as to whether the other person consents or has no reasonable grounds for believing that the other person consents to the sexual act. In determining whether a person has reasonable grounds to believe that another person consents to the act, regard must be had to all the circumstances of the case, including steps taken by the accused to ascertain whether the other person consents to the sexual intercourse.

In the public domain a number of matters have been misrepresented and I seek to correct them and draw them to the attention of the House. Firstly, it has been asserted that these new consent laws will criminalise consensual sexual intercourse if the parties were drunk. It does not do this. The current state of common law in relation to consent to sexual intercourse, which has been well settled for many years, is that if someone has become so intoxicated that they do not have the capacity to say yes or no to sex, then no consent can be given and having sex with someone in those circumstances is rape. This is quite different from the situation where people have something to drink, lose their inhibitions and have sex but are still able to consent to it.

This law simply says that substantial intoxication on the part of the victim may—not must—negate consent. That is, it is a circumstance that juries may take into account when considering whether or not consent was freely and voluntarily given. It serves as a reminder that just because a person is drunk does not mean they may be assumed to be a target for non-consensual sex, as a small minority of the community may still think is the case.

Secondly, it has been said that the new statutory definition will create greater confusion because words like "freely", "voluntary" and "capacity" will not be understood by courts or juries. "Freely" is a word that is used in legislation or the common law in jurisdictions such as Victoria, Queensland, Western Australia, Tasmania, South Australia, Northern Territory, Canada and the United Kingdom. It was a word used by the Australian Model Criminal Code Committee in its recommended statutory definition, which, incidentally, is the same as this new New South Wales statutory definition. It has even been used by some judges in New South Wales when directing juries on the law of consent.

"Voluntary" is currently part of the direction given to juries in New South Wales and is a word used by many other jurisdictions. The use of the word "capacity" in section 61HA (4) (a) includes age or cognitive incapacity. Cognitive incapacity may refer either to an inability to understand the sexual nature or quality of the act or an inability to understand the nature and effect of the consent.

Thirdly, it was initially claimed that the new consent law will remove the need to prove mens rea or a guilty mind on the part of an accused and that it will "turn our young men into rapists". That is not correct. There will still need to be proof beyond reasonable doubt as to what the accused knew in relation to consent. Rather than removing the element of the guilty mind, as has been wrongly asserted, it is the test of a guilty mind that is changed. An accused will no longer be able to simply say that he had an honest belief that there was

consent, no matter how outrageous that belief might be. The belief will now also have to be reasonable according to the objective standards of the community.

At least this must now be clear to those who objected, as it has been more recently claimed that the subjective test is not outdated; that it is a fundamental principle of the criminal law that should be abandoned only where the case for doing so is overwhelming or the offence is trivial. That is correct. This Government's position is that the case for such a test here is overwhelming. Some draw a distinction between the "stupid", "negligent" or "drunk" rapist and the "true" rapist. But for rape victims there are no differences. Rape is rape. The Government is committed to ensuring that a reasonable standard of care is taken to ascertain that a person is consenting before potentially damaging behaviour is embarked upon.

Contrary to what has been claimed, this is not the first time that an objective test has been applied to a serious offence. In the law there are several different ways of committing the offence of manslaughter, each of varying severity. Manslaughter by criminal negligence can be proved if the prosecution shows that the act which caused the death was done by the accused consciously and voluntarily, without any intention of causing death or grievous bodily harm but in circumstances which involved such a great falling short of the standard of care that a reasonable man would have exercised, and involved such a high risk that death or grievous bodily harm would follow, that the doing of the act merited criminal punishment.

Fourthly, it is said that those convicted without a subjectively guilty mind will be subjected to the same sentences as those who commit sexual assault fully knowing that there was no consent. That is not correct. When sentencing, judges will be required to make a finding of fact—just as they do in relation to the various forms of manslaughter.

Fifthly, it is said that a statutory definition of consent is unnecessary because the current law is clear—the New South Wales Bench Book ensures that standard directions are given to juries. That is not the case, according to the New South Wales Court of Criminal Appeal, as recently as 2005: There is clear unresolved reported disagreement between members of the New South Wales judiciary in this regard. In *R v Mueller* [2005] 62 NSWLR 476, an appeal against the trial judge's directions that consent had to be free and voluntary, Justice Studdert adopted the common law principle of consent stated in South Australia where the court said:

> The law on the topic of consent is clear. Consent must be free and voluntary consent.

In examining this issue, Justice Studdert noted that the expression "freely and voluntary'" is used in both the Criminal Code of Western Australia and Criminal Code Act 1899 of Queensland where consent is defined. Additionally, he observed that in Victoria consent is defined by section 36 of the Crimes Act 1958 as meaning "free agreement". His Honour also considered the decision of *R v Clark*, unreported, NSWCCA 18 April 1998, where Justice Simpson expressed the view that for the purpose of New South Wales law, consent meant "consent freely and voluntarily given".

However, Justice Hunt and Justice Hulme indicated they held reservations about this statement of law. Quite correctly, the Sexual Assault Task Force Report noted that the comments made by Mr Justice Hunt and Justice Hulme squarely raise for consideration whether New South Wales should include a definition of consent in the Crimes Act 1900. That is exactly what this Government has done in consultation with a wide range of stakeholders.

Sixthly, it has been said that the Government should not influence the way people interact in the community, and that it wants to affect sexual relationships and make people be much more civilised about their behaviour. That is quite right where sexual assault is concerned and this Government makes no apology for that. It has also been said that the criminal law is a very blunt and brutal instrument for influencing social behaviour. The criminal law should be reserved for behaviour that is so seriously wrong as to be deserving of criminal punishment, not behaviour that might be regarded as uncivilised or lacking respect for others. That is precisely what this Government is doing and the New South Wales Supreme Court agreed when it stated:

> The criminal law, in its important function of controlling behaviour, should promote standards of acceptable consensual sexual behaviour of the community. Lack of the merest advertence to consent in the case of sexual intercourse is so reckless that it is also the criminal law's business. In this, the law does no more than reflect the community's outrage at the suffering inflicted on victims of sexual violence.

That quote is from *The Queen v. Tolmie* 1995 37NSWLR 660 at 672. [*Extension of time agreed to.*]

This bill is part of the Government's ongoing commitment to ensuring that the criminal law and the processes of the criminal justice system do not compound the harm suffered by victims of sexual assault. The law in relation to consent will be clear. The changes in relation to proof of whether or not reasonable steps have been taken to ensure that consent to sexual intercourse is a free and voluntary agreement should send a message to the minority in the community who might disregard the rights of others.

It is hoped that this bill will result in less sexual assault offences being committed in the first place by making clear to the community the appropriate standards of acceptable consensual sexual behaviour. It will reduce the stress and trauma associated with the court process, and help to prevent the re-victimisation that many complainants experience at the hands of the criminal justice system. These measures will increase public confidence in the legal process, lead to greater reporting of instances of sexual assault and more successful prosecution of these matters. I commend the bill to the House.

**Ms PRU GOWARD** (Goulburn) [9.48 p.m.]: I speak on the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007 and support the Government's decision to review the bill in four years time. I acknowledge also the presence in the gallery of Karen Willis from the New South Wales Rape Crisis Centre. I thank her for her advice and guidance. It stands as one of the few black marks against the status of women in Australia today that rape and sexual assault remain such unreported crimes and that there is a widespread view amongst women in this State that it is not worth reporting a crime that is so awful and destructive—a view that is often shared by husbands, fathers and male friends. In other words, there is a general view in the community that the reporting of sexual assault is not supported by the criminal justice system.

The New South Wales Rape Crisis Centre has provided significant statistics regarding rape. The proportion of reported incidents that lead to convictions is currently around 1 per cent. About 90 per cent of sexual assault incidents reported to police are accepted for investigation. Of the 90 per cent of cases reported, only 65 per cent lead to a person being identified. In 20 per cent of cases investigated, legal proceedings are commenced by police. Where legal proceedings are commenced, 40 per cent of cases are withdrawn by the police prosecutor. Of the cases that proceed to court 80 per cent of defendants plead guilty, but usually to a lesser charge. The conviction rate at a trial is 35 per cent compared with over 70 per cent in all other criminal matters. At each stage the victim, still alive, lives through the nightmare again.

It is a black mark against this State that a fundamental human right—the right to live in safety and security—is perceived to be poorly protected. Clearly, change is in order. No-one on this side of the House denies the fact that sexual assault and prosecution need to be better addressed and reformed. Clearly, there is a view in the community that the under-reporting and under-conviction rates for rape are a reflection of an anti-female culture within the criminal justice system, particularly poor practice by police and the courts, and laws and regulations which disadvantage the victim, who is usually a woman.

There also needs to be greater support for victims as they go through the various stages of prosecution—support that enables them not only to persist with their evidence, under the pressure of cross-examination, but to literally remain sane. I am sure all members know of women in their electorates who have suffered incredible mental stress and distress as a result of having to give evidence in a sexual assault trial. As the Law Society and the Bar Association have sought to identify, the Parliament needs to be cautious when it amends the law in this way, particularly when it seeks to modify the principle of mens rea, or the guilty mind. The principle of mens rea has governed criminal prosecutions, which carry harsh sentences, for several hundred years, and we must have respect for the principle.

We have to ask ourselves: Will the bill solve the problem of under-reporting, under-conviction, and lack of confidence in the criminal justice system's determination to protect the rights of women? It is a serious question, and it is one the Opposition has considered very carefully. We need to be confident that the amendments we pass in this House will not only enable a jury to more confidently convict, without producing unsafe outcomes, but also ensure that the law retains the confidence of the people. I am particularly pleased that the Government has now agreed to a four-year review of the legislation, as many of us on this side of the House have wished and certainly as my consultations with relevant women's groups suggested was acceptable to them. We have proposed a similar review, although over a shorter duration, and the member for Epping has clearly outlined our reasoning for this course.

I would hate the bill to make no difference, as has been suggested to me by some lawyers. I would hate women to have their expectations raised by the passing of the bill and then be let down. I believe there is a serious risk of that if we do not also pursue changes in court resourcing, procedures and practices. We also need

to change public attitudes to violence against women, both sexual and domestic. Sexual assault is of concern at all levels of government. While the Howard Government has committed some $75.7 million to addressing violence against women, the State's court-based system and social justice forums also need to actively promote the notion that violence against women is not acceptable, that a person who abuses women will be prosecuted and the time that person spends in prison will be long and arduous.

Will this bill mean that more women will report the crime? Will the reported crimes lead to more prosecutions and more convictions? The number of convictions at the moment as a result of complaints seems so low that, as has been said, many women do not want to go through the process of making a complaint. We must ensure that we do not make mistakes in this respect. We need to make sure that any changes we make to the system will lead, firstly, to fewer incidents. Prevention of this nightmare must be our first priority. We must also make sure that where incidents have occurred, they are more likely to be reported to police, and that when they are reported they lead to a prosecution and, if the facts are proven, to conviction. Every sexual assault case that does not lead to a conviction is a miscarriage of justice. A caller to the New South Wales Rape Crisis Centre was quoted as saying:

> I was sexually assaulted eight years ago. I have been through two court hearings and three appeals, and it is not over yet. If I knew then what I know now I would have gone home, had a shower and never told anyone what had happened.

The woman was 32 years old. The question we must ask is: Will the bill ensure that in future women will not have to suffer that nightmare? It is a disgrace that a woman should come to the conclusion, regarding her own safety and the crime against her, that silence would have been better. I am sure that Government members would agree. The question to be asked is: Will the bill make the conviction process simpler, as the court system now works through a number of definitions of sexual assault? Are there sufficient resources to support women in these cases, to ensure that evidence is carefully taken and that court resources are sufficient to protect women from long and offensive cross-examination? One of the benefits of the bill may be that there will now be more focus on the behaviour, attitudes and motivations of the accused, not just the victim. It is about time that occurred.

It would be a terrible outcome for the women of New South Wales if these changes to the law are made, with some fanfare, and then there are insufficient resources and insufficient procedural change instituted to ensure that the changes have the opportunity to work without either unfairly and wrongly imprisoning men or ending up with the same delays, the same repetitious and unfair cross-examination, the same difficulties at the Court of Appeal stage, where evidence becomes less relevant, and the same demeaning processes that will result in women still being unwilling to come to the police and pursue their legal rights through the courts.

This bill is an important and very new step for the law and for our criminal justice system. It will need to be monitored carefully and handled wisely. I welcome the Government's acceptance of the need for a review, although, as we have said, to leave it for four years is to leave it for too long. What this Parliament must primarily want from these amendments is that justice is more likely to be done and seen to be done. The liberty of the people is only as strong as their belief in the rule of law. If these amendments are seen to have either failed women, failed men or been irrelevant, not only will victims continue to suffer and reject recourse to the law but confidence in the rule of law will also have been eroded. That must not happen, and for this reason it is vital that not only does the Government proceed with its review but it also ensures that the criminal justice system has sufficient resources—in other words, more police, more support for victims, more judges, fewer delays, better training, tougher control of cross-examination, and even specialist courts. When we start to see the Government committing to some of these additional components of sexual assault reform, perhaps then the Opposition—and myself particularly—will believe that the Government is sincere in its wish to do better for the women of this State.

**Ms JODI McKAY** (Newcastle) [9.58 p.m.]: It is very sad that the Opposition has failed to properly support this bill, and instead has tried to obstruct it by sending it off for review by a parliamentary committee—a process that will merely repeat the discussions that have already taken place in the extensive consultation process that has occurred and will delay the implementation of these reforms by months, if not years. What is also sad is the fact that, despite the support for the provisions of the bill by several women in the Liberal Party, Opposition members have failed to convince their parliamentary colleagues to endorse the bill fully. Yesterday in the other place Robyn Parker had this to say about the bill's provisions:

> A definition of "consent" will give juries greater guidance when assessing the evidence and deciding whether or not the complainant actually did give their consent freely and voluntarily.

> But the most important part of consent is that it is an educative tool. The new definition of "consent" states what we already know—that most reasonable people no longer consider appropriate predatory or opportunistic behaviour for gaining sexual intimacy. The new definition sends a message that sex gained by any means other than free or voluntary agreement is not acceptable in our society. It is no defence to state that someone was asleep, intoxicated, unconscious, or unable to resist. I support the inclusion in the legislation of a new provision that defines the term "consent"

Despite that, the Liberal Party voted to send the bill off for committee consultation. Robyn Parker was absent from the Chamber at the time of the vote. Catherine Cusack also absented herself from the Chamber. This is what Catherine Cusack had to say about the bill:

> It seems to me that the central issue is that the law as it stands makes consent about what the offender believed at the time the offence was committed. Thus a case revolves around the offender's state of mind and what a jury decides he may or may not have been thinking at the time. The reforms in the bill will refocus attention on the crime that occurred. That is why women's groups have supported this proposition so strongly for so many years. I realise that some sections of the legal community would have us believe the changes will cause the sky to come tumbling in. But there was never any question that altering the law of consent would necessitate a significant change to legal principles. The question was whether it would be too difficult to attempt. But that attempt has been made and this bill is before Parliament today.

This is a clear case of an opportunity lost for the Opposition to take a stand and support the victims of sexual assault in their campaign for the reform of sexual assault law in this State. I commend the bill to the House.

**Mr BRAD HAZZARD** (Wakehurst) [10.01 p.m.]: As has been indicated by the shadow Minister, the Opposition will not oppose the bill. I would like to place on record the concern that the Opposition has about sexual assault and the procedures and resources available to women to work through the issues after a sexual assault. Whilst this has been a good debate, as it was in the other House, as to consent and an objective consideration versus a subjective consideration, I would like to place on record that the New South Wales Opposition and, I am sure, members of the Government have one important issue at heart. We would all like to have the law enhanced to ensure that women who are subject to sexual assault or rape have confidence in the system that is available to support them. At the moment the problem is that 85 per cent of women who are subjected to sexual assault or rape in fact do not have confidence in the system. That is apparent because they do not report the assaults to police. The issue is much greater than what simply appears in black and white in the statute.

As the member for Goulburn acknowledged, Karen Willis from the Rape Crisis Centre is in the gallery. We should all be grateful that women such as Karen Willis are prepared to stand up for women who are often extremely vulnerable when this sort of thing happens. If they do not have confidence in the system, we as a Parliament and the community are faced with a huge issue. One benefit to come out of this debate is that young people will have heard that there is an issue relating to consent. They may not yet understand the full implications, but least we as a Parliament and the community have sent a message to young people that consent is a critical issue in intimate relationships, usually between a man and a woman. I think each of us would value this debate if it sends a clear message to young people that they must consider the issue of consent.

The Sexual Assault Task Force made about 70 recommendations. When one goes through those recommendations one realises that this issue is not just about the black and white letter of the law. It is about the resources that we as a community are prepared to put in to back up this black and white letter of the law. I am sure members on both sides of the House want to see increased resources and increased opportunities for women to feel that when they report a sexual assault they will be listened to in a way that reflects appropriately the situation they are in. If a woman is sexually assaulted or raped on the northern beaches she would normally be taken to the Royal North Shore Hospital. I was discussing this only a few moments ago with Karen Willis.

The woman would be given the opportunity to see a counsellor and to have certain forensic examinations and tests done. The important issue is that she will have that opportunity. She will not be told, she will not be forced but will be given the opportunity. That is because certain resources are available at that hospital. At some point police will be available to her. It may be some time after the event before she feels confident enough to want to give the evidence. She then has to consider whether the forensic tests that were taken should be available to the police and whether she wants to be involved in a prosecution.

I am confident in saying on behalf of all members of the Coalition and, I believe, the members of the Government that we as a community should ensure that women in that situation are dealt with in a respectful way. It is critical that they know that the resources are available and that they will not be treated inappropriately: they will be offered an opportunity to see counsellors, medical staff and trained police, who carry out the procedures and take the necessary steps to bring the offender to justice. The Opposition will support any

initiatives taken by the Government to ensure adequate resources are available to empower women to make those reports and to be confident that they will be followed through in a safe, efficient and effective way.

**Mr FRANK TERENZINI** (Maitland) [10.08 p.m.]: I support the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007. The objects of the bill are to define "consent" for the purposes of sexual assault offences as free and voluntary agreement to sexual intercourse; to include in cases when consent to sexual intercourse is or may be negated: incapacity to consent, intoxication, persons who are asleep or unconscious, unlawful detention, intimidatory or coercive conduct and abuse of position of authority or trust; and to provide that a person commits sexual assault if the person has no reasonable grounds for believing that the other person consents to the sexual intercourse.

New section 61HA (3) retains recklessness, which is part of the common law, and also provides that a person knows that the other person does not consent to the sexual intercourse if the person has no reasonable grounds for believing that the other person consents to the sexual intercourse. The subsection further provides that the trier of fact—the jury or the judge acting as the jury—must have regard to all the circumstances of the case, including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but not including any self-induced intoxication of the person.

The negation of consent provision, new section 61HA (4) and (5), provides that a person does not consent to sexual intercourse with another person if the person does not have the capacity to consent, including because of age or cognitive incapacity; if the person does not have the opportunity to consent because the person is unconscious or asleep; if the person consents because of threats of force or terror, whether the threats are against, or the terror is instilled in, that person or any other person; or if the person consents to the sexual intercourse because the person is unlawfully detained. A person does not consent to sexual intercourse if under a mistaken belief as to the identity of the other person, a mistaken belief that the person is married to the other person or a mistaken belief that the sexual intercourse is for medical or hygienic purposes.

New section 61HA (6) provides that the grounds on which it may be established that a person does not consent to sexual intercourse include if the person has sexual intercourse while substantially intoxicated by alcohol or any drug; if the person has sexual intercourse because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force; or if the person has sexual intercourse because of the abuse of a position of authority or trust. The current state of the law with regard to consent is that the Crown has the onus of proof beyond reasonable doubt. The question from the start of the trial until the end is whether the Crown has proved beyond reasonable doubt that the offence has occurred. One current element is that the accused must know that the complainant does not consent. That is a subjective test. All the surrounding circumstances of the case are taken into account to decide whether the accused knew that the complainant was not consenting.

The bill introduces a cultural shift, an educative process, to move the traditional thinking that there is a presumption that a woman will consent to sexual conduct. The bias and stereotypical beliefs held by some people will be swept away because the jury will be able to take into account objective facts and circumstances and will be directed accordingly. The bill, amongst other things, will have an enormous educational effect on the community, not to mention the benefit that it will bring to a jury deliberating on its verdict. The mens rea issue will remain; the requirement for the prosecution to prove beyond reasonable doubt that the accused knew or was reckless about the victim's lack of consent, or had no reasonable grounds for believing that she had consented, will remain. The objective fault test is an important part of modernising sexual assault laws, and that is the beauty of these amendments.

I have to register my disappointment about the conduct of the Opposition in the upper House. The Criminal Justice Sexual Offences Task Force published its report, which contained 70 recommendations, in 2006. There were two years of comprehensive consultation process, which represented the most comprehensive review in this area of the law for some 20 years. Unfortunately, the conduct of the Opposition in the upper House was to move the bill to a committee, to stall it. I note that the two Liberal Party members of the Legislative Council who split from the group and spoke in favour of the bill knew very well what it is about. They knew that it was a cultural shift, an educational shift, to move away from the bias and stereotypical beliefs and to modernise the state of the law. I commend them for that. That is significant because, apart from showing that at least two Liberal Party members were prepared to break ranks, it means that these proposals are correct, they are on track and they move the law along.

Experience in the courts clearly shows the difficulty of discharging the burden of proof in these cases. When I was in the office of the Director of Public Prosecutions some years ago, one in five cases would result in

prosecution. One of the main obstacles was overcoming the subjective criteria of proving to the jury beyond reasonable doubt that the accused, usually a male, believed there was consent. It would not matter how unreasonable the surrounding circumstances were that supported the accused's belief: the question that the jury had to answer was whether the accused held that belief. That did not reflect the standard of the time and does not reflect the community expectation as to how the law should operate. The bill moves that along and updates it. Mens rea and recklessness are retained, and the onus is still on the Crown to prove that the accused knew there was a lack of consent. The difference is the objective test. The reasonable person test makes it clearer and easier for the jury to follow.

In the Banditt case that the member for Epping referred to, if a person broke through a window, had sexual intercourse with a person and the complainant then found out it was not the person she thought it was, and the accused says, "I thought it was alright", that makes it clear. We can take into account the fact that he broke through a window, we can take into account intoxication. We can take all of those things into account and then ask ourselves: Is this reasonable? Is it proper? Would a reasonable person believe this? That is the difference in the criteria. It makes things much simpler.

There was a scenario in an article in yesterday's newspapers in which a woman goes out on her first date with a man. She does not want to have sex on their first date, but after they have both had too much to drink she says yes to sex. The next morning the man has moved on; she feels humiliated and decides to call the police. It is claimed that if the law was changed as proposed her apparent consent, however slurred, may not be regarded as true consent because there was no free agreement or because she suffered from cognitive incapacity and she was drunk. The beauty about the changes in the bill is that all those facts will be taken into account on the objective fault criteria, and that means that all of those facts will be relative. Merely because there is incapacity because of the consumption of alcohol does not automatically negate consent; it may negate consent. What is reasonable in the particular circumstances? Every case is different. I know that because I can remember many of the cases I prosecuted. Every case is different and each relies on its own facts. If we take the reasonable person test the jury have a much clearer idea on how to deliberate.

A case of driving in a dangerous manner is based on the reasonable person test. The reasonable person test is applied in deciding whether a person committed the offence of driving dangerously. There is no difference between that case and what the jury is asked to decide in a sexual assault case. When a jury is given these directions in a summing up, it will be told to use the objective test and to use the reasonable person test. It will be told to take all factors into account and that the state of mind of the accused is relevant, but that is not the only thing we have to think about. The state of mind of the accused is relevant, it is taken into account, but we do not ask ourselves: What was the particular accused thinking? We ask ourselves: What are the circumstances? What are the facts? How would we look at this as reasonable people?

We take into account also what the accused says he was thinking. If he says, "I had a reasonable assumption that there was consent", the jury can take that into account, but the jury is not directed by the judge that the Crown must prove beyond reasonable doubt that the accused knew the complainant was not consenting. The jury will be directed that they can take into account what the accused is saying but they also have to take into account all the other relevant objective circumstances that existed at the time. This will make it easier for a jury to deliberate; it will give them a wider scope and they will be able to take into account more facts and circumstances.

The bill modernises the law and brings it into line with community standards, and that is what the community wants. The community does not want to be hemmed into an archaic way of thinking that there is a presumption that a woman will consent to sexual activity unless it is communicated to the accused that that is not the case. This turns that around and makes the criteria much easier for the jury to follow. In that respect it brings the law into the twenty-first century. For all those reasons I commend the bill to the House.

**Mr ROB STOKES** (Pittwater) [10.20 p.m.]: I speak to the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007. Many people here tonight know a lot more about the law on this issue than I do, but I reckon I know what is right and I certainly do not oppose any changes designed to ensure that more perpetrators of sexual assault are convicted. I understand that this is a difficult area and that some potential legal intricacies must be ironed out. I agree therefore that it is appropriate to provide that the effectiveness of this legislation be looked at in the next few years. I also believe that better resourcing of criminal justice agencies is always the most effective way of dealing with crime.

I believe that sexual assault in our community is so serious and so heinous a crime that we in this place must do everything we can to ensure that the perpetrators of sexual assault are brought to justice. Occasionally

that means we must experiment with the law. It sometimes means that we should try things that may not go along with the traditional concept of mens rea, but if we have to do that to secure justice then so be it. I have looked carefully at the concept of an objective test. Fundamentally, if someone is unsure as to whether their sexual partner is consenting then there is no basis upon which they should proceed to have sexual intercourse.

It is also very important to educate our community that if there is any doubt at all about consent then sexual intercourse should not even be contemplated. I acknowledge that a number of technical difficulties can be looked at during a review period, but I believe this is an appropriate way to respond to the enduring problem of sexual assault and winning justice for the victims of sexual assault.

**Ms LYLEA McMAHON** (Shellharbour) [10.23 p.m.]: I speak in support of the Crimes Amendment (Consent—Sexual Assault Offences) Bill 2007. As a supporter of the No Means No campaign in my community for many years, this is a very sweet moment for me. Women's groups and sexual assault victims groups have been fighting for a clear definition of "consent" in sexual intercourse for at least two decades. Groups such as the Rape Crisis Centre and women's groups in my own area, including the Warilla Women's Health Centre, have been part of this fight. It is with great satisfaction that I participate in this debate that, with the successful passage of this bill, will see their aims finally realised.

The addition of a definition of "consent" to the law of sexual assault does two things. First, as there is no current statutory definition of "consent" in New South Wales, this bill brings New South Wales into line with a number of other Australian and overseas common law jurisdictions that have adopted a statutory definition of "consent". Secondly, this definition will clearly articulate to the community what does and does not amount to consent. The introduction of a definition of "consent" provides an opportunity to enact a more contemporary and appropriate definition of "consent" than is currently available under common law.

In July the Government circulated a discussion paper that examined whether a legislative definition of "consent" could be introduced into the Crimes Act 1900 to clarify the issue of consent and to give greater protection to the autonomy of the complainant. The majority of those consulted submitted that New South Wales should adopt a statutory definition of "consent". They included the Office of the Director of Public Prosecutions, a public defender, victims and women's groups such as the Rape Crisis Centre, the Victims Advisory Board and the Women's Legal Service. Those in favour believed a definition would have an educative function for both the community and jurors and that it would ensure standard directions are given to juries, thus leading to fewer appeals. The prevailing view was that it is time for New South Wales to fall into line with other Australian jurisdictions as well as the United Kingdom and Canada, and to codify the law of consent.

A recent report commissioned by the New South Wales Attorney General's Department and conducted by the Australian Institute of Criminology on jurors' perceptions of sexual assault victims suggested that consent is a difficult concept for juries to understand. The findings of the institute suggest there is a strong argument for adopting a definition. The issue of lack of consent is ultimately a matter of fact to be determined by a jury, and clear guidance should be given as to what consent means. The task force noted that there is a considerable body of academic literature describing the inherent problems with the legal concept of consent and how to define consent so as to give it appropriate contextual and contemporary meaning.

The common law definition of "consent" has been evolving but continues to remain unclear. The Court of Criminal Appeal recently disagreed on the proper direction to be given with respect to consent. Justice Studdert expressed the view that consent must be freely and voluntarily given. This represented a shift in thinking towards the proposed statutory definition of consent. Two other members of the court held onto a longstanding view that as consent may be given reluctantly or after a deal of persuasion it could not always be described as having been given freely and voluntarily. This view is out of date with community standards and expectations.

As demonstrated by the majority of submissions received in response to the discussion paper and as demonstrated by the majority of participants on the task force, the use of the word "agreement" reinforces that consent should always be seen as a positive state of mind involving an active decision to engage in sexual activity rather than one of passive acquiescence. The majority of members of the task force supported a definition of "consent" based on variations of the definition developed by the Model Criminal Code Officers Committee of May 1999 that "consent" means free and voluntary agreement.

The draft consultation bill contained a definition of "consent" with similar elements to those noted above. However, it was unanimously criticised for being phrased in the negative. The submissions supported a

positive statement of consent as this would be clearer and have a better educative function. The bill will introduce a definition of "consent" to sexual intercourse as occurring when a person "freely and voluntarily" agrees to intercourse. It is a welcome win for victims of sexual assault. On that note, I read an article in the weekend's *Illawarra Mercury* entitled "The making of Tegan Wagner". I take this opportunity to commend her for her bravery, her story, and her role in changing the way we see the world.

**Ms VERITY FIRTH** (Balmain—Minister for Women, Minister for Science and Medical Research, Minister Assisting the Minister for Health (Cancer), Minister Assisting the Minister for Climate Change, Environment and Water (Environment)) [10.30 p.m.], in reply: I thank members for their contributions to this debate. I am pleased to hear all members' interests in better protecting women in our community from the terrible impact of sexual assault. The Government is committed to continuing to provide support for victims of sexual assault, to do all it can to minimise the trauma that they face in criminal proceedings and to help them seek justice in our courts. That is what the bill is all about.

I listened with interest to the speech of the member for Epping. I point out that the member talked about supporting the bill but then spent close to 40 minutes disputing many of its key aspects—indeed, the key aspects that deliver on the recommendations of the task force. That is not real support; at best, it is grudging support. As we all know, and as has been outlined by previous speakers, on top of this only yesterday the Opposition moved an amendment in the other place to defer or delay the passage of this bill so that a parliamentary committee can consider it. This is after more than two years of serious consultations with a task force comprised of a broad range of government and non-government agencies, including the Rape Crisis Centre, Women's Legal Services, members of the legal profession from both the prosecution and defence sides, members of the judiciary, the courts, police, corrections, health, community services and academics.

The task force has been meeting for more than two years, and the Opposition wants the bill to be further delayed. The member for Epping may talk about supporting the bill, but he has not done a lot to show that support. The member said that no recommendation had been made by the task force about this change with regard to consent. That is simply not true. Recommendation 9 of the task force specifically stated that New South Wales should include a statutory definition of "consent" in the Crimes Act 1900, and recommendation 10 stated that a definition of consent be adopted partially based on the United Kingdom definition, that is, a person consents if she freely and voluntarily agrees to the sexual act and has the capacity to make that choice. For the member for Epping to say that the task force provided no recommendation with regard to consent is simply not true.

The member also talked about specialised courts. As has been explained in numerous other speeches, the Government is training judges and magistrates across New South Wales in sexual assault matters to better meet the needs of victims of sexual assault. Sexual assault has no postcode, so we are ensuring that all New South Wales courts, not just a select group, are equipped to deal with sexual assault matters. The member for Epping is incorrect in saying that specialised courts were a recommendation of the task force. In fact, they were not. The only recommendation was for specialised case management, and technology to support it, for sexual assault cases—recommendations implemented by the Government through, for example, the issuing of a special District Court practice note to set time deadlines for all sexual assault matters, which is now six months. The member for Epping also claimed that the Director of Public Prosecutions did not support this.

The member for Epping talked about the subjective-objective mixture test. He suggested that sexual assault that is reckless, or where there is no reasonable belief in consent, is somehow less serious or that where there is knowledge that the woman is not consenting is somehow less serious. This is crucial. The Government does not believe in a graded scheme of sexual assault. All rape is serious and the courts must deal with all sexual assault as a serious criminal offence. The member for Epping's comments are similar to those made by the Bar Association, which claimed that "the stupid, the negligent, the intoxicated, the crazy will be treated as if they are the same as the true rapist who knows that there is no consent to sexual intercourse".

As the Attorney General said—I was proud to be associated with the Attorney General when he made this statement—although they may like to draw a distinction between the "stupid" or "drunk" rapist and the "true" rapist, unfortunately for rape victims the difference between these categories does not matter a great deal. It will be a matter for the sentencing judge to decide to what extent these factors may make the offender more or less culpable. But the Government and the law are clear: to have intercourse without consent is rape. There will be no return to the bad old days of ignoring rape complaints and arguing that no means yes. The Director of Public Prosecutions' comments did not support the creation of a new, less serious offence where the objective fault test applies, as the member for Epping asserted.

This suggestion was supported only by some groups of defence lawyers and rejected by the vast majority of those involved in the consultation. The Director of Public Prosecutions' comments, including the need to state the consent definition in the positive, were acted on and applied in the final bill, which is now before the House. The member for Goulburn raised the need to protect the mens rea requirement for sexual assault offences as an important part of the protections inherent in our legal system. Again I clarify exactly what the Government is doing. Several Australian States have removed the mens rea requirement for sexual assault offences—Western Australia, Queensland and Tasmania—but New South Wales has not taken this option. There will still need to be proof beyond reasonable doubt as to what the accused knew in relation to consent.

Rather than removing the element of the guilty mind, as has been wrongly asserted, it is the test of a guilty mind that has changed. An accused will no longer be able to simply say that he had an honest belief that there was consent, no matter how outrageous that belief might be. Under this legislation, that belief will also have to be reasonable according to the objective standards of the community. That is incredibly important. Another allegation raised by the member for Epping related to recklessness: Why has recklessness not been given a statutory definition? The Sexual Assault Offences Taskforce specifically recommended—recommendation 15—that there should be no legislative attempt to define recklessness. There was unanimous support from all stakeholder groups on this issue: The member for Epping is entirely out of step with the community. In his submission the Director of Public Prosecutions agreed that there should be no legislative attempt to define recklessness.

The submission noted that the term "reckless" is retained in the proposed legislation. It submitted that following the decision in the Banditt case, to which the member for Epping referred, the term should be retained for the reasons identified by the Criminal Law Review Division. Furthermore, task force recommendation 15 stated that there should be no legislative attempt to define "recklessness". The common law in relation to the concept of recklessness and the proper form of the direction that should be given to juries was settled by the High Court in Banditt's case in 2005. Their Honours determined that if an offender is aware of the possibility that the woman is not consenting but goes ahead anyway then he is reckless. That is the point that the member for Pittwater raised. Further in that decision it was suggested by one member of the court that attempts to define "recklessness" give rise to uncertainty. The court stated that "reckless" is an old and well understood English word. It has been said that there are no true synonyms in the English language. The search for a truly synonymous phrase or expression will equally frequently be likely to be futile.

The member for Goulburn raised the sad and touching case of the individual who rang the Rape Crisis Centre and said that eight years after the event her case is still in the appeals procedure. Had she known that it would take so long she would never have gone down that path. We are all very concerned about that, which is why the Government has introduced this legislation and has proposed these reforms. The Government wants to give victims of sexual assault the confidence to navigate the system knowing that the law is on their side. It wants to give them the confidence to know that they will not simply lose.

The Government acknowledges the community concerns expressed by the member for Goulburn about the attrition rate for sexual assault prosecutions, which is still too high. However, the significant reforms that the Government has introduced since the report of the Sexual Assault Offences Taskforce in 2005 have already borne results. For instance, the rate of guilty verdicts for adult sexual assault cases in the New South Wales District Court and the Supreme Court rose from 35 per cent in 2004 to 49 per cent in 2006. That will give women confidence to proceed. They will know that the law is there for them, that justice is on their side, that they can navigate the system and that they will get results. That is one of the crucial goals the Government is attempting to achieve in adopting the recommendations of the task force.

It is disappointing that in the twenty-first century we still must focus our attention on decreasing the rates of sexual assault in the New South Wales community. However, while there has clearly been some improvement in community awareness about sexual assault, the statistics still paint a very bleak picture indeed. The 2005 National Personal Safety Survey, released by the Australian Bureau of Statistics last year, found that in the 12 months prior to the survey, 126,100 women and 46,700 men experienced sexual violence, including being threatened or assaulted. Of the women who experienced sexual violence, 81 per cent experienced an incident of sexual assault and 28 per cent experienced a threat of sexual assault. That is still an enormous number of people. Perhaps most disturbingly, only 19 per cent of the women who had experienced sexual violence by a male perpetrator reported the incident to police.

Looking beyond 12 months, the personal safety survey reported that since the age of 15, and compared to 5.5 per cent of men, 19 per cent of women reported experiencing sexual assault—that is almost one in five

women. In New South Wales in 2005, 4,016 sexual assaults and 3,456 indecent assaults were reported. Of the incidences that went to court, 821 sexual assault charges were finalised in the Local Court and 1,174 in the higher courts.

Members are aware that sexual assault is the most underreported of all crimes and has low conviction and imprisonment rates. However, I am pleased that the New South Wales Bureau of Crime Statistics and Research has stated in a recent report that we are making some real progress on this front in New South Wales: conviction rates in sexual assault proceedings at an all time high and almost half of all accused sexual offenders are found guilty. However, the low rates of reporting these serious crimes remain a concern for the New South Wales Government and the community at large. That is why the Government has introduced this legislation.

The Government has made significant progress in the past three years with the introduction of widespread reforms that place the victim's needs at the centre of the legal process. As members are aware, this bill is the latest measure by the Iemma Government in a suite of initiatives to assist victims of sexual assault. The New South Wales Police Force, criminal justice departments and human service agencies are already rolling out these initiatives. These measures include implementing many of the recommendations of the Criminal Justice Sexual Offences Taskforce. The Government established the task force in 2004 to examine sexual assault and how it is prosecuted. This represented the most comprehensive review of these laws in 20 years. To have the Opposition move in the other place to delay this process yet again is absolutely outrageous. I can understand why two members of the Opposition felt that they could not be present for the vote. Indeed, it would have been very embarrassing.

To give credit where it is due, the task force was established, in part, as a result of representations by one of the key organisations working in this field, the New South Wales Rape Crisis Centre. Like many members have done already, I acknowledge Karen Willis in the gallery tonight. The Government has been progressing well in its implementation of the recommendations of the task force. To date, about two-thirds of the 70 recommendations have been, or are in the process of being, implemented. These include: reforming warnings given to juries and expanding and improving non-publication provisions to protect victims—that is, preventing circulation and unauthorised copying of sensitive evidence; and working to address delays in relation to sexual assault matters. The member for Epping raised that issue.

The District Court has already introduced mandatory timetables for sexual assault matters, which means that trials are listed within four months of the date of committal and no later than six months, to make allowances for regional sittings. The Attorney General's Department is now undertaking further work with the Court of Criminal Appeal to streamline appeals in rape cases. The Government has also implemented the recommendations to close courts when victims give evidence, but to allow a support person to remain and to make it clear that a complainant is entitled to use alternative methods, such as closed circuit television, video link or segregated seating, for giving evidence so they do not have to face their assailant.

There are currently 78 remote witness facilities in New South Wales metropolitan and regional courts. A transcript or recording of a complainant's evidence can now be used in a retrial ordered following an appeal, so that the complainant cannot be forced to give her evidence again, unless she chooses to. Judges are required to disallow improper questions in cross-examination, and unrepresented accused are prohibited from directly cross-examining victims in court. Child complainants in sexual assault matters have also been exempted from attending committal hearings to give oral evidence. The Government has also increased training for criminal justice personnel in dealing with victims, especially children and other vulnerable victims.

Importantly, the Government has also provided continuing education for members of the judiciary on sexual assault matters and asked the New South Wales Judicial Commission to put together an education package for District Court judges to assist them to support victims by getting tough on defence lawyers and preventing hostile questioning of victims. The New South Wales Government has also introduced standard minimum sentences for a range of sexual offences, and increased the maximum penalties for sexual assault offences to 25 years and for sexual assault in company to imprisonment for life. Further reforms have also been recently introduced via the Criminal Procedure Amendment (Vulnerable Persons) Bill 2007 to provide greater protection for children and victims with an intellectual disability in relation to giving evidence.

Recently, my colleague the Attorney General announced the Labor Government's latest reforms of sexual assault law with the release of a discussion paper and exposure draft of this bill to define "consent" and to introduce an objective fault test into the law. I am pleased that this process has provided an opportunity for members of the public as well as the legal profession to have input into the proposed changes to the legislation.

I understand that submissions were received from more than 20 organisations with an interest in this area. The proposals to better define consent in this bill have been met with a great deal of support by many of the excellent organisations working with victims of sexual assault. The New South Wales Director of Public Prosecutions has also supported the changes.

Modernising the New South Wales law as it relates to consent aims to bring about a cultural shift in the response to victims of sexual assault in the wider community and in the legal profession. Changes to the law to better define consent have already been introduced in Queensland and Victoria as well as a number of international jurisdictions such as the United Kingdom. These reforms are also supported by a recent study released by the Australian Institute of Criminology in August. The results of this research demonstrate that judgments made by jurors in rape trials are influenced more by their personal attitudes, beliefs and biases about rape, than the objective facts of the case presented.

It is also concerning, but perhaps not surprising, that the study found that old-fashioned stereotypical beliefs about rape and rape victims still exist. The research found that some members of our community still held the view that when women say no they mean yes, that women who are raped ask for it, and that rape results from men not being able to control their need for sex. The bill reflects the views of the other, much-larger section of our community that wants to stand up for victims and reject these disgusting and outdated views.

The current subjective test of consent in the Crimes Act in relation to sexual assault offences encourages defence lawyers to employ intimidating and harassing tactics that attempt to demean the character of the victim. In the past that has resulted in situations, such as, for example, in the recent gang rape trials, where defence lawyers suggested to jurors that when a victim was crying, screaming and telling the rapist to stop she was in fact "moaning in pleasure". That kind of disgraceful strategy by defence lawyers will be made far less likely under these proposals to objectively define "consent". The bill defines "consent" as "free and voluntary agreement to sexual intercourse". The bill also spells out when consent is or may be negated; that is in situations where a victim cannot give consent because of incapacity or substantial intoxication, when a victim is asleep or unconscious, when a victim is being unlawfully detained, when a perpetrator uses intimidatory or coercive contact, or when the perpetrator abuses his or her position of power, authority or trust.

That definition is important because it much more clearly articulates what does and does not amount to consent. Clearly articulating the meaning of "consent" will have a really important educative function, for both potential jurors and the broader community. Although the absence of consent will be still ultimately decided by juries, it is essential that clear and consistent guidance is given by our courts as to what amounts to consent. The member for Epping suggested that those changes would mean that innocent young men would be labelled as criminals and rapists. The example that is cited is that consensual sexual intercourse will later be criminalised if a couple are drunk. That is absolutely not the case. The bill clarifies that if a person is so intoxicated as to be unable to give consent to sex, having sex with that person is indeed sexual assault.

It is important to make the point that currently that is the situation arising from existing case law precedent. That is the current case law. The law recognises that just because a person has had too much to drink does not mean that the person is incapable of consenting to sex, but it does provide that people should take reasonable steps to ascertain whether the other party is consenting to sex. However, if a victim is unconscious or asleep as a result of substantial alcohol consumption she or he can clearly not consent and the new law will recognise that. Currently an accused person can assert that he or she believed that the other person was consenting, no matter how unreasonable the circumstances. As it stands, the law does not adequately protect victims of sexual assault when the perpetrator has a genuine but completely distorted view about appropriate sexual conduct.

The current subjective test is outdated and fails to ensure that reasonable care is taken to ensure that a person is consenting before sexual intercourse occurs. The Iemma Government will continue to work to provide greater assistance to victims of sexual assault, especially in dealings with the legal system. It is committed to a continued program of reform in that area. The bill is an important step forward in protecting the rights of victims of sexual assault in New South Wales.

I conclude by thanking all members for their contribution to the debate. I take this opportunity to place on the record my thanks to the tireless advocacy undertaken by those organisations that work with sexual assault victims; organisations such as the New South Wales Rape Crisis Centre. That centre and the NSW Health-funded sexual assault services across the State work every day with women, men and children who have experienced sexual violence. I thank the staff of those organisations for their incredibly important work, which

does not go unnoticed. I know I speak on behalf of the House when I say thank you for treating victims of sexual assault with dignity, compassion and respect, and for providing them with much-needed assistance and support at a time that is so unimaginable. Thank you for your work, and thank you to members of the House.

**Question—That this bill be now agreed to in principle—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill agreed to in principle.**

**Consideration in detail requested by Mr Greg Smith.**

**Consideration in Detail**

**Clauses 1 to 4 agreed to.**

**Mr GREG SMITH** (Epping) [10.55 p.m.]: I move Opposition amendment No. 1:

No. 1 Page 5, schedule 1 [4]. Insert after line 8:

**Review of amendments**

(1) The Law Reform Commission is to inquire into, and report on, the amendments made to this Act by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* to determine whether the policy objectives of the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007* remain valid and whether the terms of the amendments made by that Act remain appropriate for securing those objectives.

(2) The inquiry and report is to be undertaken as soon as possible after the period of 3 years from the date of commencement of section 61HA (as inserted by the *Crimes Amendment (Consent—Sexual Assault Offences) Act 2007*).

(3) The Minister is required to table or cause to be tabled in Parliament the report as soon as practicable after the report is made by the Law Reform Commission.

The amendment is proposed purely in the interests of women. The review should be brought forward to be presented in three years, not four years. England has reviewed its legislation after three years of operation, and three years is a sufficient period to see how the law is working. The Law Reform Commission is a more suitable and objective organisation to do that review than is the Attorney General, as currently provided in the bill.

Earlier I overlooked thanking Karen Willis from the Rape Crisis Centre and Dr Anne Cossins of the University of New South Wales School of Law for their great work. I have a paper by Anne Cossins that was sent to me by Karen Willis, which I found to be of great assistance in understanding the different considerations.

**Ms VERITY FIRTH** (Balmain—Minister for Women, Minister for Science and Medical Research, Minister Assisting the Minister for Health (Cancer), Minister Assisting the Minister for Climate Change, Environment and Water (Environment)) [10.56 p.m.]: As I stated in my agreement in principle speech, the Government has already amended the bill to provide for a review of its provisions, to ensure that they are achieving the desired effect in the prosecution of sexual assault offences. The Government has provided for ministerial review, but that review will be conducted by the groups involved in the Sexual Offences Taskforce, groups that include all the stakeholders in the area of prosecution of sexual assault and assistance to its victims.

As I said earlier, that taskforce comprises a broad range of government and non-government agencies, including the Rape Crisis Centre, women's legal services, members of the legal profession from both the prosecution and defence, judiciary, courts, police, Corrections Health, community services and academics. The task force has shown its effectiveness and expertise in investigating and making recommendations for reform of sexual assault laws and is better positioned to conduct that review than is any other organisation. That remains the Government's position. In regard to the three years versus four years, the Government has received advice that a time frame of four years is necessary. It is necessary to have a sufficient number of cases go through the courts after the introduction of the bill so as to provide enough material on which to base a review. The Government has received advice that it will require four years for cases to progress through the courts. The Government does not believe the amendment should be supported, and we will not do so.

**Question—That the amendment be agreed to—put and resolved in the negative.**

**Amendment negatived.**

**Schedule 1 agreed to.**

**Consideration in detail concluded.**

**Passing of the Bill**

**Motion by Ms Verity Firth agreed to:**

That this bill be now passed.

**Bill passed and returned to the Legislative Council without amendment.**

## WAR MEMORIAL LEGISLATION AMENDMENT (INCREASED PENALTIES) BILL 2007

**Message received from the Legislative Council returning the bill without amendment.**

## SURVEILLANCE DEVICES BILL 2007

**Message received from the Legislative Council returning the bill with amendments.**

**Consideration in Detail**

**Consideration of Legislative Council's amendments.**

*Schedule of amendments referred to in message of 14 November*

No. 1 Page 29, clause 33 (1), line 18. Omit "5 business days". Insert instead "2 business days".

No. 2 Page 29, clause 33 (2), line 23. Omit "5 business days". Insert instead "2 business days".

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [11.00 p.m.]: I move:

That the House agree to the Legislative Council amendments.

The New South Wales Government does not believe that imposing a shorter period gives police the flexibility they need and have asked for, but we will not disturb the amendment and will let the bill pass as amended in the other place.

**Mr GREG SMITH** (Epping) [11.00 p.m.]: I thank the Government for taking a sensible and practical approach. After all, two business days is consistent with the law in other States and is an extra day to what the police have at the moment. They have two days in which to commence their investigations and other people can prepare the necessary documentation.

**Question—That the motion be agreed to—put and resolved in the affirmative.**

**Motion agreed to.**

**Legislative Council amendments agreed to.**

**The House adjourned at 11.02 p.m. until Thursday 15 November at 10.00 a.m.**