

LEGISLATIVE ASSEMBLY

Tuesday 22 June 2010

The Speaker (The Hon. George Richard Torbay) took the chair at 1.00 p.m.

The Speaker read the Prayer and acknowledgement of country.

BUSINESS OF THE HOUSE

Notices of Motions

General Business Notices of Motions (General Notices) given.

PRIVATE MEMBERS' STATEMENTS

VISA CAPPING LEGISLATION

Mr NATHAN REES (Toongabbie) [1.05 p.m.]: I raise an issue that I have been alerted to by dozens of members of my constituency, particularly those of Indian background. I refer to the Federal Government's Migration Amendment (Visa Capping) Bill 2010. The explanatory notes to the bill state that it will:

...enable the Minister for Immigration and Citizenship to cap visa grants and terminate visa applications based on the class or classes of applicant applying for the visa.

In particular, the bill will enable the Minister to make a legislative instrument to determine the maximum number of visas of a specified class or classes that may be granted in a financial year to visa applicants with specified characteristics, and treat outstanding applications for the capped visa as never having been made.

The implications of this are very serious for people who have come to Australia and studied, and subsequently applied for a visa. Later today a delegation formed at its core by the United Indian Association's New South Wales branch will meet with Minister Evans, the Commonwealth Minister for Immigration. As it has been put to me, the concerns of this community centre around the retrospective nature of the application of this legislation once it takes effect. However, they do not dispute the Commonwealth's entitlement to apply a cap. I am advised that currently in excess of 140,000 visa applications in the pipeline across Australia are related to and directly affected by this legislation.

I believe we need to reach a fair and just outcome on this matter. I urge the Commonwealth to take seriously the concerns that will be raised by the delegation later today. These are people of sincerity, integrity and goodwill. They want to work with the Government to find a fair and reasonable way to apply this legislation once it comes into effect. Their key concern is the retrospective nature of the bill and its capacity to thwart the visa plans of hundreds of thousands of people of Indian background, including those in my electorate, who are now working or studying in Australia, the effect of which would be to lock out people who have done nothing wrong. They have worked hard, obeyed the law and paid their taxes. They are looking for a better future in a country that is well and truly able to offer one. I agree with the sentiments they have expressed and I urge the Commonwealth to come to a negotiated position that is fair, just and reasonable for all.

GIFTED AND TALENTED CHILDREN

Mr ANTHONY ROBERTS (Lane Cove) [1.08 p.m.]: I express my admiration for the New South Wales Association for Gifted and Talented Children Inc. The association was founded in my electorate of Lane Cove at a public meeting held at Lane Cove Town Hall on 20 August 1979. Around 170 persons from all over Sydney attended that meeting, which was quickly followed by a meeting on Monday 10 September 1979, which also included a guest speaker, Mr Henry Collins, who was the Chairman of the World Council for Gifted and Talented Children. By the second meeting the membership had grown from 70 families to 120 families. Within the first year of the association they had produced a newsletter, had meetings with the then Minister for Education, Mr Landa, and received support from Barbara Murphy, Vice President of the Teachers Federation.

Within its first two years the membership of the association had increased to more than 250 families, and group membership was available to schools, several of which had joined. The first regional group was established in Bathurst. By the end of the two years, regional groups included New England, the Blue Mountains, Newcastle and Wollongong. The association also received registered charity and not-for-profit status from the New South Wales Government and the Australian Taxation Office. The first president of the association was Laura Watson, who had to vacate the position when she moved to the military base at Puckapunyal, Victoria. Mr Maydwell of Lane Cove, who was then the vice-president of the association, became the president. In the early years Mr Len Maydwell, Mr Don Mageray and Mr Neville Westwood, all of Lane Cove, served in the roles of president, vice-president and honorary secretary as well as on the general committee. Other areas from which committee members came were North Richmond, Winston Hills, Balmain, Frenchs Forest, Pymble, Northbridge, Randwick, Box Hill, Beacon Hill, Hurstville and Kingsford.

While the association does not have all the statistics for the 31-year period, since 1990 it has provided resources to more than 8,000 members, about 1,000 school memberships and 100 libraries, and it has run more than 200 events for 3,000 children and adults. The association also runs seminars at which it presents both national and international speakers. The association has seven suburban groups covering the whole metropolitan area, as well as regional contacts in Lismore, Gunnedah, Port Macquarie, Bathurst, Hay, Wagga Wagga, Goulburn, the Australian Capital Territory, the Blue Mountains and Penrith. The association has 10 special interest groups, including the Gifted with Learning Disabilities, a monthly support group that meets in the North Ryde area. I believe it is the only group in Australia that currently provides for this special needs category.

Contrary to popular belief, gifted children do not emerge solely from affluent communities. They can be found in disadvantaged or remote communities. The association supports these children and their families beyond their membership base. Additionally, many gifted children have learning disabilities and conditions, such as Attention Deficit Hyperactivity Disorder [ADHD], auditory processing disorder, dyslexia and Asperger's syndrome, as well as hypersensitivities. The association receives no funding, as such, and raises money through membership fees, events and sales. As with any charity, it provides help and support to a growing proportion of the New South Wales population, regardless of membership, school, location or status. With its limited resources it tries to help, answer and support as many people as its resources allow, and it demands nothing in return.

Today people from my electorate are still helping through volunteering to shape our future. Anthony Nolan, OAM, JP, who scored a perfect score in an IQ test, is the current treasurer of the association and the gifted children's coordinator for MENSA Australia, the high IQ society. He also runs an online support group for gifted adults, mentors children in regional areas via webcam, runs a support group for visual spatial thinkers and contributes to gifted publications. Anthony also has a full-time job. Anthony and his wife, Emily, are about to start a family. I am proud that the New South Wales Gifted and Talented Association, which is recognised as the biggest, most active and leading gifted and talented association in Australia, was established in my electorate. It is a credit not only to Lane Cove but also to our wonderful State and perhaps even Australia.

Ms ANGELA D'AMORE (Drummoyne—Parliamentary Secretary) [1.12 p.m.]: I thank the member for Lane Cove for highlighting the New South Wales Association for Gifted and Talented Children, which was founded in his electorate. I am pleased that he has acknowledged in this Chamber the good work of this association not only in his electorate and in Sydney but also throughout New South Wales. The association provides support for many families. As the member said, more than 8,000 members and others have benefited from the association. Associations such as this do great work in our communities, often with very little funding but through the work of dedicated people. I thank the member for his contribution today.

DOONSIDE RAILWAY STATION

Mr PAUL GIBSON (Blacktown) [1.13 p.m.]: I congratulate Mr Acting-Speaker (Mr David Campbell) on his appointment to the position of Acting-Speaker. I bring to the attention of the House today a meeting I attended last Thursday at Doonside. A large crowd attended the meeting, which was convened by Anne Bali, Martha Lynch and the Doonside Seniors. During the meeting I was presented with a petition in relation to Doonside railway station. Although the petition had been in circulation for only a few days, it had 4,000 signatures. Doonside railway station is 38.59 kilometres from Central railway station. The station, which has four platforms, is on the western line of the CityRail network in Sydney. It serves a well-established residential area. It was opened on the site in 1880—130 years ago. That is an important date to remember. Four tracks pass through the station, with an island platform provided between each pair. One island platform serves down trains travelling away from Sydney and the other island platform serves up trains travelling towards Sydney.

Doonside has a large settled population with a combination of elderly people and young people. Doonside railway station does not have an elevator or an escalator. It does not have an adjacent level crossing. It does not have passenger display screens. It does not have platform tactile tiles. It does not have wheelchair accessible toilets, payphones or car spaces. It does not have a nearby taxi rank or car park. The lack of facilities is the reason that Doonside Seniors held the meeting. As I said, the station has existed for 130 years, which means that governments on both sides who have had their finger in the pie have not done much, including the Coalition when it was in government for seven years. Last Thursday I received a letter from Karen Christian, a young mum who lives at Doonside. In her letter she said:

I am writing this letter on behalf of all Doonside residents who find it difficult to use our local train station due to the absence of an elevator. I, myself, being one of these people. Not to mention people who commute to Doonside by train and are also hindered by the lack of an elevator. In particular, the elderly, who I believe struggle to climb the ramps and numerous amounts of stairs. Sometimes resulting in falls and injuries, which could be avoided with the use of an elevator.

She continued:

I have witnessed quite a few mishaps at Doonside station ...

I have also seen people in wheelchairs and people on electric buggies trying to manoeuvre through the poles at the foot of the ramps ...

Not long ago I saw a young mother with a toddler holding her hand as she attempted to push a pram, with an infant in it, down the stairs. She lost her footing and the pram escaped her grip only to thankfully run into the back of other commuters ahead of her at the bottom of the stairs.

Further, she said:

I, myself, struggle up the ramp and the stairs, experiencing pain and discomfort every time I have to travel by train ...

There is no way I will be able to climb the ramps or stairs at Doonside Railway Station ... for the remainder of my life ... unless an elevator is installed at Doonside station.

Mrs Dyball, who resides in the area, also wrote to me. She said:

We are aged pensioners and my partner is an invalid who uses a walking aid.

As we go to Doonside Seniors, should we not be able to go by car, it is a great effort for him to use the stairs.

There are many people in our position and it is most imperative that this station be improved and updated, as was promised many years ago.

I do not know whether that promise was made, but an elevator or escalator is required at Doonside railway station for the invalids, the aged, the young mums with prams and the disabled. The people of Doonside are not greedy or pushy. It is said that patience is a virtue. In this case it is—they have been waiting 130 years for these improvements. Hopefully, the Government will examine this issue and provide the necessary facilities at Doonside railway station and every city and country railway station in the State. These facilities should be built now, rather than installed later.

WILCANNIA WEIR

Mr JOHN WILLIAMS (Murray-Darling) [1.18 p.m.]: Today I presented a petition with more than 500 signatures on behalf of the Darling River Action Group [DRAG] calling for the relocation of the Wilcannia weir. This has been an ongoing issue for the shire of Central Darling, which has continually lobbied various Ministers for Water about the relocation of the weir. The ability of this aged weir to perform its function to supply water to the community of Wilcannia has now passed its use-by date. This weir, which was constructed upstream of the Wilcannia community, was not conveniently placed for many members of that community. For a long time there was no water in the Darling River below the bridge on the Barrier Highway and there was no water under the bridge at Wilcannia—a factor that led to a significant decrease in morale in the Wilcannia community.

However, the recent influx of water in the Darling River has improved morale and enabled community members to partake in and enjoy recreational fishing and other activities right on their doorsteps. The relocation of the weir will also result in a pooling of water in the river, which will improve the environment. About four years ago the paucity of water in the Wilcannia community led to the sinking of more bores and to poor water quality. At that stage, because there was no pooling of water at the existing weir, the water could not be treated

and returned to the community. The new weir will retain a lot more water and guarantee a good supply of water for the community. A letter I received from the Wilcannia Tourism and Community Association on 17 June sums up the situation as follows:

We are writing to you in support of the petition calling for the relocation of the Wilcannia weir recently presented to yourself by the Darling River Action Group and would like to show the support of our group in this endeavour.

Our community has recently formed an association with the specific aim of promoting tourism and community of our town, our first meeting being held on Friday 4th June 2010. Of the various positions filled on this committee, the president elected was Mr Clarence (Bill) Elliott and I Fiona Peterson-Williams as secretary.

This group of people, which is trying to develop and to promote the Wilcannia community, believes that this weir is as an important and integral part of the future of Wilcannia. After a recent meeting of the Council of Australian Governments, the New South Wales Government published a document entitled "NSW Weirs Policy—Water Reform", which to some extent contradicts the action that should be taken. That document states:

A proposal to build a new weir or enlarge an existing weir should not be approved unless it can be demonstrated that the primary component of the proposal is necessary to maintaining the essential social and economic needs of the affected community.

[Time expired.]

INGHAM RESEARCH INSTITUTE AND LIVERPOOL HOSPITAL

Dr ANDREW McDONALD (Macquarie Fields—Parliamentary Secretary) [1.23 p.m.]: On 13 April 2010 the Deputy Prime Minister, Julia Gillard, the Premier and I attended the sod turning for the Ingham Research Institute and visited the construction works that are currently underway at Liverpool Hospital. The Ingham Research Institute will bring all the researchers in the Liverpool area together into one co-located site. This exciting initiative means that researchers will be able to cooperate and to share ideas, which is vital to research. Professor Janice Reid, the Vice-Chancellor, and Professor Alison Jones, the Dean of the medical school, represented the University of Western Sydney.

The Ingham Research Institute conducts research into four broad areas, the first of which is health services research. The institute conducts research identifying health services and systems that involves reviewing current practices and reorganising the way in which health services are delivered. The second area is population health research, which investigates the health and diseases prevalent in the local community and aims at improving health and wellbeing by identifying gaps in health services. The third area is clinical research, which determines the effectiveness of medications, devices and treatment regimens. Clinical trials play a significant role within the institute and cover many areas of health and medical research. The final area is biomedical research.

The reconstruction of Liverpool Hospital continues according to plan. On the same day the Premier, the member for Liverpool and I also visited the building site. The 2010-11 budget has allocated \$111.5 million for this continuing redevelopment. The redeveloped hospital will be the major health facility within a network of health services in the region. All major hospitals need a research facility such as the Ingham Research Institute, which is a magnet for quality clinicians and researchers. The redevelopment will provide a significant economic contribution in the form of jobs and growth. It will generate job opportunities during construction and upon completion.

Given the educational precinct next door at the TAFE, this means that the New South Wales Government continues to be the major employer in the Liverpool central business district. This phase of the redevelopment of Liverpool Hospital will be complete in late 2011. However, the first patients are due to be admitted to the area under construction later in 2010. The \$394 million redevelopment of the hospital will include a major expansion of the existing clinical services building, new education facilities, and an elevated road and separate pedestrian bridge over the railway that will link the eastern and western campuses. When the phase one redevelopment is complete, Liverpool Hospital will be the largest tertiary health facility in New South Wales and will include 855 beds—up from 645—23 operating rooms, 60 intensive care beds, a major new ambulatory care centre, a diagnostic and treatment centre, and a renovated cancer therapy centre.

At the moment the facade of the new hospital is being progressively exposed to reveal the glass and coloured aluminium panels. With more than 500 workmen on site every day, fit-out works including joinery, painting, ceilings, lightweight partitions, vinyl flooring and lift installing are progressing well. The lift core for

the pedestrian bridge and the approach to the vehicle bridge are almost complete. At a tree-topping ceremony on the hospital's new helipad to mark the final height of the building and to celebrate the achievement of construction workers the hospital's general manager, Glenda Cleaver, said:

Every week the building changes substantially, it's been very interesting watching it take shape over the past year or so. Up here the magnitude of the redevelopment becomes clear.

The development was assisted by a health impact assessment, or HIA, conducted by Population Health at Sydney South West Area Health Service and published by Michelle Maxwell. Michelle said:

We found that the HIA provided evidence to support the recommendations, raised awareness of possible inequity for disadvantaged groups during the construction phase and strengthened the consultation and communication process for the redevelopment.

Currently Liverpool Hospital teaches students from the University of New South Wales and the University of Western Sydney. I still teach students and recommend that they make their future at Liverpool Hospital, which for young medical professionals remains the land of opportunity. In 1995, when Labor came into office, the hospital was comprised of temporary huts that had been present since the war. How things have changed! The Labor Party is the only party that was ever going to build this wonderful hospital. I commend to the House the wonderful work that is being done.

PORT STEPHENS ELECTORATE YOUTH SERVICES

Mr CRAIG BAUMANN (Port Stephens) [1.28 p.m.]: Today I refer to youth services in my electorate and to the desperate need for more government funding. The committed and passionate people working on the front line face daily challenges that many in this room would not dare to believe could happen in Australia in 2010. In my electorate they do it with minimal State government funding. We are living in a world in which a 16-year-old child can drop out of school because she is homeless and in which youth workers who facilitate education programs are taking young people's clothes home to wash because there is no-one else to do it for them. Youth workers witness the amazement of a teenager on discovering that a simple, homemade chicken wrap could taste so good. For many the idea of a nutritious meal prepared at home is a world that they cannot comprehend.

My electorate is fortunate to have a wealth of incredibly dedicated and committed people whose daily passion is to help improve the lives of young people. But they do it desperately short of resources and cash. The State Labor Government could learn from the budgeting tactics those people use to stretch out services to help just one more young person or to keep a program going for one more month. One caseworker on the frontline has told me she has seen around 100 young homeless people aged between 12 and 18 in the past four years. Referred by schools or the Department of Community Services, their stories are as different as they are sad. Just one example she relayed to me, which should haunt us all, is typical of her clientele. A teenage girl, living with her father, summons up the courage to go to the police to report that her dad has molested her. While the court case is pending she obviously has to move out of the house and friends say she can stay with them—but only for a little while.

She couch-surfs for the next 18 months, drops out of school and gives up her part-time job because it is just too hard to work in such close proximity to her father. Her remaining family turn on her for instigating the charges against her father and she eventually self-harms, ending up in hospital. At 3.00 p.m. on Christmas Eve she was discharged from hospital—alone and with nowhere to go. A refuge was finally found for her some months later. Eventually she presented herself to the police after committing a break and enter. The caseworker who tried valiantly to help this child—and that is what she is, a child—has had no increase in her State Government funding in three years, but, of course, the costs of running the service have increased dramatically. She rents out to another agency half the office space she has in Raymond Terrace so she can afford to pay the rent and does not have to work out the back of her car.

The Workers Educational Association [WEA] Hunter runs a successful Incharge Links to Learning program in the main street of Raymond Terrace. The centre runs three days a week to provide assistance for 10 students. It is so successful that double that number of young people hang around outside the centre, wanting to take part and wanting to belong. The youth worker said, although she is primarily there to offer education and that she does not have the resources to take on more students, how could she turn her back? How could she turn away a teenager waiting for her to open the door at 9.00 a.m. who is starving, cold, needing to use the phone and has not had contact with family members for the past two days?

These young people congregate outside the office where other community members need to use services, and their presence can be daunting for the community. But what the community does not know when they see this bedraggled bunch of kids—who often use foul language—is what they are escaping from. The police and youth workers tell me that for many of these kids being away from the family home is the safest place they can be. Young people in my electorate are starved of opportunities such as better access to TAFE services and other educational programs because the State Labor Government has starved the existing services of vital funding. We need more services to help our young people. We have the professionals with the credentials, the passion and the commitment to make a change in these young people's lives and we need to support them with adequate funding.

SCHOLASTIC AUSTRALIA

Mr GRANT McBRIDE (The Entrance) [1.32 p.m.]: Last week I visited one of the largest private companies in my electorate, Scholastic Australia. The company has been bringing the best of children's publishing to Australia and the rest of the world for more than 40 years. I met with Ken Jolly, the chairman of the board; David Peagram, the chief executive officer; and Jackie Wells, the distribution manager. Ken Jolly joined the company nearly 40 years ago when the company first relocated to the Central Coast from Brookvale. Ken was working for the Victorian Teachers Federation at the time and fell into the job when Terry Hughes, the manager of the firm, rang the Teachers Federation to find out if they knew of anyone who was interested in children's educational publishing. It was a very good move for both the company and Ken Jolly because Ken turned out to be one of the leading lights behind the progress of Scholastic Australia. Since joining the company he worked in a number of positions, progressed to managing director for 27 years and then in 2006 was promoted to the top job as the chairman of the board.

David Peagram took over as managing director and has continued the tradition of working together with children, teachers and parents to foster the wellbeing and talents of Australian young people. The company's ownership of the Australian Children's Literature Collection at Dromkeen in Victoria, which I intend to visit in the near future, is further evidence of this commitment. Dromkeen is a heritage building in which they keep all the original drawings, et cetera, associated with children's books. In the 40 years Ken has been with the company it has grown from 30 employees to more than 400 nationally—350 of them at Narara on the Central Coast. The annual turnover has developed from a few million dollars to around \$150 million. Each day the company distributes more than 3,000 cartons of books from its despatch dock, under the watchful eye of the distribution manager, Jackie Wells.

Jackie gave me a comprehensive tour of the factory and explained that in busy times up to 12,000 cartons of books could be sent out to schools and businesses across Australia on a daily basis. That is a lot of reading for our schoolchildren. I was amazed at the size and scope of Scholastic Australia, which is one of the world's largest publishers and distributors of books, magazines and educational and media materials for children, with offices in the United States of America, Canada, Argentina, Hong Kong, India, Indonesia, Malaysia, Mexico, New Zealand and the United Kingdom. Scholastic Australia has a strong and continuing commitment to the Australian children's book industry, promoting the unique talents of Australian authors and illustrators. For example, one of the authors who has been a part of that program is Mem Fox, whose books are now incredibly popular in Australia and around the world.

The Children's Book Council of Australia Foundation was launched in 1996 to raise money to continue the Book of the Year awards and Scholastic Australia was designated a benefactor of the awards. In 2000 the company was recognised as the New South Wales State winner in the medium business category of the prestigious Australian Customer Service for Excellence, an initiative of the Australian Customer Service Association. This again exemplifies the ongoing dedication that the company and the staff exhibit towards the education of our young people. Scholastic Australia's head office and warehouse complex is at Lisarow on the Central Coast and houses the company's major sales divisions as well as operations, finance and corporate communications.

The electorate of The Entrance—indeed, the whole of the Central Coast—is a semi-rural suburban area from which around 40,000 people commute to Sydney and Newcastle every day to work. It is encouraging that major companies such as Scholastic are playing an important part in the stimulus of the Central Coast's economy. We need the kind of commitment that Scholastic demonstrates. It shows that families can relocate to the Central Coast and continue a lifestyle of work and play in one of Australia's leading communities. Thanks go to the management: David Peagram, managing director, Andrew Berkhut, Malcolm Tindale and Neil Welham; and to the board of directors: Ken Jolly, Dr Gregor Ramsey, Dick Robinson and Dick Spaulding. They are proving that business can not only survive on the Central Coast but also that it can flourish.

SINGLE PENSIONER PUBLIC HOUSING RENT INCREASE

Mr GEOFF PROVEST (Tweed) [1.37 p.m.]: Once again I am 100 per cent for the Tweed. I bring to the attention of the House a very serious issue. The Tweed's most vulnerable and poorest residents—single age pensioners who live in public housing—will be \$7.50 a week worse off from September because of an unfair rent hike by the Keneally Labor Government. I strongly believe that the Keneally Labor Government is targeting those who can least afford it. Yet again in the Tweed we are being discriminated against. Single pensioners in Queensland, on the other side of the border, do not have to cop a similar rent increase. Tweed public housing rents are rising because, unlike governments in other States, the New South Wales Labor Government refuses to agree not to profit from last year's \$30 a week increase for single pensioners. I refer to an article by Louise Hall in the *Sydney Morning Herald* on 15 June in the column headed "State Politics". The article states:

The Queensland, Northern Territory, South Australian and Tasmanian governments have agreed that the \$30 increase will never be included in public housing rent calculations, which are usually pegged at 25 per cent of the pensioner base rate.

But NSW has refused to follow suit and permanently quarantine the pensioner increase. This means single aged pensioners will pay an extra \$7.50 a week in rent after a one-year moratorium on rent rises ends in 3½ months. Couple aged pensioners will not be affected because their extra \$10.14 is paid as a supplement, rather than an increase to the basic rate.

We have heard many times in this place that there is supposedly a large level of cooperation between Federal Labor and New South Wales Labor, although I have a funny feeling that even the Prime Minister does not want to have much to do with his Labor colleagues in New South Wales. But last year Federal Treasurer Wayne Swan warned the States against eroding the pensioners' hard-won increase by increasing levies and charges. Last year the Federal Treasurer said:

There is simply no way the Commonwealth will tolerate a clawback of that one-off pension increase by the states for pensioners in public housing.

But the New South Wales Labor Government is clawing back \$7.50 per week from those people who can least afford it. Approximately 28 per cent of the Tweed electorate's population is aged over 65 years. In fact, for this age group the Tweed ranks second in the State, behind Port Macquarie. Aged pensioners have worked hard all their lives and have given a great deal to this great State, if not this great nation, of ours. Yet their pension increase is being clawed back. Some people may say that \$7.50 is not a large amount, but it will buy several loaves of bread or other essentials. Many aged pensioners budget down to their last dollar every week. Last year electricity costs increased by 20 per cent and over the next two years they are expected to increase by another 40 per cent. Many pensioners have told me that their bills will increase by \$300, \$400 or \$500 a year, yet all the Government says is that they can get the pensioner rebate to offset the increase. The pensioner rebate is \$140, so they will not save anything. In fact, they will be worse off.

Aged pensioners in the Tweed have told me that they take cold showers every second day because they cannot afford to run the electric heater for their hot water systems, and time and again they turn off appliances. In other words, their lifestyle and comforts of living are being eroded. No longer can they afford the things for which they worked hard all their life. In recent times more taxes have been imposed on the Tweed community, particularly for pensioners who own cars. Recently a \$30 increase was applied to motor vehicles according to weight. I placed on notice a question about how many vehicles in the Tweed electorate weigh more than 975 kilograms. The answer I received was 34,000. That means that through this tax increase on motor vehicles the Government is ripping another \$1 million from the people of the Tweed to be squandered in Sydney and elsewhere.

Aged pensioners need our support. They do not need people from both sides of this House trying to take their last cent and trying to erode their quality of life. Age pensioners are in their senior years after having worked hard for this great country and State. We should support them wholeheartedly. As always, I am 100 per cent for the pensioners of the Tweed.

GIRL GUIDES

Mr DAVID HARRIS (Wyong—Parliamentary Secretary) [1.42 p.m.]: The year 2010 is designated the Year of the Girl Guide. From its humble beginnings 100 years ago the Girl Guides movement has grown into the largest worldwide voluntary organisation for girls and young women, with an estimated 10 million members in 145 countries. To date the guiding movement has helped over one million Australian girls grow into confident and inspiring young women by encouraging them to be actively involved in matters of local, national

and global concern. Today Australia has approximately 30,000 Girl Guides. The Central Coast Girl Guides groups form part of the Coastal Valleys Region of Guides. Within that region is the Lakelands Division, which has Girl Guides group districts from my electorate.

Over the past 12 months I have enjoyed attending the annual general meetings of Toukley, Wyong and Ourimbah Girl Guides groups. I was impressed by the amount of activities and volunteer work that each district has organised and taken part in, ensuring that the girls in their care have many worthwhile and enriching experiences. I was pleased also to support the Wyong District Group, under the leadership of Glenys Thomson, with a community grant, which I know was used for a much-needed upgrade to their guide hall kitchen. I recognise at this point Carol Blamires, Toukley District Guide Leader, and Jenny Stannard, Secretary, who are in the public gallery. Carol has been involved in guiding for many years since her daughter was aged just seven. She told my office that she is very proud of the activities and work that the Toukley Girl Guides do each year—things such as visits to the Legacy and Vietnam Veterans centres. Twice a year the guides brighten up the days of these special people in our community by spending time, distributing gifts and even taking an artificial campfire along and singing some of those well-known camp songs most of us have heard and enjoyed over the years.

Toukley Girl Guides are famous also for their Trolley Push fundraising event at Lake Haven Shopping Centre. A couple of times a year for a small fee shoppers can have their trolley pushed to their car by the Toukley Girl Guides. This not only assists shoppers but also raises necessary funds to help with the maintenance of the guide hall and financially supports some girl guides so they can fully participate in all activities. By taking part in the Trolley Push and charity events, including McHappy Day, the girls learn important values such as empathy, responsibility and generosity, which help them develop skills for life. Rhonda MacDiarmid, acting District Leader of Ourimbah and District Leader of Tumby Umbi, also has been involved as a Girl Guide leader for more than 30 years. This is testament to her belief in the benefits of the guiding movement.

Rhonda strongly believes in the benefits of being a girl guide. The opportunities to develop self-confidence and responsibility are vast and help prepare these young girls to be good citizens and leaders of the future. Our communities are better places as a result. Rhonda's wish is that more people take advantage of the leadership roles within the Girl Guides so that the groups can continue to grow and support their members. Rhonda also has been actively involved in recruiting more girls to join guides in her areas through school visits and letterbox drops. The Come and Try Guides nights have been quite successful. One of the major events in this Year of the Girl Guide is Campfires Around the Nation, which was held on 19 June. The Lakelands Division gathered at Long Jetty Rotary Park and its campfire formed part of many hundreds of simultaneous campfires around Australia celebrating the centenary of Girl Guides.

Numerous camps also have been planned for throughout the year. One was the Centenary Camp for the Coastal Valley's Region, which was held on 22 May at Camp Chapman, Somersby. This was an ideal opportunity for Girl Guides to come together and to enjoy not only many activities but also the camaraderie that goes hand in hand with Girl Guides. The motto for the centenary year is "Let's celebrate our past, live the present and power into the future". At Camp Chapman more than 250 girls took part in heritage games representing the past, party games representing the present and activities devised around preserving the present for the future. This included a most impressive wall, which was a long piece of paper to be displayed on which all the guides wrote their thoughts and hopes for the future of guiding for all to read and be inspired.

The program of activities planned by all the Girl Guide groups across Australia will put this motto into practice and I am pleased to be involved with and support my local Girl Guide groups. They encourage independence, self-confidence and promote friendship for Girl Guides through many worthwhile and fun activities. I take this opportunity to commend and congratulate all the wonderful Girl Guide leaders. Their outstanding volunteer work with the girls of our community is truly appreciated. I am sure that all members who have anything to do with their local guide movements will be as proud of their units as I am of mine.

RAILCORP EMPLOYEE ENTITLEMENTS

Mr CHRIS HARTCHER (Terrigal) [1.47 p.m.]: In 2009 I was contacted by a number of RailCorp and CityRail employees who believed they were not receiving a fair deal from RailCorp. The workers, from various Central Coast stations, asked me to help them fight for their entitlements. Not long after those incidents, I was contacted by another RailCorp employee who also had concerns about entitlements. For approximately four years Kevin Cornford has been trying to get an answer from successive Ministers for Transport, from successive Premiers and from RailCorp itself. While I cannot do justice to all of Mr Cornford's complaints in the

five minutes provided for in a private member's statement, I will attempt to summarise some of his grievances. Ultimately, I ask that the new Minister for Transport take the opportunity to properly investigate Mr Cornford's case and provide him with some better explanation than that provided to date.

Invariably the transport Ministers who have dealt with representations made on Mr Cornford's behalf have asked RailCorp for an explanation of the corporation's position and have simply provided this to Mr Cornford. After four years I would suggest that Mr Cornford is entitled to something more substantial. Indeed, Mr Cornford has asked for the opportunity to discuss his concerns with senior government representatives. He has not demanded a personal audience with the Minister or the Premier but simply an opportunity to discuss his case briefly with a representative of the Transport Ministry. In 2005 RailCorp deemed Mr Cornford to be surplus staff and he was officially displaced in November of that year, approximately a year and a half shy of his 30-year service mark. After 28½ years Mr Cornford no longer was needed by RailCorp. He was offered the choice of either a voluntary redundancy package or a place in the corporation's 12-week Career Transition Program.

But Mr Cornford wanted to reach his 30-year service mark and made this clear to RailCorp, a fact it had acknowledged a number of times in correspondence. Mr Cornford chose to join the transition program so he could move to another area of RailCorp. However, again he was approached with a voluntary redundancy package, this time accompanied by a number of sweeteners. The corporation even acknowledged that it was a "once-off" to try to move employees from the displaced list. By that stage it had been made very clear to Mr Cornford that even if he finished the transition program there was not likely to be a job for him. In fact, in one of Minister Campbell's letters to me he stated that Mr Cornford "could not be redeployed". As members can imagine, Mr Cornford had built up a significant amount of long service leave and he even offered to take some of that leave immediately so that he might serve out the remaining 18 months of his 30 years as an employee on leave. However, the offer was rejected by RailCorp. Mr Cornford felt he had no choice but to accept the package on offer, and he did so in April 2006.

RailCorp refused to allow Mr Cornford to make any arrangement that would see him reach 30 years of service. The 30-year mark at RailCorp is a big event, giving employees a number of extra milestone allowances, including the special travel pass. The Government has a bad record when it comes to the issue of the special travel passes, including allegations that union bosses have received them decades short of the 30-year mark under exceptional circumstances clauses. Mr Cornford was only 18 months shy of his 30-year anniversary and had enough leave to make up the difference. The circumstances surrounding Mr Cornford's forced redundancy are such that one might suggest that he was being unfairly treated or the victim of bureaucratic unwillingness to assist.

However, I am willing to give the department and the current and former Ministers for Transport the benefit of the doubt. All I ask is that the current Minister review this case without referring to the bureaucratic explanation provided to him by the corporation. Ironically, Mr Cornford has received a special certificate from RailCorp after he left its employ thanking him for his 40 years of dedicated public service. Of course, because all 40 years of his dedicated public service were not served with RailCorp itself, Mr Cornford misses out. I ask the present Minister for Transport to review his case in a friendly way. He has missed out by only 18 months and he could have reached 30 years of service if he had been allowed to use his long service leave. It is important to him to mark that 30-year milestone of service in RailCorp. He has served the community for 40 years in the public sector of New South Wales and it would be fair to grant him the recognition he seeks.

Mr DAVID HARRIS (Wyang—Parliamentary Secretary) [1.52 p.m.]: I will raise that matter with the Minister for Transport if the member for Terrigal provides me with the detail of that case.

INTERNATIONAL CHILDREN'S GAMES

Mr GREG PIPER (Lake Macquarie) [1.52 p.m.]: On Saturday a contingent from Lake Macquarie will fly to Bahrain to represent the city in the Forty-fourth International Children's Games. The contingent will also present a bid to host the games in Lake Macquarie in 2014. The International Children's Games began in Slovenia in 1968 with the aim of using sport to promote peace and friendship among the world's youth. The games, having begun humbly in the climate of the Cold War and behind the Iron Curtain, have grown to be the largest multi-sport youth games in the world and are sanctioned by the International Olympic Committee.

The Secretary-General of the International Children's Games, Richard Smith, describes the Games as "a true global village, where spirited competition thrives and peace, tolerance, fairness, and integrity live". What a

wonderful environment and opportunity for young people between the ages of 12 and 15 to come together, not just to compete, but also to meet and make friends with others from different ethnic, cultural and religious backgrounds. The 2010 games will be held from 28 June to 3 July and are being hosted by the city of Manama in the Kingdom of Bahrain. The City of Lake Macquarie first participated in the 2008 games in San Francisco and was the first ever Australian participant. Our venture into the International Children's Games was a great success and two years on we remain grateful to former Minister West for the Government's \$10,000 contribution and to a number of local businesses for their generous contributions toward meeting the participants' costs.

In 2008 the team returned with a gold medal won by golfer Jake Higginbottom but, more importantly, 15 young people returned with a greater understanding of other peoples and cultures and with experience and memories that will benefit them throughout their lives. The members and sports of Team Lake Macquarie 2010 are: Jacob Lowe, 14, of Wangi Wangi—track and field; Lawson Huntriss, 14, of Toronto—track and field; Daniel Hunt, 14, of Marmong Point—track and field; Jarrod Harvey, 15, of Edgeworth—track and field; Harry Morton, 12, of Belmont—sailing; and Matthew Hall, 14, of Floraville—sailing.

The team will be accompanied by coaches Graeme Hall and Phil Jenkins, who have done a great job of preparing the six participants. Travelling to assist with the bid will be Colin Southworth from the Hunter Sports Centre at Glendale and the hardworking Kelly Lofberg from Lake Macquarie City Council. I will also accompany the contingent in my role as Mayor of Lake Macquarie and because of my strong belief in the games I am funding my own travel. The eyes of the city will be on our young sportspeople as they compete. While it will be wonderful if they do well in their sports, the real benefit will come from the experience of competing and, of course, from the success of Lake Macquarie's bid if we have that good fortune.

If our bid succeeds, the 2014 games in Lake Macquarie will be a first for Australia and will attract some 3,000 international visitors, including about 2,000 athletes. Lake Macquarie has great resources for athletics, sailing and a range of other sports. The cost of running the games is estimated to be about \$2 million, but with the city providing the use of sporting facilities and other in-kind contributions the outlay should be much less. Council will provide the venues at Speers Point and the Hunter Sports Centre at Glendale, and specialised facilities will be used at the Forum Sports and Aquatic Centre at the University of Newcastle, Belmont 16 Foot Sailing Club and Belmont Golf Club. The University of Newcastle has generously undertaken to accommodate participants in the four residential colleges at its Callaghan campus. The support of organisations and businesses such as the university, the Hunter Institute of Sport, NBN Television, the Newcastle *Herald*, Newcastle Knights and many others gives us confidence that the community will support us in running a great event.

The opportunity to participate in the International Children's Games is wonderful for the youth of area, but the possibility of hosting the Games in 2014 is an even greater opportunity for Lake Macquarie, the region and the State. With representatives from their electorates participating, I am sure that the members for Swansea, Charlestown and Cessnock will join me in wishing Team Lake Macquarie well as, I am sure, will the Parliament as a whole. Giving these young people the chance to participate in such an event as the International Children's Games is an investment in our youth. The chance to host the games in New South Wales in 2014 would be an even greater investment in youth, community and the local economy. I am confident that the bid by Lake Macquarie City Council will be successful and I call on the Government to fully support the hosting of the International Children's Games when they come to New South Wales in 2014.

PACIFIC HIGHWAY UPGRADE

Mr PETER BESSELING (Port Macquarie) [1.57 p.m.]: The month of July is set to mark the official completion of the much-heralded Coopernook to Herons Creek upgrade of the Pacific Highway. Aside from the Bulahdelah bypass that is currently underway, this highly anticipated upgrade will provide for a dual carriageway road from Sydney right through to Port Macquarie. With the Herons Creek to Stills Road upgrade and Oxley Highway upgrade projects both due for completion within the next two years, we will provide travellers with a safe and efficient pathway that will deliver visitors right through to Port Macquarie's doorstep.

The Pacific Highway upgrade has made a significant impact on local communities within the Port Macquarie electorate and has impacted greatly on the local economies of our surrounding towns and villages. The local jobs and economic stimulus that the project has provided for our region cannot be underestimated and have been clearly seen through the impact on local accommodation, subcontractors, suppliers of materials and equipment hire businesses all the way through to the smaller general stores within communities located along the highway.

It is important that the Government and this Parliament recognise the patience and the support given by communities located along the highway upgrade. People have had to deal with what has effectively been a constant construction zone for a number of years, and the associated noise, dust and inconvenience. I congratulate everyone on their patience. A number of individual issues with properties along the highway are subject to further consultation with both the Highway Alliance and the Roads and Traffic Authority. Having met with officials for an inspection tour last week to discuss these issues, I encourage the agencies involved to work towards a resolution of these issues as a matter of priority.

The mid North Coast region will benefit enormously from the upgraded Pacific Highway and, apart from the obvious safety benefits to local motorists travelling up and down the highway, the ability to attract tourists to our region has long been an economic driver that will only be strengthened by the completion of the highway through safer, more efficient and shorter travelling times to our area as both a long-stay and short-visit holiday destination. While this scenario will benefit tourist-based businesses in the area, authorities must consider the impact upon townships and businesses that traditionally have relied upon passing highway trade. The impact must be considered an economic and social cost associated with the delivery of the Pacific Highway upgrade. Communities such as Kew, Moorland and Johns River, who were bypassed in December 2009, March 2010 and May 2010, respectively, have owed their economic viability to their location along one of Australia's busiest highways and to the dollars that flowed from travellers who used the various services provided.

To their enormous credit, these communities have each formed community groups or associations that have been extremely supportive of the broader benefit to the State of the highway upgrade. These groups have worked closely with the Roads and Traffic Authority and local councils and provided feedback on future plans for their communities to best take advantage of their location, which is adjacent to the new highway, and the new amenity of their towns that will provide much-needed rest opportunities for drivers. It is now incumbent upon the Government to support these communities with far more than plans that have very little in the way of funding commitments from either local councils or State agencies.

For our communities of Kew, Johns River and Moorland to remain viable, the village plans that have been prepared through broad community consultation need to be supported through direct government action. I will progress discussions that already have taken place with the Premier's Department and the Minister for Roads in the hope that those Ministers will work with the Minister for State and Regional Development to ensure that our communities will be able to convert into future economic prosperity opportunities that already have been identified, such as signage, bypass road works and town beautification strategies.

Individual community members, chambers of commerce, the Kew and Johns River Community Progress Association and the Moorland Community Association have clearly outlined these concerns to me. Implementation and resource allocation cannot simply be left to local councils with limited resources. Having raised the expectations of townships with preparation of detailed master plans for former highway surrounds, the Government must support the economic and social welfare of our communities rather than let their concerns slip quietly into the night when excitement and pageantry of the bypass openings move farther north.

Mr DAVID HARRIS (Wyang—Parliamentary Secretary) [2.01 p.m.]: I thank the member for Port Macquarie for bringing to the attention of the House the completion of a very important project of State and local significance, which has been celebrated by his community. I acknowledge, as he did, that community members have had to put up with disruption, and I thank them for their patience. Everyone knows that ongoing roadworks present a difficult situation, so it is very good that his constituents have a local representative who will bring to the attention of the House their concerns and continuing problems. I take this opportunity to acknowledge the Assistant-Speaker, the member for Keira, who was a major driver of Pacific Highway upgrades and who, during his term as Minister for Transport and Roads, ensured that great lengths of highway upgrades were completed.

Private members' statements concluded.

[The Acting-Speaker (Mr David Campbell) left the chair at 2.03 p.m. The House resumed at 2.15 p.m.]

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The SPEAKER: I report the receipt of the following message from Her Excellency the Governor:

MARIE BASHIR
Governor

Office of the Governor
Sydney, 12 June 2010

Professor Marie Bashir, Governor of New South Wales has the honour to inform the Legislative Assembly that she re-assumed the administration of the Government of the State on 12 June 2010.

ASSENT TO BILLS

Assent to the following bills reported:

Anzac Memorial (Building) Amendment Bill 2010
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010
Health Practitioner Regulation Amendment Bill 2010
Industrial Relations Amendment (Consequential Provisions) Bill 2010
Liquor Legislation Amendment Bill 2010
Local Government Amendment (General Rate Exemptions) Bill 2010
National Parks and Wildlife Amendment Bill 2010
Threatened Species Conservation Amendment (Biodiversity Certification) Bill 2010
Weapons and Firearms Legislation Amendment Bill 2010
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010
Residential Tenancies Bill 2010.

REPRESENTATION OF MINISTER ABSENT DURING QUESTIONS

Ms KRISTINA KENEALLY: I inform the House that the Minister for Local Government, Minister for Juvenile Justice, Minister Assisting the Minister for Planning, and Minister Assisting the Minister for Health (Mental Health) will answer questions today in the absence of the Minister for the State Plan, and Minister for Community Services.

BUSINESS OF THE HOUSE

Notices of Motions

Government Business Notices of Motions (for Bills) given.

General Business Notices of Motions (for Bills) given.

DEATHS AND INJURIES OF AUSTRALIAN SOLDIERS IN AFGHANISTAN

Ministerial Statement

Ms KRISTINA KENEALLY (Heffron—Premier, and Minister for Redfern Waterloo) [2.20 p.m.]: On behalf of the families of New South Wales, I express our deepest sorrow to the family, friends and loved ones of three Australian soldiers who died yesterday in Afghanistan. I know that we pray for the seven injured, two of whom were injured seriously, that their lives may be spared. This tragedy brings to 16 the number of Australians who have lost their lives while serving their country in Afghanistan.

It is our nation's highest calling to wear the uniform of Australia. It is also the greatest sacrifice that the people of a nation can ask of their fellow man or woman. So we gather today in the shadow of a tragedy for our nation. We gather today in the shadow of Australia's greatest military loss of life since Vietnam. We gather in the shadow of a sobering reminder for every member of this House—a reminder that our democracies, for all our progress, for all our enlightenment and for all our pursuit of peace, remain quietly, tirelessly and selflessly supported by the men and women of our armed forces. As a global community we still face threats to the very underpinnings of our lives. And so, as a community of nations, we choose to face them together. We must face them together.

Australia is one of 40 nations fighting in the Afghan theatre. That is why there is bipartisan support for our troops who are combating terrorism. That is why today reminds those of us privileged enough to represent our democratic State that we stand on the shoulders of giants. We can talk about the battles of political life. We can talk about fighting for campaigns and causes. We can contemplate the challenges that each of us faces in our personal lives, but on days like this we realise that we cannot begin to contemplate the will, the courage and the selflessness required to live the daily reality of the men and women in our military.

While we stand on the shoulders of giants, they are from the streets of our suburbs, they are friends from school, they are the person next to us in the shopping aisle, they are mates, they are siblings, they are parents to their children and they will always be children to their parents. They have families who carry this sacrifice with them, parents who wave off sons or daughters with a stoic pride that hides their blackest fear; children who draw letters to fathers and mothers absent, awaiting their return through the front door, and partners who have joined their lives together and take every risk with them.

These battles do not rage solely in distant theatres of war but also in suburbs and towns of Australia, where families must endure lives without loved ones, making daily sacrifices, not only for them but for us as well. Today there are Australian families who have lost the centre of their world, families who will miss a guiding light in their lives, who will ache and weep, who will grieve a loss we cannot contemplate. So here we must fall silent. Because we cannot express what our nation's loss must mean to our fellow Australians who are now left behind.

Mr BARRY O'FARRELL (Ku-ring-gai—Leader of the Opposition) [2.24 p.m.]: I join with the Premier in expressing our condolences to the families of the three commandos killed and the seven injured as part of Australia's effort in Afghanistan. The motto of the commando regiment is *foras admonitio*, which is without warning. Certainly without warning these individuals were killed or injured, their families left devastated, and it is times like this, as the Premier has said, that we understand the real significance of places like this. The individuals involved in the Special Operations Task Group are essentially Australia's Special Forces. A former SAS commanding officer, former Governor-General Mike Jeffery once said they put the "special" into Special Forces. He described them as having:

... high intelligence, initiative to a marked degree, physical and moral courage, superb fitness, personal and group discipline, composure under pressure, and an unceasing desire to find more effective and efficient ways of carrying out diverse tasks [we expect of them.]

At a time like this we need to understand that their task is important, not just for us as a nation but also for those involved. Many in our community, in New South Wales and across the country, are questioning the commitment of Australian troops to Afghanistan. I happened to read yesterday the comments of the wife of one of these incredible individuals who serves our country in that place, whose husband had lost someone earlier in the month, and she wanted to speak out about their cause. She said:

My husband lives in a tent most of the time, eats dust with every meal and carries upwards of 50 kilograms of stuff in 50-degree heat every time he walks off the base (and they do LOTS of walking)

He knows that each time we speak might be the last. He knows all too well the realities of the Afghanistan conflict and "fighting terrorism". Despite this, he's not under any illusion that this is their only mission—he is smart enough to know that there are myriad reasons for them being over there.

However, when he is asked, he tells you that he does what he does because his skills can keep his colleagues alive. He does what he does because he's bloody good at it and somebody needs to be. He's there because he really believes that the NATO mission will make a difference to the Afghan people.

Sure, that may seem naive to the critics but that doesn't make his reasons any less valid. I think that it makes them more honourable—that he would do all this in the belief that, somehow, it will make a stranger's life better.

We all know the essence of the *Bible* found in John 15:13: There is no greater love than this, that someone lay down his life for his friends. Here, young Australian men, the cream of this nation, are laying down or putting on the line their lives for people who are not friends in the classic sense but people who they want to ensure have all the freedoms, all the opportunities and all the hopes that people in this country are able to have.

The SPEAKER: On behalf of all members, I join with the Premier and the Leader of the Opposition, and I ask all members to stand as a mark of respect.

Members and officers of the House stood in their places as a mark of respect.

QUESTION TIME

[Question time commenced at 2.28 p.m.]

PENRITH BY-ELECTION RESULT

Mr BARRY O'FARRELL: My question is directed to the Premier. Now that the people of Penrith have delivered their verdict on her Labor Government, when will she let residents of the Central Coast, the Illawarra, the Hunter, country New South Wales and the rest of Sydney have their say by calling an early election?

The SPEAKER: Order! Government members will come to order.

Ms KRISTINA KENEALLY: As the Leader of the Opposition knows, we have a Constitution in New South Wales, and I encourage him to read it.

WEAPONS DESTRUCTION

Mr NICK LALICH: My question is addressed to the Premier. How is the New South Wales Government keeping dangerous weapons off our streets?

Ms KRISTINA KENEALLY: Earlier today I joined the Minister for Police in inspecting the work of the weapons ordnance and disposal unit, where in the first three months of this year our police force has destroyed more than 3,100 dangerous weapons, some 1,500 kilograms of ammunition and other dangerous goods such as fireworks, flares and anti-personnel sprays. This is a great credit to the work of our police force, keeping our communities as safe as possible. We see the results of that great work by our police in the tonnages that have been destroyed at the weapons disposal unit. We see it in the crime statistics for New South Wales, where major categories of crime are stable or falling. We see it in the communities of New South Wales, where a safe environment for our families is perhaps our greatest asset. All of that is a great credit to our New South Wales Police Force—a police force that has halved property crime in New South Wales since 2000. Over the past three years the police weapons unit has destroyed a total of 50,000 weapons and more than 21 tonnes of ammunition.

We are serious about getting dangerous weapons off the streets and keeping our communities safe. There are two messages in the statistics I have outlined. We are sending a clear message to firearms owners: have your firearms properly stored and registered because if you do not they will be destroyed; and own a weapon lawfully or you will not own it at all. Of course, the majority of legal gun owners do the responsible thing. They support these policies, and they stamp out any irresponsibility amongst fellow gun owners. Our primary focus remains on seizing and destroying illegal weapons, getting them out of the community. This is the message we are sending to the owners of illegal weapons. We are finding these weapons, we are seizing them in record numbers and we are rendering them incapable of ever being used again. We are taking these weapons and ammunition out of the system and off our streets, making our communities a safer place to be.

PENRITH BY-ELECTION RESULT

Mr BARRY O'FARRELL: My question is directed to the Premier. When will the Premier finally admit that the result of Saturday's by-election was not just about the disgraced former Labor member, Karyn Paluzzano, but more about her Government's failure to improve the M4 on and off ramps, Victoria Bridge, slow train services and Nepean Hospital staffing issues? When will she start taking some responsibility for a change?

Ms KRISTINA KENEALLY: I have always maintained that the people of Penrith would be angry, and rightly angry, at this by-election in which they had to participate. And why would they not be angry, when the member in whom they had placed their trust had betrayed that trust?

The SPEAKER: Order! Opposition members will come to order.

Ms KRISTINA KENEALLY: The people of Penrith are rightly angry—

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

Ms KRISTINA KENEALLY: —as I am angry—

The SPEAKER: Order! I call the Leader of the Opposition to order. The Leader of the Opposition has asked his question. He will pay the Premier the courtesy of listening to her response.

Ms KRISTINA KENEALLY: The people of Penrith are angry that the former member lied to the Independent Commission Against Corruption, to the Parliament and to me. I am angry, and I am frustrated and disappointed by her behaviour. How could they not be angry and how could they not express that anger?

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

Ms KRISTINA KENEALLY: We as a government and I as the Premier respect and humbly accept the decision rendered by the people of Penrith.

Mr Barry O'Farrell: You have to! They have told you exactly what they think.

Ms KRISTINA KENEALLY: We as a government humbly listen to and respect the decision rendered by the people of Penrith. We as a government have a responsibility to deliver good government to this State and to do so with the utmost integrity.

The SPEAKER: Order! I call the member for Hawkesbury to order. I call the member for Goulburn to order.

Ms KRISTINA KENEALLY: We as a government can and we are delivering the nation's best literacy and numeracy results. We as a government can and we are securing billions of dollars for the health system in New South Wales—billions of dollars that members opposite would have walked away from had they been at the Council of Australian Governments' negotiations. We as a government can and we are overseeing the best emergency department performance in the nation. We as a government can and we are overseeing the fastest economic growth and the second lowest unemployment rate, and we are leading the nation in the roll-out of the Federal economic stimulus package.

We as a government can and we are protecting the environment, in particular the river red gums, with some of the most historic conservation of land in this State's history. We as a government can and we are delivering 6,000 social housing projects this year alone, providing homes for some of the most vulnerable people in the community. We as a government can and we are delivering the next generation of school infrastructure projects through the Federal economic stimulus package—a package that members opposite opposed at every turn, a package that has seen this State and this nation through the global financial crisis—

The SPEAKER: Order! The member for Terrigal will cease interjecting.

Ms KRISTINA KENEALLY: —employing some 16,000 people daily in this State. That is the focus we bring to government. We as a government can and we are protecting our communities, overseeing the police force and other protections—

Mr Barry O'Farrell: Point of order: My point of order is Standing Order 129. If that is the Labor Government's record, why did she not tell the people of Penrith? Why did she not campaign to the people of Penrith?

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

Ms KRISTINA KENEALLY: We as a government can and we are overseeing safer communities, with 16 out of 17 major categories of crime stable or falling. We in government are providing an historic injection of funding to disability services, community services, mental health, health and education. That is the focus we bring to government. We as a government can and we are overseeing 96 per cent on-time running on our train system. We are delivering 300 buses on time and on budget, and we have on order 74 Outer Suburban Carriages and more than 600 Waratah carriages. That is the focus we bring to government.

The SPEAKER: Order! There is too much audible conversation in the Chamber.

Ms KRISTINA KENEALLY: Let us contrast that with one idea put forward by the Opposition. Time and time again during the campaign for the Penrith by-election the member for Willoughby and the Leader of the Opposition promised the people of Penrith that a Coalition Government would deliver faster train services to the western suburbs.

The SPEAKER: Order! Members will cease interjecting.

Ms KRISTINA KENEALLY: They were in Penrith loudly lamenting the fact that a train journey from Central station to Penrith is now seven minutes longer than it was in 2004 and they promised that under a Liberal-Nationals Government the trains would run faster. But there is a reason the trains run slower than they did in 2004: the 2005 timetable changes, which members opposite portrayed as a failure by this Government, were a direct result of safety measures.

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

Ms KRISTINA KENEALLY: They were a direct response to the Waterfall commission of inquiry.

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

Ms KRISTINA KENEALLY: This has extended the train journey to Penrith by seven minutes. We take the view that passenger safety cannot be compromised and that is why we are building infrastructure to provide faster air-conditioned services in a safe manner. We are delivering the Western Express infrastructure that will provide a faster and more comfortable commuter experience with the right infrastructure.

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

Ms KRISTINA KENEALLY: The Coalition does not support the Western Express, so to meet its election commitment there are only two options left: it will either cancel services between Penrith and Central or it will ignore the safety findings of the Waterfall inquiry.

The SPEAKER: Order! Opposition members will cease interjecting.

Ms KRISTINA KENEALLY: They are options that this side of the House resoundingly rejects.

The SPEAKER: Order! I call the member for Murray-Darling to order.

Ms KRISTINA KENEALLY: I just outlined for the House those things that we on this side of the House are doing for the people of New South Wales. We have a responsibility to deliver good government and that is what we are focussed on.

The SPEAKER: Order! The Leader of the Opposition will come to order.

Ms KRISTINA KENEALLY: But we must always do so with integrity. The lesson that I and everyone on this side of the House has taken from the by-election result in Penrith—a result that we humbly accept—is that if we, as elected representatives, fail to act with the integrity that the electorate rightly demands and expects then it will make its decision known. We humbly accept its verdict on Saturday.

The SPEAKER: Order! I call the member for East Hills to order. The House will come to order. I remind the member for East Hills that he is on a call to order.

HEALTH TECHNOLOGY

Mr GRANT McBRIDE: My question is addressed to the Minister for Health. How will the Government invest in technology to deliver better patient care?

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

Ms CARMEL Tebbutt: I thank the member for The Entrance for his question. He has a strong and keen interest in improving health services in his community and across New South Wales. The most recent budget handed down by the Government saw record increases in funding, investing in high-quality health services across New South Wales. A total of \$16.4 billion has been allocated for health services across New South Wales. Along with record investments in capital works and health services, it also includes a smarter approach to health care needs across our State. We know that the delivery of health care is becoming ever more complex. The budget reflects this Government's commitment to taking a smarter approach to delivering health care services.

We recognise that technology plays an important role by enhancing health care services and also by extending the reach of health care across New South Wales. The Government is investing \$62 million in the statewide roll-out of digital medical imaging technology and \$115 million over five years to implement the electronic medical record systems in our public hospitals. Medical imaging is a vital function that is central to the timely and accurate diagnosis of disease and to monitoring a patient's progress. In New South Wales we have been rolling out a sophisticated system that means medical images such as CAT scans and magnetic resonance imaging scans can be interpreted, diagnosed and reported on in a much more quickly. The system captures images electronically. By linking health facilities across New South Wales, medical images can now be accessed by appropriate specialist doctors around the State.

The system has been rolled out to Coffs Harbour, Orange, Broken Hill, Bathurst, Dubbo and Mudgee. This roll-out means that residents in Bathurst, for example, now have access to leading specialists across New

South Wales who can interpret their images and accurately diagnose conditions remotely. Doctors with a broadband connection to the hospital can also securely view the images for their patients in their rooms or, if after hours, in their homes. All this means a quicker turnaround in the reading of images, quicker diagnoses and, ultimately, shorter hospital stays for patients. It also means X-ray films no longer need transporting to off-site radiologists for review. This means that clinicians are seeing a better outcome for patients, and increased and improved productivity. They are great outcomes for patient care. They are as a result of the significant investment that this Government has made in medical in technology.

A total of 41 sites are now using this technology. A further 30 sites will come online by the end of this year, including rural and remote areas such as Bourke, Coonamble and Forbes. By mid next year we expect the service will be in a total of 85 sites across the State. That is good news for patients and good news for clinicians. It is as a result of this Government's strong commitment to investing in health services across New South Wales—some 174 per cent increase in the Health budget since we came into office. In addition, we are also rolling out medical imaging technology. We are building a new electronic medical record system for New South Wales. We know that improved communication is one of the keys to improving patient care and safety.

Doctors, nurses, support staff and allied health professionals use the system that we are rolling out to record and exchange patient's details and clinical information from the time they arrive in a hospital to the time of discharge. This allows clinicians to read all relevant information about their patient so they can quickly and safely make the appropriate decisions about treatment. In the coming months we will see it rolled out to sites including Bathurst, Griffith, Dubbo, Mudgee and Wagga Wagga. That is a part of this Government's commitment to improve the health services for patients in New South Wales, no matter where they live. We will ensure that they have access to the most up-to-date technology. We will ensure that our clinicians can deliver better services to patients and get better outcomes for them.

PACIFIC HIGHWAY UPGRADE

Mr ANDREW STONER: My question is directed to the Premier. Given that the Premier found the time to announce new bike paths at Randwick, yet ignored the invitation from four North Coast mayors to drive the Pacific Highway, and that she responded to the by-election result not from her candidate's function in Penrith but from Darling Harbour, will she now admit she has not "humbly listened" but has continued to ignore the needs of families and suburban and regional New South Wales?

Ms KRISTINA KENEALLY: In relation to the Pacific Highway, the New South Wales Government has invested a record \$4.6 billion in New South Wales roads. That is the biggest road investment program in the history of New South Wales, an increase of \$300 million on last year's record budget.

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

Ms KRISTINA KENEALLY: An amount of \$827 million will be invested in the Pacific Highway upgrade between Hexham and the Queensland border—this includes \$174 million to continue construction which has been jointly funded with the Federal Government on the dual carriageway bypass in Kempsey, \$317.5 million to continue construction jointly funded with the Federal Government on dual carriageways on the Ballina bypass, \$155 million to start major construction jointly funded with the Federal Government between Coffs Harbour and Woolgoolga and \$85 million to continue planning and preconstruction activities jointly funded with the Federal Government for the upgrade of the highway north of Ballina—

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

Ms KRISTINA KENEALLY: These are projects that will develop important benefits in the coming year. The Government is delivering record investment in rural and regional communities in the 2010-11 budget, including, of course, as I have just outlined, a record investment in roads. Regional transport also receives a boost with \$355.4 million in private bus services for rural and regional areas and \$34.2 million to fund concession travel for pensioners and students on CountryLink services.

The Government is also investing heavily in rural and regional health and education. A record investment of \$4.4 billion in country hospitals follows our Government's historic agreement with the Commonwealth Government on health reform. This is vital funding to ensure that families have access to a better, stronger and more sustainable health system throughout New South Wales—something that I would have thought The Nationals would welcome. We are also delivering a \$5.2 billion investment in rural and regional

education—\$94 million for major upgrades at 42 schools and \$55 million for upgrades at 22 TAFE colleges. There is a range of investments in the budget for rural and regional New South Wales. I thank the Leader of The Nationals for asking a question about rural and regional New South Wales.

There will also be \$1 billion for ageing, disability and home care support in regional areas, up 9.3 per cent on last year; a \$90.3 million package to boost regional jobs, businesses and communities; and more than \$544 million in water infrastructure across rural and regional New South Wales, which includes \$30 million to improve sustainability in the Murray-Darling Basin. We also have \$972 million for emergency services, delivering more fire engines and other equipment, and additional emergency service workers in regional centres. There is an extra \$61 million for the construction of the Cessnock correctional centre and \$20 million towards a new correctional facility at South Nowra. The list goes on, with major capital works at health facilities at Taree, Port Macquarie and Queanbeyan. There is also \$50 million for a courthouse at Armidale. We are delivering real outcomes for rural and regional communities, showing a real commitment to improving infrastructure services and support for families in New South Wales.

On the subject of the Leader of The Nationals, there is little remark on his response to the budget other than an unusual insight that he had regarding the Newell Highway. This is a very serious subject that affects thousands of families who have lost loved ones on our nation's roads. On 24 November 2009 the Roads and Traffic Authority revised the speed limit of the Newell Highway from 110 kilometres per hour to 100 kilometres per hour. This change was just one aspect amongst a range of engineering, behavioural and regulatory strategies developed in response to the Roads and Traffic Authority's Newell Highway safety review conducted in 2007 and 2008. The Roads and Traffic Authority introduced this limit change responding to overwhelming evidence that this will help to reduce road fatalities in the future.

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

Ms KRISTINA KENEALLY: The Roads and Traffic Authority noted that an identical reduction on the Great Western Highway had yielded a 26 per cent reduction in fatalities on that road. I have a copy of the review report, which I am happy to provide to the Leader of The Nationals. On 10 June in his budget reply the Leader of The Nationals told the House that lowering the speed limit on the Newell Highway was a shame. Why did he say that? Because, he said, the vast majority of accidents on the Newell Highway involve fatigue as a major factor and reducing the speed limit simply keeps motorists on the road for longer. This is simply irresponsible.

I direct the member's attention to the Newell Highway report and the Roads and Traffic Authority's statement of 24 November 2009, which cites ample evidence that reduced speed limits reduce both the severity and incidence of crashes. It cites global evidence that increased speed increases both the severity and incidence of crashes and explains that there is no evidence that reduced speed limits increase the incidence of driver fatigue. In fact, there is evidence to the contrary: that reduced speed limits reduce the incidence of driver fatigue. I am happy to offer a briefing to the Leader of The Nationals by the Roads and Traffic Authority—the Minister for Roads is happy to organise that—on the ample evidence that contradicts his statements in this House. At the very least, I suggest that he read the Newell Highway safety report. Here we have a man who calls himself the ultimate roads Minister advocating speed as a solution for driver fatigue. That is simply reckless.

OVERHEIGHT TRUCKS

Ms CHERIE BURTON: My question is addressed to the Minister for Roads. What is the Government doing to stop overheight trucks damaging road tunnels and delaying road users?

Mr DAVID BORGER: I thank the member for Kogarah for her question and for her representations on behalf of commuters who have been inconvenienced in tunnels, particularly the M5, when trucks have been caught because they have been overheight going through those tunnels. The drivers of trucks that are overheight when trying to enter tunnels can cause substantial damage to the State's tunnel infrastructure, they can cause massive delays to traffic, and they are putting themselves and other motorists in grave danger. There have been 150 incidents in the past year alone of overheight vehicles trying to enter tunnels and the Government is taking new steps to hammer that out and dissuade drivers from entering tunnels when their trucks are overheight.

The current on-the-spot fine for drivers who enter tunnels with overheight trucks or loads is as little as \$141 and no demerit points. That is simply too low and does not reflect the community's expectation when significant inconvenience is caused by careless drivers. Today the Government has announced that it will increase those fines twelvefold.

The SPEAKER: Order! I call the member for Myall Lakes to order. There is too much audible conversation in the Chamber.

Mr DAVID BORGER: On 1 August 2010 the Government will increase on-the-spot fines to \$1,776 and six automatic demerit points. This is about sending a clear message to truck drivers who do the wrong thing. We know that most truck drivers are professionals who take great pride in their driving record—they know it is part of their livelihood—but there are a few very poor drivers out there. In the last year there were 150 incidents that caused massive delay to the traffic network. This is about ensuring that drivers who ignore the law feel it in their hip pocket and on their driving record. In addition, the Government will establish a tunnels task force, which will include experts from the Roads and Traffic Authority, motorway and tunnel operators, the NRMA and the freight industry.

The SPEAKER: Order! The member for Hawkesbury will come to order.

Mr DAVID BORGER: While drivers must take responsibility for their actions, we are conscious that penalties are cold comfort after the fact and we must improve prevention. That is why we will be working with industry to find ways to prevent overheight vehicles entering the road network. The tunnels task force will report back in August 2010 and it will consider a range of measures to reduce the chance of trucks hitting tunnels. Some of the issues that will be addressed will be new technology and infrastructure—it will include low-tech options such as dangle bars, barriers and other potential warning signs, and high-tech options such as the water wall that exists at the entrance to the Sydney Harbour Tunnel.

Legislative options will make sure that community expectations are being met with the establishment of these new penalties. Educational programs will make sure that truck drivers know the penalties that will apply if they do the wrong thing, they know the precautions and they know alternative routes. We all remember the incident in May this year when an eastbound truck hit the M5 tunnel, sending a boom excavator flying and severely damaging the tunnel ceiling. Incidents such as these impact on families, the economy, freight businesses, couriers and people simply trying to get to or from work.

Mr Andrew Stoner: You guys have been in government for 15 years. What have you done up until now?

Mr DAVID BORGER: The Leader of The Nationals can put up the speed limit if he wants to, but we will deal with the problem at hand. The measures I have outlined today are about trying to stop similar incidents occurring in future.

The SPEAKER: Order! Members will cease interjecting, including the Minister for Police.

Mr DAVID BORGER: Truck drivers and trucking companies all have a role to play in addressing the issue of overheight trucks in tunnels. In addition to these on-the-spot fines we have very tough chain of responsibility laws to make sure it is not just the truck driver who will be penalised for doing these things. If someone has overloaded a truck or a company has made it a policy to break the law we will go after them too on behalf of all those motorists who are inconvenienced as a result of tunnel damage by trucks.

The SPEAKER: Order! The member for Bathurst will come to order.

PENRITH BY-ELECTION RESULT

Mr RAY WILLIAMS: My question is directed to the Minister for Western Sydney. If, as the Premier alleges, all Ministers have learned the lessons of the Penrith by-election defeat, what polling booth did the Minister for Western Sydney man last Saturday to hear the concerns of the good people of Penrith?

Mr DAVID BORGER: We are proud of our record in supporting the economy of the western Sydney area.

The SPEAKER: Order! Members who continue to interject will be removed from the Chamber.

Mr DAVID BORGER: We are proud that we have been able to drive down unemployment levels throughout the western Sydney economy, and build and upgrade infrastructure, deliver jobs, and redirect government offices throughout western Sydney.

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

Mr DAVID BORGER: In fact, I have an endorsement from a member of the Opposition, the member for Coffs Harbour, in that august journal the *Woolgoolga Advertiser*, when he said recently that he was disappointed with the budget, which he claimed had delivered more to western Sydney than to regional areas. So we have an endorsement for the people of western Sydney from the member for Coffs Harbour. He should also look at the fact that we have delivered more than 90 kilometres of dual divided carriageway on the Pacific Highway, something that Mr Howard failed to do when members opposite failed to pick up the phone and get some action on that very important transport matter.

Mr Ray Williams: Point of order: I refer to Standing Order 129—

The SPEAKER: Order! There is no point of order. The member for Hawkesbury will resume his seat. Has the Minister concluded his answer?

Mr DAVID BORGER: Yes.

DROUGHT ASSISTANCE

Mr KERRY HICKEY: My question is directed to the Minister for Primary Industries. How is the Government assisting drought-affected farmers across our State?

Mr STEVE WHAN: I thank the member for Cessnock for his question and for his strong support of rural industries in his region. I also welcome this opportunity to explain to The Nationals how drought assistance works, given some of their recent comments. The Government has committed more than \$535 million in drought assistance measures since the drought began in 2002, but the true support is much more than just handing out cash. It is about providing people with on-the-ground assistance to help farmers who are most in need. The latest drought figures, for last month, reveal that 13.9 per cent of the State is in drought, a slight increase on the month before. While this is a better situation than in previous years, the fact remains that almost half the State is on the brink of going back into drought—it is in marginal condition—and more rainfall is needed in the winter months ahead.

The Government is committed to ensuring that drought assistance continues to reach those in need, which is why we have extension officers based across the State, including agronomists, livestock officers, horticulturalists and education teams. Our assistance includes drought transport subsidies for livestock, fodder and water. Industry and Investment NSW has processed in excess of 149,000 claims worth \$159 million. We also contribute to the Commonwealth's exceptional circumstances funding. We provide a drought hotline, which has had over 17,000 calls to date, and Community Disaster Relief Fund drought assistance of \$9.5 million. We have waived Western Land Lease annual rents for 2009-10 and also waived the wild dog destruction rates this year. This year the drought assistance payroll tax relief scheme will be paid to eligible producers. We have a dedicated team of drought support workers based across the State, including in many regional centres.

These measures are very important, but when I announced the latest drought figures the other day what was the response from the Opposition? The Opposition's shadow Minister, who has been in the other place for quite a long time, said on the ABC that the Government had cut funding for drought assistance in the last budget.

Mr Andrew Fraser: True.

Mr STEVE WHAN: The member says, "True", but in every budget for as long as this drought has been going, drought has been funded as it occurs, not up-front in the budget. Last year's figures certainly reflected the generous amount that we spent on drought support. This year's figure does not include it yet because we do not know how much it will be. We do not know how much the drought will cost the budget over the coming year. Hopefully it will be a lot less than previous years. It just shows that Opposition members have a lack of understanding of policy and it shows their willingness to say anything at all to score a political point.

I had a great insight recently into the Opposition's policy-making process when my wife answered the phone in our house and was polled by a company called Q & A Market Research. I was wondering who they might be polling for until I heard some of the questions. There was a bit of push polling about what they called the state of the New South Wales economy. There were a whole lot of loaded statements and right throughout

the polling talked about the need to kick-start the New South Wales economy and kick-start this and kick-start that. I wondered who was doing this research until I saw the New South Wales Liberals and Nationals' Regional Kick-Start policy, which was released just recently. I put two and two together. Incidentally, this polling was a week or so before the budget reply from the Opposition and what did we hear in that? The questions in the research included: What did the respondent think about the sale of assets; what did the respondent think about either selling or leasing—

Mr Chris Hartcher: Point of order: The question was about drought relief.

The SPEAKER: Order! I remind the Minister of the question before the House. Government members will cease interjecting.

Mr STEVE WHAN: The member for Terrigal has been fishing for a comment on his tie for two weeks and I am not going to oblige him! The policy drought in the Opposition is dire and we see how it is formulating it by the questions in this research. It asked the respondents whether they agreed with the sale of some State assets or the lease of some assets to return to government ownership in the long term. Coincidentally, two of those matters appeared in the Opposition's budget reply—the Kurnell desalination plant and Sydney Ferries. There they were, the same topics. But what about the rest of the secret agenda that people were asked about? Respondents were asked whether they would be in favour of the sale of Sydney Water—

Mr Barry O'Farrell: No.

Mr STEVE WHAN: "Oh, no", says Barry. They were asked whether they would be in favour of the sale or lease of EnergyAustralia. That is an interesting one.

The SPEAKER: Order! Members on both sides of the House will come to order.

Mr STEVE WHAN: They were also asked about Sydney Buses and the State Rail Authority. They were in there as well. We are starting to get to the bottom of how the Coalition can afford this \$5 billion fund. When he was interviewed on 2UE a week or so ago the Leader of the Opposition could not name a single thing he was going to fund out of the \$5 billion. We now know a bit more about the Opposition's policy process. I have in my hand a photo of Barry with a chainsaw. He plans to take the chainsaw to New South Wales government services. He will take the chainsaw to the things that the people of New South Wales need.

The SPEAKER: Order! The Minister will not use a prop in the Chamber. He will put his prop away.

Mr David Borger: Show us!

The SPEAKER: Order! The Minister will not use a prop in the Chamber.

Mr STEVE WHAN: I was asked, Mr Speaker. I am sorry about that.

The SPEAKER: I am asking as well.

Mr STEVE WHAN: I take your point, Mr Speaker. That was a totally irresponsible use of props, which is against standing orders. I acknowledge the point. That is what we have seen from the Opposition. In its policymaking process the figures are only wishful thinking and they rely on debt. Opposition members are secretly polling people to see what they should sell in order to fund these policies. Opposition members in this place are making a desperate attempt to divert attention from their own policies. Last week—

[Interruption]

Let us face it; so far we have seen a pretty lame performance from the Leader of the Opposition. If he could not give his best-ever performance in question time today, it is never going to happen. Instead, we have constant distractions. Amazingly enough, in the last sitting week, rather than talking about an issue of significance when debating a motion to be accorded priority, the member for Goulburn attempted to move a motion defending the dress sense of the member for Murrumbidgee, his hairstyle and—believe it or not—his sexuality, which no-one on this side of the Chamber has ever mentioned. The member for Goulburn sinks to these levels on every occasion.

Mr John Williams: Point of order—

The SPEAKER: Order! I never thought I would say this but I am pleased to hear a point of order from the member for Murray-Darling.

Mr John Williams: I am one of those people who—

The SPEAKER: Order! I ask the member to state his point of order without telling a story.

Mr John Williams: He is a crushing bore.

The SPEAKER: I uphold the point of order! I direct the Minister's attention to the question before the House. Has the Minister concluded his answer?

Mr STEVE WHAN: Yes.

UNFLUED GAS HEATERS

Mr ADRIAN PICCOLI: I direct my question to the Premier. As she admitted today on ABC radio that her unflued gas heaters policy, which was announced two weeks ago, will not commence for another 12 months—until next winter—when will she learn the lessons of Penrith, stop focusing on spin and media management, and start fixing Labor's mess?

Ms KRISTINA KENEALLY: As I was asked yesterday at a media conference about unflued gas heaters and the Government's replacement program, I am happy to provide that information to the member for Murrumbidgee. The standard heaters that are used by the Department of Education and Training were designed specifically for use in schools. The advice from health experts has always been that, when used with proper cross-ventilation and in accordance with the manufacturer's directions, the heaters pose no risk to children's health. Nonetheless, we have accepted that providing cross-ventilation poses some challenges in very cold climates. Accordingly, we have committed \$15 million to begin replacing unflued gas heaters in these schools.

I thank the member for Murrumbidgee for listening to my answer to his question, which cannot be said for other Opposition members. Consultation has started with stakeholders to determine which schools should be prioritised for the replacement program. That consultation includes parent and teacher representative organisations, NSW Health, the Asthma Foundation and the Campaign Opposing Unflued Gas Heating, or COUGH Campaign Group.

The SPEAKER: Order! Members will cease interjecting.

Ms KRISTINA KENEALLY: The replacement program is underway and we are undertaking consultation with parent and teacher representative organisations, NSW Health, the Asthma Foundation and the Cough Campaign Group. In the meantime, the results of the independent research that the Government has commissioned from the Woolcock Institute of Medical Research are being finalised. This research will guide the Government's approach to unflued gas heaters in other schools. Once that research has been through a proper peer review process the Government will consider and announce any further programs that may be necessary to address this issue. To recap, the advice to the Government remains consistent: When used with proper cross-ventilation and in accordance with manufacturer's directions, the heaters pose no risk to children's health. However, the Government recognises that providing that cross-ventilation poses some challenges in very cold climates.

The SPEAKER: Order! The member for Burrinjuck will come to order.

Ms KRISTINA KENEALLY: That is why this Government has committed \$15 million to begin the replacement of heaters in those schools and that is why it is undertaking consultation with representative organisations from parents and teachers, to NSW Health, the Asthma Foundation and the COUGH Campaign Group.

SOUTH-WEST SYDNEY WATER INFRASTRUCTURE

Dr ANDREW McDONALD: My question is addressed to the Minister for Water. How is the New South Wales Government improving water infrastructure in south-west Sydney?

Mr David Borger: Extra long version, Phil.

Mr PHILLIP COSTA: I think not—not today!

The SPEAKER: That interjection is out of order!

Mr PHILLIP COSTA: Work has already commenced. The member for Macquarie Fields is a hardworking Government member, a fine representative of Macquarie Fields, and a good friend. Sydney's south-west is at the centre of—

The SPEAKER: Order! The House will come to order.

Mr PHILLIP COSTA: We could be here all day if Opposition members keep interjecting. Sydney's south-west is at the centre of this Government's plan to service a growing city—the city of Sydney. The Macquarie Fields electorate sits within the heart of the south-west growth centre—a precinct that will boast 115,000 new homes over the next 50 years; a community as large as Canberra. The Government is investing heavily right now to ensure that essential services are on the ground, allowing more families to move into their new homes more quickly.

I was very pleased to announce in the recent State budget more than \$25 million worth of water and wastewater infrastructure in the south-west growth centre. The delivery of these essential services will pave the way for the construction of new homes and businesses in the suburbs of Oran Park and Turner Road as well as parts of Edmondson Park—communities with which the member and I have been working in recent times. The south-west growth centre is also an excellent example of building a greener, more sustainable future for the south-west and for the city of Sydney.

Also included in the budget is \$8 million to deliver recycled water to new homes in the Hoxton Park area, which is also located in the member's electorate. New homes in Edmondson Park will be connected to a major new recycled water network—the Hoxton Park Recycled Water Scheme. In addition, recycled water will be delivered to new homes in Oran Park and the Turner Road precincts. Known commonly as purple pipes—members might have seen them around the State—recycled water provided to new homes in the south-west will be used around the home for non-drinking purposes, such as watering gardens and flushing toilets. Providing recycled water to these homes has the potential of cutting average household water use by up to 40 per cent, which means that every drop that is currently in our dams simply goes further. In addition, 14,000 homes will be able to connect to the Hoxton Park Recycled Water Scheme as well as industrial areas in the local region, providing a significant boost to water recycling in the south-west.

Mr Brad Hazzard: That's been talked about for 10 years.

Mr PHILLIP COSTA: But it is happening. As members would be aware, Sydney is already home—

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

Mr PHILLIP COSTA: Sydney is already home to Australia's largest residential recycled water scheme at Rouse Hill. Extensive residential water recycling in our new growth areas across Sydney is an important part of the Government's recycled water target of 70 billion litres by 2015. We are well on track to achieving that target. At present we are recycling 27 billion litres a year and we will be up to 40 billion litres once the St Marys Replacement Flows Project comes fully on line later this year. We are achieving tremendous progress and we will reach our targets. This Government is delivering on the ground to provide for a thriving and growing city. We are proud of the projects that we are delivering, even in the electorates of Opposition members. We will continue to do this in a manner that ensures a greener and more sustainable future for our wonderful city and for the people of Sydney.

The SPEAKER: Order! The member for Hawkesbury will contain himself.

Question time concluded at 3.18 p.m.

PARLIAMENTARY REMUNERATION TRIBUNAL

Mr Michael Daley tabled a certificate of the Parliamentary Remuneration Tribunal, dated 18 June 2010, as required under section 14A (3) of the Parliamentary Remuneration Act 1989, in relation to the Parliamentary Contributory Superannuation Amendment Bill 2010.

UNPROCLAIMED LEGISLATION

The SPEAKER: Pursuant to Standing Order 117, I table a list detailing all legislation unproclaimed 90 calendar days after assent as at 22 June 2010.

AUDITOR-GENERAL'S REPORTS

The Clerk announced the receipt, pursuant to section 63C of the Public Finance and Audit Act 1983, of the following reports:

- (1) Report for 2010, Volume Two
- (2) Performance Audit Report entitled "Severance Payments to Special Temporary Employees: Department of Premier and Cabinet", dated June 2010

LEGISLATION REVIEW COMMITTEE

Report

The Clerk announced the receipt, in accordance with section 10 of the Legislation Review Act 1987, of the report entitled "Legislation Review Digest No. 9 of 2010", dated 21 June 2010.

PETITIONS

The Clerk announced that the following petitions signed by fewer than 500 persons were lodged for presentation:

Wagga Wagga Base Hospital

Petition requesting funding for and the commencement of construction of a new Wagga Wagga Base Hospital in this parliamentary term, received from **Mr Daryl Maguire**.

Tumut Renal Dialysis Service

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

Wagga Wagga Respite Services

Petition requesting funding for a second respite house and the provision of accessible access to the existing respite premises in the Wagga Wagga electorate, received from **Mr Daryl Maguire**.

Bus Service 311

Petition praying that the Government urgently improve bus service 311 to make it more frequent and more reliable, received from **Ms Clover Moore**.

Bus Service 389

Petition requesting improved services on bus route 389, received from **Ms Clover Moore**.

Walsh Bay Precinct Public Transport

Petition requesting improved bus services for the Walsh Bay precinct, and ferry services for the new wharf at pier 2/3, received from **Ms Clover Moore**.

Religious Education and School Ethics Classes

Petitions opposing the proposed ethics classes and requesting continuation of the scripture classes, received from **Mr Alan Ashton, Mr Andrew Fraser, Mr Thomas George, Mr Kevin Greene, Mr Daryl Maguire, Mr Gerard Martin and Mr Donald Page**.

Sydney Harbour Marina Developments

Petition opposing any proposed super marina for Elizabeth Bay and requesting that public consultation commence for a master plan for the whole of Sydney Harbour, received from **Ms Clover Moore**.

Retail Electricity Pricing

Petition objecting to the Independent Pricing and Regulatory Tribunal recommendations to increase retail electricity prices, received from **Mr Greg Aplin**.

Drought Relief Worker Job Protection

Petition requesting that the jobs of drought relief workers be protected, received from **Mr Greg Aplin**.

Pet Shops

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

Mental Health Services

Petition requesting increased funding for mental health services, received from **Ms Clover Moore**.

Centennial Park and Moore Park Trust Land

Petition opposing any transfer of land from the Centennial Park and Moore Park Trust to the Sydney Cricket and Sports Ground Trust, and requesting proper public consultation on any future proposals, received from **Ms Clover Moore**.

The Clerk announced that the following petitions signed by more than 500 persons were lodged for presentation:

Doonside Railway Station

Petition requesting the installation of an elevator at Doonside railway station as a matter of urgency, received from **Mr Paul Gibson**.

Coogee Bay Hotel Site

Petition opposing any redevelopment of the site bounded by Coogee Bay Road and Arden and Vicar Streets under part 3A of the Environmental Planning and Assessment Act 1979, received from **Mr Paul Pearce**.

Bringagee Road

Petition requesting immediate funding to the Griffith City Council to seal the southern 10 kilometres of Bringagee Road in the electorate of Murrumbidgee, received from **Mr Adrian Piccoli**.

The Clerk announced that the following Ministers had lodged responses to petitions signed by more than 500 persons:

The Hon. Carmel Tebbutt—Macquarie Area Rehabilitation Services—lodged 11 May 2010 (Mr Victor Dominello)

The Hon. Michael Daley—Coffs-Clarence Local Area Command—lodged 11 and 12 May 2010, and 2 June 2010 (Mr Steve Cansdell)

The Hon. Paul Lynch—Retail Electricity Pricing—lodged 12 May 2010 (Mr Richard Torbay), lodged 13 May 2010 (Mrs Dawn Fardell), lodged 18 May 2010 (Mr Peter Besseling), lodged 18 May 2010 (Mr Peter Draper) and lodged 2 June 2010 (Mr Greg Piper)

The Hon. Frank Sartor—Yurammie State Forest—lodged 12, 19 and 20 May 2010 (Ms Clover Moore)

The Hon. Carmel Tebbutt—Bellingen Hospital—lodged 13 May 2010 (Mr Andrew Stoner)

BUSINESS OF THE HOUSE**Business Lapsed**

General Business Order of the Day (General Order) No. 867 and General Business Notices of Motions (General Notices) Nos 866 and 868 to 895 lapsed pursuant to Standing Order 105 (3).

BUSINESS OF THE HOUSE**Suspension of Standing Orders: Routine of Business**

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [3.21 p.m.]: I move:

That standing orders be suspended at this sitting to permit:

- (1) The introduction, without notice, and passage through all remaining stages of the following bills:

Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010;
Home Building Amendment (Warranties and Insurance) Bill 2010; and
Personal Property Securities Legislation Amendment Bill 2010.
- (2) The Speaker to leave the Chair at 6.30 p.m.
- (3) The Speaker to resume the Chair at 7.30 p.m. for the consideration of the matter of public importance.
- (4) The consideration of Government business at the conclusion of the matter of public importance.
- (5) The House to adjourn on motion.

Members are aware that this is the final week of parliamentary sittings before the winter break, and a substantial amount of legislation must be dealt with. No doubt the Opposition will feign shock and horror at the moving of this motion, but it has always been thus—irrespective of who is in government. Much legislation needs to be concluded this week, including the three bills I have mentioned. I have moved this motion to allow these and other bills to pass through all stages today. I am confident that, with the cooperation and compliance of all members on both sides of the House and the Independents, we will be able to work through this program in an orderly and timely manner.

Mr ADRIAN PICCOLI (Murrumbidgee—Deputy Leader of The Nationals) [3.23 p.m.]: It is extraordinary that the Government proposes to introduce three bills that no-one in this House has seen—even many Government members. One bill is significant as it deals with the proceeds of crime, which is an important public policy matter, yet the Government wants to ram it through the Parliament today. If a message was delivered at the Penrith by-election on Saturday it is about the Government listening and taking and acting on advice from the community and from experts. How can the member for Riverstone give notice of legislation at this late hour and then expect it to be debated and passed through this House today?

The member for Riverstone has been in this place longer than any other member so he, more than anybody else, should know that the standard procedure is to give notice of legislation to be introduced, to give the agreement in principle speech and then allow members five clear days to consider the legislation. This provides an opportunity for Opposition and crossbench members to consult with industry. I am sure, particularly regarding the proposed proceeds of crime legislation, that many interested organisations—like all members—will want to ensure that the legislation is right. In addition to the lack of consultation, the problem is that this incompetent Government often gets this kind of legislation wrong. Other organisations need the opportunity to look at it. We must give those who are expert in law, such as the member for Epping, the chance to examine the legislation and make sure it is right. Ramming legislation through the House in the next couple of hours is completely inappropriate. The Opposition will not support the motion.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 46

Mr Amery	Mr Greene	Mr Morris
Ms Andrews	Mr Harris	Mr Pearce
Mr Aquilina	Ms Hay	Mrs Perry
Mr Borger	Mr Hickey	Mr Rees
Ms Burton	Ms Hornery	Mr Sartor
Mr Campbell	Ms Judge	Mr Shearan
Mr Collier	Mr Khoshaba	Mr Stewart
Mr Coombs	Mr Koperberg	Ms Tebbutt
Mr Corrigan	Mr Lalich	Mr Terenzini
Mr Costa	Mr Lynch	Mr Tripodi
Mr Daley	Mr McBride	Mr West
Ms D'Amore	Dr McDonald	Mr Whan
Ms Firth	Ms McKay	
Mr Furolo	Mr McLeay	<i>Tellers,</i>
Ms Gadiel	Ms McMahon	Mr Ashton
Mr Gibson	Ms Megarrity	Mr Martin

Noes, 40

Mr Aplin	Mr Hazzard	Mr Roberts
Mr Baird	Ms Hodgkinson	Mrs Skinner
Mr Baumann	Mrs Hopwood	Mr Smith
Ms Berejikian	Mr Humphries	Mr Souris
Mr Besseling	Mr Kerr	Mr Stokes
Mr Cansdell	Mr Merton	Mr Stoner
Mr Debnam	Ms Moore	Mr J. H. Turner
Mr Dominello	Mr O'Dea	Mr R. W. Turner
Mr Draper	Mr O'Farrell	Mr J. D. Williams
Mrs Fardell	Mr Page	Mr R. C. Williams
Mr Fraser	Mr Piccoli	
Ms Goward	Mr Piper	<i>Tellers,</i>
Mrs Hancock	Mr Provest	Mr George
Mr Hartcher	Mr Richardson	Mr Maguire

Pair

Ms Burney

Mr Constance

Question resolved in the affirmative.**Motion agreed to.****CONSIDERATION OF MOTIONS TO BE ACCORDED PRIORITY****Sydney Ferries**

Ms ANGELA D'AMORE (Drummoyne—Parliamentary Secretary) [3.32 p.m.]: The motion of which I gave notice earlier should be accorded priority because Sydney Ferries operates 547 services each day to 43 destinations. It operates 24 hours a day, seven days a week, and transports 14 million passengers a year. The motion should be accorded priority because the people of New South Wales need to know that the Leader of the Opposition and his candidates for the next State election have made a commitment to franchise Sydney Ferries, which is currently in public hands—and will remain in public hands under the Government.

My motion should be accorded priority because it is important to expose the Leader of the Opposition for an election commitment that will deny thousands of Sydney ferry commuters public transport. The motion should be accorded priority because the Government stands for public transport whereas the Opposition stands against public transport. The Government has made a commitment to keep Sydney Ferries in public hands; the Opposition has not. The motion deserves to be accorded priority for the reasons I have stated.

Penrith By-election Result

Mr BARRY O'FARRELL (Ku-ring-gai—Leader of the Opposition) [3.34 p.m.]: I will leave to the member for Willoughby the pleasure of dealing with the lies in the motion proposed by the member for Drummoyne. I remind the House that in Imperial Russia in the 1780s when Empress Catherine II toured the Crimea beside the Dneiper River Field Marshal Potyomkin had erected façades along the riverbank to pretend that there were wonderful villages where there was life and newness, and to hide the real situation.

Having heard not the Empress of Russia but the Premier of New South Wales during question time today, one could be forgiven for thinking that she had come straight out of Imperial Russia and the Crimea and that instead of having Field Marshal Potyomkin beside her, she has Dastyari. Every time she leaves Governor Macquarie Tower she ensures that the people she meets tell her how wonderful and wise she is, and how wonderful are the services that she is delivering to New South Wales. Every time she goes into a suburb, it is cleaned up in advance so that she does not have to cast her eyes on the ugliness of the reality that exists there.

Ms Angela D'Amore: Point of order: The Leader of the Opposition is yet to prove, or even to argue, why his motion should be accorded priority.

The SPEAKER: Order! As the member for Drummoyne is aware, I extend a degree of latitude during consideration of motions to be accorded priority.

Mr BARRY O'FARRELL: The point I make is that on Saturday in the Penrith electorate, communities across Penrith and the lower Blue Mountains sent a very strong message to members opposite about the reality that those people confront every day, such as trains slowing on the western line by seven minutes since 2004, the struggle to find car parking spaces and to get to five railway stations across the Penrith electorate, and at the Nepean Hospital 14 nurse vacancies in the emergency department, 20 in the maternity units and six in the operating theatre. The real former nurses of this House know that nurses at the Nepean Hospital are being put under even more pressure than before as they seek to deliver quality services to the people of the Penrith community.

As people travel on Mulgoa Road and the Northern Road each morning and each night, as they battle to get onto the M4 and as they battle to get into the city when they leave the M4, they know that it is all because of the problems that exist in the Penrith electorate and other areas of western Sydney that members opposite are so quiet about. It is a truism that people who live on the Central Coast take the most interest in health services in the western suburbs—people such as the member for Blacktown, who understands that in the last budget no money was set aside for upgrading the Blacktown Hospital. People who live in the Penrith electorate have been battling for years to hear their concerns voiced in this place. They have been battling for years to have someone come into this Chamber and fight for them—someone who understands that the services provided by the State are those upon which ordinary people of the State build their lives and on which small and medium-size business people rely.

Mr Allan Shearan: Have you got any facts for that?

Mr BARRY O'FARRELL: Is the member for Londonderry suggesting that there are not small business people in Penrith? That is an absolute disgrace. He should speak to the Penrith Valley Chamber of Commerce and the Penrith Business Alliance about their plans to deliver 20,000 jobs to Penrith.

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

Mr BARRY O'FARRELL: The services that the New South Wales State Government provides affect people's lives and are not reliable. If government services are not provided the reality is that opportunities for people will be limited. The big message from the Penrith by-election is that for 15 years, despite election after election and promise after promise, the people of western Sydney, particularly Penrith and the lower Blue Mountains, have been taken for granted by members opposite. On Saturday they said enough is enough. On Saturday they put their faith in a strong local Liberal candidate.

On Saturday they said to Stuart Ayres, "We want you to go into State Parliament"—with thanks to the Speaker, that will happen this Thursday—"to fight for us, to stand up for us and to deliver for us the services that we in western Sydney deserve, and the services to which people who live in Penrith and the lower Blue

Mountains are just as entitled as people who live in the eastern suburbs or on the North Shore." We cannot run a two-class city and we cannot run a two-class State. The election of Stuart Ayres is the most positive and recent affirmation of that. Put aside the temporary polls; this is a reality check. [*Time expired.*]

Question—That the motion of the member for Drummoyne be accorded priority—put and resolved in the affirmative.

SYDNEY FERRIES

Motion Accorded Priority

Ms ANGELA D'AMORE (Drummoyne—Parliamentary Secretary) [3.39 p.m.]: I move:

That this House supports the Government's decision to keep Sydney Ferries in public hands.

I support the Government's decision to keep Sydney Ferries in public hands. In making this decision, the Government took account of the strong views of the community and the improved performance of Sydney Ferries since it was corporatised at the end of 2008. Change in the governance arrangements for Sydney Ferries was one of the key recommendations of the Special Commission of Inquiry into Sydney Ferries in 2007. In response to these recommendations, the Government also subjected Sydney Ferries to a rigorous market testing process. During this period significant reforms were achieved within the organisation, particularly in relation to improving customer service and resolving staffing issues. No doubt ferry passengers deserve better services, and I am pleased that Sydney Ferries has begun to make solid improvements. That includes increased patronage, on-time running, vessel reliability, fleet availability and a reduction in complaints.

In the current financial year to May 2010, service reliability was up 99.9 per cent compared with 99.5 per cent for the same period in 2009. Fleet availability was up 86.2 per cent in the 11 months ending May 2010 compared with 80 per cent for the same period in 2009. Vessel reliability was up 96.4 per cent in the 11 months ending May 2010 compared with 95 per cent for the same period in 2009. Complaints per million passengers dropped to 45 in the 11 months ending May 2010, down from 64 in the same period last year. Most importantly, patronage is increasing. Patronage across the network increased by 3.56 per cent to May 2010 compared with the 11 months to May 2009. Passengers are voting with their feet.

The State seat of Drummoyne has five ferry wharves. We love our Sydney ferries, and patronage in my electorate is increasing on a yearly basis. Ferries are a fantastic way to travel to work and to social events. When I speak to my constituents at the wharves they always tell me about the fantastic service Sydney Ferries staff provide. As the service has improved, so, too, has the number of people who want to travel on our iconic ferry service, whether it be commuters travelling to work or tourists enjoying a trip to one of many destinations around the harbour. The special commission of inquiry and the subsequent market testing process put Sydney Ferries firmly on notice, and the organisation has responded by significantly improving its performance. In saying that, the Government has made it clear that there is more to do at Sydney Ferries to further improve performance and maintain service standards to the level rightfully expected by our community.

The new service contract with Transport NSW, which commenced in April 2010, holds Sydney Ferries fully accountable for achieving high standards of performance, particularly in key areas of safety, reliability, customer service and productivity. A significant restructure is also being carried out within the organisation. This will see the strategic functions of Sydney Ferries being relocated into the new Transport NSW super agency to enable Sydney Ferries management and staff to focus on front-line service delivery. Relocating these functions into Transport NSW will also ensure that planning and delivery of ferry services is fully coordinated with Sydney's bus and rail networks. As part of the new contract, Sydney Ferries is also required to undertake an annual timetable review to ensure that its services remain relevant to passengers' travel needs. Work is also underway on the first of these reviews.

Under the new contract, Transport NSW and Sydney Ferries will also undertake a network review, similar to the successful network reviews undertaken in recent years across the metropolitan and outer metropolitan bus networks. This will look ahead to determine the type of ferry system we need to meet the growing travel demands of Sydney. It will include a review of individual routes but also of the way the network operates as a whole. Changes in population densities around the harbour, particularly up the river, will provide new challenges for the ferry network. The Government has indicated that the new development at Barangaroo will incorporate an alternate hub for ferry services coming into the central business district. This is much welcomed.

This will provide a significant opportunity to improve service delivery across the network, in particular for commuters in the central business district who do not work near Circular Quay. Importantly, funding for six vessels has been provided in the Metropolitan Transport Plan. Unlike the Opposition, the Government has listened to the community and made a decision that delivers two things: better ferry services while maintaining ownership of our iconic ferry service in public hands. In his budget reply speech, the Leader of the Opposition finally came clean on his position that Sydney Ferries should be "franchised". That is an interesting word. He could not say the P word—privatise—so he chose to say "franchise". He would prefer to sell off Sydney Ferries like it was a McDonald's franchise. These are not cheeseburgers; these are critical services enjoyed by millions of Sydneysiders each year.

It flies in the face not only of public sentiment—and the thousands of letters and petitions the Government received to keep Sydney Ferries in the hands of the public—but of the clear improvements that have been made over the past 18 months. As can be seen by the recent introduction of commercial high-speed Manly ferry services, private operators have a place in complementing the services provided by Sydney Ferries. But let the record show that this Government is about improving ferry services while keeping Sydney Ferries in public hands. Let me highlight two services we had in the State seat of Drummoyne. As I said, we enjoy five wharves and we enjoy extremely good patronage of our ferry services.

Drummoyne had the Matilda service and the Palm Cove service, but they did not last long. They lasted only several months; then we had to revert to providing Sydney ferries at those commuter wharves. My experience in my electorate and with my constituency is that keeping Sydney Ferries in public hands is of the utmost importance. Commuters on the wharves in my electorate have told me that they welcomed the Government's decision to maintain Sydney Ferries in public hands. I thank Unions NSW, the Maritime Union of Australia and all our commuters who supported our Keep Sydney Ferries in Public Hands campaign, which was successful in convincing the Government to keep Sydney Ferries in public hands, where it belongs.

Ms GLADYS BEREJIKLIAN (Willoughby) [3.46 p.m.]: I thank the member for Drummoyne for providing this opportunity to enable us to highlight the absolute hypocrisy that she has just articulated, in addition to the Labor Government's incompetence in running and managing public transport. One need only look at the Connecting the City of Sydney's 10-year plan to see what the Government is projecting in relation to patronage for ferries. The Government is predicting and planning for a decline in patronage on Sydney ferries by 5 per cent.

Ms Angela D'Amore: Rubbish!

Ms GLADYS BEREJIKLIAN: The member for Drummoyne says that it is rubbish. She should read page 15 of the Government's report. What she is advocating on behalf of her constituents is reducing ferry services, not enhancing them. It is in black and white in the Government's report. The member for Drummoyne and the member for Parramatta do not believe in enhancing ferry services and increasing patronage because the 10-year plan states, "The forecast for ferry patronage is a decline of 4.8 per cent over 10 years". So while the population is increasing, the Government is predicting and planning for a decline. It is in the Government's 10-year plan announced by the Premier and the Minister for Transport. If Government members do not like it, it means that they do not understand their own policies. The member for Drummoyne has given the member for Manly and me a great opportunity to highlight the Labor Party's absolute incompetence when it comes to managing Sydney Ferries, which is a key part of our transport plank. In that regard I move:

That the motion be amended by leaving out all words after "That " with a view to inserting instead:

this House condemns the Government for:

- (1) failing to improve ferry services;
- (2) failing to implement the recommendations of the Walker inquiry into Sydney Ferries;
- (3) planning for a 5 per cent decline in patronage rather than enhancing services; and
- (4) giving the seven-year contract to the worst performing bid, the Sydney Ferries Corporation.

These issues are extremely important to the Coalition, so much so that after 12 months of Mr Walker handing down his recommendations in relation to his inquiry, we issued our policy called "Fixing the Ferries" in October 2008. The State Government took nearly two years after that to announce its position. We looked at Mr Walker's recommendations and this is the conclusion we arrived at:

The Coalition supports in principle the recommendation put forward by the Walker Inquiry which advocated ongoing Government ownership of Sydney Ferries with potentially a non-government operator leasing, maintaining and operating the fleet.

Under this model the Coalition would stipulate a number of strict community obligations as part of this arrangement including Government control over the fare structure, routes, safety obligations within a service contract. These obligations could also extend to staffing obligations.

This model in delivering ferry services is consistent with that undertaken in Brisbane with great success, and is consistent with the NSW Government's own model in relation to the provision of a significant proportion of existing bus services, especially in rural and regional New South Wales.

The Government's ongoing failure to respond to the inquiry and to notify the community of its intentions in relation to Sydney Ferries is inexcusable.

That was our position in October 1988. It was not until December last year that the Government had the guts to respond to the recommendations of the inquiry into Sydney Ferries. Everybody, except for the Government, disagreed with this decision. The Tourism and Transport Forum stated in a media release on 22 December in relation to the Government's decision not to allow private operators to be involved in running Sydney Ferries:

The travelling public will be subjected to sub-standard ferry services as a result of the NSW Government's decision not to franchise Sydney Ferries' services, national transport group the Tourism & Transport Forum said today.

TTF Executive Director, Brett Gale, said the position would severely damage the NSW Government's commercial credibility.

The release also stated:

The NSW Government has missed an opportunity to improve the reliability, safety and customer services of ferry services and the chance to save NSW taxpayers up to \$40 million a year.

This paragraph is important:

The argument for introducing a service contract with the private sector, whereby government would retain ownership of Sydney Ferries, set standards and control routes and timetables, was compelling, but has been ignored.

But let us not stop at the Tourism and Transport Forum; let us look at what the Property Council of Australia said on 22 December last year:

The failure to implement a competitive framework for the operation of Sydney Ferries is a lost opportunity that will ultimately hurt commuters and taxpayers ...

The Walker Inquiry in 2007 produced a clear case for change and a better solution that would benefit commuters and taxpayers.

Adoption of a service built around a strong customer focus, a new and reliable fleet and value-for-money was the unequivocal recommendation of the Walker Inquiry.

The State Government undertook an inquiry into Sydney Ferries. A very eminent Senior Counsel, Bret Walker, did an outstanding job conducting the inquiry, and handed down his report in October 2007. The Opposition waited 12 months for the Government's response, but after extensive community consultation and discussions with all stakeholders, after adopting the recommendations and after having seen what other States were doing with their ferries, it failed to respond with a policy to fix the problems with our ferries. The Opposition will not put up with commuters having to deal with cancelled services, unreliable services, services that do not meet their needs and wharves that are in disrepair because the State Government is incompetent and does not want to make the right decisions.

Instead of the member for Drummoyne sticking up for her constituents and advocating better ferry services, she is putting spin ahead of reality. I place on the record again today the Opposition's position from the outset, a position that was recommended by the very eminent person who was handpicked to launch the Australian Labor Party's inquiry. The Opposition responded but the Government would not. We know that the Government does not think it was a good decision; if it were, the Government would not have announced it on Christmas Eve last year.

Ms Tanya Gadiel: It wasn't Christmas Eve.

Ms GLADYS BEREJIKLIAN: It was 22 December, three days before Christmas and more than two years after the report was handed down. This year the new Premier and the Minister for Transport issued the Government's 10-year transport plan. On page 15 it talks about forecasting patronage. The Government is actually planning for a decline in patronage by 5 per cent for Sydney Ferries, even though the population is increasing. The member for Drummoyne is an absolute hypocrite who obviously does not care about ferry services for her constituents and does not understand the issues.

Ms TANYA GADIEL (Parramatta) [3.53 p.m.]: I support the motion moved by the member for Drummoyne. Sydney is Australia's only truly global city and Sydney's harbour and its ferries are iconic, featuring in images broadcast across the globe and celebrated in song. Sydneysiders rightly feel strongly about their ferry service and want to ensure that it remains in public hands. They want the Government to continue to provide services for the benefit of the public and the scores of visitors to our harbour city. As has been previously outlined, a market testing process was undertaken to determine whether Sydney Ferries would deliver better services and better value for money for taxpayers if the contract were awarded to a private operator.

Mr Mike Baird: What was the result?

Ms TANYA GADIEL: If the member was quiet he might hear. Sydney Ferries was given notice that it would have to lift its game and deliver significant improvements if it was going to be trusted to continue to operate ferry services on the harbour. While there is always room for improvement, Sydney Ferries rose to the challenge. There have been solid improvements in service performance, both in terms of patronage and on-time running, as well as on indicators such as vessel reliability, fleet availability and passenger complaints. These improvements continue to be made, with patronage up by more than 3 per cent in May alone. For those reasons, and in view of the overwhelming community support for keeping Sydney Ferries in the hands of the people, the Government decided that it was in the best interests of Sydneysiders for it to continue to operate these services. That was the right decision, especially given that Sydney Ferries is turning around its performance.

It does not mean that reform stops here. A new contract has been put in place to ensure that improvements continue to be made. What has the Opposition decided to do? The Opposition will, apparently, ignore the hard work that Sydney Ferries is doing and the strong community support for keeping Sydney Ferries in public ownership. If elected the Coalition will outsource our ferry services. According to the Leader of the Opposition he will adopt a franchise model, similar to that used in Brisbane, where private operators are responsible for day-to-day operations; customer service; staff management; development of timetables; maintenance of vessels, wharves and infrastructure; and marketing of services. And for what possible benefit? The Leader of the Opposition argues that privatising Sydney Ferries will deliver better services for passengers and grow patronage. To support his argument he cites a projected fall in ferry patronage.

What the Leader of the Opposition has apparently failed to understand is that these projects are based on the status quo, on nothing changing in Sydney Ferries. However, under the reforms the Government has implemented, changes are already underway and we are already seeing the benefits including, as I previously said, a 3.6 per cent increased patronage to May 2010 compared with the 11 months to May 2009. Based on the Government's reforms, it is expected that Sydney Ferries patronage will grow, not shrink, into the future. We are more than happy to consider other proposals from providers who believe that there is a market for their services and, where it does not impact on the legal rights of others, allow them to give their business idea a go.

While private operators have a place in complementing the services provided by Sydney Ferries, and while the Government will continue to drive improvements in Sydney Ferries service delivery, we on this side of the House have listened to what the people want and what is best for the millions of commuters who catch ferries every year. Under this Government Sydney Ferries will remain in public hands. I call on members of this House to go on record in support of maintaining public ownership and operation of these services.

I will be interested to hear further about the proposals of the Leader of the Opposition for the RiverCat service to Parramatta and how those proposals will affect my constituents. In his budget reply speech the Leader of the Opposition referred to the Bret Walker inquiry and said, "We believe that if you get expert advice that you should back that advice". One of the key recommendations of the Walker inquiry was to stop the RiverCat service at Rydalmere, something that my community overwhelmingly rejects. It has done so by signing my Keep our Boat Afloat petition.

Mr MIKE BAIRD (Manly) [3.58 p.m.]: This is an interesting motion and I will start with some facts. The member for Drummoyne and the member for Parramatta support the ferry services that are being provided, but they really should understand the plans that the Government is putting forward. As the member for Willoughby articulated, the State Government's Transport Plan, which the Premier released in February 2010 with much fanfare, talks about the forecast trips across the city in all the various modes of transport. I assume the brochure is correct.

It is expected that ferry trips will drop from 40,000 trips a day to 38,000 trips a day over the next 10 years. The forecast for patronage the Government will use to run the service is fewer commuters over the coming 10-year period. That is incredible. If we go further into the detail, there are some other really interesting points. Patronage on other forms of transport, including the monorail and aeroplane, will increase by 38 per cent. It is anticipated that ferry patronage will drop and part of the solution going forward will be monorails and airplanes. That is what the transport plan talks about.

Other myths were put forward in debate today about Sydney Ferries staying in public hands. Public transport should stay in public hands. We support that 100 per cent. We certainly support ferries staying in public hands. We argue that the performance of Sydney Ferries must improve. The Government should fight for the commuters it is supposed to represent. The Government's record in relation to ferries, particularly those that service my electorate, is nothing short of embarrassing. On 23 October 2009 the Premier announced in the mini-budget:

... the JetCat provides an unreliable service duplicated by a 30-minute ferry service and numerous bus services from the Northern Beaches ... we must now consider the viability of the existing service.

The State Government could not make the JetCat service work; it could not make it reliable nor could it respond to commuter complaints about it being unreliable. It was not uncommon for commuters to turn up at the wharf to find a chalkboard with words such as, "Sorry, the JetCat is not operating today". On these occasions no reason was given for the JetCat not operating. The Government said, "The only thing we can do is to cancel it, and good luck, because it is all too hard". I pay tribute to the local community that came together to try to fix the ferry service. A committee chaired by Lew Jenkins fought for a ferry service for the Manly community. We were told again and again that there was no option, that the Government was looking at it, but that no private service would be forthcoming—no service whatsoever. We argued strongly that if the Government was not going to provide a service, it should at least be put out to tender.

I give credit to the former Minister for Transport, who eventually succumbed to community pressure. The community was demanding a service—13,700 people a week would use it. After the Bass and Flinders fast ferry service was introduced, only four services were cancelled in a year, which is about 0.05 per cent of total services compared with the cancellation of 6 per cent of Sydney Ferries services, which is a massive difference. More importantly, patronage on the Bass and Flinders service started at about 1,800 passengers a day and increased to 2,700 a day. The community supports it. There are hundreds of emails supporting it. I have one here from Katrina, which reads:

The fast-ferry operators Bass & Flinders (B&F) started 10/2/09 much to the relief of the 13,750 commuters who had been let down by the state government following the arbitrary decision to close the jet cat service because it was apparently unprofitable. Amazingly Bass & Flinders have managed to run a profitable service that generates revenue to the State whilst also providing a very reliable and efficient service with no cancellations as used to happen frequently when it was state run. The service runs on time in clean boats run by friendly staff.

The email describes many processes that the service had to contend with when it started, but, despite those, the service to commuters did not suffer. The email continues:

How do we reward this 10 out of 10 service?

That is what the Manly community is saying and what we are arguing for going forward. It must be possible to provide the community we represent with the best possible service. If the members for Drummoyne and Parramatta were honest, they would acknowledge that we are arguing very strongly that public transport should be kept in public hands, but the service should be improved. Patronage and customer service should be put back in the heart of ferry services in this State.

Ms ANGELA D'AMORE (Drummoyne—Parliamentary Secretary) [4.03 p.m.], in reply: I acknowledge the members for Willoughby, Manly and Parramatta for their contributions to this debate. It is quite clear that members on this side of the House are passionate about ensuring that Sydney Ferries stays in public hands. The member for Parramatta and I, as the member for Drummoyne, successfully campaigned with our local community to ensure that our State Government understood the importance of keeping Sydney Ferries in public hands. We were very thrilled to join with the Premier in announcing not only to New South Wales but also to our local communities that we had succeeded in ensuring that the Government heard their views.

What we have heard today from the Opposition is a refusal to acknowledge the market testing process and the significant reforms undertaken by Sydney Ferries management and ferry staff. The Opposition has

refused to acknowledge that Sydney Ferries is undergoing continuous reform. It has refused to acknowledge that patronage is increasing. The Opposition referred to statistics over the next 10 years. If one were trying to be cynical, one might say that if the Coalition were in power we would probably see a decline in ferry patronage as a result of its franchise approach.

The important thing is that all of the statistics show support in our local electorates to keep Sydney Ferries in public hands and that our residents are using ferry services in larger numbers. We on this side of the House will welcome the review of the ferry service that will be undertaken later in the year. Our bus services have been reviewed in an effort to deliver significant reforms in a lot of areas. My electorate has an extra 400 bus services. We are looking forward to the ferry service review, and how we can connect ferry services with bus and rail services. Certainly there are areas that need attention, especially those along the foreshore, in the inner west, Parramatta and beyond, and increased services because we know that a number of services are reaching their peak. Commuters support ferry services. It is a fantastic way to travel to work and to social functions.

It is disappointing that today we have heard the member for Manly saying that, on the one hand, he supports public services, but on the other hand he endorses the Opposition's position to franchise public services. The fact is that the people of Sydney have told us they do not want Sydney Ferries to leave public hands. They do not want the model franchised. The Opposition is showing us that this is just the start of what would happen if the Coalition won government. We would see mass privatisation throughout the State. The Opposition uses the nice word "franchise", but what it actually means is privatisation.

I am very pleased that I have been able to raise this issue in the Chamber today because it is a point of differentiation between our members and members opposite. I hear the member for Willoughby talk about the Walker inquiry and the recommendations that flowed from it. The member for Parramatta rightly pointed out that one of the recommendations of that inquiry was to cease a service in her electorate. It was through her efforts and those of her community that that recommendation was not taken on board. Not all recommendations that come out of an inquiry are recommendations that should be taken on board. I commend the member for Parramatta for bringing up that point. The member for Willoughby focused heavily on that recommendation, but she failed to acknowledge that, had the Government taken on all of the recommendations, it would have led to a service being cancelled in an electorate that relies heavily on ferry services. I ask her to take that on board.

The member for Willoughby constantly talks about private operators. That is not what the people of Sydney want for Sydney ferries. They want Sydney ferries to stay in public hands. Members opposite have refused to thank our ferry staff, but I take this opportunity on behalf of the Government to thank those who, day in and day out, provide an excellent service to our commuters, through rain and shine, and they do so with a smile on their faces. They too love Sydney ferries being in public hands. We should not forget the feedback we get from our ferry staff. I remind the Opposition that what it is putting on record is that it will franchise public services, which could potentially lead to mass privatisation of Sydney ferries for our commuters.

Question—That the words stand—put.

The House divided.

Ayes, 47

Mr Amery	Mr Greene	Mr Morris
Ms Andrews	Mr Harris	Mr Pearce
Mr Aquilina	Ms Hay	Mrs Perry
Mr Borger	Mr Hickey	Mr Piper
Ms Burton	Ms Hornery	Mr Rees
Mr Campbell	Ms Judge	Mr Sartor
Mr Collier	Mr Khoshaba	Mr Shearan
Mr Coombs	Mr Koperberg	Mr Stewart
Mr Corrigan	Mr Lalich	Ms Tebbutt
Mr Costa	Mr Lynch	Mr Terenzini
Mr Daley	Mr McBride	Mr Tripodi
Ms D'Amore	Dr McDonald	Mr West
Ms Firth	Ms McKay	Mr Whan
Mr Furolo	Mr McLeay	<i>Tellers,</i>
Ms Gadiel	Ms McMahan	Mr Ashton
Mr Gibson	Ms Megaritty	Mr Martin

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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 Besseling	Mr Kerr	Mr Stoner
Mr Cansdell	Mr Merton	Mr J. H. Turner
Mr Debnam	Ms Moore	Mr R. W. Turner
Mr Dominello	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	<i>Tellers,</i>
Mrs Hancock	Mr Richardson	Mr George
Mr Hartcher	Mr Roberts	Mr Maguire

Pair

Ms Burney

Mr Constance

Question resolved in the affirmative.**Amendment negatived.****Motion agreed to.**

The SPEAKER: Order! Debate on the motion accorded priority having concluded, the House will now proceed to Government business.

**CRIMES (SENTENCING LEGISLATION) AMENDMENT (INTENSIVE CORRECTION ORDERS)
BILL 2010**

Agreement in Principle**Debate resumed from 10 June 2010.**

Mr GREG SMITH (Epping) [4.17 p.m.]: I lead for the Opposition on the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010, which we do not oppose. The bill amends the Crimes (Sentencing Procedure) Act 1999, the Crimes (Administration of Sentences) Act 1999, the Crimes (Sentencing Procedure) Regulation 2005 and the Crimes (Administration of Sentences) Regulation 2008, and it makes consequential amendments to other Acts to introduce intensive correction orders [ICOs] as a community-based sentencing option in New South Wales and to abolish periodic detention orders.

In 2007 the New South Wales Sentencing Council released a report that proposed the introduction of community correction orders as an alternative to imprisonment. It was proposed that a community correction order would be a sentence of imprisonment that would be suspended conditionally upon compliance. The Sentencing Council accepted that periodic detention had been seen to be a valuable sentencing option for those offenders for whom it had been available. However, the lack of its availability throughout the State by reason of resource limitations and the resulting discriminatory impact, the underutilisation of current facilities and the absence of meaningful case management for periodic detainees had given rise to significant concerns.

The bill proposes the introduction of intensive correction orders. An intensive correction order is a non-custodial order that includes community service and supervised rehabilitation. In contrast to the community correction orders recommended by the Sentencing Council an intensive correction order is not a suspended sentence but a sentence of imprisonment served in the community. The features of intensive correction orders are as follows: the sentence must be less than two years; the court is not to set a non-parole period; the offender must be over the age of 18 at the time that the offence was committed; the offender must be a suitable person to serve the sentence by way of an ICO; an ICO must be an appropriate sentence in all the circumstances; the offender must sign an undertaking to comply with the obligations under the ICO; and significant conditions may be imposed by the court.

Looking at the bill in detail, before making an intensive correction order the Crimes (Sentencing Procedure) Act is amended to provide that "full-time detention" means imprisonment that is required to be served otherwise than under an intensive correction order or by way of home detention. Section 7 provides that a court that has sentenced an offender to imprisonment for not more than two years may make an intensive correction order directing that the sentence be served by way of intensive correction in the community. An ICO is not available for certain sexual offences.

Section 69 deals with assessment reports. Before imposing a sentence of imprisonment, the court may refer an offender for assessment for intensive correction in the community. The court is not to make such a reference unless no sentence other than imprisonment is appropriate and the sentence is likely to be no more than two years—section 69. An intensive correction order report is prepared pursuant to section 70. A section 70 report is conducted by the Commissioner of Corrective Services and must take into account matters prescribed by the regulations. I am advised that the Community Compliance Group within the Corrective Services department will be responsible for the preparation of such reports.

The regulations have been amended to provide that the matters to be taken into account include any criminal record of the offender and the likelihood that the offender will reoffend; any risks in the management of the offender in the community; the likelihood that the offender will commit a domestic violence offence; whether the offender will have suitable accommodation; any circumstances which may inhibit the effective implementation of an ICO; whether the person with whom it is likely the offender will reside understands and agrees with the requirements of an ICO; whether an ICO would place at risk any person living with or in the vicinity of the offender; any dependency of the offender to alcohol or drugs; any physical or mental impairment likely to impose an impediment for the performance of an ICO; the existence of any self-harm risk; and the availability in the community of the support and treatment services necessary to manage the risk. Also, the presence of any children under the age of 18 is taken into account.

If the offender is homeless, all efforts must be made by the commissioner to find suitable accommodation for the offender. Finally, any factors associated with his or her offending that would be able to be addressed by targeted interventions under an ICO are to be taken into account. The court must have regard to the ICO assessment report and such evidence from the Commissioner of Corrective Services the court considers necessary to make a decision. The court may make an ICO only if the assessment report states that the offender is a suitable person. However, the court may decline to make an order and, where it does, the court must give reasons for its decision. The court must not make an ICO in respect of a sentence that is concurrent or consecutive if that sentence is longer than two years. The court must be satisfied that the offender is over 18; is a suitable person to serve the sentence by way of an ICO; that it is an appropriate order; and that the offender has signed an undertaking to comply with such order. Section 61 is a saving provision for periodic detention orders.

The repeal of section 6 of the Crimes (Sentencing Procedure) Act does not affect the continuity of operation of a periodic detention order made before the repeal of that section. Such an order continues in force despite the repeal of that section subject to this Act and the Crimes (Administration of Sentences) Act 1999. Having made an ICO the date of commencement must be no later than 21 days after the making of the order—section 71. The court must explain the consequences of an ICO to the offender—section 72. Conditions governing ICOs are prescribed by regulation. The Crimes (Administration of Sentences) Act, or CASA regulations, will be amended to provide for mandatory conditions that must be imposed on ICOs.

Some of these are: that the offender be of good behaviour and not commit any offences; that the offender comply with reporting conditions; reside only at approved premises; not leave New South Wales or Australia; receive home visits by a supervisor; authorise a doctor, therapist or counsellor to provide material to a supervisor that is relevant to the administration of the order; that the offender submit to searches of places and things; agree to a condition that prohibits the use of illegal drugs or the abuse of legal drugs; be subject to breath testing or urinalysis for detecting alcohol or drug use; agree to a condition that prohibits possession of a firearm or an offensive weapon; submit to electronic monitoring or surveillance and to not tamper with equipment; to remain at a specified place during specified hours; to undertake a minimum of 32 hours community service per month; and to engage in activities to address the factors associated with his or her offending as identified in the assessment report. Additional conditions may be imposed by the court including directions that the offender complies with the directions of a supervisor on employment, alcohol and non-association matters—section 176.

Section 81 of the Crimes (Administration of Sentences) Act provides that the court may impose such other conditions as the court considers necessary or desirable to reduce the likelihood of the offender reoffending. Also, before imposing an additional condition, a court is to consider whether the condition will

create a need for additional resources and must not impose the conditions unless satisfied that any such additional resources that will be needed are or will be made available—section 81. Obligations of the offender are dealt with in section 82 of the Crimes (Administration of Sentences) Act.

Section 73A provides that the scheme is to be reviewed after five years. If the commissioner is satisfied that a breach of an ICO has occurred the commissioner can decide to impose a sanction, being a formal warning or a more stringent application of the condition. The commissioner may refer more serious breaches to the Parole Authority. Section 90 of the Crimes (Administration of Sentences) Act provides that the Parole Authority may deal with a breach by imposing any sanction the commissioner could, or impose a period of up to seven days home detention or revoke the ICO. Section 91 provides for an interim suspension of an ICO on the application of the commissioner where there is insufficient time for a meeting of the Parole Authority to be convened; a judicial member of the Parole Authority may make an order suspending an ICO if the offender failed to comply with the conditions; or there is a serious and immediate risk that the offender will leave New South Wales, will harm another person or commit an offence and a warrant may be issued. A suspension order ceases to have effect at the end of 28 days.

The Parole Authority may conduct its own inquiry if it has reason to suspect that an offender has failed to comply with an ICO—section 162 of the Crimes (Administration of Sentences) Act. The Parole Authority may, on its own initiative or on the recommendation of the commissioner, make an order revoking an ICO on certain specified grounds—section 163. The Parole Authority may also reinstate an ICO if an offender has served at least one month in full-time detention—section 165. Interestingly, section 165A provides that the Parole Authority may order home detention for the remainder of the term of sentence where it revokes an ICO and the remainder of the term of sentence is 18 months or less. I query whether this section takes precedence over section 165 (2) (a), which provides that the Parole Authority can reinstate an ICO but only where the offender has served one month of full-time detention.

Non-association and place restriction conditions may also be placed on home detention orders—section 165C. The commissioner is to establish a committee to be called the Intensive Correction Orders Management Committee, or the ICO committee, to comprise not fewer than five Corrective Service officers, to advise and make recommendations to the commissioner. This committee is to prepare an annual report to the commissioner. Section 93 sets out the matters that may be provided for by regulation.

A number of arguments favour this legislation. It is cheaper to have prisoners serving their sentences in a community environment than in full-time incarceration. The Government says this will apply to approximately 800 offenders. Permitting offenders to serve their sentences in the community will relieve pressure on the State to build more prisons, but community concern—at least expressed by some people—is that criminals are being released without being punished. Diverting prisoners from full-time incarceration will be more beneficial for rehabilitation and recidivism, and will remove those offenders from the schools of crime. The Government advises that some 30 psychologists have been allocated to the program; I presume they will assist particularly those with mental health issues who might be the subject of these orders.

I am advised also that existing periodic detention centres will be used as Community Offender Support Program Centres [COSPS] and will not be sold off. Intensive correction orders will be available outside Sydney, Newcastle and Wollongong, and it is envisaged that they may be extended to the far west. These orders will be more practical and able to be used more by courts as they will not suffer the problems encountered with periodic detention orders due to there being only a certain number of centres in larger-populated areas. Focusing on intensive correction orders as a specific sentencing option will ensure that significant attention is given to guaranteeing the success of rehabilitation programs. I certainly hope that is right.

Opposing arguments include that this bill appears to change the nature of the penalty to a sentence of incarceration rather than that of a suspended sentence, thereby substituting control of the offender by the court to that by the commissioner and the parole authority. Questions arising include whether, once a court imposes an order, it should deal with any breaches. The responsibility for dealing with people not complying with periodic detention orders has been moved from the courts to the department, the commissioner and the parole authority. From my observation, that procedure has stopped the courts being cluttered with those sorts of matters.

It is arguable that the Department of Corrective Services and the Community Compliance Group are insufficiently resourced and staffed. More than 100 staff, increasing to 200 to 250, will make the concept a viable success, but it is doomed to fail unless significant additional support is provided to the department and its front-line troops. The Minister has indicated that \$14.5 million has been allocated for implementation of the

intensive correction orders during 2010-11. The use of the Community Compliance Group rather than the Probation and Parole Service to monitor and prepare reports may result in further marginalisation of Probation and Parole, which needs more, rather than less, support to enable it to properly perform its duties. To some extent, some of its duties are different and until now involved a much greater role in rehabilitation and mentoring. The problem is that the Community Compliance Groups have acted more like police regarding parole orders and have returned people to custody when they found them in breach of an order.

It remains to be seen whether those the subject of these orders will build the rapport with Community Compliance Groups that generally is built with probation and parole officers. Unless the resources are available, magistrates and judges are unlikely to impose intensive correction orders. Some people see intensive correction orders as a soft option. The announcement by the Premier that violent prisoners will be forced to undergo rehabilitation programs or remain in prison when their sentence expires clearly was not aimed at those people but appears to have been ill informed. It is naive and totally impracticable to believe prisoners can be forced to undergo rehabilitation programs because somehow they will remove violent tendencies from hardened prisoners. Violent prisoners will fake interest and commitment to such programs to obtain release on parole.

Rehabilitation programs work only when offenders want to improve and learn to control their behaviour. I had a briefing with Mary Macken, President of the Law Society, Pauline Wright, from the Law Society, and Stephen Odgers, SC, chair of the Criminal Law Committee of the Bar Association. Both groups support in principle the introduction of intensive correction orders provided they are adequately resourced. They would like to retain periodic detention as a sentencing alternative, and they consider that the two-year period provided in section 7 (1) of schedule 1 should be extended to three years to ensure that the courts are given the option of issuing an intensive correction order when the sentence proposed is between two and three years.

The Law Society would like section 7 (2) amended to allow the court to set a non-parole period and would like to give magistrates the power to order an intensive correction order in cases where the assessment report makes an adverse recommendation. Finally, the Law Society considers the court rather than the parole authority should have the power to revoke an intensive correction order. All of these submissions have been put to the Government. Past decisions of the Court of Criminal Appeal have demonstrated that some courts tailored sentences to two years in order to enable an offender to obtain a home detention order. It is hoped that courts do not adopt that practice regarding intensive correction orders. Otherwise, they may be subject to Crown appeals, which cost a lot of money, and cause expense and trauma to all concerned.

The periodic detention system largely has failed and proved unpopular with courts because it became known that if a prisoner attended for six months, he or she generally was not required to come back, even if the original sentence was for three years. Although some supervision may have been imposed, many courts, including the Court of Criminal Appeal, felt this approach made it a very lenient sentence. Years ago up to 2,000 people were serving periodic detention; the number has reduced to around 700 or 800 now. Recalling the suspended sentence option—an alternative not available for many years—probably has undermined the number of periodic detention orders issued by courts.

I have considered also submissions by the Crime and Justice Reform Committee. I particularly commend the Hon. Hal Sperling, QC, former Supreme Court judge, for publishing on the website the submissions and the responses of Ministers Hatzistergos and Costa, which assisted in understanding the nature of the change and how the Government proposed to deal with these matters. I have sought submissions also from the Director of Public Prosecutions, Legal Aid and the Public Service Association, but to date I have not received any from those groups. A number of submissions have been received from solicitors and others involved in the criminal justice system urging the retention of periodic detention.

I express my gratitude to those who made submissions, including the Law Society, the Bar Association and the Crime and Justice Reform Committee. Having examined all the submissions, having carefully considered them and having spoken to those who made submissions, on balance the Opposition will not oppose the bill but will instead carefully monitor the success of intensive correction orders as a valid sentencing option. While we do not oppose the bill, we undertake to review the efficacy of the scheme after it has been in operation for approximately a year.

Mr NATHAN REES (Toongabbie) [4.39 p.m.]: The new intensive correction orders are designed to replace periodic detention with an order that has the capacity to deliver on the Government's commitment to reduce reoffending. The New South Wales Sentencing Council endorsed the replacement of periodic detention with intensive correction orders because periodic detention orders have never been available throughout the

whole State and because people on periodic detention orders do not have access to rehabilitation programs. When summarising arguments in favour of replacing periodic detention orders with an order such as an intensive correction order, the Sentencing Council stated that the community work and programs provided as part of the order would address the offender's criminogenic and rehabilitation needs and impose the acquisition of work skills. Throughout the duration of intensive correction orders, offenders will be under intensive supervision but at the same time they will be attending programs that have been shown to be effective in the reduction of reoffending.

Research indicates that intensive supervision orders that include the provision of programs are highly effective in reducing recidivism. For example, James McGuire, a professor of forensic psychology in Great Britain who is a leading international expert on the reduction of reoffending, argues that intensive supervision alone will not be effective in reducing reoffending but that, coupled with programs, reoffending can be reduced. The new intensive correction orders will combine intensive supervision with effective rehabilitation programs, including community work. The programs provided by Corrective Services NSW comply with recognised best practice to reduce reoffending. The types of programs that will be made available to offenders who have been sentenced to an intensive correction order will address issues such as drug and alcohol abuse, anger management, criminal thinking, domestic violence and drink-driving.

Offenders will also be assessed for participation in other community-based programs, including educational programs, when they are warranted and when they are available in the community. The additional incentive that is provided by the orders will encourage offenders to complete courses and programs. The programs will be available in addition to the requirement to complete community work. The work requirement will provide full reparation to the community and require the offender to engage in training and work skills and work readiness, including the requirement of reporting to work on time unaffected by drugs and alcohol, and being ready to take instruction from supervisors.

Corrective Services NSW uses a validated actuarial instrument to assess both the likelihood of reoffending and the causes of offending. The level of service inventory for risk, or LSIR, is an actuarial instrument that Corrective Services NSW uses to measure the risk of reoffending and to weigh the relative importance of a range of criminogenic needs. Criminogenic needs are factors that are related to an individual's offending and that an offender can change. Corrective Services NSW uses the level of service inventory for risk to assess the risk of reoffending and the needs that should be addressed to reduce that risk. The level of service inventory for risk measures an offender's needs relating to education and employment, financial factors, family and marital issues, accommodation, leisure and recreational activities, companions, alcohol and drug problems, mental health problems and attitudes.

Based on the assessment, offenders sentenced to intensive correction orders will be linked into programs that are already tried and true, having been provided to other offenders in the community. Prior to the order being imposed, a complete assessment will be provided to the court. The assessment will include the results of the risk assessment as well as other information that is related to the offender's history of offending, and his or her circumstances, including accommodation, education and family circumstances. The report will also provide the court with information about appropriate programs. Completion of the programs is a compulsory aspect of the order. The process of linking offenders into programs will be by way of a case management plan that outlines the supervision, work and program requirements for each offender under an order.

Corrective Services NSW staff, who will supervise offenders that are subject to intensive correction orders, will monitor attendance at the programs. Failure to progress in the programs could result in action being taken for breach of the order. Corrective Services NSW has a proven track record in relation to the effective delivery of programs. For example, up to May 2010, 3,969 individuals each year participated in offence-related programs provided by Corrective Services NSW. It is in no small measure attributable to the work of Corrective Services that over the past nine years the rate of return to a corrective services sanction for offenders who had exited custody reduced from 51.5 per cent to 44.9 per cent. That is consistent with trends that will be delivered in accordance with the Government's State Plan target to reduce reoffending by 10 per cent by 2016.

The success of the programs is indicated also by research into program effectiveness. Corrective Services NSW has evaluated a number of programs, the results of which consistently show the approach to be effective. For example, in a violent offender program, research in collaboration with the University of New South Wales has indicated that, in relation to offences involving violence, there has been a reduction of violent behaviour by offenders in custody and a reduction in the rate at which they reoffend; that for sex offences, the

rate of offending has been reduced by a world's best 68 per cent; and that for repeat drink-driving, the rate of reoffending has been reduced by no less than 50 per cent, according to an independent study. Corrective Services NSW already has in place a number of program facilitators who have been specially trained to deliver high-quality programs. As the numbers of people who are subject to the orders grow, so too will the number of program facilitators. The pre-positioning of staff will ensure a smooth transition to implementation of the new orders.

Mr JONATHAN O'DEA (Davidson) [4.45 p.m.]: The Opposition does not oppose the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010. The bill introduces intensive correction orders [ICOs] as an alternative sentencing option and will abolish periodic detention orders. Intensive correction orders offer significant advantages over periodic detention orders, as detailed in the New South Wales Sentencing Council's 2007 "Review of Periodic Detention". However, concerns have been raised regarding the possible infringement of civil liabilities, which the Government should address.

The effectiveness of the reforms will largely depend on the resources provided, as the shadow Attorney General has mentioned. It is no good having periodic detention orders or intensive correction orders unless those sentencing options are properly resourced. One might be forgiven for expressing scepticism regarding the Government's capability of success in this area, especially considering the vote of no confidence over the lack of positive justice-related options expressed by the earnest former Minister for Juvenile Justice, and member for Campbelltown.

Periodic detention was introduced by the New South Wales Periodic Detention of Prisoners Bill 1970, which was designed to provide a means of sentencing offenders to imprisonment while maintaining their work, community and family connections. A periodic detention order is a sentence of imprisonment that requires a person to remain in custody for two days a week for the duration of their sentence, although, subject to the offender's compliance, he or she may be allowed to perform work in the community for part of that period. The review to which I referred earlier highlighted concerns that:

- periodic detention has not served its intended purposes ...
- it is not uniformly available across the State;
- it is not achieving a deterrent or rehabilitative outcome;
- its use as a sentencing option is decreasing; and
- the facilities and staff required for its administration could be put to better use.

Given the concerns regarding periodic detention orders, the majority of the New South Wales Sentencing Council supported the in-principle introduction of intensive correction orders as a replacement for periodic detention orders. The bill implements that decision. An intensive correction order, which is also referred to as a community correction order or an intensive supervision order, is a term of imprisonment that is ordered to be served in the community, subject to compliance with a number of restrictions or obligations relating to the conduct of the offender. Intensive correction orders include community service and supervised rehabilitation. Community correction orders have been introduced in Victoria under the Sentencing Act 1991 and in Queensland under part 6 of the Penalties and Sentences Act 1992. They have operated in New Zealand and in Europe for a considerable period.

As has already been pointed out, there are several advantages of intensive correction orders. They are significantly cheaper than imprisonment, which is a substantial expense currently in New South Wales, and will allow resources to be devoted to other programs. Existing periodic detention centres will be able to be used as community offenders support program centres, which I understand is the Government's intention. Intensive correction orders hopefully will improve recidivism rates by rehabilitating offenders and will ensure that they give back to the community that they have harmed, while developing skills that will assist in their rehabilitation. In addition, intensive correction orders will preserve an element of compulsory detention in relation to curfew or residential requirements that will be supported, in appropriate cases, by restriction of movement and restriction of association requirements, and by monitoring-surveillance requirements.

While monitoring anklets have been on display in the Sunday evening television program *The Good Wife*, which I recommend, more importantly I understand that they have been successful in the real world in various American jurisdictions. Finally, I note that the Legislation Review Committee, which has reviewed this bill, has made a number of conclusions and observations regarding its impact on individual rights that need to be

addressed. These concern privacy and personal integrity, the denial of review rights and ex parte applications by the Commissioner of Corrective Services. In closing, I indicate that a Government response to the committee's concerns as outlined in this digest would be appreciated.

Mr PHILLIP COSTA (Wollondilly—Minister for Water, and Minister for Corrective Services) [4.50 p.m.], in reply: I thank members for their contributions to debate on this important legislation. I thank the member for Epping for his support for the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010 on behalf of the Opposition. The member raised a couple of matters to which I will refer. He expressed concern about criminals being released into the community. Under the proposed new intensive correction order legislation—the new ICO, as we refer to it—an intensive correction order relates to a sentence of imprisonment of up to two years that is ordered to be served in the community where offenders will be subject to a range of stringent conditions, including 24-hour monitoring, regular community work and a combination of tailored education, rehabilitative and other related activities.

It is therefore wrong to suggest that the order is somehow softening the justice system. Indeed, an intensive correction order is a 24 hours a day, seven days a week order that is monitored and managed with stringent conditions. It is very different from the previous process, and we believe it will result in improved outcomes for both the community and particularly those who are incarcerated because there will be some specifically tailored educational and rehabilitative programs that we can work with over the period of the order.

The member for Epping suggested that intensive correction orders will need to be balanced with adequate resources. I support that 100 per cent. He has hit a note that is important to me, and I have pressed that issue both at the Government level and with Corrective Services. The Government has put a detailed plan in place to ensure that intensive correction orders will be adequately resourced and ultimately available State wide, which is a special feature of these orders. The Cabinet Standing Committee on the Budget has approved Corrective Services costings, and it is noted that a funding plan for the implementation of the intensive correction order may amount to \$14.5 million during the 2010-11 year. These funds will provide adequate resourcing for the initial project of 750 to 850 offenders on intensive correction orders. This figure has been arrived at based on current numbers of offenders serving periodic detention orders. It is also important to note that the bill requires a court, first, to determine that it will sentence a person to imprisonment and then to seek a suitability assessment to assist the sentencing court in determining whether the sentence of imprisonment is to be served by way of an intensive correction order.

If the courts begin to sentence more offenders to an intensive correction order than the current number of offenders sentenced to a periodic detention order, this should mean that more offenders are being diverted from full-time prison. There is therefore significant potential for the intensive correction orders to generate savings for the Government because offenders sentenced to imprisonment to be served by way of an intensive correction order would no longer be sentenced to full-time custody and the cost of an intensive correction order offender is less than the cost per day of an offender in full-time imprisonment. Accordingly, ensuring adequate resourcing for the intensive correction order program in the future should not pose a significant problem. If demand for the order starts to exceed initial expectations of numbers of offenders, offset savings will be realised by these offenders not being placed in full-time custody.

The member for Epping relayed concerns raised by the Law Society of New South Wales. I draw the member's attention to the Parliamentary Secretary's agreement in principle speech in which he outlined in detail—I have the speech here—the Government's response to those concerns. The member also relayed concerns about the interaction between new sections 165 and 165A of the Crimes (Administration of Sentences) Act. Section 165A provides for the Parole Authority to order home detention once an order is revoked. Section 165 provides for an offender whose order has been revoked and who has been ordered to serve the remainder of the order in full-time detention to have their intensive correction order reinstated. The one-month prerequisite applies only in respect of these latter offenders. There is no provision requiring an offender whose order has been revoked to serve one month in custody before the Parole Authority can impose home detention.

I note the contributions of other members. Before I conclude I will address some specific matters that have been raised. I refer to recent comments made by the Legislation Review Committee in relation to the bill. The first relates to the prescribed mandatory conditions attaching to the intensive correction order, with the committee expressing concern about what it regards as the wide latitude given to supervisors in relation to their management of intensive correction order offenders. The mandatory conditions imposed by the court upon sentence are based on those currently applying to existing sentencing options, such as home detention and periodic detention, as well as to offenders on parole. The conditions are considered imperative to ensure that offenders subject to intensive correction orders are appropriately supervised and monitored in the community. The conditions are deliberately broad in scope in order to promote the effective case management of offenders.

For an intensive correction order to be managed successfully and to provide sufficient protection to the public, a supervising officer must have the flexibility to be able to issue directions and prohibitions and seek confirmation of offenders' claims in a timely manner. Supervision will take into account issues that relate to the likelihood of reoffending, as well as issues related to the ability of the offender to adapt to normal community living within the constraints of the intensive correction order. These constraints include electronic monitoring and curfews. Administration of the monitoring system requires the ability to confirm details of an offender's whereabouts and also some control over associates. In terms of participation in rehabilitation and education programs, it is also important that there be flexibility to respond to changes in an offender's situation. This includes being able to direct offenders to participate in new and different programs as they move successfully through the order. Every person is different and special, and requires a particular program.

The second concern raised by the committee relates to the consequential amendment to the Fines Act to enable fine defaulters who would otherwise be committed to prison to serve their sentence by way of an intensive correction order. Although the committee is concerned about a lack of review rights in relation to the exercise of the provision, it should be noted that this is a duplicate of the existing provision in section 89 of the Fines Act, which currently allows fine defaulters to serve their sentence by way of periodic detention. The Government is merely replacing the reference to periodic detention with an intensive correction order.

The final concern expressed by the committee relates to a provision in the bill allowing the court the discretion to deal with the imposition, variation or revocation of any additional intensive correction order conditions with or without the parties being present and in open court or in the absence of the public. This clause is based on an existing provision relating to the variation and revocation of non-association and place restriction orders under the Crimes (Sentencing Procedure) Act 1999. This provision gives the court discretion to deal with matters in the absence of the parties in uncontested or minor matters where a technical variation to an additional condition is required in order to avert needless breaches of the order. Where contested matters are concerned it is expected that the court will wish to hear from the parties before making a decision to impose or vary an additional condition.

In closing, this bill represents a significant step forward in relation to the effective sentencing and rehabilitation of offenders and, I emphasise, the opportunity to put in place programs for rehabilitation. The shortcomings of periodic detention will be addressed by a superior sentencing option that directly targets reoffending through the intensive management of offenders in the community. The new sentencing option will be closely monitored—I agree with the comments of the member for Epping in relation to monitoring—as well as being subject to independent evaluation and review in order to ensure that it achieves its primary objective of enhancing offenders' prospects for rehabilitation. It is pleasing that members on both sides of the House see the value in intensive correction orders and that we are moving forward. 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.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2010

Agreement in Principle

Debate resumed from 11 June 2010.

Mr GREG SMITH (Epping) [5.00 p.m.]: The Opposition does not oppose the Statute Law (Miscellaneous Provisions) Bill 2010, the objects of which are:

- (a) to make minor amendments to various Acts and instruments ...
- (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision ...

- (c) to repeal an Act and provisions of Acts and instruments ... and
- (d) to make other provisions of a consequential or ancillary nature.

It is a good amendment to section 64 of the *Children and Young Persons (Care and Protection) Act* in schedule 1.8 on page 7 of the bill. Item [11] of the explanatory note on page 9 states:

Section 64 of the *Children and Young Persons (Care and Protection) Act 1998* ... requires, when a care application is made in the Children's Court in relation to a child or young person, that the child or young person's parents must be notified and served with a copy of the care application and all other supporting affidavits and other documentary evidence that accompanied the application. Item [1] of the proposed amendments to the Act provides that the parent must also be served with a copy of any report that accompanied the care application. The amendment makes the provision of the Act relating to notification of parents consistent with the provisions relating to care applications (which recently were amended to require care applications to be accompanied by specified reports).

The member for Goulburn has pressed for that, so I was pleased to support it. An amendment to the *Fines Act 1996* concerning periodic detention is in schedule 1.12, item [6], at page 12 of the bill, which states:

Insert after section 89 (10):

- (11) A periodic detention order under this section must be in the approved form.

I assume that when the legislation comes into operation these provisions will be out of date and will need amending again to cover intensive correction orders because there will no longer be the power in cause to order periodic detention in default of a fine. Other than that, the Opposition does not oppose the legislation.

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [5.04 p.m.], in reply: I thank the member for Epping for his contribution to the debate on behalf of the Opposition. As I indicated in the agreement in principle speech, basically the Statute Law (Miscellaneous Provisions) Bill 2010 is about tidying up the books. The Government has always introduced similar legislation during a session on the understanding that if there is strong disagreement with any of the statutes being revised they will be withdrawn. I am pleased to note that no such objection has been raised on this occasion. The great bulk of the amendments contained in this bill are about such things as updating the names of departments or correcting typographical errors in the legislation—things that escaped proofreaders when the legislation was introduced and passed. I am pleased that the statute law legislation will be amended. I thank the member for Epping and the Opposition for their cooperation and consideration of these matters. 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.

NATIONAL PARKS AND WILDLIFE AMENDMENT (LEASING AND LICENSING) BILL 2007

Discharge of Order of the Day

The Assistant Speaker (Ms Alison Megarrity) reported the receipt of the following message from the Legislative Council:

Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly that it has this day discharged the order of the day for the second reading of the National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007.

Legislative Council
22 June 2010

AMANDA FAZIO
President

CRIMINAL ASSETS RECOVERY AMENDMENT (UNEXPLAINED WEALTH) BILL 2010

Bill introduced on motion by Mr Michael Daley.

Agreement in Principle

Mr MICHAEL DALEY (Maroubra—Minister for Police, and Minister for Finance) [5.09 p.m.]:
I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010. This bill provides the Supreme Court with the capacity to make an unexplained wealth order in those cases in which there is reasonable suspicion that a person has engaged in serious crime-related activity and that person cannot lawfully account for the sources of their wealth. However, the court has the discretion to not make the order or to reduce the amount payable if it considers that it is in the public interest to do so. The bill takes New South Wales law enforcement agencies one step closer to dismantling the iniquitous enterprises of those criminals who are avoiding confiscation and capture under the current law.

Because the criminal marketplace adapts and changes to comprise not just traditional vices, like drug importation and supply, but other high-profit crimes like money laundering, motor vehicle theft, car rebirthing, fraud and Internet crime, the law needs to be able to punish in a way that is the most limiting, the most hurtful and the most effective—the seizure of criminally obtained wealth. The bill provides for this by amending the Criminal Assets Recovery Act 1990 so that the New South Wales Crime Commission can apply to the court for such an order when it has reasonable suspicions that the person is involved in serious criminal activity or when it holds reasonable suspicions that the person's wealth is derived from the serious criminal activity of another person or persons. The court must be satisfied on the balance of probabilities that the wealth is not, or was not, illegally acquired property.

The Criminal Assets Recovery Act has proven to be a highly successful mechanism for asset confiscation in New South Wales and provides a logical basis for the inclusion of an unexplained wealth regime. Those suspected criminals who have so far evaded confiscation within the existing framework can now be targeted and their money will be provided to victims of crime through the Victims Compensation Fund. The national movement towards adoption of unexplained wealth confiscation regimes to assist in combating organised crime was confirmed by national senior officers meetings on 5 June 2009, 17 July 2009 and 5 February 2010. Two Commonwealth parliamentary reports have also commented favourably upon unexplained wealth provisions. The Commonwealth Senate Standing Committee on Legal and Constitutional Affairs supported unexplained wealth confiscation, stating that the Committee:

wholeheartedly endorses the purpose of the unexplained wealth provisions: namely targeting the people at the head of criminal networks, who receive the lion's share of the proceeds of crime, whilst keeping themselves safely insulated from liability for particular offences.

The New South Wales Crime Commission at present can usually take no action against persons about whom it holds highly developed suspicions regarding serious criminal activity, when only minor offences, if any, can be proved against them and when they have insufficient lawful sources to justify their wealth, accumulation of assets or expenditure. The new regime will close that loophole. These amendments will be in addition to existing powers already available to the New South Wales Crime Commission to commence confiscation proceedings relating to restraining orders, assets forfeiture orders and proceeds assessment orders. The Government is not proposing to alter those powers with this bill.

However, the new unexplained wealth regime will differ in some significant aspects. The threshold about which the court must be satisfied concerning criminal activity in respect of an unexplained wealth order will be changed from a balance of probabilities—the civil burden—to a reasonable suspicion test. It is not proposed to change the definition of serious criminal activity already contained in the Act. Once the court accepts that there are reasonable grounds to suspect that a person has engaged in serious criminal activity, the court will then hear evidence from both the New South Wales Crime Commission and the person involved in order to determine whether wealth has been lawfully obtained.

If the court is not satisfied on the balance of probabilities that wealth has been lawfully obtained, the court will be able to make an unexplained wealth order and the amount payable pursuant to the unexplained

wealth order will become a debt due to the Crown. Unlike existing assets forfeiture orders and proceeds assessment orders, the new unexplained wealth orders will not include a requirement to establish that the serious criminal activity occurred in the past six years. Furthermore, the period over which the unexplained wealth order may be calculated will not be limited in time. This is consistent with the recent Commonwealth unexplained wealth legislation.

Our new provisions for unexplained wealth will not affect ordinary citizens who are not criminals and who are lucky enough to experience a financial windfall. That is stating the obvious. The proposals are clearly aimed at those suspected criminal persons, or their family members and associates, who law enforcement discovers have wealth well in excess of that which their legitimate occupations could explain. The court will only consider wealth about which the New South Wales Crime Commission has presented evidence. The public interest test may include, for example, that the court may reduce the amount payable under the order. This is intended to ensure that the court may provide for the hardship imposed on dependants, such as young children, so that they may not suffer unduly. While only the New South Wales Crime Commission has standing to make applications under the Criminal Assets Recovery Act, nothing in this bill affects the role of a New South Wales police officer acting as an authorised officer, nor the vital role of both agencies in joint operations or task forces in bringing persons before the court.

The objects of the Act will include concepts of unexplained wealth and distinguish these from proceeds assessment orders. The definitions will be made consistent with the new unexplained wealth regime and define unexplained wealth orders. References to proceeds assessment orders throughout the Act will now also refer to unexplained wealth orders. Interstate proceeds assessment orders will now include unexplained wealth orders to ensure that where other jurisdictions also have the new unexplained wealth orders the provisions in this Act apply. The bill clarifies that a person in the broader meaning includes a corporation; however, the provision relating to proceeds assessment orders whereby a child under the age of 18 years cannot have an order made against them is retained. Unexplained wealth orders will also apply to restraining orders. The restraining order may apply to all the interests in property, not just specified interests, of a person suspected of deriving property from serious crime-related activity as a consequence of the application.

The bill clarifies that the suspicion of the authorised officer may also attach to the serious crime-related activities of another person. This will mean an unexplained wealth order may be obtained for persons who are suspected of having derived their wealth from the crimes of their family or associates regardless of whether they have been able to keep their own noses clean. These provisions will ensure that when serious criminals attempt to hide their money by giving it away to their family or allies, who may be well aware of the source of that wealth, those persons are still made to account for it.

The new regime targets the current practice of criminals or their allies using expensive cars or living in large mansions, which on paper they do not own, but which are clearly not accounted for by their income. A new unexplained wealth order will be created to complement the existing orders in the Criminal Assets Recovery Act. The New South Wales Crime Commission may apply for an unexplained wealth order or a proceeds assessment order, or both. However, the court is to only make one order, whichever is the greater amount. These orders are located within the existing confiscation regime. This introduces unexplained wealth orders under an existing, well-proven process.

Three new sections of the Act provide for the application by the New South Wales Crime Commission for an unexplained wealth order. The court must make the order if it finds there is a reasonable suspicion that the defendant has engaged in serious crime-related activity or has derived the proceeds from the serious crime-related activity of another person. The bill does not affect the capacity of the New South Wales Crime Commission to apply to the court to confiscate the assets of persons who would previously have been targeted under assets forfeiture orders.

For example, the six-year limitation may prevent the Crime Commission from seeking to confiscate wealth from 10 years ago under an assets forfeiture order, but it could now commence unexplained wealth proceedings for that additional wealth. The court may refuse to make an order, or may reduce the amount payable under the order, if it thinks it is in the public interest to do so. This is a critical safeguard to the regime, a regime designed to ensure that the court has to be fully satisfied as to the suspicions of the serious criminal activity and the lawfulness of the sources of the person's wealth. Furthermore, the court may exclude, for example, a portion of the wealth from the order to provide for dependants and ensure that they do not suffer any undue hardship as a result of the confiscation.

The assessment of a person's unexplained wealth includes the total current or previous wealth other than that part of the wealth the court is satisfied, on the balance of probabilities, was lawfully acquired. The bill sets out the things included in the current and previous wealth of a person. Wealth that has been expended, disposed of or consumed and wealth provided to others as a service, advantage or benefit is included in the calculations. This is to ensure that when a criminal has provided a service or has been living the high life, expenses of this lifestyle are accounted for. The Crime Commission will be required to present evidence on this expended wealth as well as any assets or property and the court will only consider wealth that is subject to such evidence.

The court is also to include in the assessment any wealth that is outside New South Wales as well as within the State. The value of current property will be whichever is the greater: the value at the time of application or the value when a property was acquired. The value of consumed or disposed of property will be whichever is the greater: the value at the time the property was acquired or the value immediately before the property was consumed or disposed of. This ensures that criminals cannot have a mate make a dodgy evaluation of a car or house and claim that as the true worth.

Current general provisions in the Act are retained for proceeds assessment orders. Most of these will also apply to unexplained wealth orders. These provisions relate to such matters as ancillary orders, the effect of confiscation orders or actions taken by the jurisdictions, the setting aside of convictions, actions to be taken when a person has died or is not present, and evidence in relation to drugs or drug plants. In addition, when assessing the amount to be paid under an unexplained wealth order, the court must deduct the value of any interests in property already forfeited under the Criminal Assets Recovery Act, a similar interstate order or orders made under the Confiscation of Proceeds of Crime Act. The person subject to the order must still be given notice of the application to the court for an unexplained wealth order.

As currently applies, the person is provided a statement of facts and circumstances outlining a summary of the commission's case. The Crime Commission will then present to the court the suspicions regarding the criminal activity and that the wealth is illegally acquired. At a hearing on unexplained wealth the person who is the subject of the application will have the opportunity to rebut the evidence of the Crime Commission on the reasonable suspicion of serious criminal activity and to provide evidence of the lawful sources of their wealth. The making of an assets forfeiture order does not prevent the making of a proceeds assessment order or an unexplained wealth order. However, an unexplained wealth order may exclude any assets forfeited or that are subject to other confiscation orders. This ensures that the debt due to the Crown does not include wealth already confiscated by another order or confiscated under another Act, including from other jurisdictions, even though those assets may be included in the calculation of the wealth.

It will depend on the circumstances of each case under which order the New South Wales Crime Commission will elect to take action: assets forfeiture, proceeds assessment or unexplained wealth. The unexplained wealth order differs from a proceeds assessment order in the following significant ways: As I have already mentioned, the threshold to which the Crime Commission must satisfy the court on application for the new unexplained wealth order will be a reasonable suspicion that the defendant has engaged in serious crime-related activity as opposed to the balance of probabilities. This reasonable suspicion includes that the crime-related activity occurred at any time. The six-year time limit that applies to other orders under the Act is therefore not applicable for unexplained wealth.

To ensure that the wealth may include any, or all, of the ill-gotten gains, the suspicion attached to the unexplained wealth being derived from criminal activity is also over any period of time. The six-year time limit in similar Federal legislation was also considered at length by the Commonwealth Senate Legal and Constitutional Affairs Legislation Committee. It concluded:

The committee accepts the evidence it received that the six year limitation period on non-conviction based confiscation causes significant difficulties where the DPP is pursuing confiscation in matters involving complex and ongoing offences. The committee therefore supports the removal of this limitation period.

However, the court will make the single final confiscation order based on the balance of probabilities that the wealth is not or has not been illegally acquired. The burden of proof will rest with the person to prove to the court that the wealth was not illegally acquired. The Government has not taken this particular step lightly nor is it alone in considering the import of such a significant amendment. The Commonwealth Senate Legal and Constitutional Affairs Legislation Committee stated in its report on the Commonwealth Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009:

The placing of the onus of proof on a respondent in proceedings where the respondent faces a penalty of forfeiting property is an exceptional step because it represents a departure from the axiomatic principle that those accused of criminal conduct ought to be presumed innocent until proven guilty. Despite this, the committee accepts that it would defeat the purpose of the provisions if the onus was not on the respondent: the purpose of unexplained wealth orders is to require the respondent to explain the source of his or her wealth.

These are serious amendments with serious consequences and the Government has ensured that there are safeguards to these provisions. Of course the primary safeguard of the right of appeal is not altered by the amendments. Importantly, the Supreme Court will have the discretion to decline to make an unexplained wealth order, or to reduce the amount payable under the order, if it considers it is in the public interest to do so. Examples of such interest may include relieving any undue hardship on dependent children under the age of 18 years or dependants with a severe disability. And the bill is clear that the court does not have to consider wealth about which the Crime Commission has not provided evidence. So while the onus is on the person to provide the lawful sources of their wealth, it is only that wealth which the Crime Commission suspects is the takings of serious criminal activity.

These new provisions will force a suspected criminal to account for the wealth or expenditure and the sources of that wealth or face having that wealth removed by court order. Remember, these are serious and often highly organised criminals with complex accounting systems and business practices. These are not the "small fry" of a criminal organisation. The Crime Commission is careful in its targeting, which in part accounts for the success of the confiscation regime so far, and is not going to waste its resources frivolously chasing the lightweight in the criminal world.

The last amendments in the bill relate to the allocation of the confiscated wealth. The amendments will provide that 50 per cent of all proceeds assessment confiscations and/or unexplained wealth confiscations, which would otherwise be paid into the Confiscated Proceeds Account, will be allocated to the Victims Compensation Fund. This allocation will occur after all court orders, disbursements or sharing of proceeds with other law enforcement agencies in other jurisdictions have been accounted for. In this way we are ensuring that those who endure the worst at the hands of serious and organised criminals—the long-suffering, and often faceless, victims—have some way of redressing the balance.

The New South Wales Crime Commission, the New South Wales Police Force and the Office of the Director of Public Prosecutions will continue to fight the good fight against criminals, particularly those involved in organised and serious crime, by taking from them that which they desire most—their money. I commend the bill to the House.

Mr GREG SMITH (Epping) [5.28 p.m.]: At this stage the Opposition does not oppose the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010, bill but I must say that we have not had a proper opportunity to look at this complex legislation. This is not like changing section 10 of the Crimes (Sentencing Procedure) Act or a matter of that sort. This is walking on thin ice in an area in which the Government and the Crimes Commission have already had a case overturned in the High Court, in the matter of *International Finance Trust Company Ltd & Anor v the New South Wales Crime Commission & Ors* [2009] HCA 49.

After some time the Government attempted to remedy that problem by introducing the Criminal Assets Recovery Amendment Bill 2009, which had to be rushed through this House. In a similar vein, last April the outlaw gang legislation was rushed through this House, and in June 2009 amendments to that legislation were also rushed through. Not one bit of use has been made of that legislation, which we were told was urgent. In our response in debate on that legislation we said that we accepted it on trust, but aspects of that legislation appeared to be constitutionally questionable, in particular, the use of intelligence-based affidavits containing hearsay material to which the defence was not given access. That issue is now before the High Court. Despite the protestations of the Attorney General, when he was asked a question a couple of months ago and he wanted us to attend a briefing we did not do so as we had real doubts about the constitutional validity of that legislation.

Our Solicitor General is intervening—as are the Attorneys General in each State—in the challenge to the South Australian legislation and to the South Australian Government's appeal. I am not sure whether the case is being heard this week or was heard last week—it was to be some time soon—as special leave was granted. It is too risky to introduce legislation such as this and ridiculous to rush it through the House in less than a day. What is the real justification for it? Is the Government so desperate after what happened in Penrith and what the polls are showing that it has to introduce this type of legislation, show its muscle and say, "Aren't we tough? Haven't we done a wonderful job in introducing this extraordinary legislation?"

I know that the Commonwealth has passed similar laws, but we need time to compare the Commonwealth legislation with this legislation, as the States have a problem with chapter III of the Constitution. Specific provisions in the bill might well offend chapter III of the Constitution. The Government might have received advice from the Solicitor General, Bret Walker, SC, and everybody else. However, when the South Australian legislation was overturned the court looked not only at the question of the Attorney

General granting a declaration; the court looked also at the fundamental right of people who were the subject of government application to know the case that they had to meet. In that case it was not met, so that aspect was incorporated into the finding of the court. We have the same problem with the New South Wales outlaw gang legislation, which may well be overturned.

Why are we rushing this fundamentally important legislation through the Chamber? I am not sticking up for the crooks, which is why the Opposition is not opposing the legislation: we do not want the crooks to benefit and to get their assets out of the country. Nevertheless, this type of legislation requires reflection; it requires access to advice; and we need an opportunity to talk to the Law Society, the Bar Council, to various other groups that have expertise, and to Senior Counsel at the bar who want to be involved in giving advice on these matters. If there are flaws in this legislation New South Wales will again have egg on its face and it will have cost orders made against it. In the meantime, the particular gang or group from which the Government has grabbed assets gets away with it, as occurred in the International Finance Trust Company Limited case.

The onus is on the asset owner to prove on the balance of probabilities that the assets were lawfully obtained—which is the Racketeer Influenced and Corrupt Organisations Act, or RICO, type legislation. We have no objection to that type of legislation, but it has to be properly drafted and it has to be constitutionally sound. Opposition members are entitled—just as Government members who wish to speak in debate on this bill are entitled—to have a look at this legislation, to reflect on it and to determine whether there are flaws in it. There might well be flaws in the legislation. I believe it is a risky business following this Government on trust. We are doing it, but will not be an accessory to it.

The Government assures us that this legislation is urgent. I do not know why it is urgent. At the moment the Government has in place substantial criminal assets recovery laws, so where is the urgency? It is true that it will advantage law enforcement and we will be able to grab more money, but it has to be done lawfully. It is no use putting our feet in the water and saying, "Okay, we will try that out", only to find that our feet have been frozen, or something of that sort. We do not want to do that. I will refer to some specific provisions to reveal why the Criminal Assets Recovery Act was ruled to be invalid last year. In the International Finance Trust Company Limited case it was ruled:

- (a) in holding that section 10 (3) of the Criminal Assets Recovery Act 1990 (NSW) was valid and not repugnant to the exercise by the Supreme Court of New South Wales of the judicial power of the Commonwealth under Chapter III of the Constitution of the Commonwealth of Australia; and
- (b) in not dismissing the amended summons filed by the First Respondent in proceeding S12212 of 2008 of the Supreme Court of New South Wales on the ground of the constitutional invalidity of section 10 (3) of the Criminal Assets Recovery Act 1990 (NSW).

What was the result of that challenge? Justice French, the Chief Justice whose judgement was consistent with the decision of the court, after relating this type of legislation, including a reference to the Racketeer Influenced and Corrupt Organisations Act and the Money Laundering Control Act of America, outlined a significant number of countries that had brought in criminal assets forfeiture laws. At paragraph 29 he said:

The preceding history is mentioned by way of acknowledgement of the widespread acceptance by governments around the world and within Australia of the utility of civil assets forfeiture laws as a means of deterring serious criminal activity which may result in a derivation of large profits and accumulation of significant assets. The law under consideration in this case is, in many respects, typical of the kind of civil assets forfeiture statutes enacted in other States and Territories of Australia and in other countries.

After a comprehensive examination of the established law, in particular, dealing with chapter III of the Constitution in the case of the International Finance Trust Company Limited where the Crime Commission could seize assets, freeze them and the person who owned the assets did not have to be a party to the hearing, did not have to know what was going on, and could not find out what material was being put against him or her because it was privileged, at paragraphs 59 and 60 Justice French had this to say about section 10:

- 59. In my opinion s 10 is invalid. Although the authority it confers on the Commission to make ex parte applications subsumes the authority to make applications on notice, assumed in other provisions of the CAR Act, it cannot sensibly be read down to limit its operation to applications on notice. That operation is inextricably linked to the express authority which it confers and which, for the reasons outlined, thus spells invalidity. Such a reading down would impose a judicial gloss on the section at odds with its text.
- 60. I agree with and respectively adopt the observations in the joint judgement of Gummow and Bell JJ concerning the effect of the provisions of s 25 relating to exclusion orders and of the provisions of s 12 relating to ancillary orders. I agree with their Honours' rejection of the proposition that s 22 is a bill of pains and penalties and their observation that it does not operate independently of a judicial determination of liability. I agree with their conclusion that the significance of s 22 lies in its interaction with s 10 and not otherwise.

He concluded that there should be an order declaring section 10 of the Criminal Assets Recovery Act as invalid. The Criminal Assets Recovery Amendment Bill 2009 was introduced to rectify the matter. This method of seeking court orders to get assets for unexplained wealth is novel to this State. Item [6] of schedule 1 to the bill proposes to omit current section 10A (1) and insert instead:

(1) **Application for order**

The Commission may apply to the Supreme Court, ex parte for a restraining order in respect of specified interests, a specified class of interests, or all the interests, in property of any person (including interests acquired after the making of the order).

Again, provision is made to give power to apply to the court ex parte for an order. In new section 28C, "General provisions applying to proceeds assessment and unexplained wealth orders", subsection (12) states:

Despite any rule of law, or any practice, relating to hearsay evidence, the Supreme Court may, for the purposes of an application for a proceeds assessment order or unexplained wealth order, receive evidence of the opinion of:

- (a) a member of the NSW Police Force, or
- (b) a member of the Australian Federal Police, or
- (c) an officer of Customs within the meaning of the *Customs Act 1901* of the Commonwealth, or
- (d) a member or officer of the Commission—

Obviously, that means the New South Wales Crime Commission—

who is experienced in the investigation of illegal activities involving plants or drugs, being an opinion with respect to:

- (e) the amount that was the market value at a particular time of a particular kind of plant or drug, or
- (f) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of plant or drug.

That would be acceptable if the source of the information was an informant, who may be protected by public interest immunity but who might be highly dubious because the informant wants to put the opposition out of business. These provisions are traversing into areas that were considered in the International Finance Trust Company Limited case and the South Australian case involving the outlaw gang legislation. New section 28B (2) deals with unexplained wealth as "the whole or any part of the current or previous wealth of the person that the Supreme Court is not satisfied on the balance of probabilities is not or was not illegally acquired property or the proceeds of an illegal activity".

The Opposition is not defending crooks. Those who make money out of illegal behaviour by selling drugs or people through prostitution or slavery, or through other methods such as fraud or otherwise, should have the full force of the law brought upon them. However, under this legislation they must prove on the balance of probabilities that their wealth was obtained lawfully. That extraordinary change to our laws should not be rushed through this Parliament. We should be given the chance to examine it. The Law Society, the Bar Association and other groups also should be given the opportunity to provide submissions to avoid us making another mistake.

This legislation is being rushed through today and into the night, no doubt into the wee small hours of the morning when people are half awake and have to consider this important legislation. Maybe nothing will happen, as occurred with the bikie legislation. We have seen and heard nothing. It resembles the three wise monkeys: hear no evil, speak no evil and see no evil. This Government better pull up its socks, otherwise there will be a revolution in this State. If this legislation is found wanting or if the courts override it, that will be because it has been rushed through and experts have not been given the opportunity to examine it. Because we take it on trust, the Opposition does not oppose the bill.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [5.44 p.m.]: I support the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010. The bill amends the Criminal Assets Recovery Act 1990 to enable the Supreme Court to make a final order where there is reasonable suspicion a person is involved in serious criminal activity, and that person cannot lawfully account for the sources of their wealth. While at the forefront of successful criminal confiscation regimes, New South Wales is not alone in seeking to improve criminal asset confiscation law. The Senior Officers Group on Organised Crime—meeting in Canberra last year—agreed that the Commonwealth would convene a working group on criminal asset confiscation. This

group identified and addressed cross-jurisdictional issues such as achieving equitable sharing arrangements, mutual recognition of judicial proceeds of crime orders, and other operational and institutional arrangements for criminal asset confiscation.

The agreement in principle speech referred also to the two Commonwealth parliamentary reports, quoting the Senate Legal and Constitutional Affairs Legislation Committee report on the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009. The Parliamentary Joint Committee on the Australian Crime Commission also held an inquiry into the legislative arrangements to outlaw serious and organised crime groups. The committee, while noting concerns about unexplained wealth legislation that were presented to it, concluded that unexplained wealth regimes:

... appear to offer significant benefits over other legislative means of combating serious and organised crime including:

- preventing crime from occurring by ensuring profits cannot be reinvested in criminal activity, as opposed to simply reacting to serious and organised crime;
- disrupting criminal enterprises;
- targeting the profit motive of organised criminal groups; and
- ensuring that those benefiting most from organised crime—i.e. those gaining profits—are the ones captured by the law, which they are often not under ordinary criminal laws, and proceeds of crime laws which require a link to a predicate offence.

This bill takes account of these comments. Furthermore, the bill incorporates safeguards so that the Supreme Court has discretion to refuse to make an unexplained wealth order or reduce its amount where it is in the public interest to do so. For example, it may not be in the public interest when such an order would mean undue hardship to dependent children or dependants with a severe disability. It may also not be in the public interest when there is a problem with remoteness in time of any proof that the wealth was lawfully acquired. We have had the benefit of utilising an already successful system under the Criminal Assets Recovery Act. We are now improving it to catch those suspected criminals who are falling through the gaps to ensure we have good laws that target only those who deserve retribution of the court. I commend the bill to the House.

Mr MALCOLM KERR (Cronulla) [5.47 p.m.]: Once again this House is rushing legislation through simply for this Government to make an easy headline and get some good publicity after what happened at the Penrith by-election on Saturday.

Mr Barry Collier: It might happen at Cronulla.

Mr MALCOLM KERR: There is plenty of good news in Cronulla. What the member is looking for is a bit of good news in Miranda. The odds against that are quite high, given the representation in this place. As the member for Miranda admitted during the course of his contribution, the confiscation of assets legislation has existed since 1990. Suddenly the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 is introduced to proceed through all stages tonight. The member for Epping outlined some potential problems that, should they arise, could have been avoided if due process had taken place.

Mr Thomas George: What else do you expect?

Mr MALCOLM KERR: That is the real tragedy. As the member for Lismore said, what else do we expect? The legislation deals with the liberty of people as well as their assets and personal wealth. Nobody would argue against the intent of the bill; however, the means by which the objects of the legislation will be achieved are a matter of concern. As the member for Epping stated, if the bill had been introduced in the usual manner, which could have been done weeks ago, members could have sought the opinions of stakeholders in the criminal justice system.

Mr Thomas George: Opposition members could have consulted them on behalf of their electorates.

Mr MALCOLM KERR: As the member for Lismore states, the Opposition could have assured effectiveness that otherwise may not be inherent in the bill. For example, do we know the views of the Director of Public Prosecutions, whose office will be called upon to administer the bill?

Mr Michael Daley: Administer the bill?

Mr MALCOLM KERR: The Office of the Director of Public Prosecutions will administer the terms of the bill and will be undertaking actions pursuant to this legislation.

Mr Michael Daley: You do not even know what you are talking about.

Mr MALCOLM KERR: I am talking about the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010. How could a Minister say that the views of the Director of Public Prosecutions are irrelevant to the objectives of such legislation?

Mr Michael Daley: That is not what I said.

Mr MALCOLM KERR: That is what the Minister implied, and it is absolute nonsense. I hope the Minister for Police will state in his reply the views of the Director of Public Prosecutions because, as the Minister has admitted, the director's views are relevant to this debate. Unfortunately, the people of New South Wales will suffer the consequences of a bill that has been rushed into the House without notice. However, it is fortunate that the House has the advantage of advice from the member for Epping on the legislation's potential pitfalls, which could have been avoided if due process had been observed.

Mr NICK LALICH (Cabramatta) [5.51 p.m.]: I support the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010, which amends the Criminal Assets Recovery Act 1990. The New South Wales Crime Commission is one of the most successful law enforcement agencies in this country. The commission is now in its twenty-third year of operation and remains an important force in combating illegal drug trafficking as well as organised and other crime in New South Wales. During the 2008-09 financial year the Crime Commission succeeded in securing arrest and/or laying charges in 20 of its ongoing investigations. While working jointly with the New South Wales Police Force and other agencies during the past financial year, the Crime Commission made a total of 275 arrests and laid 2,113 charges. For example, the Carinda 2 reference was an investigation of identity fraud and identity theft by the joint Identity Security Strike Team, which resulted in 20 arrests and 1,084 charges being laid.

Mr Thomas George: Are you sure?

Mr NICK LALICH: I have checked, and that is correct. The Crime Commission assisted in removing well over 1,876 kilograms and 18,260 tablets of illegal substances from our streets and seized more than \$6,210,000 in cash and other assets. The most important statistic yet is that, during this last year, realisable confiscation orders totalled more than \$24 million, which is the second-highest figure since the Criminal Assets Recovery Act commenced in 1990. It is clear from the success of the commission that the only people who will not benefit from this amending legislation will be cashed-up criminals whom the Crime Commission has in its sights. Upon implementation of this legislation, 50 per cent of recovered assets will be returned to victims of crime through the Victims Compensation Fund with the remainder being directed to crime prevention, law enforcement, drug rehabilitation and victims programs that are funded from the Confiscated Proceeds Account. I commend the bill to the House.

Mr NINOS KHOSHABA (Smithfield) [5.53 p.m.]: I support the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010. The bill amends the Criminal Assets Recovery Act 1990, which is known as CARA, to enable the Supreme Court to confiscate wealth from suspected criminals when those criminals cannot explain the lawful sources of wealth. While the process will be initiated by application by the New South Wales Crime Commission, with or without a restraining order, it is often not the Crime Commission alone that has eyes on suspects. Combating organised and serious crime often is a joint enterprise. The Crime Commission works closely with the New South Wales Police Force and other law enforcement agencies to bring crooks to justice.

Joint operations are the backbone of a multifaceted attack. In particular, with the process of making declarations against outlaw motorcycle gangs the purview of the New South Wales Police Force, any follow-up action involving the confiscation of criminal assets by the Crime Commission may involve the investigations and intelligence of the Police Force. Major operations involving the airport police, the Australian Federal Police or Customs, particularly when the operations are centred on seaports and airports, are successful only with the cooperation of and contribution by all law enforcement agencies. In New South Wales the Criminal Assets Recovery Act is utilised by the Crime Commission, in conjunction with the Police Force, rather than by the Office of the Director of Public Prosecutions, as is the case in other jurisdictions.

The expertise that the Crime Commission brings to the confiscation of assets makes it the ideal agency to spearhead the new regime. However, both the New South Wales Police Force and the Crime Commission have at their disposal the Confiscation of Proceeds of Crime Act that provides for impounding the proceeds of crime, such as cars, boats and cash, from persons who have been convicted of a crime, and for the return of assets to the victims of crime. The asset confiscation unit of the New South Wales Police Force successfully has ensured that more than \$1 million has been deposited with the Public Trustee to be forwarded to the Victims of Crime Compensation Fund. That is the type of policing that we do not see on television. It is not glamorous, nor does it involve the use of a lot fancy equipment. However, it is the type of policing that punishes criminals and ensures that they do not keep the profits of their crimes, whether or not they receive a prison sentence.

If criminals go to jail, their new souped-up car or waterfront mansion will not be waiting for them when they are released. That is why the confiscation of assets aspect of law enforcement is so important. Criminals may be able to suffer a few months inside jail or constant court appearances, but they hate losing money that they have stolen, directly or indirectly, from the honest hardworking people of New South Wales. I note the presence in the Chamber of the Minister for Police. I take this opportunity to commend him and the Keneally Government for introducing the bill. I commend the bill to the House.

Mr BRAD HAZZARD (Wakehurst) [5.56 p.m.]: My contribution to the debate will focus on concerns over the manner in which the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 has been introduced. Throughout my term as a member of this House, I have seen Labor governments continually and continuously deny the people's Parliament the opportunity to properly consider significant legislation across a range of portfolios, including portfolios for which I have been the shadow Minister. I have witnessed bills being introduced at the eleventh hour and fifty-ninth minute and the Government expecting the Opposition to allow the bill to pass without concerns being expressed.

It is possible that this bill would have attracted bipartisan support, but because of the manner in which it has been introduced there has been no opportunity for serious consideration of its contents. I have heard Government members read their pro forma speeches prepared by the Minister's office. They have recited a history of the Criminal Assets Recovery Act 1990 and said it is a good thing that assets derived by criminals as a result of crime will be confiscated. That is all well and good, but it begs the question whether people are being dealt with according to the presumption of innocence. There is no doubt that, in the interests of the community, a balance must be struck. But the question is whether the bill before the House strikes the correct balance.

Clearly, no member of the House would have any difficulty with the concept of seizure of assets that have been derived from criminal acts, but the bill requires the Supreme Court to make what is described as an unexplained wealth order against a person who is the subject of reasonable suspicion—and I emphasise the term "reasonable suspicion"—that at any time the person has engaged in a serious crime-related activity. As soon as the concept of reasonable suspicion is introduced, that raises the suggestion of civil onus or a civil standard of proof. How far we should go in the pursuit of criminals is an interesting concept. The basic concept is the presumption of innocence, and what flows from that is the presumption that the prosecution must proceed to prove beyond a reasonable doubt that a person is guilty of an offence.

Effectively, I understand—I would be interested to hear from the Minister if I am wrong—that this bill introduces a reasonable suspicion test, which suggests that it is on a balance of probabilities. If I am right and the test is that a person, at any time, may have engaged in a serious crime-related activity, I think this bill should more properly and appropriately be considered in the usual course as are other bills that are presented in this place. The New South Wales Crime Commission was established 23 years ago. While there may have been issues with the Crime Commission from time to time, it was and remains a cutting edge law enforcement, crime-fighting agency, which I am sure both sides of the House support. But the fact that the Crime Commission can seek these orders from the Supreme Court and that the court is required to make an unexplained wealth order based on a test of only reasonable suspicion requires debate.

It is 6.01 p.m. This significant bill, which may impinge on innocent persons entitlements, is being pushed through, having been introduced into this House at 5.09 p.m. I have difficulty understanding why the Government considers that this bill is so urgent as to deny appropriate and proper debate in this, the people's Parliament. I indicate to the Government that this approach to legislation and to governing this State was reflected in the concerns expressed by the people of Penrith on the weekend. There is time for debate and consideration of the bill. That is certainly what this Parliament was about in years gone by. However, this Government seems hell-bent on not governing necessarily for the people and not allowing people's views to be heard.

I strongly suggest that it would be more sensible for the Government to take this bill away and think about it—we have a two-month break before the next parliamentary sittings—and allow the bill to be considered. The world will not change in the next two months. The break would allow due process to be undertaken and the issues to be appropriately considered; as a Parliament collectively we could determine what we think is appropriate to impose in the effort to attack the basis of criminal activity. It would provide an opportunity for all of us—not least the shadow Attorney General—to properly consult the various parties, the considered experts and the community on whether the bill is appropriate to pass the New South Wales Parliament.

Mr ANDREW FRASER (Coffs Harbour) [6.03 p.m.]: Like the member for Wakehurst, I am surprised at the need for the indecent haste with which the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 has been brought before the Parliament. Notice of the bill was given prior to question time today, it was introduced at 5.09 p.m. and it must pass all stages in the House tonight. Other bills on the *Business Paper* could be equally as important as this bill and have similar ramifications for the State, yet such urgency is not being applied to the other bills, only legislation of which notice was given today. I come from an area that is known as the green triangle, where people are often accused, either publicly or privately, of having assets that are the proceeds of drug crime—grass castles, as some of them are known. I am the first to stand up and to say that those who illegally sell drugs, profit from the sale of drugs and build themselves an asset base from those drugs should have their assets confiscated and forfeited to the Crown.

I do not know, because I was reading the bill during the contribution of the member for Wakehurst, whether this legislation will unfairly disadvantage the relatives of those people and whether the assessment by the Supreme Court will give due consideration to the spouse or other relative of a drug dealer who may have an interest in that property or wealth but who has not contributed substantially to that wealth. I do not know that because I have not had time to read the bill. Like the member for Wakehurst, I believe that legislation with such ramifications as this bill will have needs to lie on the table for five days, as has other legislation before the House. We need to be given an opportunity to consult the legal fraternity and others to ensure that the legislation will do what is proposed, that we can support it with a clear conscience and that we are not disadvantaging anyone.

As I said at the outset, I cannot support anyone who profits from the sale of drugs or from crime generally. But I do not know whether this legislation covers all those areas. I also reiterate what the member for Wakehurst said. In the weekend by-election the Government suffered one of the largest swings ever recorded against it. One must wonder whether this bill has been introduced to enable the Premier and Government members to say, "Look, this is what we have done", and to divert attention from other serious matters such as health, roads, schools and everything else that is relevant not only in western Sydney but across regional New South Wales. Anyone who reads *Hansard* in years to come will note that Government members appear somewhat well informed on this legislation. However, the only reason they appear that way is that, as the member for Wakehurst said, they are handed speeches prepared by the department, purely to give them the opportunity to say to their electorates, "Look what I spoke on in the House." They may have spoken on the bill but, rather than using copious notes—or, in the case of Opposition members, no notes—they are using speeches written by the department.

This process is deplorable. It is the reason the Government copped such a hiding in the Penrith by-election on the weekend. The Government is not listening to the people and it is presenting legislation such as this bill. I do not care whether it is the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill or other legislation such as the Commercial Arbitration Bill, which has been laid on the table. In the interests of the good governance of this State Opposition members must be given an opportunity to assess the legislation, to consult those who have more knowledge than we do and to give a balanced appraisal to the Parliament on whether we support, wish to amend or do not support the legislation. On behalf of my electorate I want it recorded that I said this is an abuse of the processes of Parliament. However, the bill will be passed because at present the Government, despite the result in the Penrith by-election, still has the numbers to pass anything that it wishes.

Mr MICHAEL DALEY (Maroubra—Minister for Police, and Minister for Finance) [6.08 p.m.], in reply: I thank members who participated in this debate. The Opposition's principal objection relates to what it says is the undue haste that accompanies the prospective passage of the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010 through all stages of the House today. I offer this to members opposite in good faith: We are debating this bill today because the consultation that surrounded its formulation took slightly longer than we intended. It took slightly longer than we intended because we deliberated ad nauseum about

some of the safeguards in the bill and we wanted to get it right before we brought it to the Parliament. If I had had my way, we would have introduced the bill weeks ago, and certainly before a by-election in Penrith was ever contemplated.

To suggest that this legislation has been rushed through today because it has a connection, however tenuous, with the by-election in Penrith is simply factually incorrect. This legislation has been the subject of extensive discussion and development both at the national level through the Standing Committee of Attorneys-General and the senior officers group on counterterrorism, and at the State level through the Parliamentary Counsel's Office, the New South Wales Crimes Commission, the Department of Justice and Attorney General and the Law Enforcement Policy Branch. In answer to the query posed by several members, the Director of Public Prosecutions in New South Wales was also consulted, and endorsed the principle of unexplained wealth legislation.

As I said in my agreement in principle speech, the national movement towards the adoption of unexplained wealth confiscation regimes to assist in combating organised crime was confirmed by national senior officers meeting on 5 June 2009, 17 July 2009 and 5 February 2010—well over a year ago. For 20 years New South Wales has had the best legislative regime anywhere in the country regarding the confiscation of ill-gotten gains. I wholeheartedly endorse the comments of the member for Epping that the New South Wales Crime Commission is cutting edge, and we want to make it more cutting edge. The Government was faced with the choice of holding off on the passage of this legislation until September or introducing it today, notwithstanding that it might offend some Opposition members' sensibilities. I say genuinely to members of the Opposition that there was no other choice for the Government. Why?

In section 6 of the Criminal Assets Recovery Act the definition of "serious crime-related activity" is exhaustive. It refers to people who have been engaged in the following conduct: drug misuse and trafficking; cultivation, supply, possession of prohibited plants and drugs; permitting premises as owner-occupier or lessee of the premises to be used for the purposes of cultivation or supply of prohibited plants; drug trafficking offences, prescribed indictable offences or indictable offences of a prescribed kind that relate to drug trafficking; and offences punishable by imprisonment for five years or more involving theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery, homicide, serious firearms offences, drug premises offences and offences relating to the sexual servitude of people—the member for Epping, the shadow Attorney General, made explicit reference to prostitution, but this is prostitution of an altogether different kind. Other offences include child prostitution, child pornography, participation in criminal gangs, and the list goes on.

Faced with the choice of refraining from pursuing wealth accumulated by people who have engaged in such offences or not doing so but offending members of the Opposition, the Government chose to do what it has always done—that is, pursue with the greatest endeavour those who hurt other members of the community. I make no apologies for introducing this legislation today. The member for Epping offered as one of the ramifications of the alleged hasty passage of the bill the fact that we might get it wrong again. I remind him that the Criminal Assets Recovery Act has been in operation in New South Wales since 1990. I am not sure whether the member for Epping had a crystal ball in respect of the operation of this Act, but it took 19 years for it to be invalidated on a narrow point. Without apology, the Government rushed legislation into this place to ensure that the invalidity that was a subject of a judgement in the High Court was rectified as quickly as possible. In fact, the problem was rectified so quickly that there were no ramifications in the International Finance Trust Company case that enabled those who were the subject of restraining orders to dissipate their assets. We make no apologies for having done that.

It is the case that from time to time laws, however they are conceived, will be ruled invalid by the courts. In this instance it was a 4:3 decision of the High Court, which was upheld by the Court of Appeal. The Government rectified the narrow defect in the restraining orders that was enunciated by the court. The member for Epping said that this is an extraordinary change to our laws. Indeed it is, and I am very privileged as the Minister for Police to introduce this law in this place on this day. I commend the bill to the House. Notwithstanding that the bill was introduced later than the Government would have liked, I anticipate that in this place and in the Legislative Council members who express opposition to the legislation—whether genuine or politically motivated—will have regard to the types of people who will be caught by this bill, and will embrace and support it. I applaud them for that judgement.

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.

HOME BUILDING AMENDMENT (WARRANTIES AND INSURANCE) BILL 2010

Bill introduced on motion by Ms Virginia Judge.

Agreement in Principle

Ms VIRGINIA JUDGE (Strathfield—Minister for Fair Trading, Minister for the Arts) [6.18 p.m.]:
I move:

That this bill be now agreed to in principle.

The Government is today introducing the Home Building Amendment (Warranties and Insurance) Bill 2010. The bill is being introduced urgently to overcome the effect of a recent Court of Appeal decision in the case of *Ace Woollahra v The Owners – Strata Plan 61424 & Building Insurers' Guarantee Corporation*. That decision has created considerable uncertainty in relation to the statutory warranty and home warranty insurance schemes and has cast significant doubt on whether the schemes protect all homeowners as intended. The bill will amend the Home Building Act to clarify the entitlements of homeowners to statutory warranties and home warranty insurance where loss is suffered due to defective residential building work.

The bill will change the Act to protect homeowners who have building work done, as well as subsequent purchasers of homes and apartments in circumstances where it now appears that no benefits are available. The Home Building Act provides two forms of protection against defective residential building work to homeowners who engage builders to carry out building work and those who buy a home from such persons. First, it gives homeowners a statutory warranty against defective building work undertaken by the builder. These warranties are implied in contracts to carry out residential building work. The homeowner can pursue legal action against the builder for the work required to fix the defect. Secondly, the Act is intended to allow the homeowner to claim under insurance for rectification of the work or monetary compensation.

These benefits were always intended to be available to the person who owned the land on which the building work was done, as usually that person would suffer any relevant loss. As it was expected that only the landowner would be the person entering into the contract with the builder, the Act did not specify or identify the person contracting with the builder. The intended beneficiary of the schemes was merely referred to as the person obtaining the benefit of the statutory warranties or, for insurance, the person on whose behalf the work was done. These benefits also extend to any person who is a subsequent purchaser or successor in title for a period of up to a possible maximum of seven years.

So in these cases the homeowner and any subsequent purchaser will get the benefits of the Act. However, in some instances, a contract with a builder might be entered into by a person who is not in fact the landowner. For example, a husband might enter into a contract with a builder to undertake residential building work on land owned not by him but by his wife. Similarly, a company that owns land might be developing it into a residential complex, but the contract to do the building work or to have the work done by a builder is entered into by a subsidiary of the company.

It was always thought that the benefits of the Act would flow to a landowner even if someone else was the contracting party. It was also thought that any successors in title would similarly be protected. Insurers, builders and others accepted that this was the way the Act was intended to work, and dealt with claims accordingly. However, on 17 May 2010 the Court of Appeal took a different view. The court held that only the person who actually contracts with the builder and that person's successors in title are entitled to the benefits of the statutory warranties and insurance. This means that if a person who enters into a building contract is not the landowner, subsequent purchasers of the land will not get the benefit of the statutory warranties or of the insurance.

In the case before the Court of Appeal, a landowner was involved in a form of joint venture arrangement with another party to develop a strata scheme residential living complex. The other party, not the landowner, entered into the contract with the builder. Subsequently, the owners' corporation of the strata scheme and the unit holders acquired interest in the land from the landowner. The court held that, as the original landowner did not enter into the contract with the builder, the owners' corporation and the unit holders should not have received the benefits of the statutory warranties and insurance under the Act. The owners' corporation and the unit owners were not left out of pocket. The costs of rectifying the building defects had already been met by the Building Insurers Guarantee Corporation. The issue came to court when the guarantee corporation sought to recover the rectification costs from the builder. This situation could easily arise again when a builder enters into a building contract with a party other than the landowner.

There is also a concern that developers might structure their projects to take advantage of the decision. This was not how the scheme was intended to operate. Indeed, in another Court of Appeal decision, in 2005, the court said that the phrase, "a person on whose behalf the work is being done and the person's successors in title":

point to the person for whom the work is done being a person who has title, or an estate or interest in the land on which the work is done.

The uncertainty that the recent decision has created needs to be addressed. For this reason, the Government is introducing the bill and is seeking to secure its passage urgently. The ramifications of this decision are significant as the decision may cause many statutory warranty and insurance claims to be rejected. The court decision precludes from the scheme any owner or successor in title where the person who contracted with the builder was not the owner of the land. This will occur because the statutory schemes were based on an assumption that, in any building contract, the person who contracted with the builder would always be the same person who owned the land.

Alternatively, the Act by implication provided that the landowner always was the beneficiary regardless of who entered into the contract. In addition, given that this assumption might now not be correct, a claimant, including a subsequent purchaser, could be required to produce evidence establishing the direct connection with the contracting party in order to prove an entitlement. In a large number of cases, the successor in title, particularly owners' corporations and lot owners, will not be able to obtain the evidence tracing a connection back to the contracting party. This could be because there was no written building contract created at the time or because the contract is unavailable due to the document being disposed of or the builder or developer going into liquidation.

Further, there is an assumption that the contracts would always be in writing and available many years later to subsequent owners of the land. This, of course, is highly unlikely. Without the contract, the claimant cannot identify the contracting party and thus cannot trace the necessary ownership connection. As a result, legal actions commenced or insurance claims lodged will be unsuccessful and the benefits intended to be available to consumers will be lost.

To protect future intended beneficiaries, the proposed amendments to the Act will restore the intended benefits by providing that a legal action or insurance claim cannot be defeated due to the contracting party not being the owner of the land at the time the contract is entered into. Specifically, the bill will insert into the Home Building Act amendments to the statutory warranty and insurance provisions to the effect that a landowner who was not a party to the contract will still be covered by the schemes. The amendments will provide that a person who is a non-contracting owner in relation to a contract to do residential building work is entitled to the same rights as a party to the contract has in respect of a statutory warranty or insurance.

The bill defines a "non-contracting owner" as a person who is the owner of the land but is not a party to the building contract, and includes any successor in title to the landowner. An additional provision will ensure that both a contracting party and a non-contracting owner will not each be able to recover for a particular defect. A claim by one should preclude a later claim by the other, to avoid a builder or insurer having to pay twice for the loss suffered in relation to the one defect. The amendments will also recognise the right of insurers to recover from builders in circumstances where a claim was paid notwithstanding the fact that the landowner was not a party to the residential building contract.

The transitional provisions in the bill will ensure that these amendments will be available to benefit homeowners regardless of when the residential building work was done under the statutory warranty scheme. That is, the proposed amendments will apply retroactively to all building contracts made and insurance policies issued since 1 May 1997, when the schemes were introduced. Such an action should not be taken lightly;

however, the Government believes it is indeed justified. Claims have always been paid, and insurance premiums calculated, on the basis that the scheme was intended to benefit the landowner regardless of whether that was the person who entered into the contract with the builder. More importantly, subsequent purchasers of land, particularly in strata developments, should not be caught out because an unorthodox or unusual contracting arrangement was used by a developer.

Although the scheme changed from a first resort insurance scheme to a last resort insurance scheme in July 2002, the landowner will now be entitled to the benefits provided by the Act as in force at the time the contract was entered into. This legislation is urgent. While an attempt could be made to address the issue in the next session, many decisions will have been made by insurers by then, and possibly by courts and tribunals. Insurers, courts and tribunals will essentially be obliged to act on the basis of the Court of Appeal decision as it stands today. It will be extremely difficult to undo or reverse the effects of these decisions in several months time.

Indeed, the department already expects insurers to deny claims involving circumstances similar to those that arose in the Ace Woollahra case on the basis of legal advice on how the Act now operates in light of the court decision. More worryingly, for the same reason it is expected that insurers will now require claimants to obtain and provide a copy of the relevant building contract to prove that the original landowner was a party to the building contract. Unfortunately, these approaches are justified as an insurer will not be able to recover from the builder or developer if a claim is paid where the landowner was not a party to the contract or where the claimant was not able to produce evidence to identify the relevant party to the contract.

The passage of this bill is essential to ensure that the Home Building Act operates as it was always intended to. It will benefit homeowners and deliver to them the benefits of warranties and insurance provided for by the current Act. Without this bill, many homeowners, particularly those in strata developments, could find they have no recourse against a developer or builder. The Government must act in this situation to protect the rights of all those persons who are making probably the largest purchase of their lives and who, through no fault of their own, find themselves facing substantial loss and inconvenience by the emergence of defective building work. I commend the bill to the House.

Pursuant to resolution business interrupted and set down as an order of the day for a later hour.

[The Assistant-Speaker (Mr Grant McBride) left the chair at 6.30 p.m. The House resumed at 7.30 p.m.]

APPROPRIATION BILL 2010

APPROPRIATION (PARLIAMENT) BILL 2010

APPROPRIATION (SPECIAL OFFICES) BILL 2010

STATE REVENUE LEGISLATION AMENDMENT BILL 2010

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

ELECTRICITY PRICE RISES

Matter of Public Importance

Mr PETER DRAPER (Tamworth) [7.30 p.m.]: Much time and money is being spent on environment and climate change policies, yet the savage impacts of rising utilities charges are already forcing primary producers and others to switch from electricity as their primary energy source and convert their operations to diesel engines. The oil industry supplies a non-renewable energy source. Oil imports impact on our nation's balance of payments and more tankers are using our roads to deliver fuel. We have a responsibility to address the consequences of massive price increases in water and electricity being recommended by the Independent Pricing and Regulatory Tribunal. Individually the proposed price hikes will have severe negative impacts on rural and regional development, while combined they are potentially disastrous.

When setting up their operation, the owners of a major lucerne farm near Manilla decided to use electricity rather than diesel to power their irrigation pumps. They did this for a number of reasons: a lesser environmental impact on the adjoining river system; the avoidance of any accidental fuel leaks or spillage into

the river; a reduction in noise pollution, fumes and dust; as well as removing the need for road-based deliveries on a regular basis. With rapidly increasing tariffs and the way irregular usage is billed by electricity providers, the operators of this farm now find that electricity has become financially unviable. The farm in question has constructed eight pivots, soon to be 10, covering an area of approximately 343 hectares, in conjunction with a 1,000 megalitres on-farm storage dam. The river and dam are currently equipped with seven electric motors ranging from 55 kilowatts to 100 kilowatts. Currently all the pivots are electrically driven and they have five separate metering points on the property. When the farm is in full swing the electricity bills are up to \$18,000 per month.

Currently the river pumps use 365,000 kilowatt units per annum, which is where the operator's problems begin. By law, consumers using more than 160,000 units per annum must enter into a retail contract for a minimum of 12 months. The network tariff is then averaged over a 12-month period. Therefore, unfortunately, the less you use, the more you pay. Despite the inquiries they made when developing their operation, none of the information they received indicated that they could end up paying 88¢ a kilowatt hour and, had they been aware of this cost, they would have chosen diesel or gas over electricity. Last year's price hikes, plus the 42 per cent increase over the next three years that starts with a 12.7 per cent increase from 1 July, have made electricity completely unaffordable for this business.

The biggest concern for large electricity users is not the retail component but the network tariff, which can make up 70 per cent to 80 per cent of an account. For example, one account from last year that this company sent to my office recorded only 2,514 units usage for a retail cost of \$122.65, yet the network tariff was a staggering \$1,956 for the month. Other users have told me also that having a corporate account means that if they draw power for more than 30 minutes in a billing period the network tariff is billed using their yearly average. A one-size-fits-all billing regime simply does not work when one takes into consideration the variances of farming with rapidly changing climatic conditions and intermittent river flows.

This farming operation is now seeking quotes for the replacement of all its electric motors with diesel motors. The owners have estimated that they can pay fully for replacing the electric units with diesel within three to four months just from the network tariff fee savings they would make by changing providers. There are also further long-term savings, as diesel motors do not attract network tariffs while they are not being used. That is one of the very unfair factors about the current system. Under the current electrical billing regime, diesel energy is cheaper per megalitre of water than electricity, but if liquefied petroleum gas was feasible for the operation even greater savings could be made.

The Federal Government currently offers irrigators a "water for pivot swap" water efficiency program. Farmers I have spoken to commend this approach because it helps farms, particularly irrigation farms, to remain economically viable while returning environmental flows to the inland river systems. Electric pivots are the preferred and recommended option for these conversions, but many of the farmers who take up this assistance are intermittent users, so any benefits they obtain are negated by the very rapidly escalating electricity network tariffs. Sadly, it has come to the stage where they tell me that diesel or gas is now their only viable option.

Are we prepared to see diesel engines spring up in every farm paddock and backyard because our electricity system has been priced out of the reach of users? People are rightfully cynical about the hype surrounding the environment and climate change and the increasing costs they are facing, when at the same time the Government's pricing policy through the Independent Pricing and Regulatory Tribunal is forcing many enterprises to revert to inferior energy sources. For the sake of rural and regional businesses and families, the Government has an obligation to urgently address the negative impacts of rising utilities prices.

When I spoke to the member for Dubbo earlier today about the impacts of rising electricity costs and businesses that are capable of passing on those costs, she told me about a small business in her electorate—a newsagency in Peak Hill—whose products arrive at the newsagency with a set price on them but the business is not able to pass these escalating costs on to its customers. Small businesses that are vital to country towns, particularly the smaller towns, are struggling to make ends meet. This is an extremely important issue that affects businesses right across our State, and I believe the Government should be acting on it sooner rather than later.

Ms NOREEN HAY (Wollongong—Parliamentary Secretary) [7.37 p.m.]: The New South Wales Government realises that the rising cost of utilities can be a burden on any income—a family's income or an individual's income. That is why we have moved quickly to protect families from electricity, gas and water price rises. The processes of the Independent Pricing and Regulatory Tribunal are independent and the New South

Wales Government has no discretion to amend the tribunal's decisions. Under the Electricity Supply Act, standard retailers are required to implement the tribunal's decision. The New South Wales Government has committed to providing customers with an independent, regulated price option until at least 2013.

The New South Wales Government is deeply concerned about the impact of energy price increases on all energy users, including families, pensioners and farmers. We are working day in and day out to provide support for those customers who need it most. Since the day the Independent Pricing and Regulatory Tribunal first flagged these increases in December our focus has been on making sure that help is available and that we keep the lights on for families across the State. As I said, we have moved quickly to protect New South Wales families from these price rises.

More than one million households will be eligible for the New South Wales Government's Energy Rebate Scheme from 1 July, and that includes single mums, pensioners and those on the Commonwealth Health Care Card. The New South Wales Government has set aside \$800 million over five years to help families and businesses cope with rising energy costs. For families and pensioners in financial crisis, the New South Wales Government will provide up to \$480 a year in energy vouchers. Rebates are also available for people with certain medical conditions and for those on life support or dialysis. I encourage people to contact their retailers and ask about payment options, check if they are eligible for one or more of the rebates available and, if they are not being treated fairly, contact the Energy and Water Ombudsman.

In March new regulations came into force making it harder for retailers to disconnect customers. All energy companies must now offer a minimum of two payment plans within 12 months before they can even consider disconnection. And no-one on life support can ever be disconnected. The New South Wales consumer protection framework for gas customers is largely the same as that for electricity customers. This framework includes price regulation, requirements on gas retailers to assist customers experiencing hardship, and New South Wales Government financial assistance measures.

Reforms implemented by this Government have contributed to marked changes in the gas market. Small gas customers include households and many small businesses that use less than 1 terajoule per year—equivalent to an annual gas bill of around \$15,000. Small customers experiencing difficulty in dealing with their gas retailer are able to get help from the Energy and Water Ombudsman NSW. The Ombudsman has been approved by the Government as an independent way of helping customers resolve disputes with energy providers free of charge. Residential gas customers facing financial difficulty paying their gas bills have access to a wide range of measures to assist them. As with electricity, all gas retailers are required to publish a hardship charter explaining how they will assist residential customers facing financial hardship. In its draft determination on gas pricing arrangements, the Independent Pricing and Regulatory Tribunal has made a draft decision that hardship customers are exempt from late payment fees. Residential gas customers can also access the Energy Accounts Payment Assistance Scheme for financial assistance.

Pricing across New South Wales water utilities is a reflection of the significant investment being undertaken in water and wastewater services as well as water resource management. The independent umpire, the Independent Pricing and Regulatory Tribunal, has set these prices to balance capital investment with a continuing need to deliver high-quality, cost-effective services. In Sydney, for example, swift and decisive action was required to secure Sydney's water supply in the wake of the worst drought on record. The Metropolitan Water Plan, which is a balance of infrastructure investment and sound water policy, has seen Sydney through the drought. Dams plus desalination plus recycling plus water efficiencies make up a robust plan that will secure clean, healthy and reliable drinking water for millions of Sydneysiders for decades to come. I make the point that 1,000 litres of clean, healthy drinking water delivered to your house by Sydney Water through your tap is cheaper than a bottle of Mount Franklin in the shops.

Over recent years the pricing structure set by the Independent Pricing and Regulatory Tribunal across Greater Sydney has helped build Sydney's wind-powered desalination plant and the \$250 million St Marys replacement flow project, a recycled water scheme that will save 50 million litres of drinking water a day; enabled an average annual spend on reducing leaks of about \$100 million; helped fund SewerFix, which is a \$560 million project over four years to reduce the frequency and volume of storm water; and enabled the construction of residential recycling schemes in south and north-west Sydney, as well as new water and wastewater infrastructure in the growth centres to allow construction of new houses and businesses for Sydney's growing population.

The Government understands that the prices set by the Independent Pricing and Regulatory Tribunal can be a challenge for those with limited incomes. That is why the 2010-11 budget includes more than

\$130 million in pensioner rebates in Sydney, the Hunter and far western New South Wales, a measure to help those most vulnerable in our community, our pensioners, to meet the cost of their water services. Across the State, the tribunal's pricing structures are being implemented by water utilities to ensure we continue to enjoy some of the best water services anywhere in the world.

Whether it be by leading the nation in water reforms in the Murray-Darling Basin or securing drinking water for Australia's biggest and best city, we will continue to use the independent umpire to determine pricing structures for the State's water utilities to ensure infrastructure investment leads to better services. I state again that the Independent Pricing and Regulatory Tribunal [IPART] is an independent body that the Government cannot and should not try to influence.

Mr PETER BESSELING (Port Macquarie) [7.44 p.m.]: In the most recent Independent Pricing and Regulatory Tribunal [IPART] review of regulated retail tariffs and charges for electricity prices for 2010-13, the tribunal recommended in its draft report and determination a cumulative increase of 62 per cent over three years for Country Energy customers. The tribunal highlighted significant issues affecting low-income households and pensioners in the document's introduction, where it stated:

We recognise that these price increases are large and will be felt by customers, particularly low-income households. Further, they follow large price increases in July 2009.

Of major concern is the admission that low-income households will be paying considerably more for electricity. The cumulative impact on our community will be particularly harsh as the Port Macquarie electorate faces significant demographic pressures. More than 23 per cent of the electorate's population is over the age of 65, the highest percentage of over 65s in the State. Single parent families, identified in the draft report as perhaps the most vulnerable low-income group because they are not eligible for the New South Wales energy rebate, represent more than 11.3 per cent of the local population. Almost 50 per cent of families in the electorate earn less than \$1,000 a week and 18.7 per cent of families earn less than \$500 a week, propelling Port Macquarie into the State's top 10 ranking for low-income earners. The reality for a significant proportion of our community is that it simply cannot afford to spend more than 10 per cent of its disposable income on electricity bills.

I note that the School of Commerce and Management at Southern Cross University did a study in 2004 which showed that the mid North Coast has one of the highest levels of unemployment, the lowest per capita income, and some of the highest workforce casualisation in Australia. Other factors to consider with regard to the impact that electricity prices have on our area are that 23 per cent of people living on the mid North Coast have some form of disability, compared with 19 per cent for the rest of the State. More than one in three people in the Port Macquarie-Hastings area are aged 55 years or over, compared with one in four for the rest of the State.

In 2001-02 more than 4,000 Centrelink clients in private rental were paying more than 30 per cent of income in housing costs, making the area one of the worst in the State for people experiencing housing stress. The percentage of the population aged 60-plus will be 40 per cent by 2011. I can go on giving statistics to demonstrate the problem but it is best summed up in one of the submissions to the Independent Pricing and Regulatory Tribunal by the residents committee of Bellevue Gardens Retirement Village, which states:

As representatives of the 230 residents of Bellevue Gardens Retirement Village, the majority of whom are pensioners or part-pensioners, we wish to express our absolute disbelief at the proposed increase of 18.5% in electricity costs effective from 1/7/09. Any increase is difficult enough, but to suggest an increase of this proportion is totally unacceptable, and we wish to note our strongest objection.

This comes at a time when many of our retirees are already experiencing financial difficulty and loss of income from investments and superannuation due to the economic recession, and resident levies are increasing to meet the escalating costs associated with the operation of the Village. The proposed increase will not only affect residents' personal usage, but the cost of electricity supply to common facilities within the Village would also impact on resident levies.

The supply of electricity is obviously essential to the day to day living of all residents, so they have no choice but to pay whatever charge is imposed upon them. For many, this will mean going without other items important to their health and wellbeing, and this is a very real concern.

I am sure we all share that concern. The submission concludes:

We request that you consider our strong objection to this proposed increase and that the decision can be reversed in the best interests of all retirees.

Independent members circulated a petition in our electorates because of our concern about the impact these price increases will have on our communities. As of today we have collected about 18,000 signatures. That is a significant response. The *Daily Telegraph* has also circulated a petition that has been signed by about 12,000 people. That demonstrates the huge impact of electricity price rises on communities across the State.

Mr PETER DRAPER (Tamworth) [7.49 p.m.], in reply: I thank the members for Wollongong and Port Macquarie for their contributions to this important debate. I sympathise with the member for Wollongong, who read her brief extremely well. However, the notes provided to her did not address the issue I raised—that is, the fact that major irrigation businesses are being forced back to using diesel power because of the pricing structures in this State. It was pointed out that some \$800 million is being made available for families to access in an emergency. The pertinent point is that almost one million families now qualify for emergency assistance. That is a distressing state of affairs. It was also stated that there is apparently no discretion to amend Independent Pricing and Regulatory Tribunal decisions. There has been in the past, and there should be in the future. Ministers have often said in this place that the Independent Pricing and Regulatory Tribunal has recommended a certain level of increase but that they are standing up for the community and are not accepting it. That is what needs to happen in this instance.

Farmers have made suggestions to me about how to address the dilemma of high electricity tariffs that are forcing them to revert to less environmentally friendly options, including diesel. They have suggested an electrical energy rebate similar to the current diesel fuel rebate. They believe that would subsidise the network tariff and make electricity competitive with diesel while lessening the impact of future electricity price increases. Farmers also believe that separate metering points on their properties billed as a collective unit would make a difference. Such a move would keep the farming operation I detailed earlier under the magical 160,000 units that forces them into retail contracts. Others suggested options include restructuring the network tariff to be fairer, possibly exempting farming enterprises from this impost, or suspending the tariff if their consumption is under an agreed level. That would help them to align their operations with climatic and river events.

Today I have detailed the negative impacts that the Independent Pricing and Regulatory Tribunal's determination on electricity tariffs will have on one local business, but that is only part of the picture. Later this week I intend to speak about the impacts of the tribunal's latest determination on water pricing in the Peel Valley. If it is not changed, it will negatively impact regional development and it will disadvantage the district when it is competing to attract industry. This determination will see the cost of water per tonne of lucerne hay rise from \$27.08 in 2007 to \$56.36 by 2014. That will make our farmers uncompetitive with farmers in different valleys. Combined, these imposts are driving operations close to the point of being unviable. Their dairy farmer customers have already been hit by tariff increases and their income is limited by what the milk companies offer on contract. They must not only find the money for the extra State charges but also face greatly increased costs for fodder as part of this vicious circle. At the end of the day, these costs will have to be passed on to families who are battling to put food on the table.

Tamworth Regional Council has a high security water entitlement from Chaffey Dam of 16,400 megalitres with annual water consumption averaging 5,665 megalitres. It provides water to major employers, including abattoirs, flour mills, saleyards, poultry producers, large meat export enterprises, the Tamworth hospital. Council's water bill will increase by some \$250,000 a year, from \$334,304 in 2009-10 to an extraordinary \$587,100 in 2013-14. These increases must be passed on to residential and industrial users, resulting in yet another spate of price rises as businesses pass them on, and so the vicious circle continues. The Independent Pricing and Regulatory Tribunal's recommendations will put a great deal of pressure on local businesses, families and the environment. It is scandalous that a farmer must turn back the clock and revert to diesel-powered engines using fuel sourced from overseas rather than powering irrigation pumps with electricity produced here in New South Wales. It all comes down to the cost. Farmers cannot afford these rapidly escalating costs and they must now look for alternatives.

For many country people regional development is a hard to achieve dream, and escalating utility charges is exacerbating that. The Independent Pricing and Regulatory Tribunal and the Government have failed to consider the cumulative consequences of these various price rises and the negative impacts that will flow from them. These issues must be addressed to encourage innovation in our rural sector, sustainable growth in regional communities, and security for businesses, families and the environment. My constituents raise this issue on a daily basis. People are extremely concerned about how they will make ends meet and pay their bills. Many are in the latter years of their life and they are being forced to choose between heating their house and buying food. This is an extremely important issue, and I urge the Government to reassess its ability to direct the Independent Pricing and Regulatory Tribunal or to reject some of its recommendations.

Discussion concluded.

BANANA INDUSTRY REPEAL BILL 2010

JURY AMENDMENT BILL 2010

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

HOME BUILDING AMENDMENT (WARRANTIES AND INSURANCE) BILL 2010**Agreement in Principle****Debate resumed from an earlier hour.**

Mr GREG APLIN (Albury) [7.54 p.m.]: I lead for the Opposition in the debate on the Home Building Amendment (Home Warranties and Insurance) Bill. This bill was introduced this evening and will be rushed through all stages tonight. Therefore, it has not had the benefit of consideration in any detail by the Opposition or the industry. Of course, that may lead to negative consequences in the future, but so be it. Amendments are proposed to the Home Building Act 1989 to address issues raised by the New South Wales Court of Appeal decision in *Ace Woollahra Pty Ltd, formerly known as Reed Construction Services Pty Ltd v The Owners Strata Plan 61424 & Anor* [2010] NSWCA101. That decision was handed down on 17 May this year and it reversed the decision of first instance in the Supreme Court, made by His Honour Mr Justice Einstein. The issue centred on whether statutory residential building warranties flow through to a successor in title to the property where the contractual privity between homeowner and builder is fractured.

It is argued there was defective building work. No-one disputes that the builder obtained the insurance required by the Act and no-one disputes that the current owner of the building—the owners of strata plan 61424—draw title in a direct and unbroken chain back to the original owner of the land at the time the building work took place. However, the trail becomes complicated when one sees that the original property owner did not contract with the builder. The builder, Reed Construction Services Pty Limited, completed construction of 38 aged persons' units at Wallis Street, Woollahra, under a contract with Wallis Street Developments Limited. Wallis was party to a joint venture agreement dated 21 March 1997 with the previous registered proprietor of the site, PRC Limited, to develop the site. Can this matter? Clearly it does, because the Supreme Court answered the question one way and then three judges of the Court of Appeal answered it to completely different effect.

The Building Services Corporation Amendment Act 1996 commenced on 1 May 1997, thereby bringing part 2C—the statutory warranties of the Home Building Act—into force and effect. The builder took out the required insurance—that is, Certificate of Insurance dated 1 September 1999 in respect of HIH Casualty and General Insurance Limited (HIH) Policy No. 1804587840. Construction commenced thereafter and was completed in mid-December 1999. On 15 December 1999 the property was subdivided by registration of strata plan No. 61424 and the owners corporation came into existence for this strata plan. What is the argument? Section 18D of the Home Building Act provides that a successor in title to a person with the benefit of a statutory warranty is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty. Section 99 provides that a contract of residential building insurance must insure:

- (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found, and
- (b) a person on whose behalf the work is being done and the person's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work.

On the basis of section 18D and section 99 it would seem that a successor in title to a person on whose behalf the work is being done would be covered. The Court of Appeal disagreed. His Honour Mr Justice Sackville prepared the decision of the Court of Appeal, with Justice Tobias and Justice McColl in agreement. They indicated that there might be a cause of action by the owners corporation against the original land proprietor, but not against the insured builder. The decision of the Court of Appeal is as follows:

The proprietor is not entitled under s 18D of the Home Building Act 1989 to enforce the statutory warranty against the Builder.

The lack of a contractual link between the builder and the eventual property owner was fatal. Others might now find their own buildings caught by this decision. It is not uncommon to find multiple entities involved in the acquisition of land and its development and, indeed, the building work. It is not appropriate now to debate the rights or wrongs of the decision of the four judges who have considered the issues and handed down their judgements. The Government has proposed amending the Home Building Act to make it clear that it is this Parliament's intention that the statutory warranties applying to residential building will flow through to the building owners by title.

We do not oppose the bill. I point out at this juncture the concerns of some in the building industry, who have been in touch with me in the short time available, that this quick amendment by the Government may

have unintended consequences for that industry. Speed to shore up presumed rights is important but caution is necessary also when passing a law that implies a link and a liability where no contract is in place. Should further amendment become desirable following consultation with industry stakeholders and consumers on the as yet unconsidered ramifications of this bill, we trust that the Government will also be prepared to act.

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.

PERSONAL PROPERTY SECURITIES LEGISLATION AMENDMENT BILL 2010

Bill introduced on motion by Mr Barry Collier, on behalf of Ms Carmel Tebbutt.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [8.03 p.m.]: I move:

That this bill be now agreed to in principle.

Over the last few years the Commonwealth, State and Territory governments have been working cooperatively to reform the law relating to personal property securities [PPS]. The new scheme will establish a clear set of rules for security interests in personal property and for ordering priorities between competing security interests in personal property, and will establish a single national PPS register. The bill before the House is the third bill to be introduced into the New South Wales Parliament proposing legislative initiatives relating to personal property securities. In 2009 the New South Wales Parliament passed two pieces of legislation relating to personal property securities.

The first of these, the Personal Property Securities (Commonwealth Powers) Act 2009, was passed in June and referred power to the Commonwealth to implement a national scheme for the registration of personal property securities. The passage of the referral legislation by New South Wales, the first State to do so, enabled the Commonwealth to introduce the Personal Property Securities Bill 2009. The Commonwealth Parliament passed this legislation in November 2009. The second New South Wales bill, the Personal Property Securities (Commonwealth Powers) Amendment Bill 2009, was passed in December 2009. That bill provided for the repeal of the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, and the transfer of functions and information to the Commonwealth Government as part of the establishment of the national PPS scheme.

The passage of those amendments provided certainty regarding the transfer of data currently held on the Register of Encumbered Vehicles and on the Security Interest in Goods Register to the Commonwealth Personal Property Securities Register, prior to the commencement of the scheme in May 2011. The bill being considered by the House tonight provides for consequential amendments to various other New South Wales Acts as part of the PPS implementation process. The Commonwealth Parliament passed amendments to the Personal Property Securities (Commonwealth Powers) Act 2009 in late 2009 and passed further amending legislation last week to provide for consequential amendments to the Corporations Law and other Commonwealth legislation. As members would appreciate, the PPS legislation is complex and impacts on many areas of State and Commonwealth law.

The interaction of State and Territory laws with the Personal Property Securities (Commonwealth Powers) Act was considered in the development of the Commonwealth legislation. Sections 254 and 258 of the Personal Property Securities (Commonwealth Powers) Act provide that, to the extent possible, State and Territory laws may operate concurrently with the Personal Property Securities (Commonwealth Powers) Act. Read together, these sections provide that State laws will not be excluded or limited by the Personal Property Securities (Commonwealth Powers) Act to the extent that they provide for matters, such as the creation, or transfer, disposal or forfeiture, of statutory rights, entitlements or authorities granted by or under State law; the

kinds of persons who may hold interests in a licence or other statutory authority granted by or under State law; the forfeiture of personal property or interests therein, in connection with the enforcement of the general law or State law; the transfer of property or interests in property by operation of State law.

The amendments in the bill before the House are designed to clarify the interaction of State law with the Personal Property Securities (Commonwealth Powers) Act in respect of these and other matters. I will now turn to the amendments proposed by the bill in further detail. Personal property covers a range of tangible and intangible property, such as a security interest in a licence and other statutory authorities. The expression "licence" is defined in the Personal Property Securities (Commonwealth Powers) Act as a right, entitlement or authority to deal with personal property, provide services, or explore for, or exploit resources—provided such right, entitlement or authority is transferable by the licensee. As previously outlined, the Personal Property Securities (Commonwealth Powers) Act does not apply to a particular right, licence or authority, a statutory right, granted by or under a law of the Commonwealth, a State or a Territory, if a provision of that law declares that kind of statutory right not to be personal property for the purposes of the Personal Property Securities (Commonwealth Powers) Act.

This bill provides that a number of licences and authorities established under New South Wales legislation are not personal property for the purposes of the national PPS scheme. There are sound reasons for excluding some licences from the scheme. For example, the Fisheries Management Act 1994 is currently undergoing significant reforms. The commercial fishing industry is being consulted on these reforms and other reforms, which relate to reporting and online trading. A discussion paper will be released for public consultation later this year. A report is due to be provided to Parliament on the outcomes of the statutory review in November this year. It is considered preferable that this process of reform be completed and consultation on the application of the PPS legislation to the fisheries legislation be considered during the statutory review of the Act.

In this context I am advised that the Minister for Primary Industries also proposes retaining the power to register security interests in the Share Management Fisheries Register as a permanent arrangement. The current scheme provides a one-stop shop for all parties having any interest in shares so there are benefits for the industry and financiers in retaining those efficiencies. This impacts also on the relevance of personal property security laws to statutory rights created under the fisheries legislation. Accordingly, licences and authorities under the Fisheries Management Act 1994 are being excluded from the PPS regimes at this stage. In the case of mining and petroleum licences under the Mining Act 1991 and Petroleum (Onshore) Act 1991, there are sound reasons for not transferring interests to the personal property securities register. There is already an industry specific scheme in place in relation to the regulation of financial interests in the particular industry licences.

Consequently, there would be limited efficiencies in transferring the registration of security interests in the licences to the Personal Property Securities Register, as financiers and industry stakeholders would still need to consult the New South Wales registers when undertaking transactions. Registration on the Personal Property Securities Register would duplicate this process. To maintain consistency with other licences in the minerals and energy portfolio, it is also proposed to amend the Mining Act 1992 to provide for the registration of security interests in mineral claims and opal prospecting licences on State registers.

This will ensure consistency in the treatment of licences issued under the legislation and will also mean that these licences will be excluded from the personal property securities regime. In relation to priorities for statutory interests, section 73 of the Commonwealth Personal Property Securities Act allows State law to determine the priority between security interests in personal property to which that Act applies and interests in the property created under a law of the State. To ensure that certain priorities continue to be determined by State law, the proposed bill amends the Building and Construction Industry Security of Payment Act 1999, Confiscation of Proceeds of Crime Act 1989, Criminal Assets Recovery Act 1990 and Warehousemen's Liens Act 1935.

In relation to the disposal of goods and the forfeiture of seized and confiscated property, the bill also amends the New South Wales Personal Property Securities (Commonwealth Powers) Act 2009 to make further savings and transitional provisions consequent on the Commonwealth Act. This includes amendments to ensure the continued efficacy of certain State laws relating to the disposal of abandoned, uncollected or impounded goods, the seizure and forfeiture of criminal assets and proceeds, and restrictions on dealings involving property. The amendments provide that a person may not take action to enforce a personal property securities interest if that would be inconsistent with specified relevant State property laws. The proposed bill also removes or updates references in various New South Wales Acts to the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, both of which are being repealed on the commencement of the Personal Property Securities Act.

Amendments are also being made to the Workers Compensation Act 1987 to ensure that compensation under the Act is not treated as being personal property for the purposes of the Personal Property Securities Act. A security interest in workers compensation cannot be taken, as section 235 of the New South Wales Workplace Injury Management and Workers Compensation Act 1998 provides that workers compensation is not capable of being assigned, charged or attached and does not pass to any other person by operation of law. The proposed amendment confirms that the Personal Property Securities Act does not apply to workers compensation in New South Wales. The bill also amends the Workers Compensation Act 1987 to prevent another person from enforcing an interest in certain deposits and assets in priority over the WorkCover Authority's or Nominal Defendant's interest.

The Personal Property Securities Legislation Amendment Bill 2010 implements the final amendments in a series of amendments designed to facilitate the implementation of the national personal property securities law and the Personal Property Securities Register of securities. The arrangements that will take effect under the national scheme will benefit both business and consumers by delivering more certain, consistent, less complex and cheaper arrangements in relation to personal property securities. They will promote lower transaction and compliance costs for all parties involved in personal property securities transactions, and encourage more diverse financing options. I commend the bill to the House.

Mr GREG SMITH (Epping) [8.14 p.m.]: The Personal Property Securities Legislation Amendment Bill 2010 is the third bill relating to personal property securities that has come before this House in the past two years. The first bill has been described as a referral bill and the second as a mechanical bill. This bill is also described as a mechanical bill. The purposes of this bill are to exclude certain licences granted under the New South Wales legislation from the personal property securities scheme; to preserve the operation of the New South Wales forfeiture, seized and confiscated property and abandoned goods legislation, and legislation creating statutory liens; and to make other minor consequential amendments to New South Wales legislation.

Among other things, the bill is to declare certain State statutory rights not to be personal property for the purposes of the Personal Property Securities Act 2009 of the Commonwealth—known as the Commonwealth Act; to displace priority rules set out in the Commonwealth Act in favour of rules set out in State law in relation to the determination of priorities between certain State statutory interests and security interests to which the Commonwealth Act applies; to remove or update references to the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act 2005, which are both to be repealed following the commencement of the Commonwealth Act; and to amend the Personal Property Securities (Commonwealth Powers) Act 2009 to make further provision for savings and transitional matters consequent on the enactment of the Commonwealth Act, including enacting provisions to ensure the continued efficacy of certain State laws that make provision in relation to abandoned, uncollected or impounded goods, criminal assets and proceeds, and certain other restricted dealings involving property.

The Government advises that the bill is urgent because of a Council of Australian Governments agreement about implementing a whole range of reforms by 1 July 2010. Who is responsible for this urgency? Did the Council of Australian Governments only get its act together recently? Or was the State Government a bit slow? Who knows! We are not told. Certain milestone payments are payable by the Commonwealth contingent upon achieving certain goals—that sounds interesting. We are told that the introduction of this bill has been a long process. It has not been a long process for the Coalition. This bill was given to us only late this afternoon, allowing us virtually no time to properly consider its true ramifications. Once again we are being asked by this Government to accept a bill on trust.

This bill affects a number of Acts. We have not had the time to consult with the relevant special interest groups and shadow Ministers about each and every amendment contained in this bill. However, on the other hand, we do not want to give the Commonwealth an opportunity to financially punish New South Wales because of the incompetence of the Keneally Government. Accordingly, we will not oppose this bill, but I emphasise that we do so with the greatest reluctance having been forced into a corner by the disgraceful failure of this Government to provide us with appropriate time to properly consider this bill.

Mr NATHAN REES (Toongabbie) [8.18 p.m.]: The Personal Property Securities Legislation Amendment Bill 2010 is a mechanical bill that will provide for a uniform system of registration of, and regulation over, security interests in personal property. Under the legislation, security interests are those interests in personal property by which a creditor has the right to take or keep possession of, or to otherwise deal with, that property on default by a debtor. Security interests in personal property may take the form of mortgages, charges and pledges as well as financing leases, hire purchase agreements and retention of title agreements where a sale does not transfer ownership until full payment is received.

Personal property can mean any type of property that is not land or buildings and may include tangible or intangible personal property. Examples of tangible personal property include goods such as motor vehicles, boats, aeroplanes, office furniture, artworks, business machinery and equipment, stock-in-trade, crops and livestock, and financial property such as currency, chattel paper and letters of credit. Examples of intangible personal property include intellectual property rights, such as trademarks and patents, contract rights, uncertificated shares and transferable statutory rights created under Commonwealth, State and Territory laws.

Currently, the regulatory framework in Australia governing the rights and obligations of parties in relation to personal property securities is unsatisfactory. There is a plethora of legislation at the Commonwealth and State levels, and a number of different registers have been established under various pieces of legislation. The key objective of the reforms is to remove the uncertainty arising from the vast amount of Commonwealth, State and Territory legislation, and the uneasy interaction of statutory law with common law and equitable legal principles governing personal property securities. The fragmented nature of existing legislation has created legal uncertainty and high transaction and compliance costs, which may discourage lenders from accepting personal property as security for loans. The existing law is also built on artificial distinctions around the legal form of the security taken, the legal personality of the grantor, and the nature and location of the collateral.

The new Commonwealth Personal Property Securities Act applies to all security interests in personal property that secure payment, or the performance of an obligation, regardless of the form of the transaction, the legal personality of the grantor, or the jurisdiction in which the property or parties are located, or in which the transaction occurred. The Personal Property Securities Register will be a publicly accessible electronic record of personal property securities and will provide a single access point for financiers and others to determine the securities held over particular assets. The Personal Property Securities Register will be updated and searchable in real time, and will provide a more streamlined registration process with reduced fees.

The national framework established by the Commonwealth's Personal Property Securities Act will benefit businesses, individuals and consumers by delivering more certain, consistent, less complex and cheaper arrangements for the financing of personal property. The new registration system will assist prospective purchasers and lenders to determine whether personal property may be subject to a security interest, and will facilitate the resolution of priority disputes. The bill is a further significant step towards ensuring that New South Wales is prepared for the scheduled commencement of the personal property securities scheme in May 2011.

Mr DAVID CAMPBELL (Keira) [8.21 p.m.]: The objects of the Personal Property Securities Legislation Amendment Bill 2010 are to amend certain Acts and regulations to declare certain State statutory rights not to be personal property for the purposes of the Commonwealth Personal Property Securities Act 2009, to displace priority rules set out in the Commonwealth Act in favour of rules set out in State law in relation to the determination of priorities between certain State statutory interests and security interests to which the Commonwealth Act applies, and to remove or update references to the Registration of Interests in the Goods Act 1986 and the Security Interests in Goods Act 2005, which will both be repealed following commencement of the Commonwealth Act, and to amend the Personal Property Securities (Commonwealth Powers) Act 2009 to make a further provision for savings and transitional measures consequent upon the enactment of the Commonwealth Act, including enacting provisions to ensure the continued efficacy of certain State laws that make provision in relation to abandoned, uncollected or impounded goods, criminal assets and proceeds, and certain other restricted dealings involving property.

The amendments to each of the Acts and regulations are explained in detail in the explanatory note relating to the Act or regulation in schedule 1. I do not intend to detain the House by examining all those amendments in detail, but I will make some comments on the bill. The bill is an important part of personal property securities reform. If licences or statutory rights, entitlements and authorities are transferable, they are personal property and are covered by the national personal property scheme unless the legislation declares that they are not personal property for the purpose of the personal property securities legislation. In some circumstances it is not appropriate for certain statutory licences to fall within the national personal property securities scheme. The bill declares that those licences are not personal property.

The bill will also amend State legislation to ensure the continued efficacy of certain laws that deal with abandoned, uncollected or impounded goods, and criminal assets and proceeds. Amendments will also be made to certain State laws to ensure that these laws will determine the priority between statutory rights created by the laws and security interests to which the national personal property securities scheme applies. The bill removes or updates references to the Registration of Interests in Goods Act 1986 and the Security Interests in Goods Act

2005, both of which are to be repealed following the commencement of the Commonwealth Personal Property Securities Act in 2011. The amendments relating to the Register of Encumbered Vehicles and the Register of Security Interests in Goods were passed last year.

The bill makes the remaining necessary consequential amendments to New South Wales legislation. It must be passed during this session of Parliament to meet New South Wales's Council of Australian Governments obligations and to provide business certainty. This will give business confidence that New South Wales is doing all that is necessary to ensure a seamless transition to the new national personal property securities scheme. By harmonising the current laws and creating a single national online register, the national personal property securities scheme will have a real impact for business and consumers: transaction costs should be reduced, and businesses should be willing to use more types of personal property to secure lending, thereby perhaps being able to offer lower interest rates. That is likely to be of particular benefit to small businesses.

Australia's secured transactions law will become more closely aligned with legislation in the United States, Canada and New Zealand. The laws governing securities will be more certain and consistent and less complex and costly, and will facilitate international investment in Australian businesses. The bill is another example of how the Keneally Government is working at a national level to reduce red tape, increase certainty and make things easier for business. Certainly for those reasons, I commend the bill to the House.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [8.26 p.m.], in reply: I thank the member for Epping, the member for Toongabbie and the member for Keira for their contributions to the debate. I note the Opposition does not oppose the Personal Property Securities Legislation Amendment Bill 2010. The member for Epping expressed concern about the bill being considered in haste, but I point out that the bill must be passed this month because it is one of the better regulation and competition working group reforms of the Council of Australian Governments, and there are reward payments for the States for meeting project milestones on time.

Personal property securities legislation is specifically identified in the National Partnership Agreement to Deliver a Seamless National Economy as one of the priority areas, which means that the Commonwealth Government can withhold reward payments if the milestones are not met. The relevant milestone is that this legislation be enacted by the end of June 2010. The bill was unable to be introduced earlier because it required consultation with numerous New South Wales agencies and consideration of complex issues. There was also some uncertainty about the Commonwealth legislation because it was only last week that the Commonwealth Parliament passed the Personal Property Securities (Corporations and Other Amendments) Bill 2010, which made consequential amendments to Commonwealth legislation and amended the Commonwealth Personal Property Securities Act 2009.

It is important to note that personal property securities reform will involve the development and operation by the Commonwealth of a single national electronic register of personal property securities. In New South Wales, the Personal Property Securities Register will replace the register of cooperative charges established under the uniform cooperatives legislation, the Register of Encumbered Vehicles, which is referred to as REVS, and the register established under the Security Interests in Goods Act 2005. For example, people who are contemplating buying a car or other motor vehicle will be able to search the Personal Property Securities Register to see whether anyone has registered an actual or prospective security interest in the vehicle. If a prospective buyer were to discover an entry on the register that matches the vehicle, they might consider whether they should proceed with the purchase; alternatively, they might negotiate with the vendor either to have the registration removed or to reach an agreed adjusted price that reflects the continuation of the security interest in the vehicle.

There will be a transitional period after the commencement of the Commonwealth Personal Property Securities Act. Security interests recorded on an existing register will be migrated to the new Personal Property Securities Register. That will avoid the need to re-register interests in the new system and will dramatically reduce transition costs for businesses. The Personal Property Securities Legislation Amendment Bill 2010 represents the last major step by the State Government in laying the groundwork for the implementation of the personal properties securities regime.

The bill amends various State Acts and regulations, first, to declare that certain statutory rights created under State legislation are not personal property for the purposes of the Personal Property Securities Act; secondly, to displace priority rules set out in the Personal Property Securities Act in favour of rules contained in New South Wales legislation with regard to certain statutory rights and security interests; thirdly, to remove and

update certain references to State legislation that will be repealed following the commencement of the Act in 2011; and, fourthly, to make further provision for savings and transitional matters. These and previous reforms relating to personal property securities will contribute towards creating a personal property securities regime that will benefit individuals, consumers and businesses by delivering more certain, consistent, less complex and cheaper arrangements for securing loans with personal property.

A single national personal property securities register will replace numerous registers currently operated by the Commonwealth, States and Territories. The register will be a publicly accessible electronic record of personal property securities and will be updated and searchable in real time. The proposed new arrangements will promote more certain and consistent outcomes, and encourage more diverse financing options. They will apply consistently throughout Australia and make it easier for businesses and workers to operate across State and Territory borders. 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.

POLICE LEGISLATION AMENDMENT (RECOGNISED LAW ENFORCEMENT OFFICERS) BILL 2010

Agreement in Principle

Debate resumed from 10 June 2010.

Mr JOSEPH TRIPODI (Fairfield) [8.31 p.m.]: The provisions contained in the Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 will benefit sworn police officers from other jurisdictions who assist the New South Wales Police Force in the conduct of certain operations. Indeed, this bill provides clarity and certainty to police officers from other jurisdictions who rely on their authority as a special constable to legally and effectively discharge the duties and functions of a police officer within New South Wales, particularly in respect of better policing operations. This new clarity will have a positive impact for policing in many regional areas in New South Wales, in particular those towns that are located on a border. Some examples of this include the provision of assistance during times of crisis, such as a declared state of disaster or emergency, joint patrols in border areas or working on a specific investigation. Currently, these sworn officers from other jurisdictions have the ability to assist New South Wales police as special constables, helping to protect these communities.

For example, sworn members of the Victorian police force recently provided assistance and a Victorian police helicopter to search for two males involved in a fatal attack on a 62-year-old man at Buronga on the New South Wales-Victoria border earlier this month. A 17-year-old boy was later charged with his murder. The transition of special constable arrangements to the Police Act 1990 will provide these officers with greater clarity and certainty when discharging the duties and functions of a police officer in New South Wales as a recognised law enforcement officer. These provisions clearly state that recognised law enforcement officers have and may exercise all the functions that a police officer of the rank of constable in New South Wales has and may exercise under any law of the State, including the common law and this Act. This includes the powers a constable has under the Law Enforcement (Powers and Responsibilities) Act 2002, commonly known as LEPR.

Under the Law Enforcement (Powers and Responsibilities) Act, key police powers such as the powers of arrest, search and seizure, and the power to request identification can be exercised only by police officers. References to a police officer in any other Act or statutory instrument will also be taken to include a reference to a recognised law enforcement officer. These changes not only assist in protecting our community but also will provide protections for those officers from other jurisdictions as they discharge their duties. This includes references in the Law Enforcement (Powers and Responsibilities) Act and division 8A of part 3 of the Crimes Act 1900, which relates to assaults and other actions against police and other law enforcement officers.

Mr GREG SMITH (Epping) [8.33 p.m.]: The stated objects of the Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 are, first, to repeal the provisions of the Police (Special Provisions) Act 1901 that allow the appointment of police officers from other Australian jurisdictions as special constables; secondly, to amend the Police Act 1990 to include provisions for the appointment by the Commissioner of Police of police officers from other Australian jurisdictions as recognised law enforcement officers; and, thirdly, to confer functions on recognised law enforcement officers similar to those exercised by New South Wales police officers of the rank of constable. The intention of this bill therefore is to enable interstate police officers and Australian Federal Police to be recognised as law enforcement officers in New South Wales. It applies to only one category of special constables, and they are sworn police officers from other jurisdictions. The bill does not affect other classes of special constables. Under current legislation, these police are referred to as special constables.

On occasions, police from other States are required to assist the New South Wales police with particular investigations. This is particularly so when there are border patrol and cross-border issues. I would have thought it also applied to officers working for the Police Integrity Commission. The Police Integrity Commission Act does not allow New South Wales police to be employees, so the commission seconds officers from other States and the Federal police. This will assist in clarifying their position, although they have other status as officers of the commission. The bill simplifies the process of enabling officers from other States to be recognised as New South Wales law enforcement officers. The length of appointment can be variable and can be for an unspecified period. However, once an officer ceases to be a member of the police force of their jurisdiction the appointment is terminated and they cease to be a recognised law enforcement officer in New South Wales pursuant to this bill. I understand that the New South Wales Police Association has been consulted and is supportive of the bill. Accordingly, the Liberal-Nationals do not oppose the bill.

Mr NINOS KHOSHABA (Smithfield) [8.36 p.m.]: The Police (Special Provisions) Act 1901 was introduced in colonial days, when a regular police force in New South Wales was in the process of being established. It was established to deal with civic disturbances in the infancy of what is now one of the largest police forces in the western world. Today there are three types of special constables: serving police officers from other jurisdictions, New South Wales Police Force employees who perform security-type duties such as those seen at New South Wales Parliament House, and employees from other law enforcement or New South Wales government agencies such as the RSPCA and local councils.

The Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 seeks to amend only one category of special constable—that is, serving police officers from other jurisdictions. The remaining categories will not be affected by this bill. This bill is the first in a three-step process to address special constable arrangements in New South Wales. The New South Wales Government is currently considering longer-term reform to these classes of special constables, and further legislative amendments may be required following consultation and further consideration by the Government. With these amendments, a new part 10B will be introduced into the Act to enable the Commissioner of Police to appoint members of any Australian jurisdiction as a recognised law enforcement officer in New South Wales. These appointments may be subject to certain conditions and will be in force for a period to be determined by the commissioner.

For example, interstate police may be granted temporary powers just for the duration of a particular investigation, such as six to 12 months, while those police officers assigned to border areas or frequent interstate work may be permanently appointed—that is, for the period the officer remains at the border station. If an officer ceases to be a member of the police force of their jurisdiction, their status as a recognised law enforcement officer in New South Wales will be terminated. The bill also gives the commissioner the ability to suspend a person's status as a recognised law enforcement officer if he is of the opinion that the person is not a suitable person to be recognised as such. These powers given to the Commissioner of Police will also ensure that accountability mechanisms are in place. As I mentioned earlier, the New South Wales Government will be working towards reforming the other sectors and categories of special constables into the future.

In February this year the Government approved the release of a discussion paper entitled "Special Constables: a case for reforming the current system" for consultation. I understand that public consultation has commenced and stakeholders have been invited to provide their comments on the proposals contained in the discussion paper. This feedback is presently being considered and further consultation will occur on the most appropriate way forward for special constables employed by the New South Wales Police Force and other government agencies in New South Wales. Through this bill existing arrangements for sworn interstate and Federal police officers will be brought into the modern age.

Mr GREG APLIN (Albury) [8.40 p.m.]: The main purpose of the Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 is to seek to amend the Police Act 1990 to enable sworn police officers from other jurisdictions to be appointed as recognised law enforcement officers in New South Wales following their appointment by the New South Wales Commissioner of Police. The bill provides clarity and certainty to police officers from other jurisdictions who rely on their authority as a special constable to legally and effectively discharge the duties and functions of police officers within New South Wales, particularly in respect of better policing operations.

It is just over two years since the signing of a cross-border policing agreement was postponed. In that regard, I had been pushing for finalisation of an agreement such as this by the New South Wales Minister for Police. In fact, in late April I asked the Minister for Police for an update on this important initiative for the border region. I was advised that the joint working party had completed the comprehensive terms of the agreement. I was told that implementation was dependent upon amendment of legislation by both the New South Wales Government and the Victorian Government to clarify the powers of special constables who are sworn police officers from other jurisdictions. Clearly, it was time to move forward and finalise this important issue, and I asked the Minister to do just that. This bill takes up that particular initiative.

The agreement was due to be signed by the New South Wales and Victorian police commissioners in Corowa on 7 May 2008, but it was postponed at the last moment "in order to clarify some minor issues", according to the Minister. One wonders what indeed those minor issues were and whether they were as simple as this bill before us today. I know that work was subsequently undertaken to standardise existing practices to provide consistent decision-making and to resolve or minimise any conflicts. The special constable issue itself is not that complicated; it is just took a little bit of effort on the part of police Ministers of both governments to legislate the necessary changes. Two years on from that proposed signing of the agreement we now have this bill.

I note that it is due only to the professionalism of our local police in both New South Wales and Victoria that they continued to work so well together to overcome some border issues while we were waiting for action from the New South Wales Government to formalise these arrangements. I asked the Minister what joint operations would be introduced or facilitated under the proposed agreement and in 2008 the Minister responded and said that the cross-border policing agreement aimed to formalise and standardise existing practices to provide consistent decision-making in response to incidents or emergency situations, particularly in remote areas, and to resolve or minimise any conflicts that may arise. The Opposition heartily agrees with that and welcomes the opportunity that it is now to be finalised.

Subsequently I asked the Minister whether it was intended that the cross-border policing agreement would be extended to other border areas after a trial period. The answer was an emphatic "No". I think that with the Police Legislation Amendment (Recognised Law Enforcements Officers) Bill 2010 the Minister may well consider extending that cross-border agreement because when this bill is enacted he will have the authority to note the powers of the special constables. I would like to think that the cross border policing agreement could be extended to all borders of New South Wales to enable the police to operate that much more effectively with their neighbouring police forces in the other jurisdictions. I do not oppose this bill. I look forward to its implementation in the border region where my electorate lies.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [8.43 p.m.], in reply: I thank members representing the electorates of Epping, Fairfield, Smithfield and Albury for their considered contributions to the debate. The New South Wales Police Force enjoys excellent working partnerships with the men and women of police forces from other Australian jurisdictions. In a recent example police officers from New South Wales and the Australian Capital Territory were involved in a successful operation that resulted in three people being charged with significant drug offences following a raid in Queanbeyan on 5 May 2010. Those arrests followed a long cross-border investigation between the Monaro Drug and Property Unit and the Australian Capital Territory Policing Drug Investigations Team.

Also in May the efforts of two New South Wales police officers were formally recognised when they crossed the border into Coolangatta, Queensland, to break up a brawl on Australia Day 2008. Both those officers from the Tweed/Byron Bay Local Area Command were recipients of Australian Bravery Medals for their actions on that day. I had the privilege of being at the investiture ceremony at Government House in May and was present when those officers received their award. I applaud their courageous efforts.

On a routine basis, New South Wales Police Force officers stationed in border towns and cities join forces with interstate police in the conduct of routine patrols in their area. For example, the New South Wales

and Victorian police work together to manage crime on the border. Their collaborative efforts ensure that the needs of their communities are served more efficiently. The Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010 will build on the already successful foundations of partnerships with our interstate and Federal police colleagues. I thank them for their contributions to date. 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.

FAIR TRADING AMENDMENT (UNFAIR CONTRACT TERMS) BILL 2010

Agreement in Principle

Debate resumed from 10 June 2010.

Mr GREG APLIN (Albury) [8.46 p.m.]: I lead for the Opposition on the Fair Trading Amendment (Unfair Contract Terms) Bill 2010. Contract law within our tradition is based on the notion that the parties are able to negotiate the terms of their agreement. In this lies what might be called a fiction of convenience that the parties are somehow equal in bargaining power: one wants to sell, one wants to buy. They cannot exist without each other. The laws of supply and demand will fill in the details of price, quality, delivery, timing and so on. For many decades the various parliaments of this nation have sought to shape these principles to marketplace realities. This includes situations where there is an absence of competitive pressure and where application of harsh contract terms can have serious consequences for the consumer. Market intervention is necessary in those circumstances.

By sale of goods legislation we saw the formalisation of a number of common law warranties for consumer transactions. Contracts review legislation came in a wave through the 1980s, finding ways to open a contract to investigation. Now, faced with the challenge of the take-it-or-leave-it deal, we are considering more boldly named legislation to attack the plague of unfair terms in consumer contracts. Take-it-or-leave-it contracts certainly affect products and services that are anything but take it or leave it. How readily can a consumer reject taking on a mobile phone, an Internet service, a shrink-wrap software program or a hire car at the airport when they have only a short period to complete the transaction and get on with their business or a personal loan agreement?

The Council of the European Communities adopted a directive on unfair terms and consumer contracts in 1993. Member States were required to pass laws to protect consumers. Unfair terms arose when there was a serious imbalance in the parties' rights and obligations. United Kingdom laws are found in its Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulation 1999. Canada has introduced into its consumer protection laws clauses about terms in consumer agreements that are harsh, oppressive or excessively one sided. Victoria has had similar laws for the past seven years. They can be found in its Fair Trading Act 1999 as amended. What about New South Wales over the past decade? The Legislative Council Standing Committee on Law and Justice released its final report entitled, "Unfair terms in consumer contracts", on 23 November 2006.

Fortunately, the process really started nationally when the Productivity Commission made recommendations to the Ministerial Council on Consumer Affairs. This prepared the framework for regulatory reform to facilitate and improve the national economy. Last year the Federal Assistant Treasurer and Minister for Competition and Consumer Affairs, Chris Bowen, said that legislation banning unfair contract terms would be fast-tracked. Well, the deadline is 1 July and the train is about to leave the station, whether or not New South Wales has laid the track or is ready. On this fast track the New South Wales Government has been bringing up the rear yet again.

On 2 July 2009 the Council of Australian Governments signed an intergovernmental agreement to carry out this legislative task. Developed by mutual agreement of the State and Commonwealth governments, it is the Commonwealth that has taken the lead here. This bill reflects that common purpose and intention to benefit consumers and rein in unfair business practices. It is a long overdue reform in New South Wales. *Choice* magazine has long been an advocate for unfair contract terms laws. According to *Choice* magazine:

We think unfair contract terms should be banned by national laws which apply to all industries. Fair contract terms legislation should:

- Give consumers the right to challenge an unfair term, and obtain compensation where justified.
- Enable the ACCC to remove an unfair contract term from a company's standard contracts.
- Be accompanied by an effective enforcement mechanism.

The bill before us now amends the Fair Trading Act 1987 to enact provisions concerning unfair contract terms that will eventually form part of the new Australian Consumer Law when it commences, and makes consequential amendments to the Contracts Review Act 1980. This set of protections is due to commence nationally, as I have mentioned, on 1 July this year and will apply to contracts entered into from that date, or which are renewed from that date. Where a term is varied after that date, the bill will apply to that varied term from the date the variation is made. So, while the law is not strictly retrospective, members can see that a contract renewal or variation can extend its reach back in time.

The bill will affect consumer transactions for the supply of goods or services. It will also have application where there is a sale or grant of an interest in land. In this latter case the effect is limited to situations where the sale or grant is to an individual, where the purpose is wholly or predominantly for personal, domestic or household use, and where the sale or grant is made in the course of trade or commerce. The heart of this bill is that it inserts proposed part 5G into the Fair Trading Act 1987. Part 5G takes provisions from the Australian Consumer Law on the matters of standard form consumer contracts and unfair terms.

The steps in the process are these: new section 60ZD makes void any unfair term in a consumer contract where that contract is a standard form contract. Members should note that it is the unfair term that is rendered void, not the contract as a whole, although in some cases the contract will collapse without the offending term. What is a standard form contract? New section 60ZH helps define this. Essentially, this is where one party has all or most of the bargaining power or where, for example, the contract was prepared by one party before any discussion relating to the transaction occurred. New section 60ZI excludes certain kinds of marine contracts and the constitutions of companies, managed investment schemes and other bodies. Unfair terms are partially defined by new section 60ZE. This provides that a term is unfair if:

- (i) it would cause a significant imbalance in the parties' rights and obligations arising under the contract, and
- (ii) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, and
- (iii) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

Detriment does not have to be financial. Emotional stress, for example, will also be relevant. This new section is of some help, but really leaves business operators and consumers somewhat up in the air. New section 60ZF sets out terms that unfairly prejudice the consumer or provide advantage to the trader. Examples of unfair terms are: unilateral power to terminate the contract; unilateral power to assign the contract to another, to the detriment of that other party; unilateral power to interpret the contract in the event of a dispute; unilateral power to vary the terms of the contract; unilateral power to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract; unilateral power to vary the up-front price without providing the other party with a right to terminate; and a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract.

The tribunal or court can consider matters such as fine print or illegible print, key terms buried in the depths of the documentation, use of impenetrable jargon or legalese. The list is not conclusive—there may indeed be situations where one of these questionable or grey terms is permissible. A trader can defend the claim that its contract is standard form by proving that the term is reasonably necessary to protect their legitimate interests. This would involve providing evidence on issues such as business costs and how the business must run in order to be viable in the marketplace. This will be an interesting provision to follow through the courts.

Three other points are worth noting. First, the director general or, with leave, a party to a standard form consumer contract can apply to the Supreme Court for a declaration that a term in contracts of that kind is unfair. This process will broaden our understanding of what terms are not permitted. Secondly, the Minister or the director general may issue public warnings in relation to business practices involving the use of terms in consumer contracts that are standard form contracts that are or may be unfair. Thirdly, under Victoria's Fair Trading Act, with the unfair terms amendments of 2003, a range of sanctions and penalties were provided so as to put some muscle into the process. For example, when a supplier continues to use or attempts to enforce a prescribed unfair term in a standard form contract, individuals can be liable to a penalty of \$1,000 for each contract, and companies \$2,000 for each contract.

There is also power to compel corrective advertising. Could the Minister please outline to members, for the sake of clarity, the sanctions regime for New South Wales applying to the use of unfair terms in consumer contracts? We do not oppose the bill and look forward to the next stage, later this year, covering product safety and consumer guarantees, which are scheduled to be implemented by 1 January 2011.

Mr DAVID CAMPBELL (Keira) [8.56 p.m.]: I am pleased to speak in support of the Fair Trading Amendment (Unfair Contract Terms) Bill 2010. I commend the decision taken by this Government to commence the new unfair contract terms law ahead of the rest of the Australian consumer law. I note the comments of the member for Albury, who said that the Opposition does not oppose the bill. Until now, the only jurisdiction in Australia that regulates unfair contract terms is Victoria. That State has had great success in challenging unfair terms in contracts for mobile phones, hire cars, fitness centres and Internet service providers, to name just a few.

In 2006 the Legislative Council Standing Committee on Law and Justice held an inquiry into unfair terms in consumer contracts and recommended the amendment of the Fair Trading Act 1987 to establish a scheme modelled on that in Victoria. Action was deferred pending the outcome of the Productivity Commission inquiry into Australia's consumer policy framework. The Productivity Commission's May 2008 report concluded that there were sound economic and ethical reasons for proscribing unfair contract terms that cause consumer detriment. Existing laws, such as the unconscionable conduct provisions in the Trade Practices Act and State fair trading Acts, were found to provide limited scope for addressing the issue of unfair contract terms.

The commission accepted that there is persuasive evidence of the prevalence of unfair terms, but acknowledged that there is little information on the extent of consumer detriment associated with them. As for the effect on business, the commission found little evidence of significant compliance costs or adverse unintended commercial consequences in Victoria and countries such as the United Kingdom that have enacted laws against unfair contract terms. The Productivity Commission report also found there was a strong argument for the inclusion of an unfair contract terms provision in the new National Consumer Law in order to avoid a proliferation of State-based, possibly inconsistent laws.

Since the Council of Australian Governments decision in 2008 to develop an Australian Consumer Law, the Commonwealth Government, in consultation with the States and Territories, has worked hard to introduce a national unfair contract terms law. That law will commence on 1 July 2010. The Fair Trading Amendment (Unfair Contract Terms) Bill 2010 amends the Fair Trading Act to enact those provisions in New South Wales. Unfair contract terms are unreasonable and one-sided contract terms. Examples of terms that are commonly described as being unfair include those giving a supplier the right to vary contracts at any time for any reason or penalising the consumer, but not the supplier, for a breach or termination of the contract.

The use of unfair terms in standard form or non-negotiated contracts is the major concern. Using standard form contracts in transactions between businesses and consumers is largely a consequence of the mass production and provision of goods and services, the deregulation of certain markets and the impact of technical innovation. In some industries a single standard form contract, often developed by an industry or professional association, is used by most or all service providers. Standard form contracts are used in various types of transactions, including transactions that occur online.

Standard form contracts have distinct advantages—namely convenience, certainty, time saving and reduced transaction costs. However, the way in which standard form contracts are used and entered into can be problematic. Typically, consumers do not bargain or shop around in the area of contractual terms and traders do not compete. In some transactions consumers have little opportunity to fully understand the contract terms or obtain independent advice before making a decision to purchase. Standard form agreements are generally offered on a take-it-or-leave-it basis.

The bill applies only to terms in standard form consumer contracts. A standard form contract is not defined. If a party to a contract alleges it is a standard form contract it is presumed to be so unless the other party proves otherwise. The bill lists a number of factors a court or the Consumer, Trader and Tenancy Tribunal may take into account when determining whether a contract is standard form. These include matters such as the relative bargaining power of the parties and the extent to which the consumer was required to accept, without opportunity to negotiate, contract terms drawn up by the trader before the transaction occurred.

A consumer contract is a contract for the supply of goods or services or the sale or grant of an interest in land to an individual who acquires the goods, services or land wholly or predominantly for personal, domestic or household use or consumption. The bill provides that an unfair term in a standard form consumer contract is void. Only a court or the Consumer, Trader and Tenancy Tribunal can find that a term is unfair. To do so the court must be satisfied that the term meets all three elements of unfairness: first, it would cause detriment, whether financial or otherwise, to a party to the contract; secondly, it would cause a significant imbalance in the parties' rights and obligations arising out of the contract; and, thirdly, it is not reasonably necessary to protect the legitimate interests of the party that would benefit from the term.

In other words, the court must find that the consumer will suffer financial loss or be highly inconvenienced or distressed if the term is acted upon, that the rights and duties given by the term substantially favour the trader over the consumer, and that there is no genuine business or commercial reason why the trader needs to include such terms. I am sure all members can think of examples of contract terms that they would regard as unfair. This law gives the courts a series of standards by which they can make a judgement. It lists 14 types of terms that may be unfair, but this list is by no means exhaustive. I will conclude by referring to an actual contract term that I hope will fall foul of this new law. It falls into the category of a term that penalises, or has the effect of penalising, one party but not the other party for a breach or termination of the contract. The term states:

If we have agreed to provide a Service to you for a particular term and you terminate before the end of the term, then you will be liable to us:

- a) for the whole contract amount quoted to you at the commencement of the term in respect of the provision of Services throughout the term;
- b) an early termination fee; and
- c) any outstanding charges, constitute a debt owing to us at the time of the early termination of this Agreement.

That sort of provision is one that I am proud to say this bill will render unconscionable. I am pleased to be part of a Government—in fact, part of a Parliament, given the Opposition has indicated it will not oppose the bill—that is taking a step forward in consumer protection. I commend the bill to the House.

Mr JOSEPH TRIPODI (Fairfield) [9.03 p.m.]: It gives me great pleasure to support the Fair Trading Amendment (Unfair Contract Terms) Bill 2010. From 1 July 2010 standard form consumer contracts that are entered into, or terms of existing contracts that are renewed or varied after that date, will be subject to the unfair contract terms law. Under the law, a term in a standard form consumer contract is considered to be unfair if it causes significant imbalance in the parties' rights and obligations arising under the contract, the term is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term, and it would cause detriment, whether financial or otherwise, to a party if it were to be applied or relied on. A court or tribunal must also consider how transparent the term is within the contract and the contract as a whole when deciding whether the term is unfair and therefore void. While a term found by the court or tribunal to be unfair will be void, the contract will continue to bind the parties to the contract, to the extent that the contract is able to operate without the unfair term.

This law has been developed with the agreement of all Australian jurisdictions. It is the first stage of the introduction of the Australian Consumer Law. Our Commonwealth colleagues have described the Australian Consumer Law as the biggest reform of consumer protection law since the passage of the Trade Practices Act in 1974. The Commonwealth is lead legislator and the States and Territories will apply the national law as part of their own laws. This bill is a precursor to the introduction of the application law in New South Wales. It picks up the unfair contract terms provisions already passed by the Australian Parliament. A similar bill was recently passed in Victoria. That State has had unfair contract terms legislation since 2003 and needed to amend its law to make it consistent with the Commonwealth provisions.

The benefit of a national law is that consumers will have the same rights and responsibilities, regardless of where they live, and businesses will follow the same rules whether they operate in one State or throughout the

country. Enforcement and administration of the unfair contract terms law will be shared between the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and State and Territory fair trading agencies. When the Productivity Commission recommended in favour of a national law, it also suggested that an unfair contract terms provision should be accompanied by inter-jurisdictional protocols to promote general consistency in enforcement and to prevent particular unfair contract issues being pursued by more than one regulator. Such cooperation is essential. The experience of Victoria and the recently announced enforcement policy of the Australian Competition and Consumer Commission are important guides to the way this bill will be enforced in New South Wales.

On commencement, the Australian Competition and Consumer Commission will seek compliance with the unfair contract terms provisions and will review standard form consumer contracts where consumer harm is evident. The Australian Competition and Consumer Commission will seek suppliers' cooperation to remove terms that may be unfair from consumer contracts. Where necessary, the Australian Competition and Consumer Commission will take further steps, including enforcement action, if faced with a contract term it believes to be unfair to consumers. Such enforcement action would mean an application to the court for a declaration that a particular contract term is unfair. Under the New South Wales bill, the Supreme Court can declare a contract term to be unfair on application by the Director General of Fair Trading.

Once a term is declared unfair it is void and the trader must not rely on it. This means that the trader must not attempt to enforce the term, attempt to exercise a right conferred by the term or assert the existence of a right conferred by the term. A trader who seeks to apply or rely on a declared unfair term is in contravention of the Act. It is not a criminal offence, but a civil contravention. This bill amends the Fair Trading Act so that the same remedies and enforcement provisions that are currently available when a trader engages in misleading, deceptive or unconscionable conduct are also available when a trader breaches the unfair contract terms provisions. The Supreme Court may grant remedies such as an injunction restraining a trader from engaging in certain conduct, an order that a trader engage in corrective advertising or orders to compensate consumers for loss or damage suffered as a result of the contravention.

An important point about this law is that it enables individual consumers to exercise their rights. The bill provides that a party to a standard form consumer contract may make an application to the Supreme Court for a declaration that a term of the contract is unfair. To prevent vexatious actions, such an application can be made only with the leave of the court. However, regardless of the provisions relating to declarations, a party to a standard form consumer contract may bring or defend proceedings in a court or tribunal of competent jurisdiction for relief in respect of a term that is void because it is unfair. For example, if a trader took proceedings in the Local Court to enforce a standard form contract against a consumer, the consumer could argue that the relevant term was unfair. If the court found that the term met the test for unfairness set out in the Australian Consumer Law and the Fair Trading Act, it would be void and could not be enforced.

Under the Australian Consumer Law only the courts can find a contract term in a standard form consumer contract to be unfair. In New South Wales the courts will share this jurisdiction with the Consumer, Trader and Tenancy Tribunal. The tribunal provides an accessible, quick and cost-effective dispute resolution service at hearing venues located throughout the State. The cost of applying is low and concessions are available for pensioners and students. Hearings are informal and generally legal representation is not required. Having access to the tribunal will make it easier for ordinary consumers to exercise their rights when affected by unfair contract terms. For example, a consumer in dispute with a trader may make a consumer claim in the Consumer, Trader and Tenancy Tribunal and seek an order for relief from payment. One of the reasons for seeking the order might be that a term of the standard form of contract is considered to be unfair. The tribunal could find that the term met the test for unfairness set out in Australian consumer law and the Fair Trading Act and take that into account when determining the claim.

This law, which has been well received by members on both sides of the House, presents people with a great opportunity to seek justice through the tribunal process and through the judiciary. Currently, people in my electorate are experiencing adverse treatment from Australian National Car Parks—a company that, in my view, is ripping off many people who park in the shopping centre car parks that it manages. The Government will examine this law closely to ensure that people who use those car parks and who are being ripped off by that operator have recourse to justice through this new legislation. I look forward to its operation and to the relief it will offer many people who suffer under unfair contract terms. I look forward to 1 July, when this legislation will be implemented and people can seek justice through this new remedy.

Mr JONATHAN O'DEA (Davidson) [9.11 p.m.]: Given the hour and our legislative agenda, I will make only a brief contribution to debate on the Fair Trading Amendment (Unfair Contract Terms) Bill 2010.

I welcome the legislation and share the sentiment expressed by the shadow Minister that we should not object to the bill. Matters on which the States and the Commonwealth cooperate, which have a more administratively and legislatively consistent approach on sensible issues concerning not just consumers but also businesses, should be welcomed. However, I have one qualification. While the Minister believes she is taking a revolutionary type of approach in introducing what she calls landmark law, I feel compelled to reinforce the point made ably by the shadow Minister that what New South Wales and Australia are really doing is catching up on reforms introduced overseas almost 20 years ago.

In closing, the challenge I give to the Government is that we should implement consumer and other legislation that looks to the future. We are living in an increasingly technological environment. While this legislation addresses a long overdue missing link in Australia's consumer legislation—we look forward to further legislation being introduced in the course of the year—we should examine technological innovation that has been increasing exponentially and reforms to consumer law that are more visionary, more forward looking and that anticipate social, cultural and technological environments. I leave that challenge with the Government, but I welcome this legislation.

Ms VIRGINIA JUDGE (Strathfield—Minister for Fair Trading, Minister for the Arts) [9.13 p.m.], in reply: As members have heard, the Fair Trading Amendment (Unfair Contract Terms) Bill 2010 is one of the most significant consumer protection reforms we have seen in our great nation for about a generation. I thank Rod Stowe and Susan Dixon from the Office of Fair Trading who for some time have put a lot of effort and work into this bill. I want their names recorded in *Hansard* as they deserve recognition for their tireless efforts and for their diligence. I also thank my hardworking ministerial staff. As I have outlined, all governments have agreed to introduce Australian consumer law that would be jointly administered by the Commonwealth, the States and the Territories.

As a first step, the Commonwealth and the New South Wales and Victorian governments are enacting laws to regulate unfair contract terms from 1 July 2010. This bill will amend the Fair Trading Act to protect consumers from the use of unfair terms in standard form consumer contracts. Under the amendments contained in the bill, only new contracts will be affected—and existing contracts if the terms are renewed or varied from 1 July 2010. An unfair term in a standard form consumer contract is void, while the contract continues to operate without the term. Terms that describe the goods or services the consumer has agreed to buy, or disclose the upfront price the consumer has agreed to pay, are not covered. Only a court or the Consumer, Trader and Tenancy Tribunal can find a term unfair after deciding it meets the three elements of unfairness and considering how transparent it is and the contract as a whole.

The Director General of Fair Trading may apply to the Supreme Court for an order declaring a term to be unfair, and a business that seeks to enforce a declared unfair term is indeed in breach of the Fair Trading Act. A consumer may bring proceedings in a court or tribunal in relation to an unfair contract term and may apply also to the Supreme Court for a declaration, but only with the leave of the court. I turn briefly to some of the specific issues raised by members. The member for Albury asked why New South Wales had tarried in introducing these amendments. New South Wales deferred action pending the outcome of the report of the Productivity Commission in May 2008 to allow for consistency between all jurisdictions. The member for Albury also said that variations could be retrospective. Only variations to terms that are made after 1 July 2010 can be made void by the courts, which I think is perfectly appropriate. If they are varied, the unfair aspect is current, not retrospective, despite when the original contract was made.

The member for Davidson said that he welcomed the legislation but that New South Wales was catching up on reforms introduced overseas almost 20 years ago. He wants the legislation to encompass technological innovation. This legislation has been in force federally since 1974 and is flexible enough to encompass contracts relating to technological advances in goods and services. In other words, it is generic legislation. The member for Albury also asked what penalties and sanctions applied for using unfair terms. An unfair contract term is void. This means that the term is treated as though it never existed. However, the contract will continue to bind the affected parties to the extent that it is capable of operating without the unfair term.

The Supreme Court can declare a contract term to be unfair on application by the Director General of Fair Trading or a party to the contract, with the leave of the court. Once a term is declared unfair it is void and the trader cannot rely upon it. This means that the trader must not attempt to enforce the term, attempt to exercise a right conferred by the term, or assert the existence of a right conferred by the term. A trader who seeks to apply or rely on a declared unfair term is in contravention of the Act. It is not a criminal offence but it would be a civil contravention. The Director General of Fair Trading can take advantage of the enforcement and

remedies provisions of the Fair Trading Act to ensure that the conduct ceases and that consumers who have suffered loss are compensated. These include injunctions to restrain misconduct and orders to compensate consumers.

I thank all members who contributed to debate on the bill. I mention in particular the member for Keira, who spoke about the benefits and disadvantages of standard form contracts and the types of unfair terms that can be found in contracts. The member for Fairfield, one of the last speakers in the debate, highlighted the way in which our regulatory agencies will enforce the law and how the courts and the Consumer, Trader and Tenancy Tribunal will deal with individual consumer disputes under the law. In conclusion, I believe that consumer protection in New South Wales will be much improved with the passage of this significant and historic bill. 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.

COMMERCIAL ARBITRATION BILL 2010

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [9.19 p.m.], on behalf of Ms Carmel Tebbutt: I move:

That this bill be now agreed to in principle.

The Commercial Arbitration Bill 2010 will repeal the Commercial Arbitration Act 1984 and provide a new procedural framework for the conduct of domestic commercial arbitrations. The bill facilitates the use of arbitration agreements to manage domestic commercial disputes and will ensure that arbitration provides a cost-effective and efficient alternative to litigation in Australia. The current Act is part of uniform domestic arbitration legislation across all States and Territories. This uniform legislation has not kept pace with changes in international best practice and still reflects the old English arbitration Acts. There is now a compelling need for reform and many prominent stakeholders, in particular the Chief Justice of New South Wales, have advocated for the update of commercial arbitration legislation.

At the May 2010 meeting of the Standing Committee of Attorneys-General, Ministers agreed to update the uniform legislation. This updated law would be based on the United Nations Commission on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration. The UNCITRAL Model Law reflects the accepted world standard for arbitrating commercial disputes. New South Wales took the lead in developing this model bill and will be the first jurisdiction to introduce legislation based on the model bill and provide business with up-to-date domestic arbitration laws. I shall deal briefly with the amendments to the bill in the other place.

The first amendment by the Opposition inserted the words "given on or after the termination of the mediation proceedings" at the end of proposed section 27D (4). The effect of the amendment is to clarify that consent to a practitioner proceeding to arbitrate must be given after the mediation. The Government moved three technical amendments. The first amendment added clause 8 to the list of specified provisions that apply whether the arbitration occurred in New South Wales or elsewhere. Clause 8 deals with stays on court proceedings if there is a valid arbitration agreement relating to the matter. It is appropriate that this power applies regardless of where the arbitration will occur.

The second amendment relates to clause 17I, which sets out the grounds for recognition or enforcement of interim awards. The words "of the State or Territory" were included in clause 17I (1) (a) (iii) to clarify the clause's meaning. The final amendment, to clause 20 (3), clarified that an arbitral tribunal can sit anywhere if

convenient, including outside the State, for consultation, hearings or inspection of anything relevant to the proceedings. The reform of domestic arbitration legislation is particularly timely when one has regard to developments in international arbitration. Uniform national laws that reflect accepted international practice foster the regularity and certainty that is conducive to efficient commerce. In addition, the ability of Australian courts to deal with international arbitration is based on their experience with domestic arbitration.

Notably, the jurisdictions with which we compete for international arbitration work do not have different national and international arbitration laws, and nor should we. In November 2009 the Commonwealth Government introduced the International Arbitration Amendment Bill to increase effectiveness, efficiency and affordability in international commercial arbitration. Additional to these legislative changes is the opening of the first dedicated international dispute resolution centre in the central business district later this year. All this will help ensure that Sydney capitalises on the booming market in commercial dispute resolution, ensuring that the business and the legal systems operate in essentially one commercial arbitration environment, whether domestically or internationally.

At the April 2009 meeting of the Standing Committee of Attorneys-General it was agreed that the UNCITRAL Model Law could form the basis for the reform of domestic arbitration legislation. It was agreed also that additional provisions, consistent with the UNCITRAL Model Law, and necessary for domestic dispute management, would be appropriate. There are a number of good reasons for adopting the UNCITRAL Model Law as the basis for the domestic law. First, the United Nations Commission on International Trade Law Model Law has legitimacy and familiarity worldwide. It has provided an effective framework for the conduct of international arbitrations in many jurisdictions, including Australia, for more than 24 years. It provides a well-understood procedural framework to deal with issues such as the appointment of arbitrators, jurisdiction of arbitrators, conduct of arbitral proceedings and the makings of awards, and therefore is easily adapted to the conduct of domestic arbitrations. Indeed, jurisdictions such as New Zealand and Singapore have based their domestic arbitration legislation on the UNCITRAL Model Law, and it has proven appropriate.

Secondly, basing domestic commercial arbitration legislation on the UNCITRAL Model Law creates national consistency in the regulation and conduct of international and domestic commercial arbitration. The Commonwealth International Arbitration Act 1974 gives effect to the Model Law in relation to international arbitrations. Many businesses, including legal ones, operate domestically and internationally, and one set of procedures for managing commercial disputes makes sense. Thirdly, practitioners and courts will be able to draw on case law and practice in the Commonwealth and overseas to inform the interpretation and application of its provisions.

Several prominent stakeholders, including the Chief Justice of New South Wales, have advocated for or endorsed the UNCITRAL Model Law as the appropriate basis for our domestic arbitration law. Following the Ministers' agreement at the April 2009 standing committee meeting on the UNCITRAL Model Law as the way forward, a draft model commercial arbitration bill was prepared. The draft bill was sent out for targeted consultation with stakeholders. Feedback was sought, particularly on the appropriateness, adequacy and desirability of arbitrations and amendments to the UNCITRAL Model Law tailored to domestic dispute management and related matters.

Seventeen initial submissions were received. These were considered carefully and have informed the bill before the House. The Government takes this opportunity to thank all those who contributed to the development of the bill. The bill is based upon the text and spirit of the UNCITRAL Model Law. This delivers consistency with the Commonwealth's international arbitration law and the legitimacy and familiarity of internationally accepted practice. However, the United Nations Commission on International Trade Law Model Law does not provide a complete solution to the regulation of domestic commercial arbitration. Therefore, the bill supplements the model law to provide appropriately for domestic dispute management.

At the April 2009 standing committee meeting the Ministers agreed on two principles to guide the drafting of the uniform legislation. They were, first, that the bill should give effect to the overriding purpose of commercial arbitration—namely, to provide a quicker, cheaper and less formal method of finally resolving disputes than litigation—and, secondly, that the bill should deliver a nationally harmonised system for international and domestic arbitration, noting the Commonwealth's review of the International Arbitration Act 1974. The purpose of the law agreed to by Ministers is found in clause 1A (c) of the bill, which states:

The paramount object of this Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

Stakeholders advocated for and endorsed the inclusion of a paramount object clause, noting the absence of such a provision as a weakness in the present uniform commercial arbitration Acts. I turn now to the details of the commercial arbitration framework established by the provisions of the bill. Part 1 of the bill applies the bill to domestic commercial arbitration and clarifies that it is not a domestic arbitration if it is an international arbitration for the purposes of the Commonwealth Act. Part 2 of the bill defines an arbitration agreement and requires a court before which an action is brought to refer that matter to arbitration if it is the subject of an arbitration agreement, and a party so requests. Part 3 deals with the composition of arbitral tribunals, and provides flexibility and autonomy to parties in selecting the arbitrator or arbitral tribunal to decide their dispute. It enables parties to agree not only on the number or arbitrators but also on the process by which they will be selected and how they may be challenged. It also provides a default position should the parties not be able to reach agreement.

Clause 12 sets out the grounds on which the appointment of an arbitrator may be challenged and obliges proposed arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The jurisdiction of arbitral tribunals is dealt with in part 4, which makes it clear that an arbitral tribunal is competent to determine whether it has jurisdiction in a dispute, but also enables a party to seek a ruling on the matter from the court when a tribunal determines that it has jurisdiction. Interim measures are dealt with in part 4A of the bill, which provides power to arbitral tribunals to grant interim measures for purposes such as maintenance of the status quo and the preservation of assets and evidence. The bill also confers power to grant enumerated interim and procedural orders in addition to those contained in the UNCITRAL Model Law.

Arbitral tribunals are granted flexibility, unless the parties otherwise agree, to conduct an arbitration on a stop-clock basis in which the time allocated to each party in the hearing is recorded progressively and is strictly enforced. That will enable arbitral tribunals to conduct arbitrations in a manner that is proportionate to the amount of money involved and the complexity of the issues in the matter. Similarly, clause 33B in part 6 of the bill enables an arbitral tribunal to limit the costs of arbitration, or any part of arbitral proceedings, to a specified amount, unless otherwise agreed by the parties. That will give arbitral tribunals the flexibility to cap costs on the basis of proportionality. This is another mechanism to ensure that arbitrations can be conducted in a manner proportionate to the money and complexity of the issues involved.

Part 4A also provides for the recognition and enforcement of interim measures issued under a law of New South Wales, or of another State or Territory in certain circumstances. The grounds for refusing recognition or enforcement of an interim measure are also stated in part 4A. The conduct of arbitral proceedings is dealt with in part 5 of the bill, which provides that parties must be given a fair hearing and that they are free to agree on the procedure to be followed by an arbitral tribunal. Alternatively, in the absence of agreement, the arbitral tribunal will be able to conduct the arbitration as it considers appropriate. This will ensure that parties and arbitral tribunals may be granted flexibility to adapt the conduct of the proceedings to the particular dispute before them. Part 5 includes some provisions that are additional to those stated in the Model Law to ensure that arbitrations can be conducted efficiently and cost effectively.

Clause 24B imposes a duty on parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings. Clause 25 sets out the powers of an arbitral tribunal in the event of the default of one of the parties. Additional powers to those stated in the UNCITRAL model are also conferred by clause 25 to ensure that arbitral tribunals have sufficient powers to deal with delay by parties or failure to comply with a direction of the tribunal. Clause 27A enables parties, with the consent of the arbitral tribunal, to make an application to the court to issue a subpoena requiring a person to attend arbitral proceedings, or to produce documents. Clause 27D provides that an arbitrator can act as a mediator, conciliator or other non-arbitral intermediary, if the parties so agree, to provide further flexibility for parties to agree on how their disputes are to be determined. However, if a mediation or conciliation is not successful, an arbitrator is prevented from resuming as an arbitrator without the written consent of all parties.

Part 5 also provides an optional confidentiality regime. Confidentiality is regarded as one of the key benefits of arbitration for parties that are dealing with sensitive commercial topics. The part 5 provisions have been drafted to be consistent with those of the Commonwealth Act and provide a default position if an alternative confidentiality regime is not agreed upon by the parties. As parties often assume that arbitration is both private and confidential, provisions apply on an opt-out basis to cover situations in which an arbitration agreement does not cover confidentiality. Part 6 of the bill covers the making of awards and the termination of proceedings. The UNCITRAL Model Law has been supplemented by additional provisions to deal with costs

and the awarding of interest. As stakeholders overwhelmingly suggested that harmonised treatment of costs and interests across international and domestic legislation was desirable, the provisions are consistent with the Commonwealth Act.

Recourse against award is dealt with in part 7 of the bill, which outlines the circumstances in which an application can be made for the setting aside of an award, or grounds upon which parties can appeal against an award, if parties have agreed to allow appeals under the optional provision. Recognition and enforcement of arbitral awards is dealt with in part 8 of the bill, which allows for the recognition of awards irrespective of the State or Territory in which they are made, and outlines the grounds on which enforcement may be refused. The Commercial Arbitration Bill 2010 will ensure that New South Wales domestic arbitration laws reflect accepted international practice for resolving commercial disputes and will provide businesses with a cost-effective and efficient alternative to litigation. I commend the bill to the House.

Mr GREG SMITH (Epping) [9.36 p.m.]: I lead for the New South Wales Liberal Party and The Nationals in debate on the Commercial Arbitration Bill 2010. The bill will appeal the Commercial Arbitration Act 1984 to facilitate the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay or expense. In doing so, the bill encourages the use of arbitration as a means of resolving domestic commercial disputes, and harmonises the procedures for resolution of such disputes with those applicable to the resolution of international commercial disputes under the Commonwealth International Arbitration Act 1974, which I will refer to as the Commonwealth Act.

The bill facilitates the use of arbitration agreements to manage domestic commercial disputes by adopting the provisions of the United Nations Commission on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration—which I will refer to as the Model Law—taking into account the Commonwealth Act and, with appropriate modifications, domestic commercial arbitration. The bill also contains a number of additional provisions supporting the arbitration process as well as some optional provisions that may be used by parties to an arbitration agreement, should a dispute arise between the parties. The provisions relate to assistance from the Supreme Court, or another court nominated by the parties, the consolidation of arbitral proceedings, the disclosure of confidential information, and the awarding of interest and costs. The bill also provides for the issue of subpoenas, and recognition and enforcement of awards with respect to domestic commercial arbitrations.

The bill is based on the United Nations convention, which is known as UNCITRAL. It reflects the accepted world standard for arbitrating commercial disputes. However, some provisions of the bill are not based on the UNCITRAL Model Law, and I deal with those in greater detail at a later stage. In 1989 the Commonwealth Parliament amended the International Arbitration Act by enacting the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration in section 16 of schedule 2 to the Act. Most recently, in May 2010 a meeting of the Standing Committee of Attorneys-General reached agreement to implement a model commercial arbitration bill based on the UNCITRAL Model Law.

The United Nations law on international commercial arbitration forms the basis of the bill because the model law has international acceptance and provides a consistent precedent. Basing a uniform commercial arbitration Act on the model law will provide national consistency in the regulation conduct of New South Wales domestic commercial arbitration. Furthermore, that will enable access to precedent and case law and practice of the Commonwealth and overseas jurisdictions.

I turn to the bill in some detail. Part 1 stipulates that the proposed Act applies only to domestic commercial arbitrations. The International Arbitration Act 1974 applies to international commercial arbitrations. Part 2 relates to arbitration agreements, which must be in writing. Clause 8 provides that if a party subject to an arbitration agreement requests, the court must refer that matter to arbitration. Part 3 deals with the composition of an arbitral tribunal. Clause 10 enables the parties to determine the number of arbitrators, with the default number of arbitrators being one. Clause 11 allows the parties to agree on a procedure for appointing arbitrators, and clause 12 requires that an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. It also sets out the grounds for challenging the appointment of an arbitrator.

Part 4 deals with the jurisdiction of an arbitral tribunal. Interestingly, in part 4A, clause 17 (3) (g), an arbitral tribunal is given power to divide, record and strictly enforce the time allocation for a hearing between the parties, which is referred to as a stop-clock arbitration. Part 5 is an important part and deals with the conduct of arbitral proceedings. Clause 18 makes it clear that parties must be given a fair hearing and a reasonable

opportunity of representing the party's case. It is likely that this section will be relied upon when parties make submissions on their time allocation in stop-clock arbitrations. Clause 19 provides that the parties are free to agree on the procedure to be followed, and clause 22 provides that the parties can agree on the language to be used by the arbitral tribunal.

Clause 24 sets out the procedure for the conduct of arbitral proceedings. Unless otherwise agreed by the parties, the arbitral tribunal is to decide whether to hold an oral hearing or to make a decision on the papers. Clause 24A enables a party to appear in person or be represented by any person of their choice in oral hearings of the tribunal, and clause 24B imposes a duty on the parties to do all things necessary for the proper and expeditious conduct of arbitral proceedings. Clause 25 is an important provision, and enables the arbitral tribunal to make an award dismissing a claim with costs when it is satisfied there has been an inordinate and inexcusable delay on behalf of the claimant in pursuing a claim. Clause 26 empowers an arbitral tribunal, unless otherwise agreed by the parties, to appoint and call experts.

Clauses 27A and 27B provide for the issue and enforcement of subpoenas. Clause 27D provides that an arbitrator can act as mediator in the proceedings if the parties agree. It also outlines the circumstances in which mediation can be terminated, including when a party withdraws their consent to the mediation. We moved amendments to clause 27D in the upper House because we believed the term "consent" in clause 27D (4) was ambiguous and could refer to prior, as well as subsequent, consent. We commend the Government for agreeing to that amendment. We also moved an amendment to delete clause 27D (7). In our submission that clause as presently drafted appears to mandate that an arbitrator reveal confidential information to all other parties to the arbitration proceedings.

However, matters learnt in mediation should remain confidential, particularly as there is no transcript of the mediation. The only appeal from a decision of an arbitrator would be on a matter of law to the Supreme Court. Should a party complain that a mediator destroyed their case by disclosing confidential material learnt during the confidential mediation process, that party may wish to submit that it was an error of law and that the material should not have been disclosed. We can only speculate on whether this would be upheld by the court. It could be envisaged that the mediator would have to be called to justify his or her decision on why they considered the matters disclosed to be material, and whether procedural fairness was accorded to the parties.

We also believe that the reference to material in clause 27D (7) is ambiguous as it is not certain what information referred to in that section is material. The issue of consent then raises its head. Does the arbitrator need to disclose this material before the issue of consent or after? Clearly, parties and their lawyers would want to know precisely what constituted information the arbitrator was intending to disclose before deciding whether to consent. Parties to a failed mediation would clearly not want confidential information about the strengths or weaknesses of their case to be disclosed to the other party before an arbitration and in open court before their opponent. The Government argued that unless this is done there may be appeals where an arbitrator decides the case on relevant material disclosed in mediation but not disclosed in subsequent evidence in the arbitration.

We answered that argument by saying that this very situation occurs in court every day, where rejected evidence or evidence on voir dire is rejected and put out of the mind of the presiding judicial officer. Matters can only be decided on the admissible evidence presented in the trial. This applies equally to an arbitration. It should also be noted that the United Nations Commission on International Trade Law Model Law does not have any provision equivalent to clause 27D. These provisions were not included in the draft legislation that was circulated to various stakeholders and the consent or agreement the Government received from people such as Michael Kirby, who is the president of one arbitral group, is not valid so far as this provision is concerned. This is the situation. Clause 27D (2) states:

An arbitrator acting as a mediator:

- (a) may communicate with the parties collectively or separately, and
- (b) must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees or unless the provisions of the arbitration agreement relating to mediation proceedings otherwise provide.

Clause 27D (7) provides:

If confidential information is obtained from a party during mediation proceedings as referred to in subsection (2) (b) and the mediation proceedings terminate, the arbitrator must, before conducting subsequent arbitration proceedings in relation to the dispute, disclose to all other parties to the arbitration proceedings so much of the information as the arbitrator considers material to the arbitration proceedings.

Effectively, clause 27D will not be used. There will be no attempt to mediate these proceedings because parties who want to keep their side of the argument confidential will know that there is no assurance of confidentiality despite the provisions of proposed subsection (2). This is supposed to be model legislation for the whole of Australia. It is a disgrace that the Government has got agreement on such complex legislation without drawing the attention of the other States to this clear conflict. The mediation provision means nothing. If this is how Australia looks at commercial arbitration in the future, it will not work. The bill will come back for amendment because the other States will reject it. I understand that the Government did not want to disclose to the other States that the president of one arbitration group had discovered this hole. That is an absolute disgrace. Again, the Government has shown that it is unfit to govern in this State. The sooner the Governor moves in and sacks the Government the better.

Mr Paul Pearce: What did you have for dinner?

Mr GREG SMITH: I have not had any dinner—that is the problem. The Government is rushing through legislation this week that it should have managed to pass in previous sitting weeks. As I said, the bill prohibits an arbitrator who has acted in mediation proceedings that have been terminated from conducting a subsequent arbitration unless the written consent of all the parties to the arbitration has been obtained. We believe that the material disclosed in confidence in mediation should remain confidential unless the parties consent. This is not a matter that should be mandated. Accordingly, we believe our amendments were both necessary and reasonable. The Government has indicated that it will refer this issue back to the Standing Committee of Attorneys-General. Why do that after the legislation is passed? It should have been referred already and the legislation delayed. Perhaps the Government was embarrassed, as it had sent some faulty legislation to the committee previously and does not want to admit it.

The Opposition hopes that its submission is given positive consideration at that time. We will tell our colleagues in other States to watch out for this and to push for it. We will tell them that the New South Wales Government was too pigheaded to agree to a necessary amendment that would have removed that inconsistency. The Opposition also wants decent commercial arbitration legislation and mediation to be encouraged. Mediation cuts costs. Mediation is very useful, and is something that the Government has supported in so many ways but has effectively sabotaged commercial mediation by leaving in clause 27D (7). It is pigheaded and the Government should agree to amend it. It has another chance to do so now.

Clause 27E provides for the protection of confidential information. That is a joke because if the mediator/arbitrator has now been bound to disclose. Clause 27F sets out the general circumstances in which a party to the proceedings or the arbitral tribunal can disclose confidential information and clause 27G allows an arbitral tribunal to authorise the disclosure of confidential information. Those are circumstances in which arguments can be put to seek to persuade so that when a decision is made the Supreme Court may make an order prohibiting the disclosure of confidential information, but that is after this disclosure, after the failed mediation. The Supreme Court cannot stop that; perhaps we will wait and see. The Supreme Court may determine a question of law that arises in the course of arbitration.

Part 6 deals with the making of an award and termination of proceedings. Clause 28 enables the parties to choose a substantive law to be applied to the particular facts of the matter in dispute, as opposed to determining the arbitral law under which the dispute is resolved. It makes it clear that an arbitral tribunal is to make a determination in accordance with the terms of the contract, taking into account the usages of the trade applicable to it. Clause 30 provides for the recording of a settlement between the parties in the form of an award, and clause 32 describes the circumstances in which arbitral proceedings are terminated. Clause 33 enables the correction or interpretation of a provision of the award, or the making of an additional award.

Clause 33A enables an arbitrator to make an order for specific performance of a contract in circumstances in which the Supreme Court would have power to do so, unless otherwise agreed by the parties. Importantly, clause 33B allows the arbitral tribunal, unless otherwise agreed by the parties, to determine costs, including fees and expenses of the arbitrator or arbitrators, at its discretion and to direct that they be limited to a specified amount. A direction limiting the amount must be given sufficiently in advance for the parties to take it into account in managing their own costs. Clause 33C applies division 11, costs assessment, of part 3.2, costs disclosure and assessment, of the Legal Profession Act 2004 to the assessment of costs by a court exercising jurisdiction under proposed section 33B.

Clauses 33E and 33F empower the arbitral tribunal to direct interest to be paid as part of an award. Part 7 deals with recourse against an award. Clause 34 outlines the circumstances in which an application to the court

may be made for the setting aside of an award, or an appeal against an award, and the criteria to be applied. Clause 34A enables an appeal to the Supreme Court, or another court agreed by the parties as referred to in proposed section 6, on a question of law if the parties have agreed prior to the commencement of arbitration that such appeals may be made and the court grants leave. Part 8 provides for recognition and enforcement of awards. Finally, part 9 contains various miscellaneous provisions such as clause 37, which outlines the effect that the death of a party has on an arbitration agreement, and clause 39, which confers immunity on an arbitrator acting in good faith.

A number of arguments are in favour of most of the provisions of the legislation. Arbitration is quicker, cheaper and less formal than litigation. Adoption of the model legislation—that is, the provisions of the Model Law and not those that have been tacked on, from New Zealand or wherever—will provide consistency and ensure that New South Wales companies operating in international markets can resolve disputes with procedures consistent with international standards. Arguments against the legislation are that increased arbitration may put more pressure on our courts in having to cope with appeals or re-hearings from failed arbitrations, and more emphasis should be placed on mediation rather than arbitration.

The Opposition has sought consultation from the Law Society, the Bar Association, the Director of Public Prosecutions and Legal Aid, from whom no submissions had been received, but ultimately the Opposition was given some comment. However, the Opposition has been provided with a submission from the Alternate Dispute Resolution Committee of the Bar Association that, in general, supports the Government's clause 27D. The Opposition also received a copy of a letter from the Chief Justice to the Attorney General supporting the Government's version of clause 27D. However, as I read it, he did not specifically refer to clause 27D (7). However, the UNCITRAL Model Law does not have any provision equivalent to clause 27D and the Chief Justice has not commented on the provisions that deal with the disclosure of confidential material. Finally, we received a submission from the President of the Chartered Institute of Arbitrators (Australia) Limited, Mr Derek Minus, who opposed the Government's version of clause 27D. Correspondence went each way in the *Australian Financial Review* and other papers. We do not oppose the bill but we urge the Government to fix up the problem with clause 27D before other States are burdened with it.

Mr PAUL PEARCE (Coogee) [9.56 p.m.]: I will refer to the matter raised by the member for Epping at the conclusion of my contribution. It may seem peculiar for me to comment on the Commercial Arbitration Bill 2010, but for a number of years before being elected to this place I was an accredited mediator in BA/DA mediation with the Australian Commercial Disputes Centre. I also hold formal academic qualifications in mediation. The bill will repeal the Commercial Arbitration Act 1984, which is part of uniform legislation operating across all States and Territories. The uniform legislation is now out of date, and at the May 2010 meeting of the Standing Committee of Attorneys-General, Ministers agreed to update the uniform legislation and implement a model Commercial Arbitration Bill 2010, based on the United Nations Commission on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration.

The UNCITRAL Model Law is recognised worldwide and has provided an effective framework for more than 24 years for the conduct of international arbitrations in many jurisdictions, including Australia. The Commonwealth adopted the UNCITRAL Model Law in its International Arbitration Act 1974, with some additional provisions. The update of commercial arbitration law is timely. Commercial dispute resolution is a booming market, that is one way to look at it, and Sydney is set to capitalise on this later in the year with the opening of a dedicated international dispute resolution centre in the central business district. The centre, funded jointly by the Commonwealth and New South Wales governments, the Australian Centre for International Commercial Arbitration and the Australian Commercial Disputes Centre, will strengthen capacity for corporations to resolve commercial disputes without resorting to litigation.

The centre will feature world-class communication, audiovisual and video-conferencing facilities, tribunal facilities, conference rooms and access to translation and transcription services. The ability of Australian courts to deal with international arbitration is founded upon their experience with domestic arbitration. Basing the uniform commercial arbitration Acts of the States and Territories on the UNCITRAL Model Law will provide consistent frameworks for the conduct of international and domestic commercial arbitration. Practitioners and courts will then be able to draw on case law and practice in the Commonwealth and overseas to inform the interpretation and application of its provisions, providing a significant advantage.

This reform of domestic arbitration legislation also coincides with the Commonwealth Government's amending of the International Arbitration Act 1974 to ensure that Australia remains at the forefront of international arbitration practice. The bill will create a legal framework for domestic arbitration in New South

Wales based on internationally accepted best practice and provide genuinely harmonised systems for the regulation and conduct of international and domestic commercial arbitration. It will support business by providing an attractive and viable alternative method of resolving commercial disputes.

Before concluding I will discuss a couple of issues raised by the previous speaker, the member for Epping, in relation to the provisions of clause 27D, and in particular clause 27D (2) in relation to the arbitrator's role as a mediator and clause 27D (7) that applies when the parties move into arbitration. My view is that this is an understandable and totally workable provision. The nature of mediation is such that a certain level of confidentiality is necessary. When dealing with pure mediation—an agreement to mediate where the mediator speaks to both parties individually to crystallise the issues and then brings the parties together to reach a level of consensus—it is necessary for the parties to feel confident that, in front of the mediator, they can bring their true issues to the fore and the mediator will maintain confidentiality.

Under this legislation, although mediation is clearly a part of the process, we are talking about an arbitration model wherein the parties agree to have a third party—an arbitrator—resolve the issues that arise in a commercial sense between them within the prevailing legal framework and the terms of the contractual agreement. So we are not talking about a mediation. The comments of the member for Epping would be appropriate if we were dealing with mediation where there is an obligation on the part of the mediator to keep confidential the matters raised in mediation, unless the parties agree that they should be disclosed.

We are dealing with a situation where an arbitrator acts at an interim stage as mediator and then, under clause 27D (7), reverts to their role as arbitrator, at which point, by the nature of the agreement entered into by the parties, the arbitrator must be able to make some level of determination. In those circumstances, the arbitrator has to bring certain matters to the fore to resolve the issues between the parties. The whole crux of arbitration, as opposed to a legal process through the court structure, is that there is vested in the arbitrator the capacity to resolve matters. The reality is that the players involved are aware that the person who acts as mediator and is subsequently the agreed arbitrator will be in a position to disclose certain matters. I suggest therefore that the parties may not disclose matters in the first instance if they require them to remain confidential. Arbitrators must have adequate matters before them to be able to resolve issues, and to broker a deal or broker the arbitration they must be able to disclose certain matters.

In my view we cannot look at clause 27 D without also looking at the subsequent clause 27H, which relates to moving to court proceedings where the court can prohibit disclosure of confidential information in certain circumstances. The provisions of clause 27D (2), clause 27D (7) and the subsequent clause 27H have to be read in concert to see the stages—mediation, arbitration and litigation—and get the entire picture. It may well be that the member for Epping has a valid point, and that will obviously be determined by the Standing Committee of Attorneys-General. However, in my view, the legislation—particularly the provisions of clause 27D—will satisfy the requirements to achieve the arbitral process and deliver the correct result between commercial parties to a dispute. I commend the bill to the House.

Mr DAVID CAMPBELL (Keira) [10.05 p.m.]: I support the Commercial Arbitration Bill 2010, which aims to ensure that arbitration provides an efficient and cost-effective alternative to litigation for parties seeking to settle their commercial disputes. The bill repeals the current Commercial Arbitration Act 1984, which is part of uniform domestic arbitration legislation in all States and Territories. The Standing Committee of Attorneys-General agreed to update the uniform legislation, and New South Wales took the lead in developing a model bill.

Targeted stakeholder consultation was undertaken as part of the process of developing the model bill, which is based on the United Nations Model Law on International Commercial Arbitration. One of the attributes that can make arbitration an attractive alternative dispute resolution process is that it can provide a quick, fair and impartial method of resolving commercial disputes, while minimising costs. In order to ensure that arbitration provides a viable alternative, it is necessary to define and limit the role of the courts in arbitration. The bill clarifies that the role of the courts is to maintain the significant protective function they exercise.

To what extent parties to an arbitration, and/or an arbitrator, should be able to access the courts, given the aims of commercial arbitration, was one of the issues that was highlighted during the course of stakeholder consultation on the bill. Many submissions suggested that allowing too much scope for recourse to the courts prevents arbitration from providing an effective and viable alternative to litigation. Submissions suggested that judicial involvement in arbitration should be kept to a minimum in order to give full effect to the paramount object of the bill, namely, to facilitate the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay or expense.

The provisions in the bill relating to recourse against arbitral awards are those from the United Nations Model Law on which the bill is based. They are also consistent with the Commonwealth's International Arbitration Act 1974. The courts will be able to set aside awards in the circumstances set out in the bill, including if a party was under some incapacity or was unable to present their case; if the award deals with matters not within the scope of the submission to arbitration; if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or if the award is in conflict with the public policy of New South Wales.

The consensual nature of arbitration, party autonomy and freedom of choice were also recognised in submissions as attributes of arbitration that make it an attractive alternative dispute resolution method. The ability of parties to decide how their commercial disputes are to be decided is one of the strengths of arbitration. Therefore, on the extent of recourse to the courts, submissions suggested that parties should also be able to agree to allow appeals on questions of law. The bill provides an optional provision that enables parties to agree to allow recourse to the courts on a question of law arising out of an award from any time after a dispute has arisen to the end of the three-month period allowed for appeals.

These provisions strike the right balance between ensuring arbitration can facilitate the fair and final resolution of disputes and providing parties with choice and autonomy in deciding the manner in which their disputes are decided. Parties are able, after a dispute has arisen and they are aware of the nature and extent of the issue, to agree to enter arbitration subject to judicial review, if they choose. The bill promotes the attributes that make arbitration an attractive and viable option for dispute resolution. It preserves both its consensual nature and the principles of party autonomy and justice, and its emphasis on speed, efficiency and cost effectiveness.

The issues of efficiency and cost effectiveness attract me particularly to a contemporary, modern commercial arbitration system. Where people are engaged in a contract for the provision of services or the construction of a particular piece of infrastructure there are many opportunities for troubles to arise along the way. I strongly support having a contemporary means of commercial arbitration to resolve the challenges that may arise in the course of a contract. I believe the provisions of the bill put that in place. I commend the bill to the House.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.10 p.m.], in reply: I thank the members representing the electorates of Epping, Coogee and Keira for their contributions to the debate, particularly the member for Coogee for his contribution on proposed section 27D. The member for Epping made much of that proposed section and I wish to respond to that. Proposed section 27D of the bill relates to the power of an arbitrator to act as a mediator or other non-arbitral intermediary. In the course of an arbitration, an arbitrator may assist the parties to attempt to settle the dispute by means other than arbitration, such as mediation.

This is what is often referred to as a med-arb clause; it facilitates the use of multiple dispute resolution techniques by one practitioner to get the matter resolved. This allows parties the flexibility to attempt to solve their dispute by negotiation and agreement, but also provides certainty, should the mediation terminate, as the arbitration is still able to proceed to a binding award. For these combined processes to be used, the arbitration agreement needs to provide for this to happen, or the parties need to agree in writing to this happening, presumably after suggestion by the practitioner that it would be conducive of resolution of the matter.

It should be borne in mind that proposed section 27D will only therefore apply if the parties want to use this combined mediation and arbitration process. Under the proposed section, an arbitrator acting as a mediator may communicate with the parties collectively or separately and must treat any information obtained from a party with whom they communicate separately as confidential, unless that party otherwise agrees or the arbitration agreement relating to mediation proceedings otherwise provides. While this provision allows flexibility and provides for the possibility of resolving the dispute by the parties' own agreement, there are two concerns that can arise where a person acts as both arbitrator and mediator in the same dispute. As Mr David Owen, QC, of 20 Essex Street Chambers, London, explains:

An arbitrator ... who embarks on confidential discussions with the parties, may become partial, or at least lose the objective appearance of impartiality. Similarly if the arbitrator meets with parties privately, there is an immediate concern about due process if the arbitration subsequently proceeds. Difficult problems can arise about how any confidential information obtained by the arbitrator is to be used.

To ensure procedural fairness and eliminate the potential for abuse of natural justice, the other party should have the opportunity to respond to or rebut any such information. The proposed section therefore provides that should

the mediation terminate for any reason, the person who has acted as mediator and then proposes to resume their duties as arbitrator must disclose to all other parties so much of the confidential information that has been obtained from a party during mediation as the arbitrator considers material to the proceedings. However, the proposed section also provides that a mediator can only conduct subsequent arbitral proceedings with the written consent of all parties. I point that out to the member for Epping.

This affords parties a method of protecting their confidential information should they not wish it to be disclosed, and avoids disadvantaging a party that has engaged freely and fully in the mediation process. Therefore, if the parties do not wish to have the same person conduct the mediation and arbitration they are able to withhold their consent, and the proposed section then provides for the appointment of a substitute arbitrator. If parties do choose to continue on with the same person, they do so having given informed consent that the arbitrator must disclose any information they have provided in private sessions that the arbitrator considers relevant to the proceedings, to afford the other party a chance to respond to that information. I note that the parties in these matters are all going to be advised by experienced lawyers; presumably, a well-advised party will discuss with the arbitrator, prior to giving consent to that person continuing, what information the arbitrator proposes to disclose.

By requiring the parties' written consent to resume subsequent arbitral proceedings, the proposed section addresses the risk of bias by providing parties with the ability to withhold their consent should they believe the subsequent arbitral process would be flawed or unfair. However, to provide a measure of protection for arbitrators, should the parties give their written consent to a person conducting subsequent arbitral proceedings, no objection can then be taken solely on the ground that the person acted previously as a mediator. Proposed section 27D allows the parties to settle their dispute by their own agreement but also ensures that should attempts to settle not be successful a binding resolution is able to be delivered by an arbitrator.

The consent based regime, requiring the parties' consent both to enter into mediation or other non-arbitral processes with an arbitrator and to then proceed to subsequent arbitral proceedings should settlement not be reached, provides procedural safeguards to address concerns about the potential for abuse of natural justice and the risk of bias. I would also like to correct the record on certain matters. In a letter to the *Australian Financial Review* on 8 June, Michael Sweeney, past Deputy Chair of the Institute of Arbitrators and Mediators Australia (Victorian Chapter), said of the disclosure provisions in proposed section 27D (7):

This is extraordinarily novel; a world first.

This is not correct. Both Singapore and Hong Kong have in their Acts provisions of similar effect. One main objective of this bill is to harmonise our domestic arbitration law with the international arbitration law. The United Nations Commission on International Trade Law [UNCITRAL] Model Law, on which the bill is largely based, does not have a med-arb clause. Because of the interest in using this sort of process, we included this section in the bill. Doug Jones, President of the Australian Centre for International Arbitration, wrote to the Attorney General in the following terms on 7 June this year:

ACICA regards it as critical that there be no delay in the implementation of legislation to reform commercial arbitration in Australia and whilst recognising that the issue of Arb/Med is a topic deserving of careful consideration, and one on which views may legitimately differ from a policy point of view, does not believe that the passing of legislation as presently drafted should be delayed pending a debate on this issue

The Attorney General agrees with this position. The issue of how best to regulate this sort of ADR process is one on which professional opinion is divided. The weight of it is, though, supportive of the Government's position, I must say. The ADR Committee of the New South Wales Bar Association has advised the Attorney General that it supports the bill and proposed section 27D in particular. The Government has also had similar indications from senior stakeholders. In order to work through the issues properly the Attorney General will take the issue of proposed section 27D back to the Standing Committee of Attorneys-General, and all the parties will have the opportunity to make their case. In this way, we can get on with the important task of modernising and harmonising our arbitration laws, and we can work through the issues raised regarding this section in an appropriate way. In a letter to the Attorney General on 8 June 2010, Mr Alan Linbury, a director of the Chartered Institute of Arbitrators, said:

Contrary to the views of Mr. Minus ("Arbitrators condemn NSW bill", AFR 4 June, page 47) and Mr. Sweeney ("Flawed NSW bill threat to arbitration", AFR 8 June, page 57), section 27D of the Commercial Arbitration Bill presently before the NSW Parliament will make mediation followed by arbitration by the same person ("Med-Arb") more attractive, not less, by affording disputants the opportunity to "opt out" after the mediation phase, in which case someone else will arbitrate. Under s27 as it stands in the present Act, they have to commit beforehand to the entire combined process and this has meant it has been virtually unused, "stillborn", to use Mr. Sweeney's expression, not by this Bill but since the section was enacted.

The Bill thus encourages disputants to embark on Med-Arb, since they do not have to use the same person as arbitrator if, once the mediation phase has terminated, they feel uncomfortable doing so.

This bill will repeal the Commercial Arbitration Act 1984 and provide a new procedural framework for the conduct of domestic arbitrations. The bill facilitates the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay or expense, and will ensure that arbitration provides a cost-effective and efficient alternative to litigation in Australia. The current Act, as part of uniform legislation operating across all States and Territories, needs to be modernised. While court practices and procedures have improved and developments in arbitration law have been made by many jurisdictions around the world, Australia's domestic commercial arbitration laws have changed little since they were first introduced.

There is a compelling need for reform and many prominent stakeholders have advocated for the update of commercial arbitration legislation, including the Chief Justice of New South Wales. At the May 2010 meeting of the Standing Committee of Attorneys-General, Ministers agreed to update uniform legislation and implement a model Commercial Arbitration Bill 2010 based on the United Nations Commission on International Trade Law [UNCITRAL] Model Law on International Commercial Arbitration. The UNCITRAL Model Law reflects the accepted world standard for arbitrating commercial disputes. New South Wales took the lead in developing this model bill and will be the first of the jurisdictions to introduce the legislation based on the model bill and to provide businesses with up-to-date domestic arbitration laws.

The UNCITRAL model law was adopted as the basis for the model Commercial Arbitration Bill 2010 for several reasons, including its legitimacy and familiarity worldwide, and its proven efficacy in regulating domestic commercial arbitration in other jurisdictions, including New Zealand. Basing the uniform commercial arbitration Acts on the Model Law provides genuinely harmonised systems for the regulation and conduct of international and domestic commercial arbitration. Practitioners and the courts will, therefore, be able to draw on case law and practice in the Commonwealth and overseas to inform the interpretation and application of its provisions. With Sydney set to share in a booming market in commercial dispute resolution after the opening of the first dedicated international dispute resolution centre in the central business district later this year, and given the Commonwealth Government's changes to the International Arbitration Act 1974 to ensure Australia remains at the forefront of international arbitration practice, the reform of domestic arbitration legislation is timely.

The reform of arbitration laws at both a State and a Federal level will create an international best practice legal framework for arbitration in Australia. The Commercial Arbitration Bill 2010 will ensure that New South Wales domestic arbitration laws reflect accepted international practice for resolving commercial disputes, and will provide businesses with a method to resolve disputes that is fair, quick, informal and cost-effective. I have pleasure in commending the bill to the House.

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

Motion agreed to.

Bill agreed to in principle.

Passing of the Bill

Bill declared passed and returned to the Legislative Council without amendment.

COMMUNITY RELATIONS COMMISSION AND PRINCIPLES OF MULTICULTURALISM AMENDMENT BILL 2010

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.23 p.m.], on behalf of Ms Carmel Tebbutt: I move:

That this bill be now agreed to in principle.

The Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010 will amend the Community Relations Commission and Principles of Multiculturalism Act 2000 that was introduced by the Carr Labor Government. The bill strengthens the principles of multiculturalism as the policy of the State while better facilitating the work of the Community Relations Commission in securing the policy objectives of the Act. The bill ensures the functions of the commission include proactive research to identify potential issues relating to community harmony, and better facilitates the leadership role of the commission as a coordination point for whole-of-government responses to emerging issues relating to cultural diversity.

The bill implements recommendations made by Ms Irene Moss, AO, in her review. That review was made in accordance with section 27 of the Act. The aim of the Moss review was to determine, first, whether the policy objectives of the Act remain valid and, second, whether the terms of the Act remain valid for securing those objectives. The Moss review found that some terms of the Act relating to the principles of multiculturalism would benefit from amendment in order to better articulate the ideals they seek to encapsulate. The review also found that some of the practical provisions of the Act should be modified in order to better facilitate the work of the commission. The bill before the House tonight also reflects amendments made in the other place.

I will now outline the key provisions of the bill. The bill amends section 3 of the Act relating to the principles of multiculturalism in order to better express the objectives of the Act. In addition, the bill strengthens existing powers and introduces new provisions into the Act in order to better reflect the inclusive spirit of the Government's broader policy objectives relating to community relations. The bill clarifies the commission's objectives as they relate to the promotion of social justice and community development and facilitates a number of its functions required by the Act. There was a general consensus in submissions to the review that the broad policy objectives of the Act are still relevant.

Submissions endorsed the Act's key objectives, as currently articulated by the four principles of multiculturalism: a cohesive and harmonious society based on mutual respect and a shared commitment to Australia; opportunities for all individuals in society to contribute to and participate in civil society and the public decision-making process; equitable access to government services and programs; and maximisation of the cultural and economic benefits that diversity brings to the State. However, the issue of shared values was addressed by a number of submissions. Some submissions proposed that the principles of multiculturalism should be maintained as currently articulated in the Act, while the value of a shared commitment to Australia, its laws and institutions, should be located earlier in the relevant section of the Act.

Recognising this, the bill strengthens the principles of multiculturalism in section 3 of the Act by elevating references to the "importance of shared values governed by the rule of law within a democratic framework" and a "unified commitment to Australia" to the first part of this section. These reforms are not about watering down our commitment to cultural diversity or imposing new requirements on people merely by virtue of the fact that they come from culturally and linguistically diverse backgrounds. Instead, they articulate that the strongest guarantee of diversity and harmony is a clear commitment to the democracy and rule of law on which our great nation is based.

The review also recommended that section 13 of the Act should include a provision that clearly articulates, as a function of the commission, the undertaking of proactive strategies relating to community harmony. The bill therefore amends section 13 (1) (c) of the Act, explicitly adding to the existing functions of the commission the function of proactive research to identify potential issues relating to community harmony. The Moss review also highlighted the need for greater coordination of government agency responses to emerging issues relating to social cohesion and community harmony. Accordingly, the review recommended amendments that would better recognise and facilitate the commission's leadership and coordination role in these matters. The bill amends sections 13 (1) (f) and 13 (1) (g) of the Act to give the commission the clear function of acting as a single coordination point, ensuring consistent cross-agency work in this area.

Section 13 (1) (i) of the Act establishes as one of the commission's functions the provision of interpreter services. During the review, one submission raised the concern that the continuing provision of translation and interpreter services is currently rendered more difficult by provisions relating to the collection and disclosure of personal and health information under the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002. In particular, concerns related to the potential for inadvertent collection, notification, disclosure and trans-border data flow of personal or health information collected by commission staff in the course of providing translation and interpreter services. Often this information relates to the person who requested the translation or interpreter service, or to a third party on whose behalf a customer requested the commission provide such a service.

Obviously, the commission's employees are not necessarily aware of the content of the documents and the potential for them to contain personal or health information before being translated. Accordingly, it is impractical to submit these services to the requirements of the Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act. That is why the review recommended that the public interest in maintaining the principles of multiculturalism as they relate to linguistic diversity, and thus in facilitating the legislated functions of the commission, outweighs the public interest in requiring the commission to fully comply with the respective provisions under the privacy and health records Acts.

The Moss review noted that a public interest direction from the Privacy Commissioner exempting the commissioner from the relevant provision of the two Acts could offer a temporary solution to the issue. However, as the review suggested, it is more satisfactory to permanently deal with this difficulty by legislative amendment. Therefore, the bill amends section 28 of the Privacy and Personal Information Protection Act to exempt complying translation services of the commission from the Act, subject to strict requirements against the disclosure of private information other than where necessary in the course of providing these services. The bill makes a matching amendment to section 17A of the Health Records and Information Privacy Act 2002.

In the course of its business, the commission often encounters issues relating to people's experiences of ethno-religious discrimination. These matters are addressed specifically in New South Wales legislation by the Anti-Discrimination Act 1977. Given the responsibilities of the Community Relations Commission to promote and safeguard the principles of multiculturalism, the commission clearly is an interested party in instances of ethno-religious discrimination. The relationship between the commission and the Anti-Discrimination Board is recognised in statute. It is noted that while section 13 (1) (m) of the Community Relations Commission and Principles of Multiculturalism Act establishes an advisory function for the commission in relation to the Anti-Discrimination Board, the Act does not explicitly provide for the commission to make formal references to the board, nor is there a specific onus on the board to investigate these references.

Accordingly, this bill amends the current provision under section 13 (1) (m) of the Act to formalise the commission's function in making references to the Anti-Discrimination Board. Similarly, the bill amends section 119 of the Anti-Discrimination Act to reflect this relationship between the commission and the board. Every year the Community Relations Commission produces a report on the state of community relations in New South Wales and an assessment of the effectiveness of public authorities in observing the principles of multiculturalism in the conduct of their affairs. The 2009 report recently tabled in Parliament gave a compelling snapshot of the myriad activities supported by the commission over the year.

Section 14 (3) of the Act requires that reports be provided to the Minister for Citizenship by the end of March every year. This deadline was considered as part of the Moss review, with the review considering that the current time frame may not be entirely workable. The review observed also that similar legislation in other Australian States offers considerably more flexibility regarding the timing of the report to the Minister. As a result, the review recommended that section 14 (3) of the Act be amended to provide the more practical deadline of the end of April every year.

I refer now to the arrangements for the appointment of persons to act in the place of the chairperson of the commission. As part of a range of amendments to give effect to the new government departmental arrangements in November 2009, section 2 (3) of schedule 1 to the Act was amended to provide that, in the absence of the chairperson of the commission, an acting chairperson will be appointed from a government agency. This appointment is without reference to the Minister or the Executive Council to preside over meetings of the commission. The acting chairperson, while not a commissioner, will also chair commission meetings and vote at those meetings. This situation is not an optimal method of governing the commission in the absence of the chairperson.

The November 2009 amendment conflicts also with section 8 of the Act, which outlines contingency arrangements for a part-time commissioner to be appointed as chairperson in the absence of the full-time chairperson. The current arrangement has no time limit and by default can be an indefinite or permanent arrangement compromising the inherent capacity of the commission to proffer independent advice. Accordingly, the bill amends the schedule to the Act to restore the previous position that enabled the appointment of a public servant to act in the office of chairperson, but without being a member of the commission or having a right to vote or preside at meetings.

Finally, the bill seeks to address the conflict related to the commission's reporting status. The commission has been classified as a department under schedule 3 to the Public Finance and Audit Act 1983. However, it is classified also as a statutory body under section 6 (2) of its own Act. The commission's Act needs to refer to the Annual Reports (Statutory Bodies) Act 1984 with the commission reclassified in the Public Finance and Audit Act 1983 to come under the requirements of statutory authorities and not a department. The bill addresses this inconsistency in the Act by amending section 18 (2) accordingly. Ours is a great State because of the commitment of people of diverse cultural backgrounds to our public life, our economy and social fabric.

The New South Wales Government is proud of that social cohesion and is committed to the ongoing support of our rich cultural diversity. The work of the Community Relations Commission is fundamental to

these objections. The Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010 will greatly assist the chairperson and the commissioners in their crucial work. I commend the bill to the House.

Mr ANTHONY ROBERTS (Lane Cove) [10.36 p.m.]: The aim of the Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010 is to strengthen the principles of multiculturalism while better facilitating the work of the Community Relations Commission through the implementation of the review completed in 2007. Whilst the Coalition welcomes this amendment bill, it certainly has been a long time coming, a process I will review further this evening. The bill is to ensure that functions of the Community Relations Commission include proactive research to identify potential issues relating to community harmony and better facilitate the leadership role of the Community Relations Commission as a coordination point for whole-of-government responses to emerging issues relating to cultural diversity.

The Community Relations Commission has responsibility for promoting community harmony, participation and access to services in order that the contribution of cultural diversity to New South Wales is celebrated and recognised as an important social and economic resource. It recognises multiculturalism as a deliberate public policy and takes proactive steps to ensure a cohesive and harmonious society. In March 2006 letters were sent from Ms Irene Moss, AO, who was engaged by the Community Relations Commission to conduct a review of the Act, to 90 peak community organisations in New South Wales and to 20 New South Wales and Commonwealth government human services agencies inviting submissions. The review was tabled in the New South Wales Legislative Council on 19 June 2007—quite embarrassingly some time ago.

The review found that certain sections of the Act no longer adequately equip the Community Relations Commission to secure its objective. It put forward 12 recommendations and that some terms should be amended to better express the objective and enable the Community Relations Commission to fulfil its legislative objectives. I have the 12 recommendations with me, but as the member for Miranda alluded to them already I do not need to do so. We might skip that and take them as being read. As the leading government agency supporting multicultural communities in New South Wales, the Community Relations Commission builds strong relationships with ethnic community groups and develops and fosters extensive networks throughout various communities through its programs and services. As such, the Community Relations Commission is positioned to provide comprehensive advice to government on multicultural issues.

This bill seeks to strengthen the principles of multiculturalism by elevating references to the importance of shared values within a democratic framework and a unifying commitment to Australia. The reforms will articulate that the strongest guarantee of diversity and harmony is a clear commitment to the democracy and rule of law on which Australia is based. The review highlighted the need for greater coordination of government agency responses to emerging issues relating to social cohesion and community harmony. The proposed amendment will better recognise and facilitate the Community Relations Commission's leadership and coordination role in those matters.

The ability of the Community Relations Commission to refer matters to the Anti-Discrimination Board will be formalised and will promote a better relationship between the commission and the board. The bill will restore the previous acting chairperson's position and facilitate the appointment of a public servant to act in the office of the chairperson without being a member of the commission or having a right to vote or preside at meetings. Currently the acting chairperson is able to chair commission meetings and vote. The bill clarifies the commission's reporting status to resolve a conflict between the Public Finance and Audit Act 1983 and section 6 (2) of the commission's own Act.

I state for the record that if the review's recommendations had been taken on board when they were tabled in the other place on 19 June 2007, we would not necessarily have had the problems that have occurred since 2007 with certain elements of a community. I acknowledge and pay my respects to the Indian community of Sydney, which was the focus of a level of unfortunate racism and racially motivated attacks. The Government's failure in 2007 to acknowledge that there was a growing problem goes to the heart of its failure to take appropriate action and reflects a level of policy paralysis in the Government.

As the hour is late, I will address an issue that strikes a more positive note. I refer to the \$19.7 million boost for multicultural communities—in Victoria. The Victorian Government has recognised the worthiness of using a State budget to strengthen cultural diversity and provide support to groups in Victorian communities, particularly refugees. What was absent from the New South Wales State budget has a significant presence such

as that in the Victorian State budget that reflects a government that is listening to families in vibrant Victorian multicultural communities and taking action to strengthen multiculturalism in Victoria. The Victorian Government provided an additional \$1 million in community grants to bring the total to \$5.6 million this year.

Community grants are vital to the development and expansion of culturally and linguistically diverse communities through the strengthening of local organisations and programs. That is something that is lacking in New South Wales. Small grants go such a long way towards supporting multiple communities in doing their great work. The Opposition will not oppose the bill. However, I urge the Government to take Victoria's lead, as New South Wales does with respect to other portfolio areas, and support the State's multicultural communities. I reiterate for the record the Opposition's concern that it has taken since 19 June 2007, when the review was tabled in the Legislative Council, for the Government to introduce this legislation.

Mr NINOS KHOSHABA (Smithfield) [10.43 p.m.]: I support the Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010. The bill represents a strengthening of the principles of multiculturalism and the role of the Community Relations Commission in promoting community harmony within our State. By delivering on recommendations made in the "Review of the Community Relations Commission and Principles of Multiculturalism Act 2000", which was conducted by Ms Irene Moss, AO, the Keneally Government is reaffirming its commitment to the promotion of cultural diversity within our community of communities.

By strengthening the principles of multiculturalism, the Government enables the Community Relations Commission to continue its important work with a range of communities across the State. Wherever there are issues of concern relating to community harmony, the New South Wales Government plays a proactive role through the commission, which is always there, on the ground and face-to-face, as a bridge between community leaders and the Government. The commission's activities cover a wide range of areas, including a number of interfaith initiatives.

Members would be aware that the New South Wales Government has hosted and supported a number of major religious events in Parliament House. By staging these events at the heart of our democracy, I believe we have led the way in bringing about a deeper understanding between religions. The events are attended by political and religious leaders of various faiths, and include the Hindu Deepavali Festival, the Festival of Lights; Jains, Sikh and Buddhist festivities at Parliament House; the Coptic New Year at Government House; the Muslim Iftar dinner to mark the end of Ramadan, which is organised by the State Government; and the Buddhist Vesak, which is the birth of Buddha celebration at Parliament House.

The Community Relations Commission also works to implement the principles of multiculturalism through its Community Development Grants Program. The grants enable the commission to support the work of community organisations, particularly by being able to work in partnership with local councils to address the needs of people who have recently arrived in New South Wales and people in emerging communities. In another important area of the commission's work, a recent review of the operation of the Ethnic Affairs Priorities Statement program in New South Wales identified that we have one of the most advanced and sophisticated forms of public sector multicultural governance. In 2009 the commission revitalised the old ethnic affairs priorities statement, which is referred to as the EAPS program, and renamed it the Multicultural Policies and Services Program. From the chief executive downwards, all government agencies in New South Wales are responsible for developing sound multicultural plans that will ensure that programs and services are targeted and are appropriate to the cultural, religious and linguistic diversity of the State.

The commission coordinates 10 regional advisory councils throughout the State that keep it in touch with people who live in metropolitan and regional areas of New South Wales. The councils are chaired by a commissioner of the Community Relations Commission and are otherwise constituted by local senior managers of State Government service providers. The councils also include in their membership community representatives, who are drawn from a diverse range of backgrounds and who have a great knowledge of other cultures, especially about how they impact on regional areas, as well as extensive knowledge of the needs and aspirations of local communities.

The commission also conducts the annual National Multicultural Marketing Awards, which acknowledge and encourage the efforts of business and other organisations that focus on the cultural diversity of Australia in their marketing strategies. The principles of multiculturalism are not simply ideas. By strengthening the principles of multiculturalism, the bill energises all the activities to which I have referred—activities that illustrate the day-to-day fruits of a government that is passionate about multiculturalism. The amendments in the

bill reaffirm that passion not only by facilitating the important work of the Community Relations Commission but also by strengthening the principles of multiculturalism that have become a cornerstone of community harmony and cultural diversity in the State. I commend the bill to the House.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.47 p.m.], in reply: I thank the member for Lane Cove and the member for Smithfield for their contributions to debate on the Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010. I note the suggestion made by the member for Lane Cove that New South Wales should take Victoria's lead in promoting harmony, especially in relation to the Indian community. In fact, the New South Wales Government has been widely praised for its response to recent issues concerning safety in the Indian community. I know that the Indian community has applauded the consultative approach adopted by the New South Wales Government. Indeed, it is generally accepted that the proactive work of the Community Relations Commission reduced the potential for difficulty that afflicted other parts of Australia, such as Victoria. It is interesting to note that most public angst in India was directed at Victoria rather than New South Wales.

I was interested to note during the speech made by the member for Smithfield that his experience of the benefit of small grants to multicultural groups in his electorate is much the same as my experience in the Miranda electorate. Members of the Telugu Association Inc. are based in my electorate. They receive grants for a number of their festivals, including the Ugadi and Deepavali festivals. As noted by the member for Smithfield, the commission's advisory councils play an active role throughout New South Wales. The bill strengthens the role of the Community Relations Commission in cultivating community harmony within New South Wales. The amendments not only better equip the commission to perform its functions but also demonstrate the ongoing commitment of the Keneally Government to cultural diversity in our great State of New South Wales. 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 returned to the Legislative Council without amendment.

ELECTRICITY AND GAS SUPPLY LEGISLATION AMENDMENT (RETAIL PRICE DISCLOSURES AND COMPARISONS) BILL 2010

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

INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR APPEALS) BILL 2010

Agreement in Principle

Debate resumed from 10 June 2010.

Mr ANTHONY ROBERTS (Lane Cove) [10.49 p.m.]: I speak on behalf of the Liberal-Nationals Coalition on the Industrial Relations Amendment (Public Sector Appeals) Bill 2010, which amends the Industrial Relations Act 1996 to provide for the Industrial Relations Commission to hear appeals in relation to promotion and discipline matters by public sector employees and transport employees in place of the Government and Related Employees Appeal Tribunal and the transport appeal boards. Crown employees employed through the general public sector and some statutory authorities have the right under the Government and Related Employees Appeal Tribunal Act 1990 to challenge or appeal certain public sector job promotions and individual disciplinary proceedings. The rights do not extend to temporary employees and some senior employees.

Under the Transport Appeal Boards Act, public sector employees of transport authorities, such as the State Transit Authority, Sydney Ferries, the Roads and Traffic Authority and RailCorp, have similar rights of appeal in relation to promotion and disciplinary decisions. Following the referral of most industrial relations powers to the Commonwealth, the workload of the Industrial Relations Commission has been substantially

reduced, and the Government has implemented a number of measures to streamline the various authorities and boards with industrial relations roles and to better utilise the resources of the Industrial Relations Commission. The abolition of these two appeal processes and referral of the work to the Industrial Relations Commission are said to better utilise the resources of government, to consolidate public sector employment matters with a single specialist tribunal to ensure greater efficiency and consistency in the administration and conduct of proceedings and to eliminate unnecessary duplication of services.

There is also provision to authorise the Industrial Relations Commission to make rules and practice directions regarding evidentiary requirements, calling witnesses and other procedural matters, and the appeals are meant to be in a no-cost jurisdiction—that is, the Industrial Relations Commission cannot award costs. The transport appeal boards currently require the appointment of a board member, together with an authorised representative of the employing transport authority and a nominated member of the relevant union to hear the appeals. Instead, under the amendments, the president or another member of the Industrial Relations Commission will now hear those appeals.

The consolidation of these various tribunals and the regularisation of their proceedings is a more effective and efficient way of dealing with industrial relations matters affecting the public sector, and the Coalition acknowledged that and welcomed it in particular. Eliminating cumbersome processes such as those applied in the transport appeal boards and replacing them with hearings before specialists will provide for more fairness and rigour. We understand that there will be some cost savings to the public sector. However, I point out that the bill does not address the policy providing for appeals in relation to promotions, nor the appropriateness of the appeal rights and their administration.

I understand that the Government proposes to move amendments during consideration in detail. We will not oppose the bill in the lower House. On behalf of our shadow Ministers—we are fortunate to have the hardworking shadow Minister for Industrial Relations, the Hon. Greg Pearce, in the other place—I note that too often legislation comes before us because the Government is in a rush. Often the Government pushes through legislation which is poorly drafted and which regularly contains mistakes. One need only speak to the shadow Attorney General, who spends a great deal of his time fixing mistakes in government legislation, to realise how often that happens. While we will not be opposing the bill, I understand that the amendments relate to drafting issues that will be dealt with in the other place.

Mr Paul Lynch: No, they'll be dealt with here. I will move the amendments here.

Mr ANTHONY ROBERTS: We will not oppose the amendments in this House.

Mr DAVID CAMPBELL (Keira) [10.53 p.m.]: I am pleased to support this important bill. The Industrial Relations Amendment (Public Sector Appeals) Bill 2010 will enable the Industrial Relations Commission to review appeals lodged by public sector workers who are unhappy with decisions made by employees of the Crown in relation to promotions or disciplinary action. It will also empower the president of the commission to hear and determine appeals lodged by workers under the Transport Appeal Boards Act 1980. The president may delegate these functions to another member of the commission. I take the opportunity to assure workers that the changes introduced by this bill do not affect their appeal rights. Eligibility criteria for lodging promotion or disciplinary appeals for employees who currently have access to the Government and Related Employees Appeal Tribunal or the transport appeal boards remain unchanged. Similarly, existing exemptions continue to apply.

To avoid confusion and uncertainty, the existing time frames for the lodging and hearing of appeals will remain the same. It is well established that promotion appeals are not industrial disputes and should not be conducted in an adversarial way. In recognition of this, the bill seeks to maintain the prevailing informal manner of hearing and determining promotional appeals. To this end, the bill contains amendments to the Industrial Relations Act 1996 that will empower the commission to make rules and issue practice directions to facilitate simple, non-legalistic proceedings. It will also continue the provisions that currently prohibit parties from engaging a solicitor, barrister or agent to represent their interests.

Further, with respect to the hearing of disciplinary appeals by the commission, the bill retains the existing provisions that require parties to attempt to resolve the matter by conciliation in the first instance. This has proven to be a valuable mechanism that has prevented unnecessarily protracted formal proceedings. As is currently the case, in the event that conciliation is unsuccessful, the bill provides for the appeal to proceed to a formal hearing. All future appeal proceedings will be covered under a proposed new part 7 of the Industrial

Relations Act 1996 and will follow longstanding procedures contained within the Industrial Relations Act. New South Wales public sector employers particularly welcome the amendments to evidentiary processes that remove the existing requirement to constitute tripartite panels—a costly and time-consuming exercise.

The practical effect of the bill will be to deliver many benefits for public sector employees. It will ensure greater consistency in the administration and conduct of all hearings and minimise the duplication that occurs under the current fragmented system. It will deliver fairness, transparency and a level playing field for workers throughout the public sector by creating uniformity in appeal proceedings across all government agencies and authorities. It will also provide enhanced ease and convenience for industrial parties who will be able to access what is effectively a one-stop shop. Further, by directing resources more efficiently, the bill will ensure that matters are listed for hearing in a timely manner and a resolution is reached quickly. Most importantly, it will harness the considerable knowledge and expertise of the commission, and public sector workers can be confident that the hearings will be conducted with the competence and professionalism they have come to expect. For those reasons, I commend the bill to the House.

Mr PAUL LYNCH (Liverpool—Minister for Industrial Relations, Minister for Commerce, Minister for Energy, Minister for Public Sector Reform, and Minister for Aboriginal Affairs) [10.57 p.m.], in reply: I thank the member for Lane Cove and the member for Keira for their contributions to the debate. I note that the Opposition will not oppose the Industrial Relations Amendment (Public Sector Appeals) Bill 2010, which will facilitate the transfer of public sector appeal processes to the New South Wales Industrial Relations Commission.

It is a reflection of two things. One is the development of a national industrial relations system for the private sector, which has caused some changes to the Industrial Relations Commission. The second is the evolution over the past couple of decades of the role of the Industrial Relations Commission in the matters that it might have had regard to. Whereas two to three decades ago it might not have been thought that these sorts of processes should be dealt with by the Industrial Relations Commission, the commission certainly deals with them regularly these days. As the member for Lane Cove mentioned, there are Government amendments to deal with some drafting issues, which I will explain when we consider the bill in detail. 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 Paul Lynch.

Consideration in Detail

ASSISTANT-SPEAKER (Ms Alison Megarrity): With the leave of the House, I will deal with the bill in groups of clauses and schedules.

Clauses 1 to 3 agreed to.

Mr PAUL LYNCH (Liverpool—Minister for Industrial Relations, Minister for Commerce, Minister for Energy, Minister for Public Sector Reform, and Minister for Aboriginal Affairs) [11.00 p.m.], by leave: I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 5, schedule 1 [1], proposed section 93 (2). Insert after line 32:

- (a) a Department Head (within the meaning of the *Public Sector Employment and Management Act 2002*) and the person appointed or whose appointment is recommended is an officer within the meaning of that Act in that or any other Department, or

No. 2 Page 5, schedule 1 [1], proposed section 93 (2) (a), line 34. Insert "other than a Department Head" after "2002)".

Government amendments Nos 1 and 2 are of a technical nature and are designed to preserve current promotional appeal rights for officers of departments. They will continue the requirement for divisional heads of departments to publish notice of decisions to fill vacant positions where the person appointed, or recommended for

appointment, is an officer of the department. The inclusion of these amendments will ensure that officers of departments who unsuccessfully apply for vacant positions in other departments are notified by divisional heads to enable promotional appeals to be lodged within the required time frames. The amendments also will ensure closure of the recruitment process, thereby giving certainty to departments and applicants. Given the nature of the amendments, and the Government's intention to continue the current public sector promotional appeal mechanisms under the bill, I commend the amendments to the House.

Mr ANTHONY ROBERTS (Lane Cove) [11.01 p.m.]: I understand that the amendments deal with technical drafting issues and the Opposition will not oppose them in this House. However, we reserve the right upon review to oppose or amend the bill in the Legislative Council.

Question—That Government amendments Nos 1 and 2 be agreed to—put and resolved in the affirmative.

Government amendments Nos 1 and 2 agreed to.

Schedule 1 as amended agreed to.

Schedules 2 and 3 agreed to.

Consideration in detail concluded.

Passing of the Bill

Motion by Mr Paul Lynch 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.

HEALTH LEGISLATION AMENDMENT BILL 2010

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

COURTS LEGISLATION AMENDMENT BILL 2010

Bill received from the Legislative Council and introduced.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [11.03 p.m.], on behalf of Ms Carmel Tebbutt: I move:

That this bill be now agreed to in principle.

As the Courts Legislation Amendment Bill 2010 was introduced in the Legislative Council on 10 June 2010, and is in the same form, the second reading speech appears at pages 21475 to 21477 in the *Hansard* for that day. I commend the bill to the House.

Mr GREG SMITH (Epping) [11.04 p.m.]: The proposed object of the Courts Legislation Amendment Bill 2010 is to amend certain Acts and a regulation with respect to courts and tribunals and civil and criminal procedure. I speak for the Liberals-Nationals on the bill, which we will not oppose. This bill contains three amendments to the Administrative Decisions Tribunal Act 1997. First, section 24A is amended to provide that matters of costs and jurisdiction are defined as "ancillary functions" of the tribunal and a president or relevant divisional head may give directions as to the members who are to constitute the tribunal for such functions. This will in practice mean that matters relating to costs and jurisdiction may be dealt with by a single judicial member of the tribunal at first instance or by a presidential member on appeal rather than by a three-member panel.

Section 73 is amended to provide that an application to reinstate proceedings that have been dismissed because of an applicant's failure to appear must be made within 28 days after the dismissal or with leave.

Schedule 1 [6] amends clause 3 of part 1 to provide that applications made under section 28 of the Community Services (Complaints, Reviews and Monitoring) Act 1993 are to be determined by three division members of the Community Services Division of the tribunal, at least one of whom must be a judicial member rather than a practising legal practitioner. The Attorney General, in his second reading speech, advised that this amendment has been necessary because some highly qualified members, including magistrates and judges, have not held practising certificates, thereby disqualifying them from sitting.

The Children and Young Persons (Care and Protection) Act 1998 and regulations are amended to confirm that preliminary conferences held under section 65 are intended to be for dispute resolution in care proceedings in the Children's Court. This will hopefully ensure that more childcare and protection cases can be resolved through the dispute resolution process. The Children (Criminal Proceedings) Act 1987 is amended to give the Children's Court or the Local Court the power to call upon a person under the age of 21 to appear before it if the court suspects that the person has failed to comply with a good behaviour bond, or a condition of probation or outcome plan. If the person fails to appear a warrant may be issued. Section 6A of the Children's Court Act 1987 provides that the President of the Children's Court must be a District Court judge but presently the president is precluded from exercising the jurisdiction of the District Court whilst holding the office of president. This amendment will enable the president to sit as a District Court judge if requested by the Chief Judge of the District Court.

The Civil Liability Act 2002 is amended to enable orders made by the Minister pursuant to section 17, relating to the maximum amount of damages payable for non-economic loss for personal injury, to be published on the New South Wales legislation website rather than in the *Government Gazette*. Also, a victim claim pursuant to part 2A, dealing with offenders in custody, may now be conducted on the papers unless the interests of justice require a hearing in the presence of the parties. The third amendment inserts a section 26X and provides that a court cannot award exemplary, punitive or aggravated damages in an action against a protected defendant for an award of personal injury damages when the act or omission that caused the injury or death was a tort, whether or not negligence, of a person for whose tort the protected defendant is vicariously liable. The amendment extends to certain proceedings commenced before the commencement of the amendment.

The Civil Procedure Act 2005 is amended to insert division 3, which enables the transfer of civil proceedings between the Supreme Court and the Industrial Court. The Criminal Procedure Act 1986 is amended to increase from \$15,000 to \$60,000 the summary jurisdiction of the Local Court dealing with break and enter offences. Section 13 of the District Court Act 1973 dealing with the appointment and qualifications of judges is amended to enable the Governor to appoint the Chief Magistrate of the Local Court as a judge of the District Court, and sets out special provisions that will apply in such circumstances.

Section 14 of the Local Court Act 2007 regarding the Chief Magistrate is amended to provide that the Governor may appoint either a magistrate or a judge of the District Court to be the Chief Magistrate, and provides that the Chief Magistrate who also holds office as a judge of the District Court may exercise that jurisdiction if requested to do so by the Chief Judge of the District Court. If the Chief Magistrate is a judge of the District Court, that Chief Magistrate cannot resign the office of Chief Magistrate without also resigning from office as a magistrate if he or she intends to continue in office as a judge. Issues of remuneration and superannuation also are dealt with.

The Industrial Relations Act 1996 is amended to enable the President of the Industrial Relations Commission to direct that specified functions of the commission be exercised by the Industrial Registrar or by a registry officer. This apparently rectifies an oversight in earlier amendments incorporating the provisions of the Civil Procedure Act into the Industrial Relations Act. The Land and Environment Court Act 1979 is amended to enable Supreme Court judges to act as judges of the Land and Environment Court. The Supreme Court Act 1970 is amended to enable the Chief Judge and other judges of the Land and Environment Court to act as judges of the Supreme Court.

The Legal Profession Act 2004 is amended to provide that a costs assessor is to take GST payable for legal services into account in determining legal costs that are payable in relation to the provision of legal services. This amendment overcomes the ruling of the Court of Appeal in the matter of *Boyce v McIntyre* [2009] NSWCA 185 where the court held that a costs assessor did not have the power to determine the amount of GST payable on legal costs. Also an amendment to section 329 enables the regulations to provide for the fixing of costs payable for legal services provided in connection with small claims applications within the meaning of section 379 of the Industrial Relations Act 1996.

Finally, the Victims Support and Rehabilitation Act 1996 is amended to update the amounts of the compensation levy payable by offenders by reference to the consumer price index. This apparently corrects an error in the formula used to adjust the victims compensation levy for increases in the consumer price index. There are a number of arguments in favour of the legislation. These are miscellaneous amendments to legislation and are part of the Government's regular legislative review to improve the efficiency of the operation of courts and tribunals in New South Wales. The amendments to the Supreme Court Act and the Land and Environment Court Act will reduce the need for acting judges.

Hopefully, the changes to the Children and Young Persons (Care and Protection) Act 1998 and regulations will ensure that more child care and protection cases will be resolved through the dispute resolution process thereby avoiding the trauma of court proceedings and giving the parties more of a say in the outcome. There are no significant arguments against the bill. Consultation was sought with the Law Society of New South Wales, the New South Wales Bar Association, the Director of Public Prosecutions, Legal Aid and members of the Opposition. No submissions have been received to date. We do not oppose the legislation nor do we seek to amend it.

Mr GERARD MARTIN (Bathurst) [11.12 p.m.]: I follow an eminent legal person in debate on this legislation and I support the Courts Legislation Amendment Bill 2010. Last Friday the Government announced the implementation of three programs to introduce alternative dispute resolution into the Children's Court. The first of the new initiatives is the pilot of family group conferencing conducted by the Department of Community Services and run by an independent facilitator enabling families, extended relatives and community elders to come together before a case even reaches the courthouse and plan for children if there are child protection concerns.

The second program will be the Legal Aid External Child Protection pilot, which will begin in Bidura Children's Court in Glebe. Starting with 100 cases, the pilot will offer external mediation through a skilled neutral mediator leading discussion on child protection between the Department of Community Services, parents and guardians, lawyers and other interested parties. The third initiative is the use of dispute resolution conferences, which will be run by specially trained children's registrars for matters that have gone to the Children's Court. The conferences will provide parties with an opportunity to agree on the action that should be taken in the best interests of the child and allow for the direct participation in the decision-making process of the child's family and others concerned for the safety and welfare of the child.

The amendments made to the Children and Young Persons (Care and Protection) Act 1998 by schedule 1.2 are the first step in implementing the third initiative. These amendments will support the increased use of alternative dispute resolution in care proceedings in the Children's Court by, first, renaming preliminary conferences "dispute resolution conferences" and, secondly, emphasising that the primary purpose of a dispute resolution conference is to resolve disputes. Specifically, the conference should provide the parties with the opportunity to agree on the action that should be taken in the best interests of the child, which is the overriding interest of the legislation. Thirdly, the amendments will enable children's registrars to conduct a dispute resolution conference as a conciliation.

In 2007 the New South Wales Government commissioned the Hon. James Wood, QC, to conduct a special commission of inquiry into child protection services in New South Wales. The New South Wales Government has been proud to support the recommendations made in the Wood report through the Keep Them Safe action plan. All three initiatives announced last week, and therefore the amendments made in this bill, respond to the Wood report's recommendation that more use should be made of alternative dispute resolution methods both prior to and during care proceedings. The work of the Children's Court in the areas of care and protection issues fits well with the strengths of alternative dispute resolution. The adversarial nature and greater financial cost of formal court proceedings can take a great toll on people who are already undergoing the stress of a family legal dispute.

In addition, alternative dispute resolution can include and empower children and their families in decision-making, which makes for decisions that better take account of the specifics of each case, and because all parties have had a role in coming up with the solutions those outcomes are accepted by all involved and are therefore more likely to be implemented. The Government has already put in place a number of changes recommended in the Wood report. These include appointing a judge of the District Court—Judge Marien—to the new position of President of the Children's Court and appointing new children's magistrates to increase the capacity of the court to conduct circuits in Newcastle, Wagga Wagga, Lismore and Parramatta.

The Government now requires all Children's Court registrars to have legal qualifications and is improving the Children's Court data collection regime to better understand and monitor the operation of this important system. The comprehensive response to the Wood report reflects the New South Wales Government's determination to ensure children at risk are given the opportunity to reach their full potential and situations are remedied with the input of family members and interested parties. For those reasons, I commend the bill to the House.

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [11.17 p.m.], in reply: I thank the members for Epping and Bathurst for their contributions to the debate. This bill contains miscellaneous amendments arising from the regular review of courts-related legislation and other legislation. The amendments will ensure that court and tribunal procedures and criminal procedures continue to be as effective as possible. The amendments also will support the effective administration of justice in New South Wales.

The bill will allow the President of the Children's Court to sit on the District Court; enable the Children's Court, if suspecting a breach, to call on an offender of its own motion; implement recommendations of the Wood inquiry to increase the use of alternative dispute resolutions in care proceedings in the Children's Court; restrict the award of exemplary damages for offenders in custody; clarify the application of GST to cost assessments under the Legal Profession Act; allow Land and Environment Court judges to act as Supreme Court judges and vice versa for puisne judges of the Supreme Court; appoint the Chief Magistrate as a District Court judge; and resolve several minor administrative and drafting matters. The bill has been the subject of consultations with the affected courts and tribunals, with the Law Society of New South Wales and the New South Wales Bar Association. At this hour I am very pleased to commend the bill to the House, and I thank Hansard.

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 returned to the Legislative Council without amendment.

ADJOURNMENT

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [11.19 p.m.]: I move:

That this House do now adjourn.

I thank members of the Government and the Opposition, as well as the Independents, for their cooperation tonight in getting through a difficult legislative program. I particularly thank the Parliamentary Secretary, the member for Miranda, for his sterling effort in putting through a record six bills this evening, not to mention the member for Epping who responded to five of those bills.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

**The House adjourned, pursuant to resolution, at 11.19 p.m. until
Wednesday 23 June 2010 at 10.00 a.m.**
