

# LEGISLATIVE COUNCIL

Thursday 26 September 2002

**The President (The Hon. Dr Meredith Burgmann)** took the chair at 11.00 a.m.

**The President** offered the Prayers.

**FAIR TRADING AMENDMENT (EMPLOYMENT PLACEMENT SERVICES) BILL**

**HOLIDAY PARKS (LONG-TERM CASUAL OCCUPATION) BILL**

**TOTALIZATOR AGENCY BOARD PRIVATISATION AMENDMENT BILL**

**Bills received.**

**Leave granted for procedural matters to be dealt with on one motion without formality.**

**Motion by the Hon. John Della Bosca agreed to:**

That these bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages, and the second readings of the bills stand as orders of the day for a later hour of the sitting.

**Bills read a first time.**

**THREATENED SPECIES CONSERVATION AMENDMENT BILL**

**Message received from the Legislative Assembly agreeing to the Legislative Council's amendments.**

## PETITIONS

### Freedom of Religion

Petition praying that the House reject legislative proposals that would detract from the exercise of freedom of religion, and retain the existing exemptions in the Anti-Discrimination Act applying to religious bodies, received from **the Hon. Jennifer Gardiner**.

## STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

### Membership

**Motion, by leave, by the Hon. John Della Bosca agreed to:**

That Ms Saffin be discharged from the Standing Committee on Parliamentary Privilege and Ethics and that Mr Hatzistergos be appointed to the committee.

## BUSINESS OF THE HOUSE

### Suspension of Standing and Sessional Orders

**Motion by Ms Lee Rhiannon agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 81 outside the Order of Precedence, relating to the Save Callan Park Bill, be called on forthwith.

### Order of Business

**Motion by Ms Lee Rhiannon agreed to:**

That Private Members' Business item No. 81 outside the Order of Precedence be called on forthwith.

## SAVE CALLAN PARK BILL

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

### Second Reading

**Ms LEE RHIANNON** [11.09 a.m.]: I move:

That this bill be now read a second time.

Callan Park is an inner-city miracle—61 hectares of parkland, harbour foreshore, and heritage buildings. It is truly miraculous that such a park has survived to this day. It provides an oasis of green space in the crowded inner city, and it is so beautiful and has such heritage significance that it is used and loved by people from across the State. Callan Park may have survived until 2002, but if the Carr Labor Government has its way it will not survive much longer. It is only the proud defiance of the people of the area, supported by the Greens, the wider community, and many other organisations that is standing between Callan Park and Labor's developer mates. The Save Callan Park Bill is one contribution that the Greens are making to this vital campaign. The bill requires Callan Park to be retained in public ownership and it restricts uses of the existing buildings to community, education and health uses.

The Save Callan Park Bill allows existing buildings to be refurbished or replaced but only in such a way that does not increase the total footprint or the floor space ratio from the status quo. The bill is also explicit in not overriding the Heritage Act, so that the heritage structures will continue to be protected. It is a simple, straightforward bill that does exactly what it says and exactly what the community is demanding—it saves Callan Park! The campaign to save Callan Park, orchestrated in the main by the Friends of Callan Park, has been truly inspirational. I have rarely seen such a well-organised, consistent, well-supported and thoroughly impressive campaign.

One of the key achievements of the Save Callan Park campaign has been a petition containing 18,000 signatures. Honourable members see petitions handed up in this House and know that 18,000 is an astonishing number of signatures on a petition. That demonstrates the depth of public support for this issue. Equally striking is the range of suburbs from which the signatories come—obviously from the local area but also from across the city and the State, and even from overseas. Also, there have been several extremely well-attended rallies and public meetings. The rally held on 18 August this year was quite amazing, with about 1,000 people walking along the streets from Orange Grove Public School to Callan Park, where the crowd was addressed by a number of high-profile supporters and several politicians. Prior to that rally, on 7 August Balmain Town Hall had been the venue for a packed public meeting, with about 700 people in attendance.

It is exciting to see a community so united and so determined. At all of those events the message has come through loud and clear: no-one wants Callan Park to be sold off—that is, no-one other than the Labor Party hierarchy and the developers. The urgency of this issue, and, therefore, of this bill, is that Labor is moving quickly to get the developers in. Submissions to the proposed master plan closed on 5 September. Exhibited in concert with the master plan was amendment No. 7 to State environmental planning policy 56, which suspends Leichhardt council's development controls and introduces the Labor Government's development free-for-all.

Once one looks past all the public relations guff and artists impressions, the result is clear: there will be about 1,200 dwellings on the site. That is absolutely huge, and the impact will be enormous; it is a mammoth development by any standards. By comparison with those 1,200 units and townhouses, World Tower, the 75-storey Meriton monolith under construction at the other end of town on George Street, will have around 700 residential and commercial units—that is about double the number. Breakfast Point, the entire new suburb being built on the old AGL site near Cabarita, will have around 1,400 dwellings. The proposed development at Callan Park will be one of the largest residential development sites in Sydney in recent years, a massive sell-off of public land, and a massive gift to Labor's developer mates.

When one looks at the map that accompanies the master plan, it is very clear that the development has been designed with the developers in mind. The apartment blocks will hog the high ground in Callan Park, allowing extensive views over the harbour. Because of their location they will have the greatest detrimental impact on that beautiful site. This is prime Sydney real estate, which would have apartments and townhouses set in a beautiful and historic park with harbour views. If you multiply 1,200 by the cost of such Sydney property you begin to get some idea of what is behind the sell-off. It will be \$1 billion worth of real estate, quite literally. It is a developer bonanza, courtesy of a Labor Government. It is a vicious betrayal of Labor's inner-city heartland to hand over Callan Park to the developers.

Throughout this whole sorry saga, one constant has been Labor's arrogant contempt for public opinion. The local member, Ms Sandra Nori, has repeatedly derided and denigrated opponents of the sell-off. That has been one of the ugly aspects of this story. She is completely out of step with her electorate. The Minister for Planning, Dr Refshauge, has done what he too often does: favours for developers. Perhaps the most startling public expression against Labor's attitude came when the MacLeod family of Wharf Road, Birchgrove, sent an e-mail to many members asking them to save Callan Park, as they use it and value it so highly. Ms Burnswoods responded as follows:

Dear MacLeods,

Is Callan Park really near Wharf Road, Birchgrove? And why won't you still be able to walk, cycle, etc. in the huge percentage of the site which will remain open space?

I am sure my colleagues will agree that that is classic Burnswoods. There you have it: when members of the public, quite possibly Labor voters, question the Callan Park sell-off, they are met with aggression, treated with sarcasm, and accused of being liars. That is today's Labor Party. What drives a party such as the Labor Party so far from its supporters in a heartland area? One often wonders just how things ever got so bad. Part of the answer is the extent to which corporate donations have corrupted the political process in this country. In the past three years of reporting to the Australian Electoral Commission, the New South Wales Division of the Australian Labor Party declared \$2,273,613 in donations from property interests: developers, real estate agents, and so on. That is just to the New South Wales Division of the Labor Party.

How can the public be expected to have any confidence whatsoever in the fairness of the planning processes when that process has been so tainted? Of course, the Coalition is also guilty of seeking and accepting such donations, and the public is increasingly cynical of the motivation of both major parties. Labor claims that the Callan Park sell-off is necessary to fund a new mental hospital at Concord. That is a pretty pathetic and tragic reason. The fact that Labor is pushing this line does not say very much for it. The Labor Government argues that essential public services, core government activities, can only be funded through the sell-off of public assets; that is the line it is pushing. The Labor Party has been so captured by economic rationalism that the best it can do is come up with this miserable argument.

The Greens have been arguing for some years that New South Wales desperately requires better mental health facilities. Labor has failed to deliver these facilities since 1995. Let us remember that Labor has had more than seven years to act on this commitment. But this is not a poor State. The New South Wales budget is in surplus, and money can always be found for expensive new prisons, lavish advertising campaigns, or whatever else suits the Government's re-election agenda. The New South Wales Government is perfectly capable of properly funding mental health; it lacks only the political will to do so. So, that lame excuse can be dismissed very quickly.

It is an extraordinary insult to all those who support saving Callan Park to say, as Labor continues to say, that if you support Callan Park you oppose better funding for mental health. It is a bullying tactic intended to intimidate people out of speaking up. It is demonstrably a lie, and it brings shame on Labor to use such a gutter tactic. One of the hallmarks of the Save Callan Park campaign has been the extraordinary support it has garnered from across the political spectrum. The only party in New South Wales politics that is on the record as supporting the sell-off is the Labor Party. It is a remarkable day for New South Wales when the Greens and the Coalition line up against Labor on a public land issue, which demonstrates just how out of touch the Labor leadership has become.

Many local Labor members and activists support saving Callan Park but they have been steamrollered and ignored, just like the rest of the community. It is no wonder that Labor has lost so much support in its inner-city heartland. The Greens will do everything in our power to support the community's campaign to save Callan Park. The South Coast community had a major victory this week when people power put an end to the plans for a charcoal factory at Mogo. The community can see crude environmental vandalism for what it is, whether it is on the South Coast or in Sydney's inner city.

If Labor cannot be convinced of the merits of saving Callan Park, it will have to wear the consequences. The Greens say to the community: Never give up in your fight to save Callan Park. You are right and the Government is wrong. Attend the public rallies, write letters, sign petitions, and hang those green ribbons on your fence. By supporting the Save Callan Park Bill, members in this House can send a strong signal that they, too, stand with the community. By working together we can save our inner-city miracle and restore some public faith in the political process.

**Debate adjourned on motion by the Hon. Ian McDonald.**

## DISTINGUISHED VISITORS

**The PRESIDENT:** Order! I welcome into the President's Gallery the Hon. Angus Redford, the Hon. Terry Stephens and the Hon. David Ridgway from the Legislative Council of South Australia.

## BUSINESS OF THE HOUSE

### Suspension of Standing and Sessional Orders

#### Motion by the Hon. Michael Gallacher agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 2 outside the Order of Precedence, relating to the Roads Amendment (Road Tunnel Pollution Filtration) Bill, be called on forthwith.

### Order of Business

#### Motion by the Hon. Michael Gallacher agreed to:

That Private Members' Business item No. 2 outside the Order of Precedence be called on forthwith.

## ROADS AMENDMENT (ROAD TUNNEL POLLUTION FILTRATION) BILL

### Second Reading

#### Debate resumed from 19 September.

**The Hon. JOHN JOBLING** [11.25 a.m.]: I support the bill. Members of this House are aware that this tunnel is totally unsatisfactory. The filtration does not work and the fans continue to break down. The tunnel is regularly closed to traffic. A recent breakdown in the tunnel resulted in a fire and presented enormous problems for the rescuers, who had to extinguish the fire and then remove the broken-down vehicle. The tunnel is the result of a government that would not listen, even when it was told that, by world standards, the tunnel would be ineffective, the proposed filtration of the tunnel would be ineffective, and the electricity bill to run the filters would be horrendous.

It was also made very clear by Mr Forward during a hearing of one of the general purpose standing committees that the tunnel would produce portal emissions. The only way to remove some of the smog, pollutants and particulate matter from the tunnel is to allow it to escape from the portals at either end. It may take two, three, four or five years to determine the medical effect of portal emissions and pollutants from the sole stack dumped on residents of the area.

The Government has foreshadowed that cross-city tunnels and the Lane Cove tunnel will be built to the same plan. The Roads and Traffic Authority has not listened, nor has it learned anything. Tunnels in overseas countries have more efficient methods to deal with emissions. It is quite clear from the second reading speech of the Hon. Ian Macdonald that he was attempting to defend the indefensible. I can understand why he did not want another five minutes: 15 minutes of what he had to say was excessive. He went to great lengths to convince us that the Government was not opposed in principle to filtering tunnel ventilation stacks. He said that if the technology were proven, the Government would install such a system—no ifs, no buts, no maybes.

The commitment of the Parliamentary Secretary on behalf of the Government was clear and specific. Any reasonable person who read his second reading speech would understand that it was an undertaking by the Government. Subsequently the honourable member had the hide to say that current filtration technology was ineffective, did not work, and would be no more than a high-tech placebo.

**The Hon. Richard Jones:** Rubbish!

**The Hon. JOHN JOBLING:** I agree with the interjection by the honourable member: it is absolute rubbish. It could be considered as a deliberate attempt to distort the truth in the hope that it would mislead the House, or to so cloud the issue that the truth could not be determined. It is sad that people's lives are being placed at risk because more and more tunnels are being built that expel gases and particulate matter into the air. We have the claims of the Hon. Ian Macdonald and the Roads and Traffic Authority [RTA] that the technology does not work. However, we also have reports about the installation of filtration and continuing use of electrostatic precipitator technology by a number of countries around the world.

These reports are accurate, according to the RTA, which has regularly described the successful use of the technology overseas for visibility purposes by removal of exhaust particles inside tunnels. It works in most power stations in New South Wales, which use bag filtration and electrostatic precipitator technology to clean up exhaust gases. If it works in the mining industry, why would it not work in a tunnel? However, it clearly is not working in the M5 East tunnel. I suggest that people who drive through that tunnel should wind up their windows, operate their airconditioning and use the air circuit inside their cars. Even in light traffic one can see the thick, grey fog throughout the tunnel 24 hours a day. In peak traffic it is almost unbearable and many people have reported nausea, sore eyes and general unease when travelling with their windows down. It is difficult to determine from a medical point of view whether it is a trigger point for asthmatics, but it would be a major contributing factor.

**The PRESIDENT:** Order! I welcome into the public gallery students and teachers from Campsie Public School.

**The Hon. Dr Brian Pezzutti:** They would know about this tunnel.

**The Hon. JOHN JOBLING:** Yes, they would be very familiar with the tunnel and the haze of particulate matter that pervades that tunnel 24 hours a day. The RTA refuses to explain why Japan, Norway and South Korea, which have the latest and most efficient technology, and a sound understanding of that equipment, continue to install electrostatic precipitator equipment in new tunnels. Indeed, Japan replaces obsolete equipment with this technology and would not do so if the equipment did not work. It beggars belief that three countries would install technology to replace obsolete and old technology with new technology that does not work. I have heard of fairies at the bottom of the garden but that stretches the imagination. These countries are in a position to know what technology works and what does not. It is astounding to members of this Chamber and to the residents who have fought long and hard to have effective filtration systems in tunnels that the RTA expects us to believe that it knows better than the experienced authorities in these countries.

The only reason that the Government is fighting tooth and nail against the proposal is that it believes it can save money in the short term. That may well be the case, but in the long term the Government will be dragged kicking and screaming because of breaches to the Environmental Planning and Assessment Act, with pollutants being released through portals causing adverse effects on health. The retrofitting and long-term costs will be horrendous, but that is typical of the RTA. Japan has a large population. Are we honestly expected to believe that the high-tech placebo ventilation and filtration system that was recently installed by Japanese authorities in the critical and massive tunnel under Tokyo Bay does not work? The system does work efficiently and it is necessary. I wish the RTA would take note of those factors.

It is fairly well documented that the Laerdal tunnel in Norway is, by far, the longest road tunnel in the world, and is completely dependent on an extraordinarily complex filtration system. The Stromsas tunnel near Drammen depends entirely on the efficient operation of its four precipitators and cannot effectively operate without them. What is it that the proposed equipment cannot do? The Parliamentary Secretary would have us believe that the equipment does not work, when there is overwhelming evidence that it does work. He said:

In theory, ESP is designed to remove particulate matter from emissions, although there is very little scientific data or practical evidence to prove its effectiveness.

I do not know how the Parliamentary Secretary was persuaded to make such an absurd statement. I am sure he was just filibustering so that the matter would not come to a vote in our last debate on the bill. What he said is absolute nonsense. No sensible person would hold the view that the filters do not remove particles from the air in tunnels. The system works in cement works and steelworks, which have fine grey particulate matter, so why is it argued that the system will not work in a road tunnel? Evidence of the precipitators in the Laerdal tunnel shows that after every 60 to 100 hours almost 100 kilograms of fine, greasy, black dust is removed from the precipitators, or that in one pass through the filters the concentration of dust in the air drops from over 1,400 micrograms per cubic metre to under 50 micrograms per cubic metre. Those are the results of official testing. Other installations have the same results. I am sure people would rather have a tunnel that has 50 micrograms or less per cubic metre than 1,400 micrograms per cubic metre, which would be the case without filtration. The honourable member then claimed:

But ESP does not remove—or even claim to remove—noxious gases. It has no effect whatsoever on reducing oxides of nitrogen, sulphur dioxide, carbon monoxide or carbon dioxide from vehicle emissions.

That might be true in part, but the honourable member's next statement is certainly not. It is designed to be misleading by ignoring the quantities of pollutants present. He said:

These are the gases that have the most deleterious effect on health, and ESP does not remove them at all.

It is true that those gases are not removed by ESP but it is certainly not true that they have the most deleterious effect on health in their current concentrations. It is impossible to have scrubbers in filtration systems as well as electrostatic precipitation. Scrubbers work in aluminium smelters, where they efficiently remove fluoride gases. If one had the will it would be possible to fit scrubbers into tunnels. It would be a costly exercise but it would substantially reduce noxious gas emissions.

It has been suggested that the output of nitrogen oxide in the M5 East tunnel has been grossly overestimated, and that it is actually about 60 per cent less than expected. Therefore, it is not a problem of the magnitude anticipated originally. At most times nitrogen dioxide levels inside the tunnel are less than four times the National Environment Protection Council ambient air guidelines, while particulate matter levels are 20 to 30 times similar guidelines. This is borne out by the practical experience of driving through the tunnel. One must wonder why a first-class tunnel should have a Third World extraction method. Tunnel fans do not work regularly, and particulates and gases are extracted and dumped onto a once-fine residential area. I accept that the area suffers from fallout from the airport and from industrial areas and that the levels of pollutants and particulate matter are already high. But that begs the question: If pollution levels are high why is the Government not acting to reduce them? Why build a tunnel that will have precisely the opposite effect? It will increase the levels of particulates and polluting gases, which will adversely affect people's health.

One wonders whether the Government has failed to act because it considers this area to be a Labor stronghold. The electors will not rebel or change their votes, so the Government need not worry: It will do nothing and the voters will understand. That may be a cynical view, but it is a valid question when one considers what is not being done. We should remember also what has happened to the people of Newcastle and Wollongong, whose clean air requirements are completely ignored. Their views are overridden. The Government proposes to construct two more major tunnels: one will be located in a Labor area and the other in a Coalition area. Of course residents of the latter do not count, so whatever the Government chooses to do is of no consequence. I am sure honourable members will forgive me for having these dreadfully cynical thoughts about the views and attitudes of this Government, which frankly could not care less about the people affected by the extension of the M5 East.

Let us consider the advice given to a number of parliamentary committees, the expert evidence and overseas experiences that were considered by the Roads and Traffic Authority, and the information supplied to the members of Residents Against Polluting Stacks [RAPS]—who have done a superb job in attempting to fight a totally hidebound Roads and Traffic Authority that is not interested in the facts. RAPS members should be congratulated on their perseverance and the time, personal effort and money that they have expended trying to have proper filtration installed. They care about the health of residents of areas surrounding the tunnel and are trying to prevent a similar disaster when an uncaring Government foists two new tunnels—work on them is to commence within the next six months—on two other local areas. Certain measures were to be taken in the event of exceedences: It was agreed that if exceedences occurred the installation of filtration would be mandatory. The exceedences have occurred and the Government has ignored its undertaking. The filtration equipment that was promised so faithfully has not been installed. I support the bill before the House.

**Reverend the Hon. FRED NILE** [11.45 a.m.]: The Christian Democratic Party is pleased to support the Roads Amendment (Road Tunnel Pollution Filtration) Bill, which will require the installation and maintenance of pollution filtration equipment that will remove particulate matter from the air emanating from the M5 East motorway tunnel, the proposed Lane Cove tunnel and the proposed cross-city tunnel. The last two tunnels were added to the bill because of the major problems associated with the M5 East tunnel. The Government is about to initiate an extensive tunnel-building program and the health risks posed by tunnels must be clearly recognised. Tunnel ventilation must perform properly and the tunnels must be safe for use by human beings.

The Government claims that the new tunnels will ease traffic congestion and reduce travelling times by 20 minutes here and five minutes there. I recognise that traffic congestion is a problem, and the Government has decided that tunnels will improve the road system by enabling large numbers of cars to move efficiently from point A to point B. However, it appears to have no clear policy about tunnel ventilation systems, which must be of such a high quality as to prevent any health risks to commuters. If the Government does not formulate such a policy any savings in travelling time will be offset by the harmful effects on people's health.

Honourable members will know that the Hon. Elaine Nile, when she was in this place, and I often raised the health risks associated with tunnels, particularly the M5 East tunnel. We are both asthmatics and are affected perhaps more than other people by tunnel pollution. We have certainly been affected by pollution in the M5 East tunnel, and we will no longer use it. Even turning the car into a sealed capsule, with windows closed and the airconditioning off, while travelling through the tunnel does not work. One can clearly see the pollution in the tunnel—it is not hearsay—which congregates in dips in the road.

There is no doubt about the health risks posed by pollution in the tunnel and the failure of the Government's ventilation system. The Government said that the ventilation would meet the need. It is not meeting the need and I believe there may be a case for a class action by people whose health has been affected by regular use of the tunnel. Some people may have little choice, for a number of reasons, and have to use the tunnel regularly or even daily. Over a period of time their health will be affected, as will be the health of the residents who live around the huge chimney that has been built supposedly to remove tunnel fumes. When the chimney successfully removes fumes from the tunnel, the people who live around that skyscraper chimney are the ones whose health is adversely affected. This is not just hearsay. People with asthma are affected. People suffer sore eyes and other obvious health problems caused by living near the pollution and fumes that are pumped out of the tunnel into a residential area where families live. This affects both the people who drive through the tunnel and those living around the tunnel stacks that have been constructed.

The M5 tunnel was a controversial project. The Government originally had plans for four tunnel stacks to be built in very lovely pollution-free suburbs like Earlwood, but residents raised a massive outcry when they learned that the stacks would be built in their suburbs. So the Government—I believe for health reasons and political reasons—backed off the four-tunnels proposal in favour of one massive skyscraper tunnel stack near Turrella. That has added to health problems for those who use the tunnel and for those who live around that skyscraper tunnel stack.

The Government, even in its contribution to debate on the bill, seems to be digging in its heels and claiming, as the Hon Ian McDonald stated during debate on these issues, that the Government will not install the current technology because it does not work. So the Government will not install it. He went on to say that the Government is not going to waste taxpayers' money on what is no more than "a high-tech placebo", and stated, "I should point out that the M5 East stack was, and all future tunnel stacks will be, built in such a way that should effective filtration become available, it can be easily fitted." The Government is digging in its heels on this issue. That is the reason for the bill, to try to force the Government to give further consideration to the installation of electrostatic precipitators.

The Hon. Ian Macdonald takes that attitude but PlanningNSW requires the installation of electrostatic precipitators as soon as there is one exceedence, not only for the M5 East but also for the cross-city and Lane Cove tunnels. This is the contingency plan if there are exceedences and pollution limits are breached. There is no plan B, apart, presumably, from closing the tunnel altogether. One can imagine the confusion that would cause to people using motor vehicles in the city. How can a government department, the regulator and approver of infrastructure projects, require the installation of filtration equipment, and the Roads and Traffic Authority [RTA] refuse to install them because "it does not work"? If there is a question about the effectiveness of such equipment, why was it not resolved before approval was granted? It is like having the wrong fire extinguisher on the wall. If it is not going to do the job, it should not be there. It is not fit for the purpose.

So according to the RTA this contingency plan, this proposed remedy, is not fit for the purpose. Yet it is planning to build two, if not four, tunnels along the same design and the same contingency plan. I believe this is an outrageous situation. It is irresponsible in its dealing with people's health. In 1997, before approving the M5 East tunnel, Mr Sam Haddad, the current executive director, Sustainable Development Division, PlanningNSW, personally visited Norway and was sufficiently convinced by what he saw of the operation of these electrostatic precipitators to require their installation. His report stated that:

Current and certainly projected practice in Norway does not rely on exhaust stacks in tunnels but extensively relies on treatment of exhaust instead. This applies to the tunnels I have observed as well as to those planned or under construction.

This has been borne out. We know that in Norway both the Drammen tunnel—the world's longest, a 4-kilometre urban tunnel—and the Laerdal tunnel have working filtration systems that satisfy the needs of users of the tunnels and those who live near the tunnel outlets. As Sam Haddad pointed out in his 1997 report, Japan also has had a long history of installing electrostatic precipitators. In a letter in September 2001 to Residents Against Polluting Stacks [RAPS]—the organisation of residents who are concerned about the health dangers of the Government's current policy—the Japan Highway Public Corporation stated that it "has installed electrostatic precipitators in long tunnels taking the traffic load into consideration" and further commented:

The main purpose for doing this is to maintain good visibility in the tunnels. In addition, in some tunnels electrostatic precipitators have been installed in the air circulation towers to remove dust to protect the environment.

Given that evidence from overseas it seems that the main objection of the Government—not included among its other objections, which are not genuine—is finance. The Government does not want to spend money on these proven, effective ventilation systems: the electrostatic precipitators. The Government is putting up red herrings and excuses, prolonging the issue. Maybe in time someone in the Government will have the courage to say, "We have made a mistake; let's install them," and millions of dollars will have to be spent on equipment for the benefit of people's health. A proposal for a pattern of tunnels needs clear policy. Electrostatic precipitators should be installed in the M5 East tunnel so that their working efficiency can be tested to help protect the health of tunnel users and residents living near the tunnel stacks. I presume that stacks will be built for the other tunnels proposed in Lane Cove and elsewhere.

The Roads and Traffic Authority's own report was released to this House last month as a result of the call for papers, which all Opposition members and crossbenchers support. We have already supported the referrals to the General Purpose Standing Committees to conduct a number of inquiries into the M5 East motorway. The RTA report is titled "M5 East Motorway—Electrostatic Precipitators SWTC, by Connell Wagner, October 2001". It documents tenders from manufacturers of electrostatic precipitator equipment for the installation of such equipment into the M5 East tunnel, with one of the requirements being, as stated on page 5, that such equipment should have a "minimum fractional efficiency exceeding 80 per cent for PM<sub>10</sub> particles and 80 per cent for PM<sub>2.5</sub> particles". Appendix B of the report shows detailed specifications from four suppliers, showing efficiencies of 90 per cent for particles down to not just PM<sub>1</sub> but PM<sub>0.3</sub>. All four tenders have been extensively laboratory and field tested, yet the Hon. Ian McDonald has told the Parliament that electrostatic precipitators [ESPs] are "ineffective in removing ultrafine particulate matter, that is below 1.0 micron".

The tenders also show that the energy requirements are nowhere near the \$750,000 quoted by him. The tenders also show that the energy requirements are nowhere near the \$750,000 cited by him. When the Hon. Ian Macdonald speaks in this House on behalf of the Government on issues on which he has no expertise he refers to material given to him by the Government or, in this case, the Roads and Traffic Authority. But he should question the Government about the accuracy of material he is asked to read in this House. He should ascertain that he is not being misled and is not reading material that contains factual errors so that his credibility is not damaged. I ask the Hon. Ian Macdonald whether he will personally investigate material that he is asked to read in this House that I have shown to be incorrect. It puts him in an embarrassing position if he misleads the House.

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

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### FRONTIER ECONOMICS

**The Hon. DUNCAN GAY:** My question is to the Treasurer. Does Frontier Economics currently hold any consultancy or contracting positions with State-owned electricity companies, including Transgrid? Has Frontier Economics at any time during its current contract with State Treasury held consultancy or contracting positions with State-owned electricity companies? Would it be a conflict of interest if Frontier Economics held positions with State-owned companies while at the same time advising State Treasury? Will the Treasurer provide details to the House of any work that Frontier Economics has undertaken that may be in direct conflict with its highly paid position at State Treasury?

**The Hon. MICHAEL EGAN:** As the Deputy Leader of the Opposition has pointed out, Frontier Economics has been engaged by Treasury. I am not aware whether the firm has also been engaged by any of the State-owned electricity corporations. I can certainly ascertain that information and provide it to the House.

### COMMUNITY PARTNERSHIPS PROGRAM

**The Hon. RON DYER:** Will the Treasurer and Minister for State Development please advise the House of the latest initiative to assist regional economies?

**The Hon. MICHAEL EGAN:** I am pleased to advise the House of a new program to assist regional economic development, the Community Partnerships Program. The program aims to encourage greater

engagement between regional universities and their surrounding communities and to help improve economic development skills in regional communities. The initial pilot program will run in the Central West. I am delighted that Parkes and Blayney, two communities with strong economic development potential, have agreed to participate. A regional development expert at Charles Sturt University's Western Research Institute will be appointed to work with the town councils to identify opportunities for new economic activity.

Unlike other economic development officers, this person will be based at the university and will have access to university staff with experience in disciplines relevant to economic development. For example, the person may identify a need for new skills in business formation and entrepreneurship in a regional community, and then follow up with training for emerging businesses. This new program is consistent with the Government's partnerships approach to regional development. It recognises that government alone cannot provide all the answers on regional development, nor can it control the myriad of factors that govern regional economic success. But it can make a difference by working with communities, and the government intends to build on this pilot program.

### **POLICE OFFICER MURDER SENTENCES**

**The Hon. MICHAEL GALLACHER:** My question is to the Minister for Police. On the eve of Police Remembrance Day, will the Minister show his support for the men and women of the New South Wales police service and their families by supporting Coalition policy to introduce mandatory life sentences for people who murder police officers who are serving in the line of duty?

**The Hon. MICHAEL COSTA:** That is an absolutely disgraceful question, particularly on the eve of Police Remembrance Day. We are asking our community to acknowledge the 14,000 police officers currently in the New South Wales Police Force and at the same time remember the more than 200 officers who lost their lives serving this community. It is a very serious matter, one that I take seriously. I urge everyone to attend the ceremony that will be held at St Andrew's Cathedral tomorrow to commemorate this very important day. I would have thought that the Leader of the Opposition would also take it seriously rather than play silly politics.

**The Hon. Michael Gallacher:** You are a disgrace!

**The Hon. MICHAEL COSTA:** You are trying to diminish the importance of this day by introducing on the eve of this remembrance day a policy that has been publicly canvassed for many months. It shows not only that you do not have any policy initiatives but also that you are a disgrace to the profession that you purport to have represented for 10 years. On the eve of Police Remembrance Day, for you to play politics with sentencing policy is a disgrace. There is no way to view it other than as an absolute disgrace. I do not intend to trivialise an important occasion in the way the Leader of the Opposition has done today by playing politics on the eve of Police Remembrance Day. It is a disgrace, Michael. I expect better from you. It is a complete disgrace.

### **NATIVE VEGETATION CONSERVATION ACT EXEMPTIONS**

**The Hon. IAN COHEN:** My question is to the Special Minister of State, representing the Minister for Land and Water Conservation.

**The Hon. Michael Egan:** I will represent him.

**The Hon. IAN COHEN:** Will the Minister confirm that the current draft exemption from the Native Vegetation Conservation Act for private native forestry will allow up to 20 per cent of a property, an old-growth forest mapped by the New South Wales Government, to be patch clear-felled without any consent being required from the department? Will the Minister acknowledge that the current draft is a major and serious breach of the Native Vegetation Conservation Act requirement for exemptions to have minimal impact?

**The Hon. MICHAEL EGAN:** I will refer that question to the appropriate Minister for a considered response. I was inclined to take a point of order because the question really was an argument that was being advanced by the honourable member. Nevertheless, I will be nice to him on this occasion and refer the question to the appropriate Minister. But I would urge him in future to abide by the standing orders; otherwise I will have to take a point of order on his questions.

### **YOUTH PROGRAMS**

**The Hon. IAN MACDONALD:** My question is to the Minister Assisting the Premier on Youth. What is the Government doing to help marginalised young people in light of a study by the Dusseldorp Skills Forum that suggests that a significant number of teenagers in New South Wales are "at risk" of disconnection from employment and education?

**The Hon. CARMEL TEBBUTT:** The Hon. Ian Macdonald has highlighted an important issue that the Government takes very seriously. The study by the Dusseldorp Skills Forum suggests that more than half a million Australians aged 15 to 24 are at risk of being marginalised; they are in neither full-time education nor full-time work. The Dusseldorp Skills Forum has a long history of doing reputable research with regard to issues that affect young people, particularly in the area of education and training. The Government has been working to address this alarming situation for some time. There has been a major policy shift in New South Wales to regard schools as key sites for early intervention and prevention programs, and in this way ensure greater connection for young people throughout their time in schooling.

The Department of Education and Training has introduced a number of initiatives to meet the needs of young people at risk of leaving school before they have sufficient qualifications and skills to enable them to readily access work or further educational opportunities. These include the New South Wales Priority Schools Funding Program to assist targeted school communities to improve literacy and numeracy, discipline and attendance, and school and community partnerships. The Primary Connect Program provides additional support to at-risk children aged from 5 to 12 years, and their families. The Links to Learning Program provides funding to community organisations to assist young people who experience significant difficulties participating in formal learning environments to access, remain in or return to formal education.

The Gateways Program is an innovative early-intervention and prevention initiative currently piloted in the Fairfield district to increase the retention, participation and completion of schooling. Effective drug education is a key feature of the program. Another program is the TAFE Youth at Risk Program, which supports disadvantaged young people in the community by providing pathways for further education and employment. Those are a few examples of what the Government is doing to ensure that young people remain connected to education. We know that the connection to education is one of the significant factors in ensuring that young people make a successful transition to adult life and to employment.

The Government regards literacy and numeracy as crucial indicators of success in all aspects of life. I am pleased to inform the House that the Government's Youth Policy, which I recently launched, called Working Together: Working for Young People, is another critical document that addresses some of the issues raised in the Dusseldorp Skills Forum's research. One key initiative to come out of the policy is the Better Futures Regional Strategy, which has funded \$8.6 million over four years. The strategy will start this year in the Illawarra, Broken Hill, the Hunter, the Central Coast, south-east Sydney and Penrith in Western Sydney. Each area will receive up to \$200,000 a year for two years.

Those areas have been targeted as they have youth populations higher than the State average. This strategy is designed to increase the effectiveness of services for young people from 9 to 18 years across New South Wales. It aims to develop co-ordinated networks, improve local planning and address gaps in services for young people. The strategy is based on principles that work with and listen to young people. That is just one of the many initiatives outlined in the Government's Youth Policy. The Working Together: Working for Young People document is aimed at providing young people with opportunities for rewarding lives, now and in future. It will serve as an important guide in strengthening our linkages with young people, their families, their communities and the organisations that work with and for young people.

### FRONTIER ECONOMICS

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question without notice is to the Treasurer. Does the Government still have confidence in Frontier Economics? Is the Treasurer committed to retaining its advice or will the Government obtain alternative or in-house expertise?

**The Hon. MICHAEL EGAN:** Both the Treasury and the Government have a great deal of confidence in Frontier Economics. It has done an excellent job for the Government. When its contract expires, of course it will be assessed along with any other competitors for any further work that may need to be done on behalf of the State.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I ask a supplementary question. Did the contract with Frontier Economics not expire at the end of the last financial year? Is that firm retained on a day-to-day basis?

**The Hon. MICHAEL EGAN:** My understanding is that that is the case. Frontier Economics is still engaged on projects that have yet to be completed.

### DEPARTMENT OF COMMUNITY SERVICES COUNSELLING SERVICES

**The Hon. PATRICIA FORSYTHE:** My question without notice is to the Minister for Community Services. This morning on radio 2SM the Minister claimed that the Department of Community Services had arranged counselling for a 14-year-old girl in the Grafton area, that the carer would be reimbursed if receipts were provided, and that the girl had self-placed in the disability pensioner's care. According to Tony Barac, Co-ordinator of the Information Referral and Support Services for Separated Families, Coffs Harbour, that is untrue. The girl was placed by the Department of Community Services [DOCS], the carer had to arrange her own counselling with Mr Barac's service, and the carer has not been reimbursed. How does the Minister explain the difference between this account and her statements on 2SM?

**The Hon. CARMEL TEBBUTT:** I thank the Hon. Patricia Forsythe for this question, because it provides me with an opportunity to address an issue raised yesterday by the shadow Minister for Community Services. He raised allegations about the treatment by DOCS of a 14-year-old-girl and her carer. On a number of occasions I have said that I do not believe that question time is the appropriate forum to address issues that involve complex matters and people's lives, particularly when we are talking about adolescent children. Nonetheless, given that the shadow Minister has chosen, once again, to go down this path, I will take this opportunity to correct the record. Once again, the shadow Minister has his facts wrong, as does the Hon. Patricia Forsythe.

It took some time for the Department of Community Services to track down the case referred to by the shadow Minister, because he did not bother to supply detailed information. If the shadow Minister was truly interested in resolving these issues, rather than chasing headlines, perhaps he could provide the details so that cases can be appropriately followed up. We did not get much detail from the shadow Minister, and, further, key elements of the information contained in the question are false; they are completely untrue. The shadow Minister referred to a disabled pensioner caring for a 14-year-old girl, at the request of DOCS. The department has made no such request. The girl ran away from home and placed herself with the family of a school friend. The department has made no such request. Indeed, as I shall detail, all the efforts of the department in this case have been in restoring the girl's relationship with her mother and returning her to her home.

The Hon. Patricia Forsythe referred to comments made by Mr Tony Barac, the co-ordinator of a service in the Coffs Harbour area. It is not my preference to go this way, but I will indicate exactly what Mr Barac said. Referring to this child, Mr Barac said that this child is one of the growing numbers of children that fall outside the net of the child protection and family law systems. However, the abuse she suffered at her family home is not at the level that would justify the intervention of DOCS. The girl was not in immediate physical danger, nor physically neglected. Mr Barac, the very person to whom the Hon. Patricia Forsythe refers to back up her case, clearly indicated that the department could not take action to remove the child. That does not in any way undermine that this is another sad, tragic case. In this situation a 14-year-old girl has run away from home, she does not want to remain with her parents and the department has taken the approach that restoration to her family is the best course of action.

The department has advised me that there are no issues of abuse that would make it unsafe for the girl to return to her family. The department has facilitated mediation and counselling in order for the girl to be able to return to her family. On the facts I have I believe that is an appropriate course of action. Last June this young girl ran away from home as a result of conflict with her parents and placed herself in the home of a school friend. The policy of the Department of Community Services is that when children are to be placed with foster carers, the foster carers are assessed and approved, and the carers receive an allowance. DOCS did not place the girl with a foster carer; she ran away, she placed herself in a friend's home. Since the girl ran away, DOCS has facilitated mediation and counselling in an effort to resolve the parent-adolescent conflict. I make it clear that DOCS has assessed that there were no grounds to justify the girl being removed from her family home, nor is it unsafe for her to return. The woman currently caring for the girl has been advised that if she produces receipts with regard to school excursions and other expenses that she has incurred, the department will look at reimbursing those expenses. [*Time expired.*]

### AUSTRALIAN TECHNOLOGY SHOWCASE

**The Hon. AMANDA FAZIO:** My question without notice is to the Treasurer, and Minister for State Development. Will the Treasurer update the House about the latest successful export companies in the Australian Technology Showcase?

**The Hon. MICHAEL EGAN:** I thank the Hon. Amanda Fazio for asking a question on a subject that honourable members would be aware is one of my favourites, that is, the Australian Technology Showcase [ATS]. And it is good to have a new audience to hear about the successes of the showcase. The ATS, which was

established by the Government, supports and helps to market the very best of Australian innovation. The New South Wales Government established the program in 1997 to foster local innovation and to promote that innovation to the world. The ATS has now grown to 320 member companies in this State with a national total of 376. This program has now spread nationally, with the Commonwealth Government and almost every other State Government involved in it. As recently as two weeks ago during the Australian Technology Showcase Week, the ATS Patron's Awards were presented to recognise outstanding achievement in international markets. It is interesting to note that during the estimates hearings this year the Deputy Leader of the Opposition asked me how many of the ATS companies had actually been successful in marketing their products overseas.

**The Hon. Duncan Gay:** Yes, but I cannot remember you answering.

**The Hon. MICHAEL EGAN:** I did indeed, and I remember that Mr Loftus Harris certainly did. The inaugural winner of the award is a company named Portland Orthopaedics, and that company is now doing brilliantly overseas. Earlier this year the Premier and I opened a new manufacturing facility at Matraville for Portland Orthopaedics. That new facility is a direct result of the company's success in the United States. I am pleased to advise the House that the award this year was shared by a Sydney biotechnology company, Novogen, and the Ballina-based fuel technology company, Permo-Drive Technologies Ltd, which was formally based in Lismore. Novogen is the world's largest producer of isoflavones, a naturally occurring plant hormone. The company has developed a natural alternative to hormone replacement therapy.

Permo-Drive, which I believe would be well known to honourable members, has created a regenerative energy technology that cuts fuel consumption in heavy vehicles by almost 40 per cent. Recently the company signed an agreement with the United States Army, which operates almost a quarter of a million trucks. I add, as a matter of interest to honourable members of this House, that the company is chaired by a former political leader in this country, Charles Blunt, who was a national party leader until 1990. He is certainly doing an excellent job as chairman of this company.

**The Hon. Dr Brian Pezzutti:** You should put it on New South Wales buses.

**The Hon. MICHAEL EGAN:** I think there is great potential for putting it into New South Wales buses.

**The Hon. Dr Brian Pezzutti:** Why do you not do that?

**The Hon. MICHAEL EGAN:** The product has been developed for commercial and large-scale use. I think that we will not only in a very short time see the product being used by Army trucks in the United States but all round Australia. Those two companies, Novogen and Permo-Drive, have developed technologies that are now recognised world wide, and they are wonderful examples of Australian excellence in innovation. More than 20 companies entered this year's patron's awards, with six companies presenting to the judging panel. The four other finalists for the awards included Ilum-a-Lite Pty Ltd, which manufactures technology that uses microprocessors to control the voltage of fluorescent lighting tubes, delivering energy savings of up to 30 per cent. *[Time expired.]*

**The Hon. AMANDA FAZIO:** I ask a supplementary question. Will the Minister elucidate his answer?

**The Hon. MICHAEL EGAN:** I thank the Hon. Amanda Fazio because I have been informed that the Ilum-a-Lite product has been installed in Governor Macquarie Tower, delivering energy savings of up to 30 per cent as I mentioned. Another finalist was Global Competency Systems Proprietary Ltd, an e-learning system, which allows people without computer programming skills to create interactive multimedia content, something that I believe could be of great value to me. Other finalists were HRworkbench Pty Ltd, which produces multilingual questionnaires for human resources professionals to use on the Internet, and TECRA International Pty Ltd, which is an automated testing system for the detection of bacteria that causes food poisoning. I thank the ATS patrons, which include PricewaterhouseCoopers, Panasonic, Newport Technology Fund, Air New Zealand, Intel Australia, Macquarie Bank, Pacific Capital Corporation, Spruson and Ferguson, and the Write Communications Group, for their great support of ATS.

#### PRISONERS REHABILITATION PROGRAMS

**The Hon. RICHARD JONES:** My question is to the Treasurer, representing the Minister for Corrective Services. As his Government intends evidently to increase the prison population quite significantly,

what precisely is he doing to ensure that those who have been gaoled for long periods under the American-style sentencing system are rehabilitated back into society as useful, well-adjusted citizens? As most of those who are gaoled are functionally illiterate, mentally disturbed and affected by long-term drug use, precisely what programs will he be instituting to assist long-term prisoners to read and write, and to gain social and employment skills? How will drug rehabilitation programs be enhanced? What employment skills will these people be taught? Is he aware that locking people up for long periods without adequate rehabilitation programs will create time bombs that will explode when eventually they are released into the community?

**The Hon. MICHAEL EGAN:** I thank the Hon. Richard Jones for an important question on a topic in which I am sure he takes a genuine interest. It is true that the Government is spending a good deal of money on the construction of new gaol facilities. This is not only to expand the system but also to ensure that prisoners are incarcerated in proper surroundings in which their prospects for rehabilitation may be improved. The increase in the gaol population, while not a good reflection on our society, at least indicates that the police in this State are having more and more success in catching criminals and in having them convicted. That is not something to be regretted. It is something to be applauded. The expansion of the prison system is also in part due to changes to the bail laws, which will mean that a presumption in favour of bail for repeat offenders is no longer applicable. The sentencing policy, which the Government announced some weeks ago, will also have an impact on the gaol population in the longer term. Nevertheless the Department of Corrective Services has a large number of initiatives and programs under way. I will be obtaining the full details of those in chapter and verse for the Hon. Richard Jones.

### FRONTIER ECONOMICS PAYMENTS

**The Hon. Dr BRIAN PEZZUTTI:** My question without notice is to the Treasurer. Further to his answer last week and his answer today on fees paid to Frontier Economics, is he now in a position to advise the House whether the \$14.5 million fee paid to Frontier over three years included expenses for accommodation and air fares? In particular, what is the total cost, including fees and expenses, to the taxpayers of New South Wales of engaging Frontier Economics for such a long period?

**The Hon. MICHAEL EGAN:** As I mentioned to the House last week, my understanding is that the amount included expenses paid to Frontier Economics. I undertook to find out whether that was correct. I have not received advice on that, but I will make sure that the honourable member receives a response as quickly as possible.

### OPERATION VIKINGS

**The Hon. PETER PRIMROSE:** My question without notice is to the Minister for Police. What is the latest information on Operation Vikings?

**The Hon. Michael Gallacher:** Point of order: The blue and white ribbon is a national symbol of police remembrance. I draw the attention of the Minister for Police to the fact that he is improperly wearing the ribbon, that is, on the wrong side of his suit. I think he should show some decency and knowledge by wearing it properly instead of displaying contempt by wearing it in that fashion.

**The Hon. Michael Costa:** To the point of order: This is actually a New South Wales Police Association badge, not the blue and white ribbon. It is correct that the blue and white ribbon is worn on the right, but mine is not the blue and white ribbon. It is a Police Association badge, which can be worn on the left. If the honourable member has a sensible point of order to make, he should make it. The point I make is that tomorrow's events should be treated with dignity.

**The PRESIDENT:** Order! I have reminded honourable members on many occasions not to use points of order simply to make debating points.

**The Hon. MICHAEL COSTA:** The community wants to see police in the right places at the right times, and the Government is committed to that. That is why this Government has introduced high-visibility, high-impact policing. This high-visibility, high-impact policing has won the support of the community and front-line police. That is why Operation Vikings will continue to roll out across the State.

**The Hon. Duncan Gay:** That was a stunt, an absolute stunt.

**The Hon. MICHAEL COSTA:** Operation Vikings is targeting major transport routes, hot spots, shopping centres and areas of community concern. I note the interjection from the Deputy Leader of the Opposition, "It is a stunt."

**The Hon. Duncan Gay:** It is a stunt.

**The Hon. MICHAEL COSTA:** We will add that to the list, Duncan. Since 24 May there have been Vikings operations in Sydney, Wollongong, Orange and Dubbo. Planning is under way for additional regional Vikings operations. NSW Police staged the twelfth Operation Vikings last weekend on the streets of inner-metropolitan Sydney. I am advised that 600 police saturated the streets of Burwood, Marrickville, Newtown, St George, Surry Hills, Kings Cross and the central business district. The Inner-Metropolitan Regional Commander, Assistant Commissioner Dick Adams, advises that 60 people were arrested during the operation, including 27 for offences such as drug possession and supply, and stealing. A further 16 people were arrested on first instance warrants. Police patrolled 152 trains and 263 licensed premises. They issued 147 move-on directions, stopped 5,600 vehicles, issued 552 traffic infringement notices, conducted 5,479 random breath tests and charged 25 people with drink driving.

I am advised further that police have charged two people with assaulting police during the operation. One officer was treated for a superficial wound after being hit with a bottle. The twelfth Operation Vikings was clearly a success. The combined results from all 12 Operation Vikings are no less impressive. I am advised that since the first operation on 24 May police have arrested 460 people, laid 600-odd charges, conducted 23,000 random breath tests, patrolled more than 1,400 trains and 700 licensed premises, issued 3,200 traffic infringement notices, conducted 500 knife searches, issued 650 move-along directions, and conducted 85 drug searches and 55 drug dog searches. Nearly 3,300 police have been deployed in these operations. These officers were drawn from a range of commands to support local police.

This is a point that, obviously, the Opposition does not understand: these are police additional to those who are normally rostered on. They include Transit Police, Special Crime and Internal Affairs officers, Police Citizens and Youth Clubs police, Traffic Services and Education Services officers, Water Police, Legal Services officers, Dog Squad police and mounted police. In line with the 1 July restructure, which includes a requirement for all police to be involved in visible policing, Commissioner Moroney and our deputy commissioners have been involved. More experienced officers are getting out from behind desks and are leading from the front. Front-line police tell me that high-impact, high-visibility policing, like Operation Vikings, makes a difference at the local level. On behalf of the community, I thank our police for their involvement. I ask the Opposition to apologise— [*Time expired.*]

#### JASON ANTHONY VAN DER BAAN MURDER TRIAL

**Reverend the Hon. FRED NILE:** I ask the Treasurer, representing the Attorney General, a question without notice. Is it a fact that Jason Anthony Van Der Baan was acquitted in the Supreme Court of the rape and murder of Irene Wilson, despite the fact that he confessed—

[*Interruption*]

**The Hon. Michael Egan:** Reverend the Hon. Fred Nile is asking me a question, but I cannot hear it over the inane interjections of the Leader of the Opposition.

**The PRESIDENT:** Order! I have advised members previously that it is very difficult for members to hear debate in this Chamber when there is too much audible conversation.

**Reverend the Hon. Fred Nile:** —to the murder and was already in gaol for another brutal rape. Is it a fact that Justice Greg James, who presided over the trial, prohibited this vital evidence from being presented to the jury? Is it a fact that defence lawyer David Buchanan knowingly gave this person a good character reference in his closing address to the jury? Will the Attorney General and the Director of Public Prosecutions urgently review this case and either appeal against the jury verdict or recharge Jason Anthony Van Der Beer with another charge if he cannot be recharged with the offence of murder? Will the Attorney General investigate the actions of the lawyer as well?

**The PRESIDENT:** Order! The honourable member's time has expired; he will resume his seat.

**Reverend the Hon. Fred Nile:** Madam President, my time was taken up by the point of order taken on the Leader of the Opposition.

**The Hon. Michael Gallacher:** It was not my point of order. It was the point of order of the Leader of the Government.

**Reverend the Hon. FRED NILE:** He took a point of order because you were interjecting on my serious question.

**The Hon. Michael Gallacher:** I wasn't interjecting on the honourable member; I was responding to Minister Costa.

**The Hon. MICHAEL EGAN:** The honourable member was not allowing the question to be heard. That is the fact.

**The PRESIDENT:** Order! I call the Leader of the Opposition to order for the first time.

**The Hon. MICHAEL EGAN:** Reverend the Hon. Fred Nile has asked a serious question. I am not aware of the details of all the circumstances of the matter. I will certainly refer it to the Attorney General and obtain a response.

### TROUT STOCKS

**The Hon. JENNIFER GARDINER:** My question is to the Minister for Fisheries, and follows on from his inability yesterday to provide the scientific basis upon which he banned stocking of trout in some streams, and further to his comments in this House on 17 September relating to the new requirements for ocean haul commercial fishers. Will he provide the House with the scientific basis upon which his ban on hauling nets over strapweed seagrass was made? What are his reasons for rejecting the position of his Estuary General Management Advisory Committee [MAC] on a number of other key issues in the new regulations? I can detail those if the Minister wishes; there are three of them.

**The Hon. EDDIE OBEID:** It is not uncommon for the Hon. Jennifer Gardiner to be concerned when the community, after consultation, advises that it has a view different from hers. The problem is, however, that she then seeks to diminish the role the community should play. The decision to protect seagrasses from hauling was based on environmental assessments on all fisheries.

**The Hon. Jennifer Gardiner:** What is the scientific basis?

**The Hon. EDDIE OBEID:** That is dealt with Through the Fisheries Resource Conservation and Resources Council. Representatives of the environment and conservation movements and all the stakeholders in fisheries have been involved in the process. I am very happy with the outcomes of both estuary general and ocean hauling assessment process. We must protect our juvenile breeding grounds for the long term. If the honourable member cannot see that, I feel sorry for her. She might understand one day, if she ever becomes—in 20 years time—the Minister on Fisheries. This serious process undertaken by the Government has involved broad community consultation. The model has been set. I am more than satisfied that the recommendations should be upheld, not to deny fishers good fishing grounds but to maintain long-term sustainability of the resource. We must protect the resource to ensure that it remains sustainable for both the commercial and recreational sector that harvest it. If the honourable member wants to belittle or question the process, there is an appropriate mechanism for doing so, and I will not interfere with that. So far as any recommendations of the advisory committee are concerned, I advise the honourable member that I always take such recommendations on board. However, I am not exactly sure of the issue the honourable member is talking about.

### BONDI BEACH STUDENT VANDALISM

**The Hon. HENRY TSANG:** My question is to the Minister for Police. What is the latest information on last night's malicious damage attacks at Bondi?

**The Hon. John Ryan:** I hope you're not going to slag that on us.

**The Hon. MICHAEL COSTA:** I am sure all honourable members will join with me in condemning the high school students involved in last night's rampage along Campbell Parade in Bondi. I trust that the Hon. John Ryan takes this matter seriously.

**The Hon. John Ryan:** I am taking it seriously. I hope the Minister does not attempt to denigrate any school in his answer.

**The Hon. MICHAEL COSTA:** There is absolutely no excuse for this disgraceful behaviour. I am advised that malicious damage was inflicted on parked cars, the North Bondi Surf Club and council property, resulting in thousands of dollars worth of property damage. Police advised that they have launched a full

investigation into last night's events. It is not relevant what schools were involved or where the students were from, and nor is it relevant which side of the tracks those involved were from. What is relevant is their behaviour.

**The Hon. Dr Brian Pezzutti:** Where were the police?

**The PRESIDENT:** Order! I call the Hon. Dr Brian Pezzutti to order.

**The Hon. MICHAEL COSTA:** They have committed a criminal offence, and therefore they should be arrested and charged by the police and put before the courts. I am advised that police are obtaining closed-circuit television footage from a number of premises on Campbell Parade as well as video footage taken by witnesses to help identify the offenders. I am advised further that police are working with the schools involved to identify the students. Police are investigating whether alcohol was served to minors in nearby premises before the incident. At the very least, the students involved in this incident should pay for the damage and help repair the damage they have caused.

**The PRESIDENT:** Order! I call the Hon. Greg Pearce to order.

**The Hon. MICHAEL COSTA:** I call on the schools and the families of these offenders to provide every assistance to police in identifying those involved and to help foot the cost of repairs for the damage. The Minister for Education and Training yesterday appealed to high school students across the State not to follow the actions of those involved in last night's incident. I want to emphasise that message and warn students that muck-up days are not excuses to commit criminal offences and that students are misguided if they commit crimes under the notion that muck-up day makes such behaviour acceptable. Police will treat very seriously all matters deemed to involve criminal behaviour.

**The Hon. Rick Colless:** Where were the police last night?

**The Hon. MICHAEL COSTA:** The interjection clearly indicates that the Opposition does not take this matter seriously. The people involved in this incident last night will be dealt with by the police.

**The Hon. Dr Brian Pezzutti:** Point of order: I take exception to the Minister saying that the Opposition does not take this matter seriously. I am a member of the Opposition. The statement was offensive to me and I want it withdrawn.

**The PRESIDENT:** Order! There is no point of order. The Minister may continue.

**The Hon. MICHAEL COSTA:** I shall reiterate the point I was making. The offences committed last night are criminal offences. The police are investigating and they will take action against those who were involved in the offences. The Opposition ought to treat this matter seriously. It is denigrating the communities that had to suffer from this sort of behaviour and the police officers who are currently investigating the matters. The Opposition sits here constantly talking to me and others about— [*Time expired.*]

#### **HILTON HOTEL EMPLOYEES**

**Ms LEE RHIANNON:** I direct my question to the Treasurer, representing the Minister for Industrial Relations. Does the Government have any legal powers to assist former Hilton Hotel workers who have been recently sacked by the Sydney Hilton Hotel management. Given the harsh treatment of the former Sydney Hilton Hotel workers, will the Government seek to intervene on their behalf to secure employment and a better redundancy deal?

**The Hon. MICHAEL EGAN:** The Hon. Lee Rhiannon has asked a good question and I will refer it to my colleague the Deputy Leader of the Government, the Special Minister of State, and Minister for Industrial Relations, who I am sure will give the House a response as soon as he can.

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

**The Hon. RICK COLLESS:** My question is directed to the Minister for Mineral Resources. Now that the Minister has confirmed his lack of knowledge about the proposed option E for the Brigalow belt south bioregion, an option that has the potential to lock up large areas—

**The Hon. Michael Egan:** Point of order: That question is clearly out of order. It is not seeking information from the Minister. The honourable member is making assertions and engaging in argument. Given the role that all Opposition members played in the adoption of the new sessional orders—

**The Hon. Michael Gallacher:** You signed off on them.

**The Hon. Michael Egan:** I signed off on them, yes.

**The Hon. Michael Gallacher:** So they are yours.

**The Hon. Michael Egan:** They belong to the House, but they were instigated by the Opposition at the urging of Ms Lee Rhiannon. Indeed, Ms Lee Rhiannon was having coffee at Parliament House in Canberra—

**Ms Lee Rhiannon:** I don't drink coffee.

**The Hon. Michael Egan:** Whatever she was drinking, she was in a coffee shop telling people that she was going to devise new standing orders to "get that Egan". Of course, a month or two later she had put the new standing orders together and the Opposition approved them.

**The Hon. John Jobling:** To the point of order: My colleague had given enough information to make understandable to the Minister the question he was about to ask. He has not completed his question and, therefore the point of order suggesting that the question is not in order is without substance. If the question is completed, it will be clearly understood.

**The PRESIDENT:** Order! The new sessional orders added certain elements to define what is and what is not allowable in a question. One such element is that a question must not contain argument. The question of the Hon. Rick Colless certainly contained argument and, therefore I rule it out of order.

#### **SPECKLED MOSQUITO FISH ERADICATION PROGRAM**

**The Hon. JOHN HATZISTERGOS:** My question is to the Minister for Fisheries. What has the New South Wales Government done to reduce the risk of the speckled mosquito fish spreading into our fresh waterways?

**The Hon. EDDIE OBEID:** I thank the Hon. John Hatzistergos for asking a very important question. The New South Wales Government is determined to protect our native species from introduced fish like the speckled mosquito fish. This species was recently found in freshwater ponds in the Collaroy area of Sydney's northern beaches. It is native to South America and is known in the aquarium trade.

*[Interruption]*

It is properly appropriate that the honourable member for Wakehurst is present in the gallery. I am sure he would prefer to listen to my answer than the inane interjections of the Hon. John Ryan. However, this tiny fish has already made its presence felt across Australia. It has been found in the wild in a small number of isolated locations near Perth and Alice Springs. The New South Wales Government has acted quickly because this fish has the potential to become a significant environmental pest, especially having regard to its impact on native fish and frogs.

The first stage of the eradication program included detailed surveys of water bodies in Collaroy. I am advised that the fish was not found in any other location. New South Wales Government conservation agencies, including NSW Fisheries, the National Parks and Wildlife Service and the Environment Protection Authority have worked with the Australian Museum to develop a control program. Native fish were removed and released into Dee Why lagoon. The water was then chemically treated to kill this invasive pest. The Australian Museum will work with NSW Fisheries with ongoing monitoring to ascertain whether this treatment has been successful. Staff from NSW Fisheries also inspected local aquarium shops to see whether speckled mosquito fish were being sold in those premises. None was found.

This is yet another project undertaken by the New South Wales Government to protect native species and the aquatic environment. We have provided nearly \$1 million to control exotic fish and plants and remove the threat to our aquatic life imposed by exotic species. As part of the wider aquatic pest management program, NSW Fisheries has established a 24-hour telephone number to which the community can report any sightings of this fish.

**The Hon. John Ryan:** Where fish can ring up.

**The Hon. EDDIE OBEID:** I urge anyone who may have seen this pest to report it promptly.

**The Hon. John Ryan:** I will just ring the police assistance line.

**The Hon. EDDIE OBEID:** It is worth noting the insensitivity of the Opposition, in particular, that of the Hon. John Ryan, to any issues about protecting our native species, taking appropriate and necessary controls, and trying to eradicate pests. His behaviour is typical of an Opposition that is environmentally out of touch with the rest of the community. The community at large expects the Government to take prompt action in circumstances such as these, and the Government is doing just that. The Hon. John Ryan is showing how totally out of touch he is when he makes such stupid interjections. He might not be of the same faction as that of the honourable member for Wakehurst, but he should listen to my response. It is very important for his community and his constituents.

### COFFS HARBOUR WATER SUPPLY

**The Hon. IAN COHEN:** If the Opposition is out of touch, the Government is hardly touchy-feely on the environment. My question is directed to the Treasurer, and Minister for State Development, representing the Minister for Planning. Does the Government support the 87 kilometres of pipe that are to be blasted through sandstone country in the Kangaroo Creek area near Coffs Harbour to supply the city with water? Why is the Government not demanding water efficiency rather than the construction of a destructive dam and profligate water use in the Coffs Harbour area?

**The Hon. MICHAEL EGAN:** I will refer the question to the appropriate Minister. Coffs Harbour has had a water problem for a very long time and I think the Government is right to try to do what it can to overcome it.

**The Hon. IAN COHEN:** I ask a supplementary question. In view of the Treasurer's concession that there is a water supply problem in the Coffs Harbour area, will the Government take steps to assist water efficiency and demand management by promoting the use of water tanks in the area? Perhaps it should subsidise them in some way, which would in turn encourage local industry.

**The Hon. MICHAEL EGAN:** Demand management should certainly be pursued by all water authorities, there is no question about that. However, I sometimes suspect that the Hon. Ian Cohen and others in his party believe we should all stop drinking water—or not exist at all!

### DEPARTMENT OF COMMUNITY SERVICES COUNSELLING SERVICES

**The Hon. PATRICIA FORSYTHE:** My question is directed to the Minister for Community Services. In her earlier answer about a 14-year-old girl the Minister referred to the girl's Department of Community Services file. Does that file show that on 6 June 2002 the child was classified as a level 2 child at risk, and therefore the department was required to take action? Did that action take the form of contacting the Grafton mother on her mobile telephone between 2.00 p.m. and 3.00 p.m. on 6 June to ascertain whether she would be prepared to take the child? If, as the Minister suggested, the foster mother has not been assessed, on what basis did the Department of Community Services advise the mother that in her care the child was in category level 6? [*Time expired.*]

**The Hon. CARMEL TEBBUTT:** I reiterate for the benefit of the Opposition that the person caring for this young girl is not a foster parent. I make that very clear. The view of the Department of Community Services is that this girl should return home, and the department's efforts have been directed at achieving that outcome, not supporting the girl's choice to run away from home. I have no doubt that the woman who is currently caring for this girl has incurred expenses in the course of that care. The department has indicated that, if she presents receipts, it will reimburse her for appropriate expenses. I assure the House that the Department of Community Services remains committed to covering the costs of any mediation and counselling necessary to restore this girl's relationship with her mother. I repeat: the woman who is caring for this girl is not a foster parent. I appreciate that she has been placed in a very difficult situation because the girl has run away to this woman's house. However, the Opposition is simply not presenting the case correctly. Furthermore, I do not believe it is appropriate to continue to trawl this issue through the public domain during question time in this House.

## MINEWORKERS OCCUPATIONAL HEALTH AND SAFETY

**The Hon. IAN WEST:** My question is directed to the Minister for Mineral Resources. What is being done to protect New South Wales mineworkers from the serious safety hazards posed by electricity in mines?

**The Hon. EDDIE OBEID:** The New South Wales Government is committed to the better protection of mineworkers. Reducing the risk of electrical accidents in our mines and quarries is an important part of protecting these workers. The Carr Government has provided an additional \$15 million over five years to improve mine safety. As a result of this Government's support there has been a major change in the way in which electrical hazards are now identified and controlled. The Department of Mineral Resources has a specialist Mine Safety Division, which among other things is responsible for electrical safety in our mines. The group comprises highly qualified specialists who have begun action plans, which include preventing the electrical ignition of gas and dust in coalmines, preventing fires caused by malfunctioning electrical equipment, preventing mineworkers from suffering shocks and burns; and preventing the unintended operation of electrically powered equipment.

New South Wales mines and quarries are the best in the world at preventing electrocutions. This is encouraging news, but we can never be too complacent. In fact, we are becoming even more stringent. The Carr Government has instigated mandatory reporting of all electric shock incidents, not just those causing injury or burns that require first aid. Over the past six months the Government has employed two extra electrical engineering mine safety staff, one based in the Hunter region and the other in the Illawarra. They are presently assessing every coalmine and selected metalliferous and extractive sites, focusing on low-voltage surface installations and the use of portable electric tools and welding equipment.

The possibility of electricity igniting gas or dust is another potential hazard for mineworkers. The electrical safety group is also targeting this area in an effort to develop stringent standards for design, use and maintenance of electrical equipment. The Carr Government will not relax its efforts to continue to improve mine safety in New South Wales. Every miner has the right to return home from work each day safe and healthy.

## GENETICALLY MODIFIED LIVESTOCK FOOD

**The Hon. RICHARD JONES:** My question is directed to the Treasurer, representing the Minister for Agriculture. Why is the Minister allowing cotton trash from genetically engineered cotton to be fed to beef cattle? Does this not put at risk our beef markets in Japan and the United States of America? Has the Minister advised our markets that the beef cattle they are buying are being fed genetically engineered cotton trash? If not, why not?

**The Hon. MICHAEL EGAN:** The question verged on being out of order as it certainly contained many assertions and much argument. Nevertheless, it is an important subject and I do not know whether the assertions in the question are wrong. That is one of the reasons that assertions are not allowed in questions; they can be wrong. In any event, I will refer the question to my colleague the Minister for Agriculture. I notice that the Leader of the Opposition is attempting to quieten his colleagues. I do not know what he has in mind or what his purpose is given his own behaviour during question time. However, it is something for us to contemplate. I will now conclude so that the Opposition can ask another question.

## BRIGALOW BELT SOUTH BIOREGION ASSESSMENT PROCESS

**The Hon. RICK COLLESS:** My question is directed to the Minister for Mineral Resources. Will he explain the Government's position regarding the purchase of Mount Murchison station and the impact of that purchase by the National Parks and Wildlife Service on future gas exploration and extraction activities in the region? Given the importance of those issues, can the Minister explain his lack of knowledge about the proposed option E for the Brigalow Belt South bioregion, which has the potential for locking away large areas of the Pilliga from gas exploration?

**The Hon. EDDIE OBEID:** The first part of the question, concerning the purchase of land by the Department of Land and Environment, should have been referred to my colleague the Hon. Carmel Tebbutt, who represents the Minister for the Environment. Nevertheless, we will take it on notice and it will be answered by the Minister.

## BRIGALOW BELT SOUTH BIOREGION ASSESSMENT PROCESS

**The Hon. EDDIE OBEID:** Yesterday the Hon. Rick Colless and the Hon. Duncan Gay asked a question about the Brigalow Belt South Bioregion. If they had done their homework, they would have known

that the Department of Planning is the relevant co-ordinating body. Of course, my department has an input. As I said yesterday, a number of land use options have been suggested for this area. They have to go on public exhibition first and then there will be a whole-of-government decision. I assure honourable members that the Department of Mineral Resources will have input in relation to areas that are affected and/or have mineral resource or petroleum possibilities. After the public exhibition and when we have input, we will assess it and make a whole-of-government decision.

#### **NON-PROFIT AND RELIGIOUS GROUPS LIVERPOOL LAND PURCHASE**

**Reverend the Hon. FRED NILE:** I ask the Minister for Mineral Resources, representing the Minister for Local Government, a question without notice: It is a fact that Liverpool Council has moved to bar religious groups and non-government schools from buying parcels of land before they are rezoned for development? Is it a fact that this move will force non-profit community groups to compete with large commercial developers, effectively creating a ban on religious groups being able to purchase affordable property? What action will the State Government take to ensure that non-profit and religious groups, such as Christian churches, Christian schools and others, are allowed to purchase property at reasonable prices in order to provide the community with vital services such as education, youth programs, counselling, et cetera, which help to reduce crime and assist the community with key services at no cost to local government?

**The Hon. EDDIE OBEID:** That is a very important and serious question by Reverend the Hon. Fred Nile. I am more than happy to take it on notice and obtain an answer from my ministerial colleague in the other House.

#### **DEPARTMENT OF PUBLIC WORKS AND SERVICES POSITION RECLASSIFICATIONS**

**The Hon. JAMES SAMIOS:** My question is to the Minister for Police, representing the Minister for Public Works and Services. Does the Department of Public Works and Services intend to downgrade positions within the department, with a resultant significant decrease in salaries for affected employees? What will be the decrease in salaries for affected employees? Why is this action being taken, and on what grounds are the positions to be reclassified?

**The Hon. MICHAEL EGAN:** I will refer the honourable member's question to the Minister for Public Works.

If members have further questions, they might like to place them on notice.

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

**The Hon. EDDIE OBEID:** Yesterday the Hon. Duncan Gay and the Hon. Rick Colless asked me questions about the Brigalow Belt South Bioregion. I can now provide the following answer

A number of options are being developed from the Brigalow Belt South Bioregion assessment process conducted by the Resource and Conservation Assessment Council.

With all options under consideration the Department of Mineral Resources has provided input relevant to the mineral resources sector including petroleum resources.

All options will be put on exhibition on September 30 for community comment.

**Questions without notice concluded.**

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (ILLEGAL BACKPACKER ACCOMMODATION) BILL**

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

**Motion by the Hon. Dr Arthur Chesterfield-Evans agreed to:**

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

*[The President left the chair at 1.06 p.m. The House resumed at 2.45 p.m.]*

**REGULATION REVIEW COMMITTEE****Report**

**The Hon. Malcolm Jones**, on behalf of the Chair, tabled Report No. 23/52, entitled "Report on the Mining (General) Amendment Regulation 2002 and the Petroleum (Onshore) Amendment Regulation 2002", dated September 2002.

**Ordered to be printed.**

**BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders****Motion by the Hon. Michael Gallacher agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 2 outside the Order of Precedence, relating to the Roads Amendment (Road Tunnel Pollution Filtration) Bill, be called on forthwith.

**Order of Business****Motion by the Hon. Michael Gallacher agreed to:**

That Private Members' Business item No. 2 outside the Order of Precedence be called on forthwith.

**ROADS AMENDMENT (ROAD TUNNEL POLLUTION FILTRATION) BILL****Second Reading****Debate resumed from an earlier hour.**

**Reverend the Hon. FRED NILE** [2.50 p.m.]: Obviously, the reply of the Hon. Ian Macdonald to criticism of the Government's lack of action on pollution emitted from the M5 East tunnel was supplied by the Minister's department. I do not suggest that the honourable member deliberately tried to give us false information, but some of information he was given to read into *Hansard* is not factual. It does not line up with other information revealed in documents produced to the Clerk of the House following a resolution of the House. The Hon. Ian Macdonald said:

But ESP does not remove—nor even claim to remove—noxious gases. It has no effect whatsoever on reducing oxide of nitrogen, sulfur dioxide, carbon monoxide or carbon dioxide from vehicle emissions. These are the gases that have the most deleterious effect on health, and ESP does not remove them at all.

That statement is quite misleading. The amount of nitrogen dioxide in the M5 was grossly overestimated, and is about 60 per cent less than was expected. At most times the nitrogen dioxide levels inside the tunnel are less than four times the National Environment Protection Council [NEPC] ambient air limits used to measure outside air, while PM<sub>10</sub>, or particulate matter, is 20 to 30 times the same limits. Particles are a significant problem. The assertion by the Hon. Ian Macdonald that the gases "have the most deleterious effects on health" does not correspond with what the scientific and health communities tell us. A paper presented by Tom Beer of the CSIRO Environmental Risk Network last month at the sixteenth International Clean Air and Environment Conference, in New Zealand, puts the differences in perspective. He attempts to put an economic value on the impact of various pollutants, including particulate matter, non-methane hydrocarbons, oxides of nitrogen and carbon monoxide by dividing the transport-related health costs by the estimated vehicle emissions.

Repugnant as it may be to try to put monetary value on human life and health, the conclusions he draws, based on the cost of providing medical treatment for illness likely to result from individual pollutants, are useful. The rounded economic costs per tonne that he quotes are: particles \$150,000, non-methane hydrocarbons \$19,000, oxides of nitrogen \$900 and carbon monoxide \$3. The two components identified by the Hon. Ian Macdonald as a major danger in tunnel emissions, oxide of nitrogen and carbon monoxide, are identified as having one two-hundredth of the total impact of the first two, and the danger from hydrocarbons, including benzene and polyaromatic hydrocarbons, is ignored. Many of the statements that the Hon. Ian Macdonald has been given to present to the House do not stand up to scrutiny. Finally, he said:

... international best practice for tunnels of this length is to ventilate through stacks to allow high-level atmospheric dispersion.

That may be the case in some countries that have much better fuel and engine standards and have more modern vehicles, such as in Switzerland.

**The Hon. Ian Macdonald:** Point of order: Instead of traducing me in very unsavoury terms, Reverend the Hon. Fred Nile should explain to the House why in Norway only one out of 900 tunnels is being operated?

**The DEPUTY-PRESIDENT (The Hon. Tony Kelly):** Order! No point of order is involved.

**Reverend the Hon. FRED NILE:** We know that Norway is an acknowledged world leader in tunnelling, with more than 900 road tunnels, covering a total distance of almost 600 kilometres. The policy in Norway is to filter tunnels where needed. No-one has ever said that all tunnels must be filtered. As the Roads and Traffic Authority [RTA] international tunnel workshop pointed out in 2000, each tunnel must be assessed on a case-by-case basis. As the Hon. Ian Macdonald pointed out, the M5 East has three stacks that were moved from the Bardwell ridge to one giant stack in a valley, below people's homes. That hardly allows for high-level atmospheric dispersion. We also have the longest tunnel in the Southern Hemisphere, carrying 80,000 vehicles a day, 20 per cent of which are trucks. There is terrible visibility and air-quality problems inside the tunnel and for those unfortunate enough to live or work near the stack and tunnel exits.

The Government is prepared to pay \$30 million in relocating three stacks to one and \$3 million a year in electricity but it will not spend \$10 million, \$15 million or \$20 million to make sure that this tunnel is safe for both drivers and residents. It is important that the Government reviews this situation and supports the bill because the tunnel poses a serious health risk. If these problems are not fixed with the M5 East, similar problems will occur in other tunnels. We support the bill.

**The Hon. PATRICIA FORSYTHE** [2.55 p.m.]: Earlier today in question time the Minister for Police, in his usual style, said that the Opposition has no policies. This bill demonstrates that the Opposition most certainly has policies, particularly in relation to road tunnels. The bill, introduced by my colleague the Leader of the Opposition, is further evidence of our commitment to clean air and to the built environment. It is further proof of the direction that the Opposition will take with infrastructure development in New South Wales. The Minister for Police used that throwaway line, as he often does, that the Opposition has no policies, but that is far from the truth. The Opposition has a clear direction, as demonstrated by this legislation. The legislation builds on a policy that was released a number of months ago by the then shadow Minister for Environment, Andrew Humpherson, called "Improving Road Tunnel Air Quality: A 10-point Plan". This bill gives effect to one of those 10 points.

I need not reiterate the evidence that my colleagues have already put on the record, but the Opposition, in introducing this bill, has clearly stated its position on the M5 East tunnel and the proposed Lane Cove and cross-city tunnels. The Opposition has spoken with interested groups. Unlike Government Ministers, the Opposition has not hurled insults at those groups. The usual position taken by the Government is to not listen to the message but to shoot the messenger. On one occasion the Minister for Transport accused the Residents Against Polluting Stacks of being an organised group of agitators. Far from it. These people are affected by the impact of the M5 East Tunnel. They live in areas affected by the Lane Cove or cross-city tunnels. They have a personal and genuine interest in their health and the health of residents in their area.

I attended a meeting within days of taking over the shadow environment portfolio and I was impressed at their knowledge and expertise, which demonstrated that the Government is wrong on this issue. The Premier likes to be the style policeman of New South Wales. He likes to discuss the aesthetics of various buildings. He would do better to apply his mind and energies to the impact of some of the policies that he has played a direct role in inflicting on the people of New South Wales. In particular, I refer to air quality arising from the decision to build the M5 East Tunnel and the proposals to build the cross-city tunnel and the Lane Cave tunnel.

The Premier should listen to the needs of the community rather than the sort of distractions he has gone on with whenever the Opposition has tried to focus on the real issues that matter to the community. The Opposition's direction on the environment is to pay close attention to the built environment and to the quality of air and water, particularly in the Sydney Basin. We are very much moving the margins as Sydney expands and infrastructure is introduced to overcome existing road problems. The Opposition is paying close attention to the impact of decisions. It is all very well and good to talk about improving infrastructure and using tunnels, but if air quality is not considered at the same time, we will be letting down the community.

What stands out clearly when one reads the proposals for the Lane Cove tunnel, the cross-city tunnel and the M5 East is the location of the stacks. In every case they are located inappropriately in valleys. I looked

at the map showing a proposed cross-city tunnel stack site. Only two years ago we were talking proudly about the Sydney Olympic Games. The Darling Harbour region—which was extremely important to our promotion of the city—would be much impacted if a stack were erected in the vicinity. For example, the Chinese gardens is within 400 metres of the proposed site. This special place symbolises the strength of the relationship both between Sydney and Guangzhou and between New South Wales and China. Many other parts of Darling Harbour will be similarly affected.

When one visits the proposed site one will find an area of extensive development, both commercial and residential. This is the living city to which people are returning. People live in this area. In the past couple of years a significant number of high-rise units have been built in Sussex and Bathurst streets, all of which will overlook the stack. I will not detail this issue further as my colleagues have talked about air quality and the impact of pollution on residents. People who live near the M5 East tunnel complain of ill health and an adverse impact on their way of life. These effects are not imaginary, they are real.

People who use the tunnel are similarly affected. Reverend the Hon. Fred Nile said that he no longer uses the M5 East tunnel because the air quality is so bad. The Hon. Elaine Nile suffered from health problems. Local residents who are asthmatic report that their health has worsened significantly as a consequence of the tunnel. If it is a question of whether these claims are supported by statistics, can we afford to err on the side of doubt or uncertainty? This legislation sets out clearly the position that the Coalition believes the Government should have taken and the direction in which we will move up to and after next year's election, when we will be in government.

This bill deserves the support of the whole House. If the Government seeks to go to the next election resting on its environmental laurels, it must do more than make some deals with a few organisations regarding significant parts of western New South Wales. We know that the Government is making such a deal—as was revealed in question time in the past few days. If the Government wants to stand on its environmental credentials it must consider the built environment, particularly the Sydney Basin. As evidenced by this morning's debate about Callan Park, the Government must consider the Sydney region together with other parts of the State. Doing some deals with a few groups—albeit about important issues—will not obscure the fact that the Government's environmental record is absolutely woeful. I urge honourable members to support this bill so that we can send it to the other place and make very clear to the Government the position we believe it should take.

**The Hon. IAN COHEN** [3.04 p.m.]: This issue has been much debated in the House over the years—and it is certainly worthy of such debate. I congratulate the Opposition on introducing this legislation. I also congratulate Ms Giselle Maurer, Mr Mark Curran and Mr Charles Briers on their untiring efforts on behalf of their community to produce information about these issues. My speech today was compiled by an active community group that has been campaigning in this area with a high degree of expertise and tenacity. In fact, during an estimates committee hearing the Minister for Transport, and Minister for Roads was prompted to say that he had never known a community group to be such a nuisance. It has done a fantastic job and deserves congratulations.

Further to the discussion about tunnels in Norway, the Eckberg tunnel was initially the only one with filtration. However, since then two new tunnels have come into use. The Laerdal, which is the world's longest tunnel, came into full use in the northern summer this year. Its filtration system is also working fully. The Stromsas Drammen tunnel is also in use, with four filters. So the Hon. Ian Macdonald's speech appears to be terribly out of date. At least the Government has embraced one environmentally friendly practice: recycling speeches.

A critical aspect of tunnel filtration that has not been debated widely is energy. I congratulate the Hon. Richard Jones on his fulsome speech to the House last week about this matter. The Japanese, Norwegians and Koreans install electrostatic precipitators in their tunnels mainly to save on energy costs. If the air emanating from the tunnel is relatively clean it does not need to be jet-blasted up through the stack to prevent it from impacting on surrounding areas. That is an interesting concept that could save the Government money in the long term. I agree with the Hon. Richard Jones that blasting emissions through the stack is a dinosaur method. Placing filters throughout the tunnel could significantly reduce mechanical blasting. The machinery used for this purpose must be maintained to a high standard, supposedly in order to disperse the emissions properly. An effective static filtration system could be introduced instead.

Energy consumption related to the M5 East stack has been condemned by international experts invited to Australia by the Roads and Traffic Authority [RTA]. They described it as "uniquely complicated, expensive,

outdated and wasteful of energy". When they attended the RTA international workshop in 2000, they said that such a system would never have been approved in their countries because of its energy and greenhouse implications. Because of the RTA's peculiar interpretation of the condition requiring that no emissions be allowed from the end of the tunnel—the portals—the air inside the tunnel is stopped at the end, turned through 180 degrees and sent back to the centre of the tunnel and out through the stack. This increases by one third the quantity of air needing to be moved in the tunnel. As the air in the tunnel weighs about 500 tonnes this crazy system probably doubles the amount of energy required for the ventilation system, a system that does not work even then. The transcript from the RTA's international workshop shows that, for example, John Day, an air quality expert invited by the RTA from Switzerland, commented:

The energy costs to bring back that bit of flow from the end of the tunnel maybe over 50 metres is incredible, and within our Government we are not allowed to waste energy.

Likewise, Dr Franz Zumsteg, also from Switzerland, said:

The aspect of energy is quite a strong argument against stacks. It is not just the pure costs. But it is also how we regard the importance of energy. And energy in our country is produced roughly 60% as nuclear and 40% as water and hydropower and we don't burn coal or oil. I think this has to be regarded. If we talk about energy consumption in your country then it is as what I understand directly related with pollutants too, because you burn coal. Is that right? So you are producing at least CO<sub>2</sub> somewhere else and CO<sub>2</sub> adds the unwanted effect as an ozone killer.

Energy costs in Switzerland are as much as three times higher than they are here in Australia. That means the Switzerland has a much more responsible attitude to waste. The transcripts also show that repeatedly the experts asked for a precise estimate of the energy costs of the ventilation system, but such a costing was never provided. The economic and greenhouse implications of the energy needs of the stacks were among the terms of reference of the 2001 parliamentary inquiry. I note gain from the report that information was not forthcoming from the RTA or the other regulators. The report stated at page 91:

The Committee received very little evidence about the economic or greenhouse implications of energy needs of the stack. The EPA advised the Committee that they have not been asked to assess the impact of greenhouse gas emissions due to the operation of the tunnel and that the impact of the tunnel in this respect should ideally be dealt with through an environmental impact assessment process.

The EPA was not asked to advise, therefore it did not. Consequently, we have the scandalous situation in which the EPA can give advice on such critical issues only when it is asked, and even then it is doubtful if the advice will be followed. The parliamentary inquiry heard evidence that the costs of running the ventilation system, according to the CSIRO, were "humungous". "Humungous" is actually the 32 gigawatt—that is 32,000 megawatts—hours per year that the tunnel ventilation system was predicted to consume. I advise that 32 gigawatt hours per year constitutes 32,000 tonnes of greenhouse gas. At domestic rates this equates to almost \$3 million per annum. Given the problems in the tunnel and the need to operate the fans at higher speeds than were expected, this is probably an underestimate. This is peak load power at the most expensive rates. Rather than running costs being reduced, they will continue to increase with time as energy costs increase. We are talking about enough energy to run 3,000 households, or a decent sized country town.

Evidence was presented by community representatives and technical experts that, based on overseas experience, with the installation of electrostatic precipitators as an integral part of the design, energy costs could be reduced to between one-sixth to one-eighth. Comparisons with Japanese tunnels of similar size and traffic load show that on a per vehicle/kilometre travelled comparison, a true comparison, the M5 tunnel consumes between four and eight times more energy than any Japanese tunnel. The filtered tunnels of the Japanese consume even less energy. The new Stromsas tunnel in Norway, which is filtered, uses less than one-sixth of the energy per vehicle/kilometre than the M5 uses. However, it uses a safe form of portal emission in a remote area. The committee stated:

The M5 East stack provided the perfect opportunity for the RTA and other authorities to study the effectiveness of ESP technology in the Australian context and recommended that the RTA immediately call for tenders for the installation of ESPs in the stack.

This recommendation was, like almost all the recommendations of the inquiry, ignored. So here we have the green Carr Government, which so concerned about Kyoto and reducing greenhouse gas emissions, approving a tunnel that costs about \$3 million a year in electricity and discharges 30,000 tonnes of greenhouse gas emissions into the atmosphere. I say "about" \$3 million because although we tried to get a straight answer from the Minister about this issue, we were not given one. During the budget estimates hearings the Minister was asked, "What are the current energy costs of operating the ventilation system of the M5 East?" His answer was, "There is a lump sum item entitled 'ventilation system' in the operations and maintenance contract for power utilisation,

inspection and maintenance of ventilation fans/controls and monitoring stations. The energy costs are not recorded separately." He again refused to tell us. Yet last Thursday the Hon. Ian McDonald was able to confidently—he is always confident—tell us:

The Roads and Traffic Authority advises that for the technology to work on the airflow levels in the M5 East stack would cost some \$39 million in capital cost, \$700,000 per annum to operate and \$970,000 per annum in maintenance costs. The net present value for the M5 East alone would be \$54 million.

The Government can tell us exactly how much it would cost to run the filtration system it does not want to install—it would do nothing to reduce the problem inside the tunnel because it is the wrong design—but it does not know how much it will cost the taxpayers of New South Wales who have been exposed to unsafe carcinogenic pollution inside the tunnel and around the outlets for the last nine months. I am surprised the Hon Ian McDonald did not try to pass off the latest cheap fix of dumping pollution straight out of the portals onto two new communities as an energy-saving greenhouse gas reduction initiative.

To add insult to injury, the cross-city tunnel has exactly the same design system. Effectively, it is the M5 cut in half at the centre. The proposed ventilation design, like that of the M5 East, is based on one outlet and requires recirculating the tunnel fumes from Kings Cross all the way down to Darling Harbour before they are jet-blasted up the stack. Because the trip from Darling Harbour to Kings Cross is basically uphill, more air is required in this tube than on the downhill run the other way because engine emissions are greater. Because of this crazy design, all of the air that is dirtied on the way to Kings Cross must be brought back to Darling Harbour—roughly 30,000 tonnes of air a day unnecessarily moved 2.5 kilometres through the tunnel. The Government must really have it in for the residents living round the tunnel. This unnecessary trip will probably double the cost of running the ventilation system and the amount of energy required to be used.

In what way is this tunnel an environmentally sustainable infrastructure? How does it fit in with current State Government environmental commitments and initiatives? In addition, in terms of environmental sustainability, it is clear that the construction of this tunnel will further reinforce dependence on vehicle travel and reduce the use of public transport, as it has for the M5 East. I was interested to hear today private bus operators complaining about the loss of patronage and I was wondering how they can win people back from public transport.

In the case of the M5, passenger numbers on the largely parallel East Hills line has dropped significantly since the opening of the M5 East extension—a decrease of about 7 per cent. The cross-city environmental impact statement does not say a single word about the energy and greenhouse costs of this wasteful, environmentally irresponsible design. At least the M5 environmental impact statement paid lip-service to this consideration, even if, through an unfortunate and undetected mathematical error—which no-one appeared to notice—the greenhouse gas tonnage was under-reported by a factor of 1,000. As was the case with the M5 East, the EPA has not been asked to assess, comment or approve this design. In turn, it did not make a comment or criticism, although it was clearly in a position to do so. At the 2001 M5 East inquiry the EPA stated:

The impact of the tunnel in the respect of energy costs should ideally be dealt with through an environmental impact assessment process.

But when it comes to a new tunnel, neither department wants to know about assessing environmental impacts, because the results would be so embarrassing, so scandalous. Like the tunnel, let us keep such things deeply buried underground. In a wonderful example of spin-doctoring, the EIS claims that the cross-city tunnel will produce a slight decrease in greenhouse gas emissions from the vehicle fleet. Nowhere in the EIS is there any assessment made of the additional greenhouse gas emissions produced by this bizarre ventilation system. The fact that the cross-city tunnel ventilation system is basically the same as the M5 means that it can also be described as being "uniquely complicated" and able to be "distinguished from any other time or ventilation scheme in the world", except, of course, the M5.

The cross-city tunnel will undoubtedly suffer from exactly the same problems as the M5. The same mistakes will be made. Both projects will continue to use excessive amounts of energy and will be a massive drain on the State's financial resources. It would not be so bad if the designs gave truly great results, but clearly they will not. The stench inside the cross-city tunnel will undoubtedly be the same as that in the M5 and the people living around the stack will be sickened, further adding to hospital and medical costs. I constantly wish that the Government would take into consideration the shifting of responsibilities to other portfolios. It is often not recognised that the community bears extra hospital and medical costs arising from this transport scheme.

Property values will be decreased near the station and enjoyment of the centre of the city will be reduced—all because the RTA and the Minister are too proud to admit that they have made a mistake. I strongly commend the Opposition bill to the House.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.21 p.m.]: I support the bill. It is tragic that we have to talk about this issue today. The problem is historical but the Government has shown no intention of fixing the problems in the future and, sadly, neither has the Opposition. The reason that a long road tunnel was built in the M5 is basically that there is an inadequate public transport based on rail—either heavy rail or light rail—so people are totally oriented to cars because cars offer quicker travel. Once car dependency is established in the population and the Government is unwilling to introduce retrospectively a public transport system because that is too expensive, it then tries to make do with the existing public transport system, which involves roads, and it builds tunnels.

The problem starts with the lack of planning for rail infrastructure. Cities should be planned so that people do not have to commute long distances to work. But there has been no serious plan to achieve this. The process has been driven by markets rather than plans. The Government is unwilling to envisage where we will be in 20 years and to start planning for and building infrastructure towards that end. We need serious planning, as opposed to the dribbling out of diagrams in response to developers' proposals, which is the way planning seems to be done in New South Wales—a trend that has been worsened by the Carr Government's giving more power to the developers in the developers court, officially known as the Land and Environment Court.

The bottom line is that we have built this very long road tunnel. One would have thought that we could have learnt from overseas experience with building long tunnels. Huge mountains with icy roads are very good reasons for building long road tunnels. But in Australia we are building long tunnels because we are able to build them and because there are no corridors or easements and there is no rail infrastructure. The tunnel was designed to have three ventilation stacks but because there were protests about having three stacks the Minister made a political decision to concentrate all the exhaust into a big chimney a few hundred metres from people who, with reasonable luck, perhaps would not notice. This political decision created engineering problems. The system seems to be trying to defy the laws of physics. The laws of physics are far more immutable and much harder than the laws of politics. They will not bow to the Government. Mr Scully, the man whose trains fall off the rails, has another project falling off the rails in this case. The pipes are too small. I understand that resistance is proportionate to the square of the velocity. I am not an expert in physics, but it takes a lot more energy to cause fluid to travel fast through a little pipe than to make fluid travel slowly through a big pipe. I think that is the general principle as someone in this Chamber might understand it.

The Government seems totally unwilling to admit that there is a problem. One of the problems in public health is cause and effect: if many people have a small detriment it is hard to measure. As with many public health problems—tobacco is my area of expertise—it has been denied for many years. And there is no one better at denying things than someone who does not actually want to know. Many people have noticed that they are much sicker than they used to be. They frequently feel unwell and have headaches. Their doctors cannot explain it. A doctor's patient of 20 years who used not to complain about things is now complaining. There is a general malaise and a need to compile this data, which is difficult to compile. And it is very difficult if the Government wants to save itself from the embarrassment of being shown to have made a silly decision.

**The Hon. Dr Brian Pezzutti:** It does not even collect information.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It does not want to collect the information. It is difficult to collect but it is even more difficult if the Government does not want to collect it—more difficult still if the Government does not want to know the conclusion. That is the situation. We have to support the bill in order to get some progress in this matter. But we have to go further than that. We have to make sure that a tunnel is not built under the city. There is evidence that a light rail line out to Randwick would take as much load off city traffic as a tunnel under the city, and it would be a much cleaner and better solution.

**The Hon. Dr Brian Pezzutti:** No, it would not. That is silly.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** We need to look at other public transport solutions that would take the load off the roads. We need to make sure that we build rail in the north-west sector, where we are about to repeat our problems with roads, and we need general planning of rail infrastructure in the Sydney basin—despite the interjections of the Hon. Dr Brian Pezzutti, whose party has not taken a sensible and reasonable approach to public transport planning. We need to start planning for less car dependency in a

systematic way for the future, with higher density corridors following rail infrastructure through the city and people working at nodes in that public transport infrastructure. That is the direction we need to take. It is very sad that the Government will not recognise the immense problem it has and will not learn from its mistakes—even if it does not admit it publicly—and plan accordingly. That at least would be some progress.

We are still left with the problem of the stack. Mitigating factors have to be taken into account. It is an interesting political dynamic, if one can be so cold-blooded about it, that the experts have got it totally wrong and refuse to admit it. In this case the RAPS group, Residents Against Polluting Stacks, have paid for their own experts to carry out scientific studies and are challenging government departments. The concept that the department has all the expertise and can tell the poor unenlightened folk what should be happening has been shown as a myth. The people with the real knowledge are the RAPS people. They have gone overseas to find world's best practice and are now showing the Government what it should be doing. It is a great credit to those people. It is interesting that Jeff Kennett, a former Premier of Victoria, has branded the Burnley tunnel the dirtiest tunnel in Australia. He obviously has not driven through the M5 tunnel. An article in the *Melbourne Times* reported:

Declaring he had "had a gutful" of filthy air in the tunnel, Mr Kennett said he might even run for parliament on a "clean up the tunnel" ticket.

"In terms of pollution, it just drives me insane", said Mr Kennett, who has recently started commuting regularly through the Burnley tunnel.

Mr Kennett likened breathing polluted air in the tunnel to asbestos, and said its health effects might not be known for years.

And, speaking on 3AK last week, he castigated the tollway operator Transurban, saying managing director Kim Edwards and his board should "take note" that their contract required them to provide a "clean environment" in the tunnel.

The attack stunned clean air campaigners, who tried in vain for years to persuade the Kennett government to insist on air filters in the City Link tunnels.

"I'm surprised at his conversion. I know the road to Burnley isn't the road to Damascus but obviously it is similar," veteran clean air campaigner Ruth Clemens said.

That article confirms that Jeff Kennett made a complete mess of those tunnels, but at least he has admitted his mistake. It is sad, however, that this man—who was so critical of and scoffed at those who wanted rail transport—has realised his mistake too late, as people often do. It is time that this Government also realised its mistake, even at this late stage, and got on with filtering this tunnel and putting some sensible planning into effect so that this type of thing does not happen again.

**The Hon. Dr BRIAN PEZZUTTI** [3.30 p.m.]: Obviously there is a public safety and health issue involved here, and not just for the people travelling in the tunnel. Twice last weekend I experienced the conditions in the M5 tunnel, when I drove to and from Canberra. It was not a great pleasure. It is a particularly badly designed tunnel; I always feel as though it is crowding in on me. The lighting in the tunnel is poor. However, the harbour tunnel and Eastern Distributor tunnel are quite wide and have good lighting. The M5 East tunnel is a disaster in many aspects. One would have thought that the Government, having constructed the harbour tunnel and the Eastern Distributor tunnel, would have learnt something about health specifications and design principles.

It is a good idea to have the pollution leave such a large tunnel at one point only—that is single-point pollution—but something should be then done to that pollution. But nothing is being done to it. The tunnel should be filtered in a number of places, and the air leaving the tunnel at one outlet could be easily checked. I am amazed that the Government has decided to build another tunnel similar to the M5 East. I declare an interest here, in case a pecuniary interest issue is involved: I have a unit in Ultimo. I am particularly concerned about the original plan as well as the revised plan for the cross-city tunnel. All pollution from the tunnel will come out at the Darling Harbour end where many people spend their outdoor recreation time in the city of Sydney.

**The Hon. Dr Arthur Chesterfield-Evans:** You would be better to put them in a train, Brian.

**The Hon. Dr BRIAN PEZZUTTI:** No, there is no point in putting them in a train; they will get mugged. Passengers would not get to their destinations. Our trains rattle and they stink. The Millennium trains are now three years behind schedule, they cost far too much money and they are not efficient.

**The Hon. Rick Colless:** And the buses are all broken down.

**The Hon. Dr BRIAN PEZZUTTI:** Exactly. If someone wants to see pollution, they should drive behind a government bus. The point I am trying to make is, simply, that the new cross-city tunnel will cause pollution at Darling Harbour, and that is where many Sydneysiders take their outdoor recreation and have fun. What an absolute joke! The emissions will not be filtered in any way—it is shocking.

**The Hon. Dr Arthur Chesterfield-Evans:** You are not seriously suggesting that you should put all the people in cars and then filter the air, are you? That would be a crazy solution, and you should know that.

**The Hon. Dr BRIAN PEZZUTTI:** When the day comes that heavy rail or light rail can deliver ice cream to a corner shop I will agree with the Hon. Dr Arthur Chesterfield-Evans. We would not need cars or roads should that day come. But let us get serious. We need proper transport to deliver goods to destinations people want goods delivered to.

**Ms Lee Rhiannon:** Your ice cream truck would not arrive at its destination because there would be gridlock. The ice cream would have melted.

**The Hon. Dr BRIAN PEZZUTTI:** I like my colleague the Hon. Ian Cohen, because he is sensible. I do not like my colleague the Hon. Lee Rhiannon, because she is not sensible, as her interjection proved. In the end, point-source pollution cleaning is the cheaper option. The tunnel would pay for its own cleaning under the polluter-pays principle. But how can that be done if the pollution cannot be measured? The Roads and Traffic Authority is not measuring the pollution and the commuters are suffering the consequences as they travel through dirty tunnels. The health of local residents is also affected. I commend the Leader of the Opposition, and the large number of people who worked hard on this legislation, for introducing this bill. It is a good example of what the Government does not do.

The Opposition has undertaken wide, deep and meaningful consultation. Consultation does not mean telling people what something is all about and that is the end of the matter. Consultation means telling people about the proposal and asking them what they think about it. The Opposition has listened and talked to people. We spoke with bureaucrats and they gave us their technical information. The people affected by the M5 tunnel are not stupid, people in the inner city are not stupid, people in the Eastern Suburbs are not stupid; but by goodness this Government is stupid. Minister Nori now has three king hits against her: Callan Park, the stack at Darling Harbour and a pollution bay at Pyrmont Point—a proposal that involves all commercial shipping and floating restaurants dumping their garbage at the end of Pyrmont Point. What a joke! Poor Sandra, she has got herself nailed to the cross and this Government is making sure that she never gets down.

**The Hon. Dr PETER WONG** [3.35 p.m.]: The problems inherent in the M5 East, both inside and outside the tunnel, are the result of both inadequate design and inadequate regulation. No-one who has used the tunnel would dare suggest that the environment inside the tunnel is acceptable. In fact, it is sickening—a point which has been made repeatedly in this House, not the least by the Hon. Dr Brian Pezzutti. There are consistent reports of people outside the tunnel suffering significant health problems that can be clearly tied to the stack. It is clear that there is something wrong. Yet, when we look at the regulations that were designed to protect the public—the 150 strict conditions that both the Premier and the Minister constantly refer to—we find that there is nothing to guide us and nothing to indicate that there has been a breach of those conditions.

In fact, there are no enforceable regulations at all about the levels of particle pollution in the tunnel. There is just an outdated visibility guideline to stop vehicles from running into the rear of vehicles in front of them. The standard used is the one set by the Permanent International Association of Road Congresses, the international tunnel association, in 1995, as a minimum standard of acceptability. It states:

This means a most uncomfortable tunnel atmosphere, but there is normally enough visibility for a safe car stop in front of an obstacle.

**The Hon. Ian Macdonald:** You would not recommend living in it?

**The Hon. Dr PETER WONG:** No way. I would not even drive through the tunnel. I have driven through it, it is terrible, it is smelly. What we have now with the M5 East we will have with the cross-city and Lane Cove tunnels.

**The Hon. Dr Brian Pezzutti:** Did the honourable member say the tunnel is smelly?

**The Hon. Dr PETER WONG:** Yes, it is very smelly—it is awful. This Government will be too, one day, if it stays in office long enough.

**The Hon. Ian Macdonald:** You can get through the tunnel in about four minutes.

**The Hon. Dr PETER WONG:** Yes, but you can also quickly get lung cancer and asthma, among other things.

**The Hon. Ian Macdonald:** As a doctor do you suggest that someone could get cancer from being in a tunnel for four minutes, once a week?

**The Hon. Dr PETER WONG:** No. The Hon. Ian Macdonald is now asking for a medical opinion. There are three doctors in the Chamber—the Hon. Dr Arthur Chesterfield-Evans, the Hon. Dr Brian Pezzutti and the Hon. Dr Peter Wong—and we are all against this tunnel. Having been given that advice, will the Hon. Ian Macdonald now vote with us on this bill?

**The Hon. Ian Macdonald:** I will test the quality of the medical evidence.

**The Hon. Dr Brian Pezzutti:** What about Chinatown and this tunnel? Chinatown will smell as a result of the pollution.

**The Hon. Dr PETER WONG:** That would get Sandra Nori elected, wouldn't it!

**The Hon. Dr Brian Pezzutti:** They would be thrilled to have a funnel down there, in Chinatown, I am sure.

**The Hon. Dr PETER WONG:** People in Chinatown have contacted me on many occasions complaining about this mighty tunnel and the one single stack at Darling Harbour. The Hon. Dr Brian Pezzutti is quite right: Sandra Nori is in some kind of trouble.

**The Hon. Dr Brian Pezzutti:** And they will not talk to Henry Tsang.

**The Hon. Dr PETER WONG:** I am sure that the Hon. Henry Tsang does not want to know about this.

**The Hon. Dr Brian Pezzutti:** And the council is wringing its hands—worry, worry!

**The Hon. Dr PETER WONG:** The Hon. Henry Tsang is too smart to get involved with this. He stays away from it, and rightly so. Can the Hon. Ian Macdonald imagine the Hon. Henry Tsang saying that this is the right thing to do? No way!

**The Hon. Ian Macdonald:** Are you verballing me?

**The Hon. Dr PETER WONG:** No, I am talking about the Hon. Henry Tsang. I am verballing him. Unfortunately, he is not here. But I do say he is an honourable man who will do exactly the right thing for the community.

**The Hon. Ian Macdonald:** What's that?

**The Hon. Dr PETER WONG:** He will not back up Sandra Nori on this stupid tunnel thing.

**The Hon. Dr Brian Pezzutti:** Outrageous! He will back government policy.

**The Hon. Dr PETER WONG:** He will not.

**The Hon. Dr Brian Pezzutti:** He is right and she is left.

**The Hon. Dr PETER WONG:** Is that what it is?

**The Hon. Dr Brian Pezzutti:** That's what it's all about, and she is not a male. You have to be male and in the right to be a mate to get anywhere.

**The Hon. Ian Macdonald:** You take that up with Amanda.

**The Hon. Dr PETER WONG:** The Hon. Dr Brian Pezzutti is helping me. He is offering a medical opinion, which I accept for the time being. On another topic I might differ from him. The reality check for the air quality condition is whether they are working, and it is clear they are not. If they were, people would not get

sick, both inside the tunnel and around the stack. The regulatory regimes adopted in relation to the tunnel and other point-source emissions by both PlanningNSW and the Environment Protection Authority, and accepted by the Department of Health, are fundamentally flawed.

They claim all is well because the readings meet their conditions and standards, but anyone driving through the tunnel at peak hour or breathing the foul air around the stack on a calm day can clearly smell it, as the Hon. Dr Brian Pezzutti and I have experienced. All is not well, it is foul. These regulatory bodies have used the National Environmental Protection Measure [NEPM] air quality guidelines as the basis of their attempt to limit the impact of the stack on surrounding areas. This is inappropriate; it is one of the main causes of the debacle that is facing us. NEPM regional air quality goals are designed only to provide a tool by which assessment can be made of policies and actions designed to reduce pollution on a regional scale. The 1998 NEPM documentation is quite specific. At page 13 it states:

Conversely, the air quality of some localised areas within major air sheds are dominated by local activities such as that experienced in a road tunnel or a heavily trafficked canyon street. Air quality management in these areas is complex and needs a different approach to that directed at meeting ambient standards intended to reflect the general air quality in the air sheds.

There is good reason for this. The setting of a ground-level goal provides a performance measure and implies that it is permissible to pollute up to the limit. It is effectively a licence to pollute, which is contrary to the general principle of pollution reduction, which is that every little bit counts. In the case of tunnel exhaust and abuse of a PM10 standard, the component that is causing the increase is not the same in composition as regional particulate matter but is much more harmful, consisting almost entirely of ultrafine particles. Apparently, trivial additions measured as PM10 can cause disproportionate increases in the actual harm caused. It is not possible to measure compliance with the requirement to prevent surface exceedences of the NEPM-specified pollutant concentrations. The method plans are inappropriate, the instrument is unsuitable and insufficiently accurate, and the protocols are flawed.

This might not be so bad if it were possible to measure compliance and reliably detect non-compliance. The measurement of compliance requires that all exceedences of the air quality goals that occurred at monitoring stations can be accurately detected. However, this is not technically possible as the instrumentation used is incapable of such accuracy and reliability. In the case of the approval of the stack design for the M5 tunnel, the ventilation design was claimed to meet the requirement set down, that is, it would not exceed the air quality goals by a tiny 0.6 per cent. This deliberately misleading and technically unjustified claim should never have been accepted by PlanningNSW. According to the Australian standards for the basic instruments, the greatest possible accuracy is about plus or minus 5 per cent.

Recently, the CSIRO-Environment Australia study showed that in urban areas some TEOM-based monitoring stations, of which Earlwood was one, were underestimating PM10 by more than 20 per cent. It was this type of measurement that was the basis of the claim that the stack design would meet the requirements imposed on it. The Roads and Traffic Authority is now working with RAPS on ways to correct these TEOM readings, but there is no guarantee that it will adopt the corrections, or even agree to them once the work of the committee is done. It is becoming clear from other comparable research that, even when corrected, the instrumentation is incapable of providing the certainty necessary to fulfil the requirements of the conditions of approval.

At least one, but not all, of the stations must show a reading above the goal and the occurrence of apparent exceedences must be correlated with factors such as wind direction to exclude the possibility of another cause. Thus, only a few, if any, actual exceedences will be correctly attributed to the stack. It is axiomatic that pollution is best controlled at source. In the case of tunnels and vehicle exhaust generally, this is difficult and, more importantly, involves significant expense and long time frames. It also appears that some of the actions already started, including the Euro engine emission rules, will not be as effective as hoped and have unforeseen side-effects. The other possible action is to control emissions before they are released from tunnels by using electrostatic precipitator technology to remove particles.

In a regulatory sense where it may be inappropriate to specify the use of particular technologies, the best option appears to be to set strict in-tunnel and in-stack concentration limits. These can be accurately measured using currently available technology. Controlling in-tunnel conditions in this way reduces exposure of those outside the tunnel, or portal, as well as those using the tunnel. The aim of maximum achievable control of pollutants is a responsible policy that will achieve community support. The setting of these inappropriate and unenforceable conditions, in many cases against expert advice, clearly show both a frightening degree of incompetence on the part of the Government and its lack of determination to apply a safe and effective control to these projects.

**Ms LEE RHIANNON** [4.46 p.m.]: The Greens very strongly support the bill. This tunnel is out of control. It is a ticking time bomb. Emergency services will not be able to deal adequately with accidents and fires in the tunnel, and there was an example of this yesterday when a fire broke out in the tunnel. I will come back to that matter because, I am sure, it is of great concern to all of us. As honourable members know, there has been a long fight to clean up the stack.

I join with many other honourable members who have congratulated Residents against Polluting Stack [RAPS]. This inspiring organisation comprises many hard-working members who have consistently lobbied parliamentarians, campaigned, and protested outside this Parliament to bring some sanity to the Labor Party. They are still at it, and they have mastered every tactic. When I speak to other groups who are getting their campaign tactics going I regularly use RAPS as an example of a body that runs a very effective campaign.

One way RAPS has used this Parliament is by requesting members in the upper House to call for the release of papers. One of the released papers was particularly interesting. I refer to a letter dated 17 June from Lisa Corbyn, the Director-General of the Environment Protection Authority [EPA], to Mr Paul Forward, the Chief Executive Officer of the Roads and Traffic Authority [RTA]. The letter contained these pertinent comments about this matter:

The EPA is concerned that the information provided by RTA about recent incidences of CO exceedences would suggest that the mechanical procedures for ventilating the tunnel are inadequate, and that traffic management procedures cannot respond to in-tunnel air quality problems. The EPA considers that, given the commitment made during the construction of the motorway, the problems with tunnel ventilation need to be resolved as soon as possible.

It could not be much clearer than that. The EPA is telling the RTA to fix the filtration as soon as possible. More documents were released yesterday, including one from PlanningNSW which shows eight exceedences of carbon monoxide. It is extraordinary that the Government is still debating whether a breach has occurred. One wonders whether all the members of the Government need a dictionary. This Government's actions are quite breathtaking. A report entitled "PlanningNSW—Major Infrastructure Assessment Branch—Report on in-tunnel air quality issues related to the operation of the M5 East—September 2002" states:

Since the tunnel opened in December 2000 there have been 8 occasions when CO levels have been recorded above 87ppm.

Details of each of these exceedences are provided, and I will deal with them in detail. At the outset, I will explain "87 ppm". Condition 70 relating to the motorway requires that the tunnel ventilation system be designed to meet the World Health Organization's 15-minute carbon monoxide [CO] goal of 87 parts per million. The standards are very clear, but they have been breached. According to PlanningNSW, they were breached on Tuesday 5 March 2002, Wednesday 6 March 2002 and Friday 19 April 2002, when an accident occurred on General Holmes Drive. Accidents do happen, and they will continue to happen. The standard was also breached on Friday 24 May, Monday 27 May and Tuesday 28 May.

*[Debate interrupted.]*

## DISTINGUISHED VISITORS

**The DEPUTY-PRESIDENT (The Hon. Helen Sham-Ho):** Order! I draw to the attention of the House the presence in the gallery of Mr TonPong Tangtermtong and Mrs Boontahika Junhanandana, who are parliamentary officers on attachment from the Parliament of Thailand. I welcome our visitors, who will spend two weeks meeting members and officers of the Parliament of New South Wales.

## ROADS AMENDMENT (ROAD TUNNEL POLLUTION FILTRATION) BILL

### Second Reading

*[Debate resumed.]*

**Ms LEE RHIANNON:** The reason given by PlanningNSW is that there was a fault in the air intake sensor, resulting in a problem with the fresh air intake to the tunnel. Really, PlanningNSW should have got it right. On Wednesday 5 July 2002 there was another accident inside the tunnel. On Thursday 22 August the reason for the exceedence was that the Turrella stack was closed down for maintenance but the Duff Street intake and ventilation crossover was not closed. PlanningNSW cannot even get it right when it is apparently in control. It is a very disturbing situation. A PlanningNSW document dated 27 September has some very interesting and disturbing revelations. Under the heading of "Staged incident on the 12<sup>th</sup> July" it states:

As has been reported in the media, the tunnel operator purposely stopped a vehicle in the tunnel to simulate a breakdown. It is understood that the purpose was to do some testing of the ventilation system under a controlled environment. The operator BHEgis did not inform the RTA, EPA or PlanningNSW at any stage of the simulation and it was only because of a leak to the media that anyone (including as I understand the RTA) knew about it.

That was a direct quote. The document also states:

As requested in our letter of 19 July 2002, the RTA has prepared a detailed report about the incident.

CO levels inside the tunnel were within the requirements of Condition 70. However, advice from the RTA indicates that there were portal emissions. This appears to represent an intentional breach of Condition 71.

How extraordinary! This situation is really scandalous. I received an anonymous document today that has been leaked from somebody who is very close to the operator. It is dated 17 July. The document begins with the statement, "Unfortunately I am not in a position to disclose my identity" and, referring to the incident I have just outlined, continues:

The incident was kept secret and the Roads and Traffic Authority Transport Management Centre was not given the complete picture. They were deliberately misled and believed that the incident was genuine. The motorist was a M5 East employee who stopped for 12 minutes blocking traffic and then left. This was allowed to happen with the direct approval of the M5 East Management.

It is extraordinary that people's lives were put at risk while the operator carried out that life-threatening experiment. When is this Government going to take this project in hand? When will this Government accept responsibility? Let me further examine this revealing PlanningNSW document. An important and very interesting section appears on page 6 under the heading "Strategic Lessons for Other Tunnel Proposals". It states:

The issues raised on the M5 East indicates that whilst there was much focus on the external air quality issues, the in-tunnel conditions have proven to be more problematic. To some extent this may be systematic of designing tunnels to meet a specific air quality specifications without leaving sufficient spare capacity for any irregularities. Whether or not this is the case requires investigation.

In the case of the Cross-City tunnel the Sydney CBD location could result in similar if not more frequent issues with respect to traffic congestion and thus potential time spent inside the tunnel. The nature of CBD gridlock is also expected to cause potential problems on a more regular basis with limited opportunity for mitigation or for traffic management solutions. This concern has already been raised with the RTA and design changes are under consideration.

Whilst the current conditions of approval to the CCT will require enhancements similar to the recommendations above, in addition, it may be opportune to now look more strategically at other design aspects of tunnels. In particular the implications of making design improvements as early as possible to minimise any longer term air quality issues should be investigated as a matter of priority. The relationship of fire/safety issues is also integral to this assessment.

That document is signed by Mark Hather, who is the director of the major infrastructure assessment unit of PlanningNSW. One of the recommendations made by Mr Hather is as follows:

It is recommended that a more strategic study be undertaken into better understanding the design of tunnels and in particular the relationship of the design to air quality outcomes (both short term and longer term guidelines), relationship to fire/safety issues and the degree of risks/contingency built into the design and potential construction and costs impacts of improvements.

I suggest to honourable members that that is a very clear indication that there has been massive failure in the way in which this project has been undertaken. Labor's unwillingness to provide this tunnel with a filtration system demonstrates its arrogance toward the local community, as well as a willingness to depart from Labor policy. I refer particularly to Labor leaders because I wish to distinguish the upper echelons of the Labor Government from its rank and file members. So many Labor branch members disagree with Labor's refusal to install a filtration system in the stack. They are feeling quite uncertain about their future with the Labor Party. Let us remember that Labor Party policy is quite clear on this issue. I read that policy to the House during the debate on a bill introduced by the Hon. Dr Peter Wong, but I will read it again because it is relevant to the matter we are now debating. Labor policy states:

... to ensure that all new road tunnels, including the proposed city tunnel and the M5 East tunnel, are fitted with state-of-the-art exhaust filtration systems and that comprehensive and regular monitoring of air quality both within the tunnel and around the exhaust outlets takes place.

What is Labor Party policy worth? The policy is quite clear, but why is it not being followed? Why is this Labor Party Government not implementing the policy? Labor has been given a direction from its party conference, but one would have to say that the policy is not worth the paper it is written on. Where does that leave the humble

Labor backbenchers in this Parliament? One would have to say that it leaves them in a difficult situation because, on the one hand they are supposed to uphold Labor Party policy when they enter Parliament, and on the other hand they are bound by a caucus decision that the Labor Party will not install a filtration system in this stack. Where does that leave them? I understand that ALP members of this House cannot follow party policy once caucus has adopted a differing position and they cannot vote with us; but there is nothing to stop Labor members of Parliament from speaking in this House in support of filtration.

**The Hon. Rick Colless:** They are not allowed to.

**Ms LEE RHIANNON:** That is not true. They can only be expelled for crossing the floor. There have been examples of Labor members in this House who have spoken against a Labor bill but have not been expelled.

**The Hon. Rick Colless:** That is even worse. They are not game to.

**Ms LEE RHIANNON:** That is the point I want to make. They could easily make a speech according to Labor Party policy. Labor Party members of this House cannot be expelled for speaking out in support of Labor policy. Surely some Labor backbenchers could listen to their conscience and speak out for the Turrella community and their own party policy! The Turrella community is in pain. The residents suffer the stress of uncertainty because they do not know the serious health consequences of this unfiltered stack. Already there have been adverse health impacts causing considerable sickness among many local people. The community has worked hard for what is the right of everyone: clean air.

The community used its own money to launch legal action after exhausting all avenues in the long fight for clean air, including two parliamentary inquiries. As result of its hard work the Residents Against Polluting Stacks [RAPS] signed an agreement with the RTA in good faith and with the best of intentions. However, the community has been increasingly frustrated by the RTA's failure and delay in providing essential information. RAPS has worked successfully with members of this House to require the Government to release papers relating to the stack, and I would like to comment on some of that data. RTA data released in June showed that the tunnel and stack fans operated below the required speeds on at least 49 days between February and May, and that for much of that time they were not even turned on. RAPS also understands that ventilation fans in the M5 East Tunnel were operated below the required speed and did not operate at all between February, March and April.

The RTA was forced to establish a complaints line to deal with complaints about the stack, but it could not get it right. Six months after the opening of the tunnel the RTA finally set up a complaints line to receive complaints about the smells and illnesses caused by the tunnel and about ill effects suffered while in the tunnel. The advertisement placed in the newspapers by the RTA to comply with a condition that it had to establish a complaints procedure about the stack did not even mention the stack. A request for people to be on the consultative committee is also well and truly hidden within the advertisement. This is true to RTA form and true to Labor Party form

I wonder how the complaints line responded to yesterday's fire. I would be interested to read the report. The headline on the front page of today's *Cooks River Valley Times* was "Disaster averted in M5 Tunnel Fire". Luckily, a driver in the tunnel near to the fire had a fire extinguisher. I shudder to think what would have happened if that had not been the case. The M5 time bomb did not go off yesterday, but it is most definitely still ticking. The Greens have taken a consistent position of opposition to motorways. The appalling operation of the M5 East is further proof of our position. We are clear on the direction we must take on statements from government departments. Plans to build any future tunnels should be cancelled, and the M5 East and other tunnels must be immediately filtrated. Labor has considerable cleaning up to do and the most symbolic start it could take would be filtrate the M5 East stack. We need it immediately.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [4.05 p.m.], in reply: I thank all honourable members for their contributions to the debate. This was one of those rare debates that prove the need for an upper House in New South Wales. If we did not have a House of review in New South Wales, people affected by the M5 East stack would not have a forum in which to put their points forward in the way that that has happened in this place. Indeed, the people of New South Wales would be without any mechanism of protection from a Government that has simply lost the plot on so many issues.

This is a classic example of how the Government got it wrong from the outset and, what is worse, how it has stopped listening to the people. Indeed, one might question whether the Government ever started to listen.

This debate has ranged over a number of days and has identified the difference between the views of the Government and the non-government members in this Chamber. There is a clear defining line on this issue. Very few members, if any, from the crossbench support the Government's position. This debate is beyond politics; it is about ensuring that the people of this State have an effective voice to put their message. One need only have observed the passion from so many members during the course of this debate—and only one or two live near the M5 East—to understand the deep impact this issue has on some many people in this city.

I congratulate crossbench members on voting with the Opposition in its support for the community on this important issue. The position we have taken is fair and equitable. I thank John Turner, the shadow Minister for Roads in the other place. He greatly assisted me by ensuring that I was kept up to date with the needs of the community. I also acknowledge Coalition members in this Chamber who have a personal interest in this matter. The Hon. John Ryan took time out from the normal role he performs in his important part of Sydney to spend an inordinate amount of time with people affected by the M5 East, as he has done with people who are affected by the Government's mishandling of housing in New South Wales. He has done a fantastic job in voicing the concerns of the community and I congratulate him on that. I also thank the Hon. John Jobling, who in this debate took our understanding to another level by outlining the scientific rationale of these problems. Indeed, I thank all Coalition members who have participated.

I do not propose to delay the House any further. Opposition members want to put this matter to the vote. I give the Government credit for not putting up speaker after speaker—which is what normally happens when the Government knows it is in trouble—or trying to talk out the issue until the election in the hope that it will go away. The Government knows that that will not happen because we are as one on this issue. On this day democracy has won.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

#### **ANTI-DISCRIMINATION (HETEROSEXUAL DISCRIMINATION) AMENDMENT BILL**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Peter Primrose.**

#### **PUBLIC HEALTH AMENDMENT (JUVENILE SMOKING) BILL**

##### **Second Reading**

**Debate called on, and adjourned on motion by Reverend the Hon. Fred Nile.**

#### **FAMILY IMPACT COMMISSION BILL**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Ian Macdonald.**

#### **NATIONAL PARKS AND WILDLIFE AMENDMENT (LICENCES) BILL**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Ian Macdonald.**

#### **WILDERNESS AMENDMENT (PROCEDURE) BILL**

##### **Second Reading**

**Debate called on, and adjourned on motion by the Hon. Ian Macdonald.**

**AUSTRALIAN PEOPLE FOR HEALTH, EDUCATION AND DEVELOPMENT ABROAD**

**The Hon. IAN WEST** [4.15 p.m.]: I move:

That this House:

- (a) congratulates Australian People for Health, Education and Development Abroad (APHEDA), the overseas humanitarian aid agency of the Australian Council of Trade Unions (ACTU), also known as Union Aid Abroad, for its work in international aid and development and skills training projects for workers in South East Asia, the Pacific, southern Africa and the Middle East,
- (b) notes APHEDA's commitment to social justice and human rights since its establishment in 1984 by the ACTU through direct contributions to countries and regions of the world where men and women workers are disadvantaged through poverty, lack of human and workplace rights and civil conflict,
- (c) recognises APHEDA's rights based approach through its Union Aid Abroad program in building self-reliance for workers, their organisations and communities,
- (d) supports APHEDA's efforts to eradicate poverty and achieve human rights as well as lift standards of corporate governance, public accountability and financial management,
- (e) supports APHEDA's commitment to social justice and international solidarity for human rights and development by its support to education, training and development projects, working in partnership with those whose rights to development are restricted or denied,
- (f) commends APHEDA's work in East Timor where, with the support of Australian unions such as the Hospitality and Miscellaneous Workers Union (LHMU), Construction, Forestry, Mining and Energy Union (CFMEU), Manufacturing Workers Union (AMWU), Communications, Electrical and Plumbing Union (CEPU), Independent Education Union (IEU), Media, Entertainment and Arts Alliance (MEAA) and others, together with, building companies, training bodies and AusAID, a program of vocational training, community media development, capacity building for local community organisations and assistance to the University of East Timor library is being undertaken,
- (g) commends APHEDA's long-term commitment to development in countries such as Cambodia, where the Hospitality and Miscellaneous Workers Union (LHMU), Maritime Union of Australia (MUA), Manufacturing Workers Union (AMWU) and others, together with AusAID, have trained more than 2,000 disadvantaged women each year for over 10 years in employment skills or income generating skills so they can have access to a better life.

Australian People for Health, Education and Development Abroad [APHEDA] was established by the Australian Council of Trade Unions in 1984. The APHEDA resume includes projects in over 15 of the most needy countries in the world, including countries such as Cambodia, East Timor and Vietnam. It has three offices: the major office in Sydney, a smaller office in Canberra in the Australian Capital Territory, and an international office located in Phnom Penh in Cambodia. APHEDA assists in many projects through providing financial and technical help to local unions and community-based organisations, for which they have a committee of management locally in that country which decides which projects people wish to embark upon. The vision of APHEDA is that unions and communities working internationally will be able to mitigate or attempt to eradicate poverty and achieve improved human rights in the developing world.

APHEDA was established in 1984 when the Australian Council of Trade Unions [ACTU] decided not only to help people in Australia but to give assistance to those in many other countries. It was officially classed a charity under the New South Wales Incorporations Act in 1984 and since that time it has been an active member of the Australian Council for Overseas Aid. This active participation has resulted in the charity being highly regarded by the international community for its work in eradicating poverty and improving human rights in many countries.

APHEDA's mission as the ACTU's humanitarian aid agency expresses the Australian union movement's commitment to social justice and international solidarity for human rights and development through the support of education, training and development projects, working in partnership with those whose rights to development are restricted or have been denied in some way. To achieve this APHEDA works with local organisations—usually unions, trade-based or non-government organisations—and focuses on giving technical skills to fledgling communities. Much of this is invaluable work as the people who are teaching various technical skills to the fledgling communities are invariably trained professionals. This results in people not only being given the technology but also the correct way in which to perform the work. This form of aid assists these people over a long period of time, as opposed to a one-off grant. It enables them to have information given to them today which assists them for decades into the future. From 1984 to date up to 60 different programs have been put in place throughout 15 or 16 countries in South-East Asia, the Pacific, the Middle East, South Africa and the Caribbean.

**The Hon. Dr Brian Pezzutti:** Afghanistan?

**The Hon. IAN WEST:** At this point in time, as far as I am aware, there has not been an opportunity to assist people particularly in Afghanistan. However, there are a number of programs in the Middle East. However, I wish to speak first about what has been happening in East Timor, where an education program has been established at Knua Buka Hatente. That program is part of a numeracy, literacy and vocational skills project for workers that targets the poor, the disadvantaged, women and ex-combatants who have suffered loss of eyesight or limbs. Those literacy, numeracy and vocational skills programs, which are open to whomever the local community wishes to come along to them, have been handed over to three local partners to run. That project has enabled the building of facilities, using materials and labour supplied by employers in the Australian building industry, to enable literacy, numeracy and vocational skills training to be undertaken by the people of East Timor.

In Cambodia the Kampot Industry Technical Education Centre has been established and provides information to workers about the information technology industry. It was set up by money and expertise supplied by APHEDA. The project has been running extremely well and has assisted people who have lost limbs, are visually impaired or suffer other disabilities. Worldwide, about 246 million children aged between five and 17 are engaged in child labour. In India 50 million children are subject to child labour and the cycle of poverty. Union Aid Abroad, APHEDA, has been involved in a project that is making workers aware of child labour, motivating parents to send their children to school, providing basic preparatory education on formal lines to children of construction industry workers, and encouraging them to go to government schools to continue their education.

This project has been supported by the Victorian Child Labour Schools Company and the International Federation of Building and Woodworkers. Three schools have been built in India with this money to enable these children to be educated after they come out of the garment industry, prostitution and other unenviable tasks. Even a few people on the other side of the House may find that an enviable project. In South Africa HIV and AIDS education and support care is provided. A total of \$2.2 million adult women were estimated to be living with HIV in South Africa at the end of 1999. My mates in the trade union movement and I, and those who have some sympathy for those individuals, those human beings, think that APHEDA or Union Aid Abroad is doing an exceptional job.

The garment industry is by far the largest industry in Cambodia, employing almost 200,000 workers, mostly in the capital of Phnom Penh. The workers are mainly young rural women who migrate to the cities looking for work to support their families or to help younger brothers and sisters to stay at school. Most of the girls start work in the factories soon after the age of 14 with an average wage of \$1.50—Yankee dollar—for a seven-hour shift. Those women have problems arising from their complete lack of knowledge of the labour codes, the dismissal of workers who are union activists, and late payment of wages. Women returning from maternity leave are not paid if they have lost the baby. If they cannot show that their parents are looking after the children there can be difficulties in getting payments. They can also encounter sexual harassment and violence. Union Aid Abroad or APHEDA has been involved in these projects since 1984, not seeking glory or to influence the outcome of elections in those countries but there to help people who really need help. There are no sinister motives or intents.

**The Hon. Dr Brian Pezzutti:** No, but they are more righteous.

**The Hon. IAN WEST:** They are in no way more righteous than the various churches that are involved in those countries. Burma probably has the most repressive military regime in the world, and other similar regimes around the world harbour all sorts of people, many of whom might at times be described as terrorists. We are told they are everywhere. I refer now to labour rights. Union Aid Abroad or APHEDA supports projects in developing countries such as Indonesia. As the new millennium unfolds there is nothing to indicate that the world is becoming a better place for workers. In the name of competition and the free market, real wages for workers in many countries, particularly developing countries, have been driven down and conditions and safety standards have fallen. Worldwide about 250 million children aged between 4 and 14 are forced to work. In this supposedly enlightened era the International Labour Organisation and other international organisations have claimed that there is probably more child labour now than there was in Dickensian times.

I take the opportunity to congratulate the Special Minister of State and Minister for Industrial Relations, Mr Della Bosca, on the Fair Wear campaign and the Behind the Label launch that took place on 18 September. Union Aid abroad, or APHEDA, was involved in that launch. The campaign was endorsed nationally by a number of organisations the Anglican Church Diocese of Sydney Social Issues Committee, the Anglican Diocese of Melbourne, Asian Women at Work, the Australian Council of Social Justice, the Australian

Forum for Justice, the Baptist Church Social Group of Victoria and the Baptist Union of New South Wales, the Loreto Sisters, the Mercy Foundation, the Uniting Church Assembly's Social Responsibility and Justice Committee, the Board of Social Responsibility Synod and the Uniting Church of the Northern Territory.

Also represented were the Women's Federal Lobby, the Women's Health Industry Association and the Asian Women at Work Organisation. I congratulate the Chairperson of the Asian Women at Work Organisation, Debbie Carstens, on the work she has done in the Behind the Label campaign. The statement of aims of Fair Wear was to eliminate the exploitation of home-based outworkers and to encourage retailers and manufacturers to support and adopt a code of practice for the textile, clothing and footwear industries. Other aims were to urge the Australian Government to development initiatives to encourage home-based workers to move into the formal economy, and to encourage Australian companies to incorporate a fair practice code in their overseas production.

The Fair Wear campaign goes to the very issue of what is happening to a number of people working in various industries in a number of countries including Cambodia, Cuba, East Timor, India, Indonesia, Laos, Burma, Vietnam and areas in the Middle East, the Pacific, the Philippines and southern Africa, et cetera. A number of those countries have been involved in engaging cheap labour and exporting their products to Australia under labels that enable entrepreneurs to make profits from child labour. Those young workers are causing outworkers in Australia to work for wages and under conditions that are far below those paid by companies such as Sussan. Even though a company may have provided an outworker with machine to work on, the worker is responsible for any necessary repairs to that machine.

The Behind the Label Government initiative of 18 September was, from the point of view of wages in Australia, clearly one of the most important projects ever experienced by clothing workers in this country. Over a three year period \$4 million was dedicated to clothing outworkers to support a strong competitive clothing industry. It was backed by legislation, the Industrial Relations (Ethical Clothing Trades) Act 2001. Behind the Label is clearly a comprehensive strategy to provide direct help to outworkers, and a real incentive and assistance to industry. In time it will also give the community in general a chance to show its support by choosing typically made clothing. The Behind the Label team within the Department of Industrial Relations is working with other agencies, industries and community organisations to develop and fund projects in four particular areas compliance, community education, outworker training and industry assistance.

To co-ordinate broader measures, an Ethical Clothing Trades Council has been convened, bringing together government, industry, union and community representatives. The main objective of the council is to promote greater self-regulation in the clothing industry through agreements such as the Ethical Clothing Code of Practice. If we are able to ensure that the retail industry in New South Wales has a proper ethical clothing trades policy, it will not be able, or willing, to import clothing products made as a result of child labour. The outcomes will be improved compliance through direct assistance, monitoring and intervention. [*Time expired.*]

**Debate adjourned on motion by the Hon. Peter Primrose.**

### **SPECIAL ADJOURNMENT**

**Motion by the Hon. Ian Macdonald agreed to:**

That this House at its rising today do adjourn until Tuesday 22 October 2002 at 2.30 p.m.

### **GENERAL PURPOSE STANDING COMMITTEE No. 3**

#### **Reference to the Independent Commission Against Corruption**

**The DEPUTY-PRESIDENT (The Hon. Tony Kelly):** I inform the House that further to the resolution of the Legislative Council on Wednesday 28 August referring report No. 10 of General Purpose Standing Committee No. 3, entitled "Inquiry into aspects of the Department of Corrective Services", to the Commissioner of the Independent Commission Against Corruption, the Clerk received a letter from the commissioner on 23 September indicating that she had formed the view that the commission may well be prevented from using the material forwarded as the basis on which to pursue the matters in that material because of parliamentary privilege. As the letter is lengthy, I will have it incorporated in *Hansard* and I ask the Clerk to distribute copies to honourable members.

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Mr John Evans  
Clerk to the Parliaments  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

Dear Mr Evans,

Thank you for your letter of 9 September 2002, communicating the resolution of the Legislative Council regarding the referral of material arising from the inquiry into aspects of the Department of Corrective Services, conducted by the General Purpose Standing Committee No. 3.

I note your suggestion to seek advice on the use of the material in the context of Parliamentary privilege and the material constituting "proceeding in Parliament". I have taken advice on the question, and have formed the view that the ICAC may well be prevented from using the material forwarded by the Legislative Council as the basis on which to pursue the matters contained in that material.

Section 122 of the *Independent Commission Against Corruption Act 1988* states:

Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

Consequently, consideration has been given to Article 9 of the *Bill of Rights* as the relevant privilege in this matter, and I note the prohibition in that Article on Parliamentary proceedings being "impeached or questioned" in any court "or place out of Parliament", which I take to include such bodies as the ICAC.

In the absence of an enactment in NSW codifying the privileges of the Parliament, I have used such materials as the provisions of the Parliamentary Privileges Act 1987 (Cth) as a means of settling upon the meaning of "impeached or questioned". It should be understood that my advice has considered these provisions to be illustrative, but not exhaustive, in determining the privileges of the NSW Parliament.

Section 16(3) of the *Parliamentary Privileges Act 1987* (Cth) states

*In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of.*

*(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament,*

*(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or*

*(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.* [Emphasis added.]

The Privy Council in *Prebble v Television New Zealand* [1995] 1 AC 321, stated that section 16(3):

*"declares what had previously been regarded as the effect of [Article 9] and... contains what, in the opinion of their Lordships, is the correct principle to be applied."* (at 333)

Accordingly, I am inclined to take the view that if the material referred by the House constitutes "proceedings in Parliament", the ICAC would be prevented from relying upon that material for its inquiries.

I refer to the *Parliamentary Privileges Act 1987* (Cth) as an illustration of the matters that would be covered by definition of "proceedings in Parliament". Again I emphasise that this has been used as a means of illustrating but not exhausting the meaning of the term. Section 16(2) states:

*all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a Committee, and, without limiting the generality of the foregoing, includes-*

*(a) the giving of evidence before a House or a Committee, and evidence so given;*

*(b) the presentation or submission of a document to a House or a committee,*

*(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and*

*(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.* [Emphasis added].

I note that this definition has been used elsewhere, such as in s.13 of the *Defamation Act 1996* (UK), to define "proceedings in Parliament" for those jurisdictions, and have relied on it accordingly.

The emphasised elements of the section squarely encompass the material referred by the Legislative Council in this instance. Accordingly I am of the view that all the material referred by the Legislative Council constitutes "proceedings in Parliament". It follows that it cannot form the basis of any further consideration or action by the ICAC because of section 122 of the ICAC Act.

I am mindful of the Legislative Council's wishes, reflected in the resolution of 28 August 2002, that the ICAC give consideration to the information contained in the referred material, and assess it to determine what, if any, action should be taken in response. The ICAC has received a great deal of material on the matters raised in the documents tabled by the Inspector General. I propose to provide him with a copy of this letter, and ascertain whether he is prepared to provide directly to the ICAC that material he has previously tabled.

Given this position, I would like to draw to the Legislative Council's attention the general effect of its privileges on the referral and subsequent use of material obtained in the course of its inquiries. It should be appreciated that the cessation of an inquiry by a Parliamentary Committee, and referral to a standing body for further inquiries, does not appear to be an option, given that no use can be made of the evidence or documents obtained by the Committee to form the basis of any inquiries by that body.

Any future referrals of the sort made in this instance, absent a waiver of privilege enabled by statutory provisions contained in amendments of the type made in 1997 to the *Special Commissions of Inquiry Act 1983*, would presumably face similar problems to those that have occurred in this instance.

Yours sincerely

**Irene Moss AO**  
**Commissioner**

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## AUSTRALIAN MILITARY INVOLVEMENT IN IRAQ

**The Hon. Dr PETER WONG** [4.50 p.m.]: I move:

That this House communicate to the Federal Government its concern that Australia should not participate in action by sending troops to Iraq without the imprimatur or agreement of the United Nations.

I am sure that Australians are a peace-loving people. I give respect to the many Australians who have lost their lives in many battles around the world and to those who are ready to defend Australia at a moment's notice. However, I do not think Australians believe that fighting is the way to solve a problem. The September 11 incident has set us suddenly on a path to a war on terrorism. But the war on terror has now detoured to a war on Iraq. I quote from an article in the *Sydney Morning Herald* of 24 September written by an American:

To begin with, I believe that we should focus our efforts first and foremost against those who attacked us on September 11th and have thus far gotten away with it ... I do not believe that we should allow ourselves to be distracted from this urgent task simply because it is proving to be more difficult and lengthy than predicted. Great nations persevere and then prevail. They do not jump from one unfinished task to another.

We are talking about a war with Iraq, which I neither agree with nor support. Another nation in the Middle East has, without doubt, amassed weapons of mass destruction and invaded its neighbours. It occupies three of its neighbours. It is also in violation of 28 United Nations Security Council resolutions, the most recent of which was passed only this week. That country is Israel, a staunch ally of the United States of America. Another staunch regional ally of the US is Pakistan, which, more than any other nation on earth, was responsible for sponsoring and supporting the Taliban. Let us not forget Saudi Arabia, another great friend of the US in the region. Saudi Arabia is the familial home of Osama bin Laden and most of Al-Qaeda's leadership, and the source of much of its finances.

It is interesting to note that Iraq, for all its sins real and imagined, refused to recognise the Taliban regime in Kabul, but not so Pakistan and Saudi Arabia, the regime's erstwhile supporters. There is no link between September 11 and Iraq. There is no link between the Islamic fundamentalism of Al-Qaeda and the secular government of Iraq. Consequently, George W. Bush may well miss out on his much-vaunted military adventure. Australia is a peace-loving country. We simply cannot do what the US wants us to do. We cannot act or go to war without the endorsement of the United Nations. If we blindly follow the United States, we will harm our relationship with many Middle Eastern countries and the Islamic world. At the end of the day, Australians will not support a war on Iraq.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.54 p.m.]: The Government takes the position expounded by the Federal Leader of the Opposition, Mr Crean, in Federal Parliament. Australia should not participate in any action against Iraq without a resolution from the United Nations. That is the position of the Australian Labor Party. It is important to note, in the context of this motion, that we propose to honour resolutions of the United Nations. The Palestinian situation is subject to a series of resolutions adopted by the United Nations that were endorsed almost unanimously by the community. Recently, one such resolution passed through the United Nations with only one abstention. The United Nations and United States of America must endeavour to achieve a peaceful settlement in the Middle East. Many of the problems in the Arab world relate to the long-term situation in the Middle East, which must be resolved.

We must establish a viable Palestinian State and procure peace and security in Israel. To that end the United Nations has produced a number of resolutions which, on various occasions, were strongly supported by the previous President of the United States, Bill Clinton. Unfortunately, President George W. Bush is a rogue

president who, it seems, wants to take on the world by himself. He has a Texas view of the world. He is a bit of a lone ranger. He has proposed a forward defence situation for the Middle East, particularly Iraq. I do not support Saddam Hussein in any way. He is one of the worst dictators the world has seen in the past 50 years. He is in the same category as Pinochet in Chile, and other dictators in Argentina and other parts of South America and Africa. Unfortunately, Africa is still ruled by dictators who promote war and seek opportunities to sell whatever they can around the world.

**The Hon. Charlie Lynn:** What about Fidel Castro?

**The Hon. IAN MACDONALD:** Fidel Castro, for all his faults, cannot be accused of trying to wage war on other countries. Cuba is very isolated. Any evidence of his waging war on other countries is very limited. I am suspicious of much of what the United States has said about Cuba over the years. We must get rid of Saddam Hussein. However, actions against Iraq must be taken in the context of United Nations resolutions. Al Gore, who was cheated out of his election by George W. Bush's brother, Jeb Bush, in Florida, was one of eight Democrats who voted for George W. Bush's father to intervene in Iraq in 1991. Yesterday he made it clear that the policy of George W. Bush would jeopardise America's relationship with the rest of the world.

He is acting without any respect for the world community and is denying the world community a view on these events. The Netherlands, with all European countries, makes it clear that the Iraq issue must be resolved within the context of international relations and not by invasion by aircraft and tanks, smashing up the country and leaving an absolute mess. War would create an enormous reaction throughout the Middle East that would lead to decades of turmoil, dislocation and alienation towards the West for more than one billion people who subscribe to the Muslim religion. Bush should make it a priority to have the United Nations resolutions in relation to the Middle East enacted so that we finally have peace, a viable Palestinian State and a peaceful Israel. This motion is one of the finest motions ever to be moved in this Chamber because it is germane to all of us. We could be fighting a war early next year.

**Pursuant to sessional orders business interrupted.**

#### ADJOURNMENT

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [5.01 p.m.]: I move:

That this House do now adjourn.

#### OASIS LIVERPOOL DEVELOPMENT

**The Hon. PETER BREEN** [5.01 p.m.]: A question was asked in the lower House today by the Leader of the Opposition about a telephone conversation I had with the Minister for Fisheries, Mr Obeid, on 24 September. That conversation took place following a meeting at 9.00 a.m. between the Minister and members of the crossbench—a meeting called by the Minister at which the Minister sought to explain his failure to include 29 companies in his pecuniary interest return. When I returned to my office the Minister telephoned me and asked whether I supported the Opposition motion to declare his seat vacant.

**The Hon. Ian Macdonald:** Point of order: I believe the matters being raised by the Hon. Peter Breen are, in fact, before the privileges committee. He referred to 29 companies, and that is obviously a reference to matters dealt with yesterday at considerable length in this Chamber—whether those companies had been declared at various times by the Minister. The issue is now before the privileges committee, which I understand met at lunchtime today to set a schedule of arrangements for dealing with this reference. If the honourable member is seeking to canvass anything to do with the matters that will be before the privileges committee, he is out of order. They should be dealt with by that committee. If honourable members have any comments to make about the matters that are before the committee, they should make a submission to the committee and have their concerns dealt with that way, not by way of a speech on an adjournment motion. When the committee reports, all members here will have an opportunity to debate the matter. What the member is attempting to do is against the traditions of this House. The matters are before a committee of this House and, accordingly, the Hon. Peter Breen is out of order.

**The Hon. PETER BREEN:** To the point of order: The issue that I was raising has nothing to do with the question that has been referred to the privileges and ethics committee. I was simply seeking to place these matters in context. The context arose as a result of discussions that led to the reference to the privileges and ethics committee. The conversation that I was addressing took place after the referral and has nothing to do with it.

[*Interruption*]

**The Hon. Amanda Fazio:** To the point of order: I wish to speak briefly to the point of order, without the interjections of the despicable creature, the Hon. Greg Pearce. I do not like to waste the time of other honourable members during their adjournment speeches, but as a member of the privileges and ethics committee I advise that the committee met this morning at 10.30 in the members' lounge. The majority of the meeting was devoted to discussing the matters that were referred to us by this House yesterday. I believe it would be anticipating the deliberations of the privileges and ethics committee to discuss this matter again in the Chamber because the matter will be fully investigated by the committee. I have made a definite effort, as a member of the privileges and ethics committee, to have minimal contact with the Minister for Mineral Resources so as not to prejudice my involvement in that committee's deliberations. We should not be debating this matter now. I apologise to the Hon. Peter Breen for taking up his time, but this is an important matter of principle.

**Ms Lee Rhiannon:** To the point of order: The underlying principle behind all our standing orders is the public interest. It is clear that there is a public interest in this House hearing Mr Breen at this time.

**The Hon. Greg Pearce:** To the point of order: This afternoon I had a discussion with the Hon. Peter Breen in which he told me he had returned to his office and had received a telephone call from Mr Obeid. In the course of that telephone call, Mr Obeid read from a statutory declaration—

**The Hon. Ian Macdonald:** Point of order, Madam President.

**The Hon. Greg Pearce:** —and Mr Breen took contemporaneous notes of the conversation and the contents of that conversation. Mr Breen further told me—

**The Hon. Ian Macdonald:** Point of order—

**The Hon. Greg Pearce:** —that the statutory declaration included a statement that there had been a meeting on 15 November 2001 at which Mr Arthur Coorey —

**The Hon. Ian Macdonald:** Madam President, you should stop him. He is canvassing the issue; he is not speaking to the point of order.

**The Hon. Greg Pearce:** —had told Mr McIntyre that on payment of \$1 million to the ALP the Oasis development would get approval.

**The PRESIDENT:** Order! The Hon. Ian Macdonald, were you taking a point of order on the point of order?

**The Hon. Ian Macdonald:** I was taking a point on the content of what the Hon. Greg Pearce was saying, when he was not speaking to the point of order but rather reading a statement about some matters that are already before the privileges committee.

**The Hon. Peter Breen:** They are not.

**The Hon. Ian Macdonald:** Matters relevant to these issues are before the privileges committee. If he wants to make a statement about the matter, he can make it to the privileges committee.

**The PRESIDENT:** Order! I will rule on the point of order on the point of order. The point of order of the Hon. Ian Macdonald is upheld. Members cannot introduce material into the debate that has anything to do with the substantive issue. The point of order must, indeed, be a point of order.

**The Hon. Peter Breen:** To the point of order: This conversation took place after the reference to the committee. The conversation—

**The Hon. Ian Macdonald:** Point of order: Is the Hon. Peter Breen speaking to the point of order?

**The Hon. Michael Gallacher:** Yes.

**The Hon. Ian Macdonald:** He is not. He is talking about a conversation.

**The Hon. Dr Brian Pezzutti:** He didn't say "conversation" at all.

**The Hon. Ian Macdonald:** Yes, he did. The Hon. Peter Breen clearly made a point about a conversation that he allegedly had this afternoon.

**The Hon. Rick Colless:** Throwing Eddie a lifeline.

**The Hon. Ian Macdonald:** I am not throwing anyone a lifeline; you are the privileges committee. The point is that the Hon. Peter Breen is trying to canvass the issue. If he wants to deal with the point of order, he should do so.

**The PRESIDENT:** Order! I will rule on the point of order on that point of order. The Hon. Peter Breen must be aware that he cannot speak, even in a point of order, about any of the items covered by the reference to the standing committee. Members may not, even when taking points of order, refer to events—even if they be conversations—that have to do with this reference, which, for the edification of members, I will read:

The Standing Committee on Parliamentary Privilege and Ethics investigate and report on:

- (a) whether, under section 14A (2) of the Constitution Act 1902, the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, has wilfully contravened the requirements of clause 12 of the Constitution (Disclosures by Members) Regulation 1983 by failing to disclose any pecuniary interest as required under the Regulation.
- (b) what, if any, sanctions should be enforced in relation to the conduct of the Honourable Edward Obeid, Minister for Mineral Resources and Minister for Fisheries, in this matter, and
- (c) whether the provisions of the Constitution (Disclosures by Members) Regulation 1983 should be amended to provide for the provision of supplementary or amended disclosures by Members.

I remind members that any reference to discussion, whether by way of conversation or formal meeting, that covers those matters is out of order, and I will rule any such reference out of order. I give the call to the Hon. John Hatzistergos.

**The Hon. Dr Brian Pezzutti:** Peter Breen still has a point of order, Madam President. You have ruled on the point of order on the point of order.

**The PRESIDENT:** Order! The honourable member's time had expired.

**The Hon. Michael Gallacher:** Madam President, you only ruled on the first point of order.

**The PRESIDENT:** Order! I am ruling on all the points of order and am reminding members what they can and cannot talk about under the relevant standing orders.

**The Hon. Duncan Gay:** A point of clarification—

**The Hon. Amanda Fazio:** There's no such thing.

**The Hon. Duncan Gay:** Just be careful, Mandy. Madam President, you indicated that you were going to rule on the point of order taken on the Hon. Peter Breen, who was speaking to the point of order.

**The Hon. Michael Gallacher:** He was in the course of speaking.

**The Hon. Duncan Gay:** Yes. My understanding is that, you having made that statement, the call returns to the Hon. Peter Breen, who was speaking to the first point of order.

**The PRESIDENT:** Order! I was ruling that the remarks the Hon. Peter Breen was making were out of order.

**The Hon. Dr Brian Pezzutti:** No, you weren't.

**The PRESIDENT:** Order! I made a general ruling that any comments that cover what I read out were out of order.

**The Hon. Michael Gallacher:** He had not had a chance—

**The PRESIDENT:** Order! The Hon. Peter Breen may take a further point of order if he wishes. The Hon. John Hatzistergos has the call.

**The Hon. Michael Gallacher:** Point of order: Madam President, with all due respect, you said that the Hon. Peter Breen can take a further point of order if he wishes. But he has now been surrounded by the heavies. I would expect you to give him a chance. This is a disgrace!

**The PRESIDENT:** Order! The Hon. Peter Breen may take a point of order if he wishes.

**The Hon. PETER BREEN:** Thank you, Madam President. My point of order is that any conversation that I might have had with the Minister subsequent to the meeting between the crossbenchers and the Minister is not within the terms of any matter before the House. I therefore respectfully ask for the right to speak to that issue. I am not speaking to the matter that has been referred to the Standing Committee on Parliamentary Privilege and Ethics.

**The PRESIDENT:** Order! The problem is that the honourable member's time has expired. There may be time left at the end of the adjournment debate for him to seek the call again.

### JUDICIAL APPOINTMENTS

**The Hon. JOHN HATZISTERGOS** [5.15 p.m.]: Recent public outcry over judicial decision-making has focused the attention of some commentators on the judicial appointments process. Under our system of appointments it is standard that the Executive makes the ultimate choice on judicial appointments. For my own part, I have never subscribed to the notion of elected judges, as are common in the United States. Nor for that matter do I support the notion of judges on contracts—a proposition that had some appeal to the previous Northern Territory Government and also to the previous Leader of the Opposition in this State.

Accepting the notion of Executive appointment, the often-raised criticism is the absence of known public criteria or measure. With some exceptions, it has not been the practice in Australia to advertise for applicants for judicial appointment, at least not in the intermediate or higher court levels. One-off exceptions have been in Tasmania in 2000 when the Tasmanian Government advertised for expressions of interest about a vacancy in the Supreme Court, and when the Commonwealth Government advertised in 1999 for a Family Court judge in Townsville. Though there are consultation processes, they are not generally formalised. Indeed, there is a perception amongst some that, whilst consultation is undertaken, it is generally ignored. For example, Justice McPherson of the Queensland Court of Appeal stated in a letter published in the *Queensland Bar News* in 1999:

Consultation with leaders of the profession may take place; but, as often as not, some Attorneys-General do not consider the advice received in that way as relevant, and increasingly it is being treated as a formality that is ignored in practice.

In a similar vein Justice Sally Brown said in her evidence before the Senate Standing Committee on Legal and Constitutional Affairs in 1994:

... The judicial whisper goes around and someone ends up miraculously on the bench... because there is all this mystique, as if it is somehow by magic that it happens, there is a perception—that may or may not be right in some cases—that it depends on who you know; that it is not based on any objective criteria; and that we do not know what we are trying to achieve when we appoint people...

These criticisms from persons who could not be regarded as uninformed on the matter invite response. It seems to me that, irrespective of the validity of the claims, a process that gives oxygen to their ventilation requires re-examination. Indeed, Australia is not the only country where such commentary has been made, and as a consequence a number of models to address this are to be found. For example in 35 States of the United States of America a system is used that combines both recommendations of a nominating commission and Executive appointment. Under this system the nominating system recruits, screens and recommends a short list of candidates for judgeship from which the appointer must appoint someone. A variant of this system also exists in Canada, where judicial appointments advisory committees are established in each province. These committees have a non-lawyer majority. Their function is to assess written applications and rank them as highly favoured, favoured or not favoured. The Minister's self-imposed restriction is to choose from only the first two categories.

A further variant is to be found in New Zealand, where, in response to criticisms that the judiciary was remote and unrepresentative of the community, a Judicial Appointments Board has been in operation since 1988. The board is constituted by a broad range of interest groups, including four lay members appointed

by the Minister for Justice in consultation with the Ministers for Maori, Consumer and Women's Affairs. The board advertises vacancies and reviews applications in accordance with its criteria before providing a ranking list to the Attorney. There seems to be no serious move in Australia toward establishing a judicial board or nominating commission. Not having examined these bodies in any depth, I am uncertain of their effectiveness.

However, in March this year the Law Council of Australia released a policy on the process of judicial appointments. The policy affirmed that judicial appointment is a function of government. However the policy sets out that the Attorney General, in consultation with the head of jurisdiction and the legal profession of the jurisdiction, should establish and make publicly available a formal judicial appointments protocol, outlining the judicial appointment process in that jurisdiction.

Two factors were identified for inclusion in the proposed protocol. The first was the requirement for formal consultation with certain officeholders within the judiciary and the profession. The second was that the protocol should set out the knowledge and experience that candidates for judicial appointment must possess, as well as the professional and personal qualities that are desirable for candidates in the judicial appointment process. It is also acknowledged that other persons may be consulted, and wider consultation is encouraged. For my part, I think in the modern day context, broader consumer consultation is essential rather than simply a desirable course to be taken.

Finally, it is suggested that the protocol should ensure that all suitable candidates are considered for appointment and that this may involve advertising for expressions of interest, so long as the advertising is undertaken carefully and in a way that does not diminish the standing of the court. It must be acknowledged particularly that advertising is auxiliary to consultation and not a substitute for it. This approach essentially ensures that the Executive is aware of all suitable candidates and assesses them against consistent, appropriate criteria based on merit. As we know, the law is not an exact science, and therefore those who administer it and hand down judgments must have the full trust of the community to do so. It seems to me that establishing and applying such a protocol would be helpful in meeting community expectations and recognising that appointments be made solely on merit.

The principle of ensuring representation on the bench reflective of the community at large is an important aspect of equal opportunity. However, the administration of justice cannot be a lucky dip, depending on the background and disposition of those who, by chance, happen to be hearing a case. Ensuring minority representation within the judiciary will be sustained only if we take steps towards ensuring the quality of access and participation within the law well before targeting judicial appointment. Justice Michael Kirby said in his 1983 Boyer lecture, "Judges judge the community in all its diversity." I believe that the changes outlined by the Law Council of Australia go a long way to achieving these ends and promoting community confidence.

### OASIS LIVERPOOL DEVELOPMENT

**The Hon. PETER BREEN** [5.20 p.m.] by leave: The need for me to make this statement arises out of a question which was asked in the lower House today by the Leader of the Opposition. When I was speaking earlier I said that I had had a conversation with the Minister for Fisheries, Mr Obeid, following the meeting between the crossbench and the Minister on Tuesday. When I got back to my office following that meeting the Minister telephoned me and asked whether I supported the motion before the House. I said I did not believe he had wilfully failed to include the companies in his pecuniary interests return and I accepted his explanation that his accountants were responsible for the oversight.

In the course of that telephone discussion I expressed to the Minister my opinion that his biggest concern was the allegation that he promised approval for the Oasis development at Liverpool in return for a donation of \$1 million to the Labor Party. The Minister then said, "I am suing the *Herald* for that" or words to that effect. He also said, "They've got to find someone who I said it to" or words to that effect. I then said, "I've been talking with Kate McClymont at the *Herald* and they reckon they've got five or six people who say Gary McIntyre says you said it" or words to that effect. The Minister then said he had a statutory declaration from Gary McIntyre and he read two paragraphs of the declaration to me over the telephone.

I should emphasise that the purpose of him reading it to me was to place the remarks he was about to make in the context of defamation proceedings that he had commenced against the *Sydney Morning Herald*. In the first paragraph read to me by the Minister, Mr McIntyre denied that the Minister had ever promised approval for the Oasis development in return for a donation to the Labor Party. Mr McIntyre said that a discussion had taken place on 15 November 2001 with Mr Arthur Coorey in which Mr Coorey is reported to have said in the declaration, "If you give \$1 million to the party you will get all the approvals you need at Liverpool" or words to that effect.

There was then a further conversation, which I do not recollect in all its detail, but that statement by Mr Coorey was some kind of speculative statement. I did not get the impression from that statement that he, Mr Coorey, was intending to raise money using the Oasis development; it was simply a speculative statement on his part that was included in the declaration. I am sure the Minister would be happy to make the declaration available. If he made it so readily available to me over the telephone I am sure he would make it available to others. I would expect that the context of that statement would indicate one of speculation rather than fact.

In the second paragraph of the declaration read to me by the Minister, Mr McIntyre referred to a conversation that took place at Canterbury Leagues Club on 21 November 2001 in the presence of Peter Wilkinson and his wife, Mark Wells, and others. I do not recall the content of that conversation but it did not relate to the question of the Oasis development approval. At the end of the telephone discussion the Minister repeated the statement, "They've got to find someone who I said it to" or words to that effect. He asked would I like to go back to his office and look at the declaration and I said I was too busy.

I gained the impression from a conversation with the Minister that the declaration by Mr McIntyre was prepared for the purposes of the defamation proceedings which I have mentioned. Subsequent to the conversation with the Minister I spoke with two journalists and I regret any embarrassment, hurt or other difficulty that has been caused to the Minister as a result of my repeating the conversation. But the conversation that I have repeated is as I had it with the Minister.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [5.24 p.m.]: I should point out to the House that to my knowledge the two gentlemen mentioned by the Hon. Peter Breen have absolutely no connection with the Australian Labor Party. To my knowledge, they both formerly did have a connection with the Canterbury Bankstown football club. I would also point out to the House that the Government has done nothing, absolutely nothing, to facilitate the Oasis development going ahead at Liverpool in the form in which the Bulldogs Rugby League Club was promoting it.

#### STAR CITY CASINO EMPLOYEE TERMINATION

**The Hon. CHARLIE LYNN** [5.25 p.m.]: I wish to refer to a long-standing claim for damages arising from the termination of employment of Mr John St Vincent Welch by the Sydney casino operator in 1995. Mr St Vincent Welch's claim before the Supreme Court was finally concluded at mediation and Mr St Vincent Welch received an apology from the casino operator, Star City Pty Limited, as part of the mediation process. Mr David Banks, the Chief Executive Officer of Star City Sydney, concluded the apology with the statement that "John's employment with the company was terminated in circumstances which, after investigation, the company now regrets."

I raised this issue almost 12 months ago but because the case was before the court I was not able to table the report of the Casino Surveillance Division of the Department of Gaming and Racing of 5 March 1996. This report, compiled five years ago, revealed that there was no basis upon which action should be taken against Mr Saint Vincent Welch, nor was anything revealed which detrimentally impacted on his suitability to hold a special employee licence. The investigation, which formed the basis of the report, was conducted during the period December 1995 to 5 March 1996.

When I raised the issue four months ago I stated the belief that the attitude of the Casino Control Authority and the secrecy provisions contained in the Casino Control Act 1992 had been abused and that they should be reviewed as a matter of urgency. I stated that we have a duty to ensure that proper process is not abused and that members of the community who are affected by the provisions of the Act have a proper and transparent opportunity to defend themselves against any real or perceived miscarriages of justice.

While it took the Sydney casino operator five years, from 13 February 1996 until 14 December 2001, to discover it had no grounds to terminate the services of Mr St Vincent Welch and could not justify its action, the whole sordid affair was overseen by the State Government regulator, the Casino Control Authority. The report I have was compiled by the Casino Surveillance Division and it reveals that the casino operator had both internal and external legal opinion back in December 1995 which stated, "There were insufficient grounds upon which to effect a summary dismissal."

On 5 October 1999 the Minister for Gaming and Racing encouraged Mr St Vincent Welch to seek an external review by the Ombudsman or the Administrative Decisions Tribunal. An external review was sought through the Administrative Decisions Tribunal and this review resulted in a decision dated 1 June 2001 in which the judicial member, Mr Robinson, stated:

Serious allegations were made against the applicant. The applicant is aware that they were not substantiated in the report. The applicant is entitled to know in some detail and not in a cursory fashion, the results of the investigation from the source document itself, the report.

As a result of the Tribunal's decision, Mr St Vincent Welch sought and was provided with a purged copy of the report. I have a copy of the full report and a copy of the purged report and it is my view that the only reason the report has been kept secret is to cover up the incompetent and unlawful conduct of the Sydney Casino operator in the process leading to the termination of Mr St Vincent Welch's employment. Indeed it begs the question that it was classified secret to protect those who knowingly bore false witness against Mr St Vincent Welch.

I sought leave to table the document but I was told that leave would not be granted. The outcome of the Supreme Court case against Mr St Vincent Welch and a statement of apology from the operator of the casino is clear evidence that Mr John St Vincent Welch was a victim of a system that has been seriously abused by the Casino Control Authority. It is now urgent that a review of the operation of the secrecy provisions of the Casino Control Authority be conducted. As a result of being unable to table that full report, because the purged document is a disgrace, I give notice that I will be calling for a parliamentary inquiry into the unlawful dismissal of Mr John St Vincent Welch and a review of the secrecy provisions of the Casino Control Act 1992.

### WILDERNESS DECLARATIONS

**The Hon. RICHARD JONES** [5.29 p.m.]: The last time I spoke on the adjournment I was talking about the meaning of wilderness. I will carry on from where I left off in quoting Roderick Frazier Nash:

But wilderness is not for people at all. It is where the wild things, the willed things, are.

From this egocentric perspective, wilderness preservation becomes a gesture of planetary modesty and a badly needed exercise in restraint on the part of a species intoxicated with its power. Seen this way, wilderness preservation expresses a belief in the rights of nature.

Rightly seen, wilderness is the best demonstration that we are not the only, or even the primary, members of the biotic team. It is a living reminder of the gross limitations of our definitions of "society" and "morality". Our real society is coterminous with life on this planet, a fact that our ethical sensibilities have yet failed to recognise.

In the biblical past people went to the wilderness to receive the commandments with which to restructure society. We need to do so again. Right now we desperately need a "time out" to learn how to be team players in the biosphere. We need to learn—or, perhaps, to relearn—how to live responsibly in the larger community called the ecosystem.

### ENERGY PERFORMANCE CONTRACTS

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [5.31 p.m.]: This evening I wish to discuss energy performance contracts [EPCs] and the Carr Labor Government's mismanagement of the EPC process. I state from the outset that it has been estimated that mismanagement of EPCs to date has resulted in around \$2 million of forgone savings, as well as at least 20,000 tonnes of carbon dioxide abatements forgone. I have been advised that during 2001 a number of New South Wales government agencies entered into first procurement stages of energy performance contracts for the delivery of facilities to reduce energy and water consumption. EPCs have the potential to deliver significant savings in energy and water bills, and there are huge savings to be made if the contracts are properly awarded and executed.

The government agencies, which include Western Sydney Area Health Service, Northern Rivers Area Health Service, and Southern Area Health Service, entered into EPCs with Tarong Energy Management, a business unit of Tarong Energy Corporation, which is a Queensland Government-owned electricity generation company. These contracts were entered into in 2001. In early March 2002 the Tarong Energy Corporation, being the parent company of the business awarded the contracts, announced that Tarong Energy Management was withdrawing from the energy performance contracting industry.

This called into question the future of EPCs already awarded to Tarong in the DFS implementation stage, and placed in doubt future savings to the area health services that had signed up to these projects with Tarong. Industry estimates of the forgone savings are as follows: Western Sydney Area Health Service \$880,000, Southern Area Health Service \$15,000, Northern Rivers Area Health Service \$255,000, and Royal Botanic Gardens \$130,000. Two TAFE institutes also entered into agreements with Tarong. The estimates of forgone savings for those TAFEs total \$440,000.

The contracts with the area health services were due to have commenced in August and October 2001. The peak industry body representing performance contractors, the Australian Energy Performance Contractors Association, wrote to the Sustainable Energy Development Authority in March this year, as well as to the affected agencies, outlining a recommendation that affected EPCs be awarded to the second placed tenderer in the event that the successful tenderer withdrew for any reason, or that the projects be retendered.

Those recommendations were not adopted, and I have been informed that the EPC projects entered into by the area health services are instead to be novated to a new start-up company, which I believe is made up of former employees of Tarong Energy Management. Concerns have been raised with me about this process. I am concerned that Tarong's actions in effectively on-selling the contracts to the start-up company may disadvantage the area health services that have entered into these EPC contracts. The new company has been handed these contracts without being a prequalified tenderer for the provision of EPCs. The Department of Public Works and Services [DPWS] has identified and acknowledged serious elevated contract risks in dealing with a newly started firm. The DPWS has suggested that the elevated risk should be controlled through a range of measures, including an assessment of financial capacity, as well as additional bank guarantees in respect of construction and installation of equipment.

Serious concerns have been raised with me about the way these contracts have been handled following the withdrawal of Tarong from the EPC industry. They are concerns that the Government has been made aware of but is yet to respond to. They include the novation of the contracts to a new company that may not have the same ability to deliver the outcomes as the original company that was awarded the tender; the delivery of savings to State government agencies that committed to EPCs with the original company; the legality and/or probity of novating the contracts to another company following the withdrawal of Tarong from the EPC industry; and the overall impact—both financial and outcome-based—of the current situation with EPC projects in the implementation phase.

Based on the concerns that have been expressed to me about the current state of some EPCs in New South Wales, I now call on the Government to institute a formal review of EPC provisions, with a special focus on what should happen should the original service provider withdraw from the market. There is obviously a grey area here—and one that needs to be remedied. As I stated at the outset, it has been estimated that around \$2 million in savings has been forgone because of the current delays with the EPCs entered into with these government agencies. It is time to address the delays before the savings and the benefits promised in the original contracts disappear for good.

**Motion agreed to.**

**The House adjourned at 5.36 p.m. until  
Tuesday 22 October 2002 at 2.30 p.m.**

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