

# LEGISLATIVE COUNCIL

Tuesday 1 June 2004

---

**The President (The Hon. Dr Meredith Burgmann)** took the chair at 2.30 p.m.

**The Clerk of the Parliaments** offered the Prayers.

**The PRESIDENT:** I acknowledge that we are meeting on Eora land.

## STANDING RULES AND ORDERS

**The PRESIDENT:** Order! I report to the House that I have received a communication from the Official Secretary to the Governor notifying that on 31 May 2004 Her Excellency approved the standing rules and orders adopted by the House on 5 May 2004. The new standing orders took effect yesterday 31 May 2004. Consequent upon the approval of these orders it is necessary to make a number of machinery amendments to various sessional orders and resolutions relating to committees and other procedures so that they are in conformity with the new standing orders. The Leader of the House will seek to move various motions to give effect to these amendments. Copies of the amendments have been circulated and are also available from the Clerks.

## BUSINESS OF THE HOUSE

### Suspension of Standing Orders

**Motion, by leave, by the Hon. Tony Kelly agreed to:**

That standing orders be suspended to allow several motions to be moved in globo forthwith relating to changes to the sessional orders and resolutions of the House consequential upon the approval of the new standing orders.

### Standing Rules and Orders

**Motion by the Hon. Tony Kelly agreed to:**

That the following sessional orders and resolutions be adopted:

#### 1. Sessional orders

That this House:

- (a) rescinds all current sessional orders,
- (b) adopts the following sessional orders:

#### Sitting Days

That, during the present session and unless otherwise ordered, this House meet for the despatch of business each week as follows:

Monday	11.00 a.m.
Tuesday	02.30 p.m.
Wednesday	11.00 a.m.
Thursday	11.00 a.m.
Friday	11.00 a.m.

#### Precedence of Business

That, during the present session and unless otherwise ordered:

1. Government Business is to take precedence of General Business on Monday, Tuesday, Wednesday and Friday, and after 5.00 p.m. on Thursday each week.
2. General Business is to take precedence until 5.00 p.m. on Thursday each week.

### Questions—Time for Questions Without Notice

That, during the present session and unless otherwise ordered:

1. Questions are to commence at 4.00 p.m. on Monday and Tuesday, and at 12.00 noon on Wednesday, Thursday and Friday.
2. Whenever the House adjourns to a day and time later than the time appointed in paragraph 1, questions are to commence 30 minutes after the time appointed for the meeting of the House.
3. If, at the time for interruption:
  - (a) a division is in progress, the division is to be completed and the result announced,
  - (b) the House is in Committee of the Whole, the chair is to leave the chair and report progress,
 and any business then under discussion, if not disposed of, is to be set down on the Notice Paper for a later hour of the sitting.

### Motion for the Adjournment

That, during the present Session and unless otherwise ordered, proceedings must be interrupted at 5.00 p.m. on Thursday and 3.45 p.m. on Friday to permit a motion for adjournment to be moved to terminate the sitting if a Minister thinks fit.

### Cut-off Date for Government Bills

That, during the present session and notwithstanding anything contained in the standing orders, and unless otherwise ordered, the following procedures apply to the passage of Government bills:

1. Where a bill, except the Appropriation Bill and cognate bills, is introduced by a Minister, or is received from the Legislative Assembly:
  - (a) after Tuesday 22 June 2004 (Budget Session), debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting day in September 2004,
  - (b) after Tuesday 7 December 2004 (Spring Session), debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an Order of the Day for the first sitting day in 2005.
2. However, if after the first reading a Minister declares a bill to be an urgent bill and copies have been circulated to members, the question "That the bill be considered an urgent bill" is to be decided without amendment or debate, except a statement not exceeding ten minutes each by a Minister and the Leader of the Opposition, or a member nominated by the Leader of the Opposition and two crossbench members. If that question is agreed to, the second reading debate and subsequent stages may proceed forthwith or at any time during any sitting of the House.

### Debate on Committee Reports

**That, during the present session and unless otherwise ordered, debate on Committee reports is to take precedence after questions on Wednesday.**

## 2. Standing Committees

That the resolution of the House of 21 May 2003 establishing the Standing Committees on Law and Justice, Social Issues and State Development, as amended on 25 June 2003, be amended to reflect the new standing orders, by:

- (a) omitting paragraphs 5, 7 (a), 7 (b), 7 (d) and 8,
- (b) omitting from paragraph 9 (1) (a) the words "nominated by the Leader of the Government",
- (c) omitting from paragraph 9 (1) (b) the words "nominated by the Leader of the Opposition",
- (d) omitting from paragraph 9 (1) (c) the words "nominated by agreement between crossbench members",
- (e) omitting paragraphs 9 (2), 9 (3), 10 (3), 10 (4), 10 (5), 11, 12, 14 and 15,
- (f) omitting paragraph 16 and inserting instead: **Sub-committees** "A Standing Committee has power to appoint sub-committees.",
- (g) omitting paragraphs 17 to 28,
- (h) renumbering the remaining paragraphs accordingly.

**3. General Purpose Standing Committee**

That the resolution of the House of 3 July 2003 establishing General Purpose Standing Committees be amended to reflect the new standing orders, by:

- (a) omitting paragraph: 2, 4 and 5,
- (b) omitting from paragraph 6 (1) (a) the words "nominated by the Leader of the Government",
- (c) omitting from paragraph 6 (1) (b) the words "nominated by the Leader of the Opposition",
- (d) omitting from paragraph 6 (1) (c) the words "nominated by agreement between crossbench members"
- (e) omitting paragraphs 6 (2), 6 (3), 7 (2), 7 (3), 7 (4), 8 to 11, and 13 to 23,
- (f) renumbering the remaining paragraphs accordingly.

**4. Privileges Committee**

That the resolution of the House of 4 September 2003 establishing the Standing Committee on Parliamentary Privilege and Ethics be amended to reflect the new standing orders, by:

- (a) renaming the committee the "Privileges Committee",
- (b) omitting the words "Standing Committee on Parliamentary Privilege and Ethics" in paragraph 1 (1) and inserting instead the words "Privileges Committee",
- (c) omitting paragraphs 4 (a), 4 (b), 4 (d) and 5,
- (d) omitting from paragraph 6 (1) (a) the words "nominated by the Leader of the Government",
- (e) omitting from paragraph 6 (1) (b) the words "nominated by the Leader of the Opposition",
- (f) omitting from paragraph 6 (1) (c) the words "nominated by agreement between crossbench members",
- (g) omitting paragraphs 6 (2), 6 (3), 7 (3), 7 (4), 7 (5), and 8 to 22,
- (h) renumbering the remaining paragraphs accordingly.

**5. Procedure Committee**

- 1. That the resolution of the House of 8 May 2003, as amended on 29 May 2003, appointing the Standing Orders Committee be rescinded.
- 2. That a Procedure Committee, consisting of the following members: The President, Mr Egan, Mr Della Bosca, Mr Kelly, Mr Macdonald, Mr Primrose, Mr Gallacher, Mr Gay, Mr Harwin, Revd Mr Nile and Dr Wong, be appointed.

**6. Citizen's Right of Reply**

That the resolution of the House of 13 November 1997 establishing the procedure for a citizen's right of reply be rescinded to reflect the new Standing Orders.

**ASSENT TO BILLS**

Assent to the following bills reported:

Botany Bay National Park (Helicopter Base Relocation) Bill  
 Children (Detention Centres) Amendment Bill  
 Civil Liability Amendment (Offender Damages) Bill  
 Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill  
 Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill  
 Appropriation (Budget Variations) Bill  
 State Revenue Legislation Amendment Bill

**MINE HEALTH AND SAFETY BILL****MINING AMENDMENT (MISCELLANEOUS PROVISIONS) BILL**

**Bills received.**

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

**Motion by the Hon. Michael Egan agreed to:**

That the 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 be set down as orders of the day for a later hour of the sitting.

**Bills read a first time and ordered to be printed.**

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS****Establishment**

**The PRESIDENT:** I report the receipt of the following message from the Legislative Assembly:

Madam PRESIDENT

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution:

- (1) That a Joint Standing Committee, to be known as the Joint Standing Committee on Electoral Matters be appointed.
- (2) That the Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:
  - (a) The following electoral laws:
    - (i) Parliamentary Electorates and Elections Act 1912 (other than Part 2);
    - (ii) Election Funding Act 1981; and
    - (iii) Those provisions of the Constitution Act 1902 that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than section 27, 28 and 28A);
  - (b) The administration of and practices associated with the electoral laws described at (a).
- (3) All matters that relate to (2)(a) and (b) above in respect of the 22 March 2003 State election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 12 months of the date of this resolution being agreed to by both Houses.
- (4) That the Committee consist of seven members, as follows:
  - (a) four members of the Legislative Assembly of whom:
    - (i) three must be Government members,
    - (ii) one must be an Opposition member, and
  - (b) three members of the Legislative Council of whom:
    - (i) one must be a Government member,
    - (ii) one must be an Opposition member, and
    - (iii) one must be a Cross-bench member
- (5) That the members be nominated in writing to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council by the relevant party leaders and the Cross-bench members respectively, within seven days of this resolution being agreed to by both Houses. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (6) That notwithstanding anything contained in the Standing Orders of either House, at any meeting of the Committee, any four members of the Committee will constitute a quorum, provided that the Committee meets as a joint committee at all times.
- (7) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses.
- (8) That the Committee have power:
  - (a) to send for and examine persons, papers, records and things,
  - (b) to adjourn from place to place,
  - (c) to make visits of inspection within the State of New South Wales and elsewhere in Australia, and
  - (d) to take evidence in accordance with the provisions of the Parliamentary Evidence Act 1901.
- (9) That the Committee have leave to report from time to time.
- (10)
  - (a) That if either House is not sitting when the Committee wishes to report, the Committee have leave to send any such report, minutes and evidence to the Clerk of each House.
  - (b) A report presented to the Clerk is:

- (i) on presentation, and for all purposes, deemed to have been laid before the House,
  - (ii) to be printed by authority of the Clerk,
  - (iii) for all purposes, deemed to be a document published by order or under the authority of the House, and
  - (iv) to be recorded in the official proceedings of the House.
- (11) That the Legislative Assembly requests the Legislative Council to agree to a similar resolution and name the time and place for the first meeting.

Legislative Assembly  
14 May 2004

JOHN AQUILINA  
Speaker

**Consideration of message deferred.**

**TUNNEL VENTILATION SYSTEMS**

**Motion by Ms Sylvia Hale agreed to:**

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution all documents created since 1 June 2003, and not previously provided to the House, in the possession, custody or control of the Cabinet Office, the Roads and Traffic Authority (RTA), the Premier's Department, the Department of Infrastructure, Planning and Natural Resources (DIPNR, previously referred to as PlanningNSW), the Environment Protection Authority (EPA) and NSW Health (including Central, Northern and South East Sydney Area Health Services), and the offices of the responsible Ministers relating to:

- (a) the M5 East tunnel ventilation or ventilation in the proposed Cross City and Lane Cove road tunnels, including any investigation, or cost benefit analysis, on the redesign of the ventilation system or the provision of electrostatic precipitators or other air treatment or filtration systems,
- (b) health studies undertaken by NSW Health (including Central, Northern and South East Sydney Area Health Services) or their contractors into internal and external air quality impacts of the M5 East tunnel and predicted impacts of the proposed Cross City and Lane Cove road tunnels,
- (c) predicted and actual air dispersion, air quality, cumulative and local health impacts, and compliances and exceedences of air quality goals relating to the M5 East tunnel and stack, Cross City and Lane Cove road tunnels, including air quality data from monitoring of in-tunnel, portal and in-stack emissions from the M5 East tunnel, not already publicly available including isokinetic analysis of stack emissions to determine particle size distribution and other characteristics of stack emissions,
- (d) details of any overseas visits made by, or intended to be made by officers of the RTA, DIPNR or specialist consultants and contractors associated with either the M5 East, Cross City or Lane Cove tunnels to investigate tunnel ventilation and filtration and treatment equipment, and any communication between the RTA, its contractors or consultants, and manufacturers or designers of tunnel filtration and treatment equipment or overseas government or semi-government authorities regarding tunnel air quality, ventilation and filtration and treatment equipment,
- (e) compliance with approval conditions for the operation of the M5 East tunnel or the M5 East stack, including complaints relating to air quality and flooding impacts from the M5 East tunnel or the M5 East stack, and actions taken in response to such complaints,
- (f) any research, conferences or seminars on air quality standards, issues, health impacts of road tunnel emissions or issues relating to ventilation in road tunnels,
- (g) any communication relating to the proposed location of the exhaust stack for the Cross City Tunnel at Darling Harbour, the air quality monitoring station at 51 Drutt Street Sydney, modifications to the Fig Street pedestrian walkway from Ultimo to the City and the use of land at the Fig St undercut near Harris Street,
- (h) any document which records or refers to the production of documents as a result of this order of this House.

**TABLING OF PAPERS**

**The Hon. John Hatzistergos** tabled the following paper:

Annual Reports (Statutory Bodies) Act 1984—Report of the Technical Education Trust Funds for the year ended 31 December 2003.

**Ordered to be printed.**

**The Hon. John Hatzistergos** tabled a list of all papers tabled but not ordered to be printed for May 2004.

The following report was ordered to be printed:

Special report of the Ombudsman entitled "Assisting Homeless People—The Need to Improve Their Access to Accommodation and Support Services: Final report arising from an inquiry into access to, and exiting from, the Supported Accommodation Assistance Program", dated May 2004, together with a summary of the report.

#### **AUDITOR-GENERAL'S REPORT**

**The Clerk** announced the receipt, pursuant to the Public Finance and Audit Act 1983, of the Auditor-General's Financial Audits Report, volume 2, dated May 2004.

**The Clerk** announced further that, pursuant to the Act, it had been authorised that the report be printed.

#### **MINI-BUDGET DOCUMENTS**

##### **Return to Order**

**The Clerk** tabled, pursuant to resolution of the House of 11 May 2004, documents relating to the mini-Budget received on 25 May 2004 from the Director General of the Premier's Department, together with an indexed list of documents.

##### **Return to Order: Claim of Privilege**

**The Clerk** tabled a return identifying documents for which privilege is claimed and which are available only to members of the Legislative Council.

#### **ACMENA JUVENILE JUSTICE CENTRE RIOT**

##### **Return to Order**

**The Clerk** tabled, pursuant to the resolution of the House of 12 May 2004, documents received on 26 May 2004 relating to the Acmena Juvenile Justice Centre, Grafton, from the Director General of the Premier's Department, together with an indexed list of documents.

##### **Return to Order: Claim of Privilege**

**The Clerk** tabled a return identifying documents for which privilege is claimed and which are available only to members of the Legislative Council.

#### **GENERAL PURPOSE STANDING COMMITTEE NO. 1**

##### **Report: Serious Injury and Death in the Workplace**

**The Clerk** announced the receipt, pursuant to resolution of the House of 3 July 2003, of Report No. 24, entitled "Serious Injury and Death in the Workplace", dated May 2004, together with minutes of proceedings, submissions, correspondence and transcripts of evidence.

**The Clerk** announced further that, pursuant to the resolution, it had been authorised that the report be printed.

**Reverend the Hon. FRED NILE** [2.43 p.m.]: I move:

That the House take note of the report.

The report relates to a very important inquiry. Before seeking to have the debate adjourned, I point out that the inquiry was valuable and most fruitful in dealing in detail with the issues that were referred to the committee by this House. The report makes a controversial recommendation that the Crimes Act be amended to create the offence of corporate manslaughter. I understand that the Government has not enthusiastically endorsed that recommendation.

I hope that by studying the report and the evidence the Government will give further consideration to its position in this regard. The committee believes that because of the serious increase in the number of workplace deaths such an offence is necessary to indicate to employers that the death of a worker is just as serious as is the death of someone in a car accident or, may I say, even during wartime. We should not be complacent about this matter. The offence will mean that an employer who causes the death of a worker could face a prison sentence. The committee believes that this recommendation will be a major incentive and an education process for all employers to treat occupational health and safety requirements more seriously than they do at present.

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

#### **COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

##### **Report**

**The Clerk** announced the receipt, pursuant to the Independent Commission Against Corruption Act 1988, of Report No. 1/53, entitled "Regarding the Prevention and Investigation of Misconduct and Criminal Wrongdoing Involving Public Officials—Report of a visit of inspection by a delegation of the ICAC Committee 12-30 April 2004", dated May 2004.

**The Clerk** announced further that, pursuant to the Independent Commission Against Corruption Act 1988, it had been authorised that the report be printed.

#### **STANDING COMMITTEE ON STATE DEVELOPMENT**

##### **Report: Inquiry into Port Infrastructure in New South Wales: Interim Report**

**The Clerk** announced the receipt, pursuant to resolution of the House of 21 May 2003, of Report No. 29, entitled "Inquiry into Port Infrastructure in New South Wales: Interim Report", dated May 2004.

**The Clerk** announced further that, pursuant to the resolution, it had been authorised that the report be printed.

**The Hon. TONY BURKE** [2.46 p.m.]: I move:

That the House take note of the report.

This report deals specifically with the Port Botany part of the inquiry.

**Debate adjourned on motion by the Hon. Tony Burke.**

#### **LEGISLATION REVIEW COMMITTEE**

##### **Report**

**The Clerk** announced the receipt, pursuant to the Legislation Review Act 1987, of the report entitled "Legislation Review Digest No. 8 of 2004", dated 31 May 2004.

**The Clerk** announced further that, pursuant to the Act, it had been authorised that the report be printed.

#### **STANDING COMMITTEE ON SOCIAL ISSUES**

##### **Government Response to Report**

**The Clerk** announced the receipt, pursuant to resolution of the House of 21 May 2003, of the Government's response to Report No. 31, entitled "Report on Community Housing", dated November 2003.

**The Clerk** announced further that, pursuant to the resolution, it had been authorised that the report be printed.

## PETITIONS

### Alcohol Industry Deregulation

Petition opposing national competition policy amending legislation that would lead to the deregulation of the liquor industry and failure to control liquor licences, received from **the Hon. Duncan Gay**.

### Freedom of Religion

Petitions praying that the House reject legislative proposals that would detract from the exercise of freedom of religion, and retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **Reverend the Hon. Dr Gordon Moyes** and **Reverend the Hon. Fred Nile**.

### Alcohol Sale Deregulation

Petition requesting exclusion of liquor sales outlets from the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill, received from **the Hon. Dr Peter Wong**.

### CountryLink Rail Services

Petition opposing the abolition of CountryLink rail services and their replacement with buses in rural and regional New South Wales, received from **the Hon. Catherine Cusack**.

### Blue Circle Southern Cement Alternative Fuels Application

Petition calling for disallowance of the application by Blue Circle Southern Cement to burn alternative fuels, received from **Ms Sylvia Hale**.

### Casino to Murwillumbah Rail Services

Petition requesting reinstatement of rail services from Casino to Murwillumbah, received from **the Hon. Catherine Cusack**.

### Australian Defence Industries Site Redevelopment

Petition requesting that the Australian Defence Industries St Marys site be protected as a conservation area and that development consent be denied, received from **Ms Sylvia Hale**.

### Anti-Discrimination Legislation

Petition requesting support for the Anti-Discrimination Amendment (Equality in Education and Employment) Bill and the Anti-Discrimination Amendment (Sexuality and Gender Diversity) Bill, received from **Ms Lee Rhiannon**.

### CountryLink Rail Services

Petition opposing the replacement of CountryLink rail services with bus services in rural and regional New South Wales, and calling for reversal of the decision to close the Casino to Murwillumbah rail line, received from **Ms Lee Rhiannon**.

## BUSINESS OF THE HOUSE

### Postponement of Business

**Government Business Orders of the Day Nos 1 to 4 postponed on motion by the Hon. Tony Kelly.**

## CRIMES AMENDMENT (CHILD NEGLECT) BILL

### Second Reading

**Debate resumed from 5 May.**

**The Hon. JOHN RYAN** [3.04 p.m.]: We can forget about the empty rhetoric that was espoused by the Minister when she introduced this bill—rhetoric about the Government's being strong in opposing the abuse and neglect of children. The simple fact is that the Government has been brought kicking and screaming to



reforming child neglect and abuse laws. Even now, with this bill, it has failed to do the job properly. The need for reform to our child abuse and neglect laws was made obvious by two significant cases that were dealt with by the courts during the past 12 months.

In August 2003 a magistrate on the Central Coast, Alan Railton, attempted to impose a 12-month gaol term on a 30-year-old man after it was proved that he had recklessly endangered the life of his four-week-old baby son by abandoning him in a yard. The offender compounded his offence by refusing to assist police in locating the baby so that they could rescue it. Fortunately, the baby was found unharmed. The man was charged and convicted of neglecting the baby under the Children and Young Persons (Care and Protection) Act.

The magistrate thought that the offence merited a 12-month gaol term and he imposed that sentence. But the sentence was overturned after it was pointed out to the court that the Children and Young Persons (Care and Protection) Act does not provide for a gaol penalty for abuse and neglect. The case brought a storm of public protest in the local media particularly when it was pointed out that the legislation protecting animals from neglect and cruelty—the Prevention of Cruelty to Animals Act—provides for fines and six-month gaol terms, but the legislation dealing with the neglect and abuse of children provides only for a maximum fine of \$22,000, exactly the same penalty that is imposed for cruelty to animals.

In response to this specific case and another that I will describe in a moment, the Opposition took action to draft and introduce a private member's bill—the Children and Young Persons (Care and Protection) Amendment (Child Abuse or Neglect) Bill 2003. I introduced that bill on behalf of the Opposition on 13 November 2003 and I circulated it for comment to about 40 people and organisations that are concerned with the issue of child abuse and neglect. The Government has stated on many occasions that our actions were unnecessary and that no changes to the law were needed. For example, on 10 October the *Newcastle Herald* contained the quote:

The Government has disputed the Opposition's assertions—

that is, to introduce higher fines and gaol penalties—

pointing to a similar worded charge that carries a gaol sentence.

I presume that that similarly worded charge relates to the Crimes Act—the legislation that we are amending today. The article also stated:

Ms Tebbutt said that under the Crimes Act, it was an offence to abandon or expose a child under the age of two and an offence not to provide a child with food, clothing or lodging in a way that endangered that child's health or life.

The Minister said that it was unnecessary to introduce the legislation that has now been introduced in this Parliament.

[*Interruption*]

The Minister disputes that by way of interjection, but she said that it was not necessary to tamper with the law and that the law was adequate for the task. The Leader of the Opposition, John Brogden, used those same words on the Australian Broadcasting Corporation in response to an announcement about the Opposition's legislation. It is interesting to compare the Government's response to my bill with the response I received from a number of significant community organisations. For example, the Association of Children's Welfare Agencies wrote to me and said:

The Association of Children's Welfare Agencies welcomes the attention that you have brought to the issue in the Parliament and the community more broadly with the introduction of this bill.

The Salvation Army wrote to me and stated:

The Salvation Army accepts that there is a need for legislation that will better facilitate a more appropriate response to the increasing abuse and neglect of children within our society.

We endorse the purpose of the bill and the widening of the judicial powers to impose additional custodial sentences for a criminal activity which includes some form of child abuse and/or neglect.

That letter was sent to me on 4 March by Lieutenant-Colonel Robert Street, Chief Secretary of the Salvation Army. A representative of an organisation called Advocates for Survivors of Child Abuse replied to my letter in the following terms:

Your proposed amendment was discussed at our National Board Meeting on 27th March 2004 and was supported.

I also received a congratulatory email from Ms Liz Mullinar from Hunter Link. Ms Mullinar is a well-known child welfare advocate. She said:

It is indeed appalling that New South Wales cares so little for children. Unless the law assures parents that children matter and that children have rights independent of their parents it will be hard to change parental attitudes to parenting.

When these various events occurred in the Newcastle area, John Heslop, President of the National Association for the Prevention of Child Abuse—a well-known advocate against child abuse and neglect who I am sure would be respected throughout this Parliament—who recently retired from having primary responsibility for this role in the NSW police service, said:

The Partlett Case—

a case to which I referred earlier—

was another sign that society had failed to move with the times. If you have a dog, your treatment of that dog can have worse implications than your treatment of a baby. If you look at the kind of things that neglect of children could cause, it can be catastrophic.

I accept that my bill could have contained flaws; in fact, I would be prepared to concede that it did. I said in my second reading speech that I said I was prepared to accept changes to my bill. I accept entirely the comment from community organisations that gaol penalties are better placed in the Crimes Act in preference to the Children and Young Persons (Care and Protection) Act. The Minister said something about that point in her second reading speech, although she did not say she was referring specifically to my bill, but it was probably intended to be a response to it. I accept that criticism.

For the sake of convenience, I, like the Minister, will adopt the practice of referring to the legislation as the "care" legislation. I accept the proposition that the main task of the care legislation is to support families and that custodial penalties are better placed in the Crimes Act. However, useful as that distinction may be, my chief concern remains ensuring that we have legislation that adequately reflects community standards regarding the serious nature of child abuse and neglect and that adequately protects children. I happily admit that our bill inserted gaol penalties into the care legislation because it seemed to be an easier legislative task than trying to rewrite the confusing and anachronistic language that currently appears in sections 43 and 44 of the Crimes Act. I was concerned that, had I attempted to amend the Crimes Act, we may have created some unintended anomalies. Unlike the Government, the Opposition does not have ready access to legal advice to ensure that our legislation does the job that we intend it to do. I stated plainly in November 2003 that I did not propose to proceed further with my bill until it had been circulated for comment and consultation. More importantly, I also said plainly that I had an open mind as to how the bill could be improved.

The worst that could be said about the Opposition's bill is that it went too far. Sadly, the problem with the Government's bill is that it is far too weak: it is full of gaps, loopholes and inconsistencies. I hope only that the Government is as prepared as I was to listen to and take note of expert advice regarding the bill's specific provisions. Before I examine those provisions, I would like to outline and respond to a further case that demonstrates clearly how much reform is needed to this State's child abuse and neglect laws. The case, which was dealt with recently in the courts, involves a 24-year-old woman who was charged under the Children and Young Persons (Care and Protection) Act after she had failed to tell doctors or police that her three-year-old daughter had swallowed five ecstasy tablets. The child swallowed the tablets while she was unsupervised in a motel room where her mother had taken a prostitution client for sex. Police alleged that the woman knew all along that her daughter had swallowed a dangerous quantity of drugs and refused to tell them exactly what had happened to her daughter.

A police officer allegedly asked the woman 20 times to tell him what her daughter had swallowed but she refused to say anything, even though her daughter eventually required intubation, lapsed into a coma and nearly died. A police officer who had been called to the hospital to respond to the matter approached the woman a number of times, begging her for information about what the child had swallowed. I heard that police officer give evidence at Bankstown local court, and it was incredibly moving. He assured the woman specifically that she would not get into trouble for the drugs and that he just wanted her to give information to hospital staff that was vital to saving the life of her child.

The option of a custodial sentence in situations such as this may be important in saving the life of a child. Police in similar circumstances would at least be able to use the threat of a potential gaol sentence as further encouragement, if any should be needed, in getting potentially life-saving information. Without the option of a custodial penalty for the offence of abuse and neglect, police are not in a position to say that the consequences of not giving this information will be more severe than the penalty that the perpetrators may face for the crime they are trying to cover up. That is the problem. The woman in the case I have outlined was trying to avoid the gaol penalty for her involvement in drug trafficking. All the police had to convince her to change her mind was the threat of a financial penalty of up to \$22,000.

This matter has now been finalised but I, like many other people, was astonished at the sentence given by the magistrate to the offender following her eventual decision to plead guilty. The magistrate elected to accept her guilty plea, declined to record a conviction and then imposed a 12-month good behaviour bond. My disbelief was matched by that of the prosecuting police. The offender in this matter had narrowly escaped a manslaughter charge because the child had nearly died. The infant was saved only because of the persistence of police and the natural father. In this instance, the natural father was not living with the mother at the time but attended the hospital out of concern for his daughter. The information about what the child had swallowed came to light after the mother went around the emergency waiting room asking people gathered there whether she could borrow a telephone. In the course of making that request she revealed to a complete stranger that her child had swallowed a number of ecstasy tablets. The natural father noticed that she had been speaking to some strangers, approached them and inquired about the details of her conversation with them. As soon as he found out what his daughter had taken he contacted police, who alerted medical staff and the baby was saved.

Believe it or not, when confronted with her failure to give this life-saving information either to medical staff or to police, the offender proceeded to make up a deliberately false story about how the natural father may have been responsible for her daughter swallowing the drugs. He simply could not have been responsible because he was no longer living with the family and, at the insistence of the natural mother, was permitted only limited contact with his children. But the offender's guilt does not end there. After she was charged she continued to deny her actions and pleaded not guilty. There was a hearing in the local court, which was covered in some detail in the media. It was virtually complete, having lasted some days and involved a number of witnesses. The woman pleaded guilty only at the very last moment when it became apparent, on the weight of the evidence—which included detailed evidence from independent witnesses—that she would be found guilty.

In her defence, after pleading guilty the woman explained to the court that she had been affected by drugs and had taken a number of actions to rehabilitate herself. I point out that none of her rehabilitation was entered into voluntarily. Her rehabilitation had been forced upon her by the actions of the Department of Community Services in removing both her children from her care. Under those circumstances, it is beyond my comprehension how this offender failed to have even a conviction recorded against her. I understand that police have applied to the Director of Public Prosecutions for an appeal against the severity of the sentence. I sincerely hope that their request will be granted and that action will be taken to appeal the outcome of the case. While I do not expect this offender to receive a custodial sentence—given the state of the law, which does not provide for such penalties—it is beyond belief that she escaped having a conviction recorded. It is my understanding that magistrates are given discretion to waive the recording of a conviction if there are extenuating circumstances. However, I fail to see any extenuating circumstances in this case, particularly given that the woman avoided pleading guilty until the very last moment, when the outcome of the case was inevitable.

Sadly, the result in this matter reflects the inadequate treatment given to child abuse and neglect in our criminal justice system and in our society generally. There are thousands of reports of child abuse each year but, with the exception of a few well-documented cases of sexual assault, very few of them are even prosecuted, much less penalised appropriately. Important statistics show that we have virtually decriminalised child abuse in this State. It might interest the House to learn that, according to information before the Judicial Commission, sections 43 and 44 of the Crimes Act—which we are seeking to amend in this bill—have been used to prosecute successfully only eight individuals since 1996. About one quarter of cases were dismissed, four people received suspended sentences and one person received a bond. Since 1996 not a single parent in this State has received a custodial sentence for serious child abuse and neglect. These provisions have been used on fewer than a dozen occasions. I presume that the Judicial Commission statistics refer only to those cases that were concluded successfully; they obviously do not include every prosecution.

The legislation we seek to amend today has been so useful that it has been successful in only eight cases, and in no circumstance was a custodial penalty imposed. That should be balanced with the 55,295 child abuse cases reported and sustained from 1996 to 2002-03. Those figures are drawn from the Minister's answer to

my question on notice about a month ago. Of the 55,295 cases only eight have resulted in prosecutions for abuse and neglect under the legislation. I presume a number of cases have probably resulted in prosecutions for sexual assault and some in prosecutions for assault under other legislation, but it is hard to believe that only eight have resulted in prosecutions. The people of New South Wales would take a serious view of the fact that since 1996 our criminal justice system has put only eight people in court to face a custodial sentence for serious abuse and neglect that endangered a child's life. The Opposition is not alone in making that point, and I refer to a well-known study completed and reported on by Chris Goddard and Joe Tucci to the recent Australasian Conference on Child Abuse and Neglect that was held in Sydney in November 2003. Their paper states:

We may be failing to develop effective frameworks of protection for abused children because we are not engaging the criminal justice system in aiming for prosecutions of perpetrators.

In my view a revolution in attitudes towards domestic violence has occurred. One of the reasons for that change is that no-one regards domestic violence as being anything other than a crime and, where necessary, police put perpetrators before the courts on charges that attract custodial sentences. However, it would appear that we adopt almost exclusively a welfare approach towards child abuse and neglect. I am all for a welfare approach but, sadly, it would appear that in response to that approach the number of substantiated child abuse cases has escalated. The figures tell their own story. In 1997-98 there were 8,406 substantiated child abuse cases compared with 16,765 cases in 2002-03. The number of cases has doubled, no doubt due in part to better reporting and recording, but nevertheless the trend has increased in New South Wales and throughout Australia. I also have no doubt that is happening because, in cases where it is thought appropriate, the authorities—the Department of Community Services or the police—fail to put the perpetrators before the courts and thus neglect to make the point that child abuse is a crime.

Further, when the authorities do put a perpetrator before a court, some magistrates do not even bother to record a conviction but just dismiss the case out of hand. Bear in mind that in the case I earlier outlined neglect upon neglect was perpetrated by the parent and the child nearly died. I do not say that that parent needed to go to gaol but I do say that a more complex approach was needed. Had the parent gone to gaol for three or four months—she was not caring for her children at the time—that would not have created any difficulties for her in caring for her children. Even if she were not given a custodial sentence, the court could have imposed home detention, periodic detention, community service or probation and parole. Without the option of a custodial sentence those sorts of rehabilitative and therapeutic options are just not available. There would have been no point in giving that offender a monetary fine because I have no doubt that she would have paid it by either selling more drugs or engaging in prostitution. They were hardly options that would have resulted in better care for her children should she ever gain custody of them again, so a monetary fine is certainly not a suitable penalty. An advantage of a custodial sentence is that it allows a court to impose therapeutic rehabilitation, which may well be appropriate. It also allows the court to point out that it is important to denounce child abuse and neglect and to call it what it is, that is, a crime.

The Government has not consulted widely in regard to this legislation, and as a result the bill does not adequately protect children. I would have thought that in drafting this bill the Government might have consulted the well-known and respected expert on child abuse and neglect, Professor Patrick Parkinson, of the University of Sydney Law School. From memory, the Minister made reference to him in her second reading speech.

*[Interruption]*

She acknowledged that he had reviewed the care legislation. Clearly, he is a well-known expert who was available to the Government to consult. When I sent the bill to him, as is the normal practice of an Opposition, I was astonished to get a response that he had not seen the legislation. He was not even aware that the Government had engaged in the exercise of reviewing the legislation. What was the need for the secrecy? As I understood it, the Government intended reviewing this legislation late last year, as I was told by an adviser who was sitting in the Chamber when I introduced my private member's bill that some sort of committee comprising public servants was reviewing the law. There has been plenty of time for the bill to be circulated for comment. Had the Government consulted Professor Parkinson, as I did, both on my bill and this legislation, the Government would have learned about how hopeless the provisions will be in protecting children from deliberate acts of neglect and abuse. Professor Parkinson wrote in a letter to me:

I ... have problems with the drafting of the Government's proposed amendments. I do not think they go far enough to modernise the language and are not broad enough to capture all the circumstances to which such criminal law provisions ought to be directed.

Professor Parkinson then detailed section by section the Government's legislation and pointed out its flaws. I believe he has done a complete demolition job on the value of the bill. I support his request that the Government withdraw the bill and rewrite it. Section 43 of the Crimes Act states:

Whosoever unlawfully abandons or exposes any child under the age of 7 years, whereby the life of such child was or is endangered, or its health was or is likely to be seriously injured, shall be liable to imprisonment for five years.

The Government's proposed amendment replaces the word "unlawfully" with the words "without reasonable excuse" and makes certain other changes. However, no change is proposed to the language "abandons or exposes". Perhaps for lawyers those terms have a particular meaning but for the community they have very little meaning. In fact, Professor Parkinson went on to describe how the use of the word "exposes" has exactly the opposite impact to that intended by the Government. How different that is to the wording in the care legislation, which in my view is elegant in its simplicity so that even the most simply educated person can understand what it means. For example, the care legislation states:

A person who intentionally takes action that has resulted in or appears likely to result in:

- (a) the physical injury or sexual abuse of a child or young person, or
- (b) a child or young person suffering emotional or psychological harm of such a kind that the emotional or intellectual development of the child or young person is, or is likely to be, significantly damaged, or
- (c) the physical development or health of a child or young person being significantly harmed ...

The Act further states:

A person, whether or not the parent of the child or young person, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person in his or her care, is guilty of an offence.

In my view, that is modern language. Modern language certainly does not include expressions such as "whosoever unlawfully abandons or exposes any child under the age of seven". That expression is in almost King James English. The Government has amended only one small phrase in that expression by adding the words "without reasonable excuse". The legislation, as worded by the Government, will continue to use the word "expose". Professor Parkinson points out in his letter:

The word "expose" remains archaic. Its connotation is of infant children being left to the mercy of the elements in the cold winters of the northern hemisphere, with the intention or expectation that they will die.

That conjures up images of children being left on Mount Taygetos in Sparta. Professor Parkinson continues:

There is a potential difference between abandoning and exposing, for a defence could be raised that the defendant did not intend to abandon the child for good. That would not be a defence to a charge of "exposing". However, I think Parliamentary Counsel should be asked to come up with another word or phrase which captures the intent of the verb "to expose" in more modern and accessible language.

I could not agree more. He then goes on to deal with the issue of the age of the child. The Government's legislation limits the impact of that clause to children aged seven years or younger. I quote Professor Parkinson:

The offence remains confined to children under 7 years of age. The reason historically the offence was confined to young children is no doubt that the danger of abandonment or exposure arises because the children cannot go and get help for themselves. The danger to the child from such actions diminishes with age. However, there may be situations of profound intellectual or physical disability where a child over the age of 7 is exposed to much the same level of risk through abandonment as an older child. A quadriplegic child may have no greater capacity to get help than an infant, other than by calling out. I cannot see why the offence should not be made applicable to a child of any age.

As my colleague the Hon. Patricia Forsythe put to me, "What about children who are abandoned by their parents in the middle of the night?" They could be 10 or 11 years of age, and unable to get assistance. Though their lives are placed in danger, this legislation will not apply to them. The legislation is intended to deal with car thieves abandoning cars with babies inside. The Minister explained that in her second reading speech. In response to that, Professor Parkinson has said:

I am not at all certain that the proposed amendment will always allow successful prosecutions of car thieves who find that a baby is in the back of the car. Consider this example:

A parent parks a car and runs into a nearby shop leaving the car unlocked. It is a very hot summer day in Sydney. An opportunistic car thief steals the car not realising that a baby is in the back seat.

Exactly those circumstances prevailed in a well-documented case that occurred in Sydney only a couple of years ago. Professor Parkinson continues with his example:

Someone sees the car being stolen and rings the police. A police chase ensues not long afterwards. The car thief then realises there is a baby in the back. He stops the car when he is out of sight of the police, and runs away on foot. His intention is not to abandon the child. He intends to ring 000 as soon as he believes the police have lost his trail. Indeed there is evidence that he does so—but too late. In any event, he assumes the police know there is a baby in the back and will rescue the child almost immediately. In fact, the police chase was in response to an alert from a bystander that the car had been stolen. The bystander did not realise there was a child in the back seat. The police take a few minutes to find the parked car and continue to pursue the thief by looking around the area. It is another four minutes before they are alerted by radio to look in the back seat of the car, and a couple more minutes before one of them can get back to the car. By this stage the child has suffered serious brain damage in the heat.

Arguably in this circumstance, the car thief has not intentionally abandoned the child. Nor has he "exposed" her since the harm to the child occurs from being *enclosed* not from being *exposed*. He is nonetheless culpable because he should have given himself up immediately with the baby rather than trying to outrun police.

New section 43A is to be contrasted with section 228 of the Children and Young Persons (Care and Protection) Act 1998. I read that legislation a while ago. The new section is confined in its operation to persons who have parental responsibility. The care legislation is not confined to parents having responsibility; it applies to persons whether a parent or not. In this particular case, only parents can commit the offence. The term it uses, "person in parental responsibility", is wider than the term "parent", but it excludes people such as de facto caregivers. People who would be excluded from the scope of this section include the following, and I should inform the House that here I use Professor Parkinson's own words: a mother's new husband or de facto, unless he has been awarded parental responsibility by a court exercising jurisdiction under the Family Law Act; a mother's boyfriend; relatives who in practice have care-giving responsibility for a child without any legal transfer of that responsibility; and foster carers where the Minister or other person holds the parental responsibility for the child.

Those persons are not regarded as having parental responsibility. They might act in the place of a parent, but they do not have parental responsibility for the child. There are many well-known documented cases where people in all of those categories have been responsible for cases of serious child abuse. I would have to say that, in my view, that point by Professor Patrick Parkinson is the one that knocks this bill for a six. If the Minister does not give an assurance that this legislation covers de facto parents, other relatives, boyfriends of natural parents, relatives, including grandparents, babysitters and others of that nature who are acting in the place of a parent, we need to know that those persons, if they deliberately take actions that place children at risk, will face the prescribed penalties.

Professor Parkinson writes further and deals with the expression "necessities of life". Is that a modern expression? It has been said that this bill is supposed to update legislation by using modern language. I would not have thought that the expression "necessities of life" is in common use. I would have thought that the expressions used in the care legislation spell out exactly what is meant by the expression "necessities of life", that is, providing adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person. That sounds like modern language. I have to say "necessities of life" does not.

My concern is that there might be all sorts of legal arguments about what the "necessities of life" refers to. In section 228 of the care legislation, the wording is "adequate and proper food, nursing, clothing, medical aid or lodging". The issue of medical aid is an important one, given the examples I have given in this speech. In a situation where a parent has wilfully or recklessly failed to ensure that a child gets necessary medical attention, he or she has not failed to provide the necessities of life. As an example, in the case to which I referred, the mother took the child to the hospital. To what extent is she guilty of denying or failing to provide the necessities of life? She simply failed to give information. In other words, she has intentionally done an act that has put her child in serious danger. She has not neglected to provide the necessities of life, because she actually took her child to the hospital to have it treated. In that regard, who wants in legislation a loophole and the court hearing lengthy argument about whether it applies? I would rather there be in legislation simple, unambiguous language, to ensure that we are legislating appropriately to protect children. I now turn to section 44, a fascinating legislative provision. In fact, I am surprised to find New South Wales has such a statutory provision. The legislation currently provides that:

Whosoever:

being legally liable to provide any wife, apprentice, or servant or any insane person with necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or

maliciously does, or causes to be done, any bodily harm to any wife, apprentice or servant, or to any insane person ...

is guilty of an offence. All that the Government is doing with respect to that provision is removing reference to children, and that is because children are covered in the new section 43A. But we will still have references to apprentices, wives, servants and insane persons. I ask: Why should this legislation be directed to only husbands who fail to provide for wives? If a wife fails to make those provisions for a husband who is dependent upon her for care, why should she escape the provision? I suspect this was written in Victorian times because then government, and perhaps society, had completely different approaches to the role of women and men. I quote what Professor Patrick Parkinson says in regard to this matter:

I think the Government should decide whether to repeal the whole section. Prosecutions for bodily harm can be brought under other sections, and the remaining provisions would appear to be based on social conditions and legal obligations that have long ceased to exist in Australia. There may be a need still to look at obligations to those who, as a consequence of intellectual disability or mental illness, are under the legal guardianship of another, but that is a matter best dealt with in guardianship legislation, if it is not covered already.

There are other issues not covered by the bill, and I quote Professor Parkinson:

The bill does not cover situations where through acts of intentional cruelty or neglect, a parent or other person causes serious psychological harm to the child. An example would be locking a child in a cupboard for days on end over a number of years, supplying only the physical necessities of life. Such a child would be likely to suffer significant psychological harm, and very likely would experience non-organic failure to thrive, but not serious "injury" within the normal meaning of that word. A prosecution could be brought under s.227 of the Children and Young Persons (Care and Protection) Act 1998 but not under the proposed amendments to the Crimes Act. A custodial sentence could not be imposed for such extreme cruelty under the Children and Young Persons (Care and Protection) Act 1998.

Professor Parkinson believes that the bill is so bad that the Government should scrap it and start again. I understand he has written in similar terms to the Minister in the last week. He said:

I could suggest some amendments to the Government's bill. However, I think it would be better if the Minister were to agree to consider these issues and to ask Parliamentary Counsel to draft revised amendments in the light of revised drafting instructions.

I sincerely hope the Minister gives serious consideration to doing that. The Opposition will not oppose the bill today. We believe it is flawed, but at least it is a small step in the right direction. But if the Minister thinks that the job of reforming child abuse and neglect laws in the State is over, it is not. I believe that Professor Patrick Parkinson has put to us and the Government a compelling argument that these issues need to be revisited.

I suggest the best way to revisit them is to draft a bill, perhaps in conjunction with Professor Parkinson, and allow it to be exposed to, and discussed by, the community before it is brought back to the House next year, which is exactly the same sort of procedure we followed with other legislation that curbed excessive punishment. That bill started off as a well-intentioned bill, but it would have been misapplied had it been passed in its original form. After a great deal of public discussion and inquiry by the Standing Committee on Law and Justice the bill was passed, and met the requirements of 90 per cent of the community and most of the members of this House.

Child protection laws in this State need a number of reforms. The bill achieves some, but not all, of those reforms. First, it is appropriate to have a custodial sentence available to the courts for serious cases of child abuse and neglect. Sadly, some have callous disregard for the interests of children and it is necessary to ensure that community standards are enforced and maintained by giving the courts the capacity to impose a custodial sentence when necessary. In many cases it may not be in the best interests of the child to place a parent in gaol. But the availability of a custodial sentence also enables the courts to access other community options, such as home detention, community service, periodic detention and parole. All these options enable justice to be served without compromising the capacity of a custodial parent to continue to care for their child. Often parents can be encouraged into therapeutic rehabilitation options more effectively by these sentencing options than by the imposition of a fine, which is the only option currently available in the care legislation.

Second, police have informed me that one of the serious disadvantages of the current law, but not of the bill, is that offenders can be prosecuted only in the higher criminal courts. There has been no option to have less serious matters dealt with summarily in the Local Courts. I notice that the bill copies the option I outlined in my private member's bill by amending the Criminal Procedure Act to enable the prosecuting authorities to elect to have the matter dealt with in the Local Courts. That was not part of the Minister's original announcement, but I take it the Government has listened and possibly taken notice of the comments I made to the media after the Minister announced her intention to change the Crimes Act.

Another obstacle in the current law was the excessive burden of proof required by the prosecution. Under the current provisions of the Crimes Act police could secure a prosecution only if they were able to prove

beyond a reasonable doubt that the offender intended to seriously harm the child. The care legislation refers to intentional acts that have that result, but the Crimes Act referred only to actually harming the child. The bill goes some way to achieving a successful balance by using the words "intentionally" and "recklessly", which reduces the burden of proof required by prosecuting authorities to secure an appropriate prosecution. An example could include car thieves who leave a child enclosed in a steaming-hot stolen vehicle as they attempt to escape from police, or the mother of a child who refuses to tell medical authorities that the child has ingested illegal drugs.

In dealing with the matter I outlined earlier—the woman who allowed her child to ingest Ecstasy—I asked the prosecuting police why they did not use the Crimes Act, which seemed highly appropriate. They said they had two problems: first, it would require a trial before a judge and jury, and they did not think the offence merited that approach; and, second, the burden of proof required to prove that the mother intended to harm the child probably would have been dismissed because the mother took the child to hospital. It is necessary to have a provision to take action against persons who intentionally commit an act, even though they do not intend harm to the child, that harms the child and can be reasonably foreseen would harm the child. Even though people who neglect and abuse children in the course of a crime can be found guilty of other offences, such as car theft or dealing in drugs, the Opposition believes that offenders should face an additional penalty for placing children at risk in the course of committing a crime. As I said, the wording in the bill goes some way to addressing the problem.

The law must protect all vulnerable children. The bill deals only with children under the age of seven and ignores completely children who may be older, but who are impaired in their capacity to seek help or escape harm because of disability or a situation that may be peculiar. For example, the crime might occur at night. A 10-year-old abandoned in the bush might not be in a position to call for help. But if that child dies as a result of being abandoned in the bush, the parent deserves to face the consequences of the legislation. I do not see any reason why the bill should be limited to children aged only seven. We must find a way to protect children who are vulnerable and in need of care. The Opposition will not oppose the bill. We believe we have adequately outlined our concerns with the bill, and hope that the Minister addresses them.

If the Minister does not take action to address our concerns I will work with people such as Professor Patrick Parkinson to introduce another private member's bill, which will seek to take this debate further. This issue is far too important to be politicised, and I hope the Minister takes the view that I have not tried to politicise it. I have offered every opportunity for open discussion. In this instance I have indicated that I have supported some of what the Minister has tried to achieve and complimented her in that regard. I offer bipartisan support in making the legislation better than it is. I will be happy to stand side by side with the Minister between now and the election to defend legislation that appropriately does that. I make no secret of the fact that the Opposition will choose to continue to keep this issue on the agenda by introducing further legislation, if necessary.

**The Hon. PATRICIA FORSYTHE** [3.48 p.m.]: A very clear principle underpins the legislation: a parent who neglects a child should be guilty of a serious offence, a crime. The legislation certainly attempts to enshrine that principle. I hope that the parents of New South Wales derive from the fundamental principle and its implications the very clear understanding that to be a parent is a right that can be exercised only in accordance with responsibilities. Too often people accept the right to be a parent but ignore their responsibilities. This legislation should make it clear that people have to balance their rights with some very important responsibilities.

The speech made by my colleague the Hon. John Ryan set out very clearly the situation in which the people of New South Wales find themselves. This State has been presented with a very important principle embodied in legislation that is terribly flawed. As my colleague stated, although the Opposition will not oppose the bill we point out that it does not do justice to the important principle to which I have referred. Comments made by Professor Patrick Parkinson suggest that what the Government is attempting by this bill—quite apart from the worthy principle it is attempting to address—is effectively to defy logic. I am unable to understand why it did not refer to its own care legislation and the words that were selected for inclusion in that legislation as a consequence of a long process of consultation with numerous groups throughout the State. The Minister knows as well as I do that the legislation received support because of the widespread consultation. The fact that a consultation process was not conducted in relation to this amending legislation defies logic.

I am puzzled by the Government's selection of seven years as the upper age limit for grounding an offence of neglect. By virtue of this bill, the neglect of children seven years of age or younger will be the basis



upon which a person may be found guilty of an offence in circumstances in which the children are intentionally abandoned or exposed to danger. Apart from the very significant points made by my colleague relating to interpretation and what the provisions of this bill will mean to people who are endeavouring to ascertain the scope of their responsibilities, I query the Government's selection of the age of seven years. I wonder whether implicit in that selection is the suggestion that seven-year-old children are able to protect, defend and care for themselves and get themselves out of situations that are likely to cause serious injury or constitute a danger of death.

Of the cases I reviewed when I was the shadow Minister, one stood out in particular. An article in the *Sydney Morning Herald* on 30 January 1998, under the headline "Home alone while parents gambled", reported on a case involving two children—one aged 18 months and the other aged nine years—who were left at home alone at night. Clearly, under this legislation the parents would have been culpable for leaving a child under 18 months old, but the nine-year-old would have been in a different category. At 1 o'clock in the morning the nine-year-old child was woken by the sound of her 18-month-old brother crying, and contacted 000. What is a child meant to do in such circumstances? Is there an assumption that nine-year old children can obtain help and care for themselves, that because they are nine years old, not seven years old, they will not be at risk?

I suggest that a nine-year old child at home alone is in as much danger as a seven-year old child. They are unable to do many things that people over 16 are able to do if they have the experience of being alone and out of the house at night. Many children under 16 have never had that type of experience. In this case the response from the Department of Community Services [DOCS] was found to be wanting. A spokeswoman from the department said, in relation to the adult members of the family having been to the casino, that DOCS would assess the family's position, including support that the family might need, such as "child minding and counselling for gambling addiction". Instead of treating this as a crime, DOCS was contemplating whether the family might need child minding services. What type of message does that send to parents? At least in that sense the Government has moved on. Those children could have been in danger of serious injury or death if there had been a heater or fire in the house, but fortunately this incident occurred in late November. However, those dangers must be borne in mind.

Another case that came to mind when I first heard of this legislation was the subject of a debate between the previous Minister and me in 1997. There was discussion about whether there were five children or two children left at home alone in Campbelltown while their mother honeymooned in South Australia. Irrespective of the number of children, they were under the age of 14 and they were alone. The Minister suggested that two of the children were aged 14 years and 12 years. A newspaper report suggested that DOCS first visited the house on 24 January after being told by a concerned neighbour that the children were not being looked after properly. The last contact DOCS officials had with the children's mother was on 20 February, at which time the DOCS spokeswoman said, "There is nothing remarkable here." Apparently it was not remarkable that for a period between January and February at least two children were alone in a house without supervision. Initially they had been left with neighbours but, as was pointed out in media reports in March, they had been left without proper food or care. One would hope that would be deemed as being left without the proper necessities of life.

I mention these cases in the hope that there has been an attitudinal change within the Department of Community Services. I am sure that the Minister has done her best to ensure that that attitudinal change extends to an understanding by DOCS officials that it is unacceptable to classify those circumstances as "nothing remarkable". Two young children had been left in a house alone for at least five weeks without adequate provision having been made for food and care. One would hope those very circumstances will be covered by this legislation.

It is important that parents understand that they have a responsibility to care and protect young children and to provide for them. However, responsibility for young children extends beyond parents—a fact that this legislation does not recognise; in fact, it is seriously deficient in that regard. Anyone who is acting as a parent should be exercising proper care in relation to young children, and I would have thought that the term "in loco parentis" would be included in this legislation, not merely the term "parental responsibility". Together with my colleague, I urge the Minister to withdraw the legislation and get it right. The Opposition will support the Government if it does so. I acknowledge that this very flawed bill is a step forward, and that is why the Opposition will not oppose it.

**Ms SYLVIA HALE** [3.58 p.m.]: The Greens do not oppose the bill but have serious misgivings about the punitive principle underlying it. We acknowledge the inadequacies of its wording as outlined by the Hon.

John Ryan. The bill is indicative of the usual zero tolerance, get tough on the victims approach adopted by this Government. It is extraordinary to propose that increasing a gaol term for parents who fail to provide adequate protection to a child will result in better parenting. Gaol terms are intended to act as a deterrent. Does the Government really think that the threat of a five-year gaol term will result in better parenting?

I ask the Minister to answer that question in her reply. The failure of parents to provide adequate care for their children is the result of a complex range of socioeconomic and behavioural issues, including social isolation, mental health, discrimination and, above all, poverty. These are the real problems that give rise to parental neglect. A five-year gaol term will do absolutely nothing to address a single one of those issues. The bill completely ignores the fundamental underlying problem present in the majority of child neglect cases, and that is poverty. The Minister, in her briefing note, emphasises that fines of up to \$22,000 will be imposed in preference to gaol terms.

Once again I ask the Minister to explain to the House how a family crippled by poverty to the point where normal child-parent behaviour has broken down will be assisted in any way by the imposition of a \$22,000 fine. Child neglect is a serious problem. Indeed, there are unfortunate cases in which parents are unable to provide adequate care and the children must be removed and placed in alternative care. In the vast majority of neglect cases parents are able to provide adequate care when provided with appropriate support services and economic independence. I refer briefly to the instance nominated by the Hon. John Ryan of a woman who refused to reveal the substance that her daughter had swallowed. This is a very instructive case. In that instance the woman's failure to co-operate with the hospital resulted—

**Pursuant to sessional orders business interrupted.**

#### **MINISTRY**

**The Hon. MICHAEL EGAN:** I advise the House that during the absence of the Minister for Transport Services, Minister for the Hunter, and Minister Assisting the Minister for Natural Resources (Forests), the Hon. Michael Costa, any questions relating to his portfolio should be directed to me.

#### **QUESTIONS WITHOUT NOTICE**

---

#### **SYDNEY SUPERDOME SALE**

**The Hon. MICHAEL GALLACHER:** My question without notice is directed to the Treasurer. When the Treasurer decided to support Gerry Gleeson's last minute multi-million dollar bid for the Sydney SuperDome, did he advise the relevant Minister, Craig Knowles, of his support for the proposal, or was this just a super-dumb, sorry, SuperDome arrangement between the Treasurer and Gerry Gleeson?

**The Hon. MICHAEL EGAN:** Treasury advised the Sydney Harbour Foreshore Authority that I had approved the bid being lodged.

#### **SHANNON VALE FIELD STATION SALE**

**The Hon. DUNCAN GAY:** My question without notice is directed to the Minister for Primary Industries. Does the Minister recall my discussions with his office on Monday 31 May in regard to Shannon Vale field station? Will the Minister now give full consideration to any proposal to be put forward by the University of New England to lease the Shannon Vale research station in the knowledge that such a proposal would have the support of the Opposition and the wider community?

**The Hon. IAN MACDONALD:** I appreciate the spirit in which the question was asked. Shannon Vale was originally established to investigate weaner ill-thrift in sheep. The solution of the problem involved improved pastures and fertiliser and was sorted out some 50 or 60 years ago. Indeed, I am advised that currently there is no locally based research at Shannon Vale, and there has not been for at least five years. Similarly, currently there is no research on sheep or cattle diseases, and there has not been much, if any, for more than 15 years. NSW Agriculture continuously evaluates its programs and corporate operating systems to ensure that the people of New South Wales get the best value possible for the money they invest. The sale of Shannon Vale research station reflects that the department has no foreseeable need for the site. Consequently, the intention to dispose of the property was publicly announced on 24 February.

As with all government departments, NSW Agriculture is obliged to follow Treasury guidelines regarding any divestment process and in doing so is required to realise an appropriate commercial return on the sale of any asset. That is simply a matter of being fiscally responsible. In the past two weeks my staff have had a number of conversations with the University of New England about the possibility of it acquiring Shannon Vale. It is disappointing that despite having had three months notice of our intentions no earlier approach was made. The university initially contacted my office on 18 May indicating its interest in assuming control of the property without purchasing it, or indeed even making a contribution towards its operational costs. Naturally that was not a feasible option.

Subsequently I have received correspondence, once again indicating an interest, but no concrete proposal. Today my staff engaged in further dialogue with the university in which it was revealed to my office that an individual had conducted the original correspondence rather than it having been authorised by the university's governing body. I am informed that the university's governing body, the council, will meet on Friday to consider whether to make a formal offer for the property. I am more than prepared to consider any proposal that would facilitate the University of New England's plans whilst also meeting the objectives of the department. I am most appreciative of the efforts of the Deputy Leader of the Opposition to facilitate such an outcome. Indeed, I hope that the university will be able to provide a formal proposal for consideration prior to the set auction date of 9 June. However, I stress that any outcome of such negotiations must meet Treasury's guidelines to ensure an appropriate return is realised for New South Wales taxpayers. To do anything less would be quite irresponsible. Once again, I thank the honourable member for the productive manner in which he has raised this issue.

#### **STATE EMERGENCY SERVICES COUNTER-TERRORISM EXERCISE**

**The Hon. AMANDA FAZIO:** My question is directed to the Minister for Emergency Services. What is the latest information regarding the preparedness of the State's emergency services in a major emergency?

**The Hon. TONY KELLY:** Our emergency services are among the best equipped and best trained in the world. In light of recent events, the Bali bombing and September 11, it is more important than ever for the State to be prepared for the worst. Therefore, from 31 May until 3 June the New South Wales Fire Brigades [NSWFB] will be involved in the National Counter Terrorism Committee's multi-agency investigation and consequence management exercise, known as Exercise Explorer. The scenario involves a multi-storey building collapse within the Sydney central business district as a result of a terrorist attack. As with September 11, firefighters are likely to be first on the scene in such an event. The scenario involves the rescue of up to 300 people who are trapped in the collapsed building. I thank the State emergency services volunteers who were involved in that part of the exercise. Our fire brigades are highly trained in urban search and rescue. The exercise has given them the opportunity to test their skills in real time, with all the pressures of a real incident, and will save lives in the event of a real incident.

Our response to hazardous materials has also been tested throughout this exercise. Other areas to be tested include the senior, strategic level, emergency management functions and relationships in a multi-agency incident management structure, NSWFB counter-terrorism standing operating guidelines, and the management of information in a terrorist situation. NSWFB will extinguish fires, monitor chemical and other hazards, and conduct the rescue of trapped victims from the site, working in conjunction with police search dogs and ambulance paramedics. The management of fear is critical to ensuring that the public does not panic, and if so that public panic does not disrupt the planned response to and the management of an incident. Experience from previous exercises indicates that an individual's reaction to a terrorist incident will largely be determined by the information available to them at the time.

During the exercise, components of the New South Wales Public Information Services Functional Area Supporting Plan and the National Counter Terrorism Plan will also be tested. The fire brigades and other emergency services will be responsible for distributing consistent and timely information which ensures the integrity of emergency operations, assists investigations and maintains public confidence. Exercises such as this are invaluable both to emergency services and to the community. So far, the brigades have demonstrated that they are ready for any major emergency such as a terrorist attack. I have said on many occasions that we cannot make New South Wales terrorist proof, but we can make sure that our emergency service workers are as prepared as possible. A full debriefing will be held after the exercise to assess any problems that arise and build on the skills of our emergency service personnel.

[Interruption]

I will tell emergency services personnel that the Leader of the Opposition is not interested in this issue. I congratulate our firefighters on the skill and temperament that were shown during this exercise. They have again shown that they are willing at any time to go beyond the call of duty. As I said earlier, special congratulations go to those State Emergency Service volunteers who acted as victims. That, surely, was not an easy role for them to play. On behalf of the Government I thank them for that.

### SYDNEY WATER SUPPLY

**The Hon. JOHN TINGLE:** My question without notice is addressed to the Minister for Local Government, representing the Minister for Energy and Utilities. Is the future inadequate water supply for Sydney and other parts of the State now an issue of crucial importance, not only because of the prolonged drought, but also because of the growth and development of the State and the resulting inadequacy of the dams? Is the Minister looking at alternative methods of increasing the supply? In particular, has the Minister considered the feasibility of available alternative technologies such as desalination of seawater to provide fresh water for some specific purposes, such as irrigation? Has any study been done of the cost benefit effectiveness of methods of deriving water other than from rainfall?

**The Hon. TONY KELLY:** I will refer the honourable member's important and timely question to the Minister and ensure that I obtain a speedy reply.

### TRADE AND INVESTMENT COMMISSIONER LONDON APPOINTMENT

**The Hon. TONY BURKE:** My question without notice is directed to the Treasurer. Is it the intention of the Government to appoint the Treasurer as the Trade and Investment Commissioner for New South Wales in London?

**The Hon. MICHAEL EGAN:** Whilst it is true that occasionally there is a breakdown in communications between me and other members of the Government, I hope this is not one of those occasions. If there is some intention to offer me a post somewhere, it is without my knowledge. I hope that this is not bad news and that I will not be getting a tap on the shoulder from someone. The idea that I will be the State's next Trade and Investment Commissioner in London is quite bizarre. That position reports to the Minister for State Development, which is me. I do not know why I would want a job reporting to the Minister for State Development when I am the Minister for State Development.

Whilst I have a very high regard for my many qualities and virtues, I do not think I would like to work for me; nor would I like to work for any other future Minister for State Development that I could think of. I certainly would not want to work for the Hon. Michael Costa or even for the Hon. John Della Bosca. I am quite happy in the job that I now have. I spent close on 25 years trying to get this specific job—not in this House but in another House—and I will not give it up easily. The article in today's *Daily Telegraph* that was written by Mr Mark Skelsey was bizarre for another reason.

**The Hon. Michael Gallacher:** That picture?

**The Hon MICHAEL EGAN:** The picture is terrible, I agree. I quote from the article, which states:

Egan is understood to have some fondness for a future life in mother England ...

Mr Skelsey obviously knows nothing about me. Let me relate a little story for his information. Some time ago—I think it was in 1979—I was at a function in Sydney for a visiting international celebrity—a function that was being hosted by a number of younger members of Parliament. At the end of the night the celebrity was about to be taken off by his minders. While he was waiting around he looked at us and said, "You obviously all know something about me. Tell me something about yourselves."

The first person that he looked at was me. I blurted out, "It is very simple. I am Irish, I am Labor, I am Catholic and I am republican." "Oh", said the celebrity, His Royal Highness the Prince of Wales, "You need not have said all that. You only needed to say that you were Irish." Mother England might be mother England to Mr Skelsey, but it is certainly not mother England to me. I will give honourable members a reason for that. I hope that they all watched *The Restoration* on ABC television last Sunday and the Sunday before—a very sad period in British and English history. One day we will remedy that. The Act of Settlement, about which I have made many speeches in this House, states:

Provided always, and be it hereby enacted, That all and every person and persons, who shall or may take or inherit the said Crown, by virtue of the limitation of this present act and is, are or shall be reconciled to, or shall hold communion with, the See or Church of Rome—

[*Time expired.*]

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

**The Hon. MICHAEL EGAN:** The Act of Settlement continues:

... or shall profess the popish religion, or shall marry a papist, shall be subject to such incapacities ...

That means that the person cannot become the monarch of England. Until that is fixed up I will not have too much to do with England, other than to make the occasional temporary visit. I concede that England has given us many things, such as Shakespeare, the rule of law and the Westminster system, but until it fixes that up, any person who refers to it as mother England in my mind is a heretic and a traitor.

### HOTELS AND CLUBS SMOKING RESTRICTIONS

**The Hon. Dr PETER WONG:** I direct my question to the Special Minister for State, representing the Minister for Health. In the spirit of World No Tobacco Day held on 31 May this year, and to mitigate the significant dangers of this disease-causing drug for the public, when will the Government be ready to implement no smoking in enclosed public places, in particular, pubs and clubs?

**The Hon. JOHN DELLA BOSCA:** Given that the honourable member asked me to make a policy announcement, I think his question is close to being out of order. He asked me to make a policy announcement in an area that does not fall within my portfolio. I will refer the matter to the relevant Minister and obtain an answer for the honourable member.

### INTERCOUNTRY ADOPTION FEES

**The Hon. JOHN RYAN:** My question without notice is directed to the Minister for Community Services. Has she reconsidered her decision to increase fees for intercountry adoptions by 270 per cent from 1 July 2004 in light of the public outcry and submissions that she has received from potential adoptive parents and others?

**The Hon. CARMEL TEBBUTT:** This is an issue in which the honourable member has a keen interest. I can advise the House that a reform proposal was put out for consultation and that consultation period has recently been completed. The reform proposal covered a range of issues, one of which the honourable member has spoken about on a number of occasions, that is, the fee increases. The reform proposal also covered a range of other issues, including the proposal to accredit service providers that seek to provide inter-country adoption services. The legislation provides for that to occur.

The proposal in the paper is that the Children's Guardian will assume the role of accrediting service providers under the Adoption Act through a delegation from the director-general of the Department of Community Services. This is an important issue. Potential providers of intercountry adoption services and others have expressed some concern about the proposed fee increases outlined in the paper to which the honourable member has referred. I indicate to the honourable member that I have not changed my mind with regard either to the fee increases or to the other issues that are covered in the paper that has been released.

Nonetheless, should the reform proposals go ahead they would enable other service providers beyond the Department of Community Services to provide for intercountry adoptions. I have pointed out previously that fees for intercountry adoptions have not increased since 1995. Should the Department of Community Services continue to make available intercountry adoption services at a greatly subsidised cost, clearly that would be unfair to any other providers because there would be a significant advantage to people using the government provider as opposed to other service providers.

I reiterate that the Government is proposing to do what has already been done in several other jurisdictions—that is, recover a great proportion of the costs of providing intercountry adoption services. Some of the costs in this process are not controlled by government, including fees paid to engage private social workers to conduct assessments of intercountry adoption applicants. Revenue will be directed towards

recovering costs and to funding system improvements. I also advise the House, as I have done previously, that applications already being processed will continue to accrue the current level of fees and will not be affected by these proposals.

**The Hon. Catherine Cusack:** Why discriminate against overseas adoptions?

**The Hon. CARMEL TEBBUTT:** The Government is not discriminating against intercountry adoptions. The reality is that the costs involved in organising intercountry adoptions are quite significant. I also inform the House that a hardship provision is being developed in response to issues that have been raised through the consultation process whereby financially disadvantaged applicants will be charged a reduced rate for intercountry adoption processes. I will provide more details to the House about this issue in the coming weeks.

### **BOURKE COMMUNITY DRUG ACTION TEAM PROJECTS**

**The Hon. CHRISTINE ROBERTSON:** My question is addressed to the Special Minister of State. Can the Minister inform the House how the Community Drug Action Program is helping young people from Bourke promote responsible messages about drugs and alcohol?

**The Hon. JOHN DELLA BOSCA:** I am pleased to inform the House of two innovative projects launched last week as part of our Community Drug Action Program and information program. These projects—a music CD and a television campaign promoting responsible drinking—were developed by young people in Bourke, who have found innovative ways to engage and address their peers about drug and alcohol issues. The young people worked with filmmaker Richard Snashall and hip-hop musicians MC Wire and Morganics to write scripts, develop lyrics and produce a television campaign and music CD. The theme of the campaign is "He ain't drinkin', he's drivin'". The television campaign includes two 30-second advertisements that communicate a serious message in a humorous way. The campaign features "Paul, a smart man" and depicts social occasions on which he is the designated driver while out with friends. The advertisements will air for four weeks and will be shown across Australia on indigenous station Imparja Television. The hip-hop and rap music CD, featuring Bourke's own Back Lane Boys, was produced with well-known hip-hop artists and features tracks with positive alcohol messages for young people.

The projects have been developed through the Bourke Community Drug Action Team. The development of the television campaign and CD, while supported by professionals, involved Bourke young people each step of the way. The young people were involved in every aspect of the television campaign, including writing scripts, acting and producing the advertisements; focus testing the messages to ensure that they were appropriate for the target audience; and developing a media schedule to ensure maximum audience reach and exposure. Some of the young people involved in the project have since gone on to undertake film-making and music production courses at TAFE.

Chair of the Bourke Community Drug Action Team, Sergeant Tim Beattie, is also very supportive of the project and has expressed on behalf of the community drug action team pride in the efforts of the young people and the level of talent in the Bourke community. He also emphasised the importance of police being part of a project that gives young people the opportunity to explore their talents and of supporting them in going on to further training and education. I am very glad to see that members of NSW Police have more progressive views about these matters than some Opposition members. Sergeant Beattie also emphasised the importance of being part of a project that gives young people the opportunity to explore their talents in a socially useful way.

I am very impressed by the enthusiasm, talent and commitment displayed by the young people, and I had a great time meeting them yesterday morning. Members of the Back Lane Boys were invited to Sydney to perform their songs at the Message Stick Festival at the Opera House held last weekend. This was undoubtedly a great experience for them, and I had the distinct impression that their confidence and self-esteem had doubled as a result. It is a fantastic demonstration of how a small, grassroots program such as the Community Drug Action Program, which involves minimal expenditure, can affect directly and positively the lives of people in even the remotest, and sometimes most marginalised, communities. I congratulate the young people involved and the Bourke community on their innovative work in raising awareness of alcohol issues.

### **DNA TESTING**

**The Hon. PETER BREEN:** My question is directed to the Minister for Justice, representing the Minister for Police and the Attorney General. Is the Minister aware of a massive backlog at the Government Division of Analytical Laboratories at Lidcombe with regard to the testing of DNA samples? Given that backlog, can the Minister indicate whether certain crimes are given higher priority in the testing of DNA

samples at the laboratory and, if so, what crimes are given priority? Can the Minister also indicate what impact the backlog of DNA testing at the laboratory is having on the re-establishment of the Innocence Panel, whereby prisoners wrongly convicted can use DNA testing to prove their innocence?

**The Hon. JOHN HATZISTERGOS:** The question relates to the portfolios of both the Minister for Police and the Attorney General. I am aware of allegations of the nature of those raised by the Hon. Peter Breen. In the circumstances it would be appropriate for me to refer the matters to the relevant Ministers, obtain answers and advise the House in due course.

#### **SYDNEY SUPERDOME SALE**

**The Hon. CATHERINE CUSACK:** My question is directed to the Treasurer. Will he fully outline the reasons that the Treasury gave him when it advised against supporting Gerry Gleeson's bid for the Sydney SuperDome?

**The Hon. MICHAEL EGAN:** The simple fact of the matter is that the Government has decided that the Sydney Harbour Foreshore Authority [SHFA] will not make a bid for the Sydney SuperDome. Before my approval of SHFA's bid I sought Treasury advice, which was that I should not approve it. I also considered the arguments put to me by the Sydney Harbour Foreshore Authority and, on balance, I decided to support SHFA's bid.

**The Hon. CATHERINE CUSACK:** I ask a supplementary question. Will the Treasurer table the Treasury's advice?

**The Hon. MICHAEL EGAN:** No.

#### **ATHLETES DRUG TESTING**

**The Hon. HENRY TSANG:** My question is directed to the Treasurer, and Minister for State Development. Will the Treasurer inform the House about a Sydney company's role in helping to catch the next generation of sports drug cheats?

**The Hon. MICHAEL EGAN:** With the Athens Olympics due to get under way very soon, the issue of athletics and athletic performance will once again become a major issue of public debate. So I inform the House about the work of a Sydney biotechnology company called Proteome Systems. This North Ryde based company has been asked by the World Anti-Doping Agency to develop a better way to catch athletes who use the latest protein-based performance-enhancing drugs. The World Anti-Doping Agency has enlisted the help of Proteome Systems in producing a simpler and more effective urine-based test for a particular protein called erythropoietin.

**The Hon. Catherine Cusack:** You had better give us the acronym for that.

**The Hon. MICHAEL EGAN:** There is no acronym. This drug is used by some athletes to enhance performance in endurance events by increasing their red blood cell production. The first test to detect the illegal use of the substance was developed in time for the Sydney Olympics in 2000 but it had limitations that the World Anti-Doping Agency is now trying to overcome. As a result Proteome Systems has been asked to develop a simpler, more robust and definitive test for the substance, using improved patented technology to analyse samples.

I am pleased to say that the New South Wales Government has provided financial and marketing support to Proteome Systems in the past. In 2002 we supported the company's research efforts with a proof of concept grant under the Government's BioBusiness Program, which, as honourable members will be aware, is part of our BioFirst Strategy. In 2003 we again assisted the company under the BioBusiness Program's high-growth business component to assist its efforts to achieve international regulatory accreditation in the European Union. I am delighted that the company is now gaining international recognition in the field of proteomics technology. The vice-president of research and development at Proteome Systems, Dr Nicolle Packer, reports that the company will use a unique technology platform to carry out the drug tests. The process will involve electrophoresis, which involves the separation of molecules or proteins based on their electric charge.

Dr Packer says the difference between the electric charge on the natural form of erythropoietin that is found in our bodies and the erythropoietin drug that is illegally taken by athletes will form the basis of the new

test. Proteome Systems says its technology is also suited for blood tests to detect the illegal use of synthetic human growth hormone, another protein-based performance enhancing drug. Proteome Systems with its base at North Ryde is now ideally placed to provide a universal protein drug testing system that could be taken up by the rest of the world. This will drive the message home to cheats that they will be caught if they use drugs to illegally enhance their sporting performance.

### HONEYSUCKLE DEVELOPMENT

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is directed to the Minister for the Hunter, but as he is absent in Lebanon I redirect it to the Treasurer. Is the Treasurer aware that on 17 February, Newcastle City Council passed a motion requesting that a commission of inquiry be conducted into the Lee Wharf Development Honeysuckle Development before the Minister for Infrastructure and Planning granted consent on 27 May? Will the Minister for the Hunter advocate for a commission of inquiry into the Honeysuckle Development in view of the community perception that a conflict of interest exists in his role as the proponent and the consent authority?

**The Hon. MICHAEL EGAN:** I will refer the honourable member's question to my colleague the Minister for Transport Services on his return.

### WORKERS COMPENSATION PREMIUMS

**The Hon. DAVID CLARKE:** My question is directed to the Minister for Commerce. Will the Minister give an undertaking that there will be no increase of the F-factor component of the experience premium within the formula used to calculate workers compensation premiums for the 2004-05 financial year?

**The Hon. Amanda Fazio:** That's an interesting question.

**The Hon. JOHN DELLA BOSCA:** It is interesting. Obviously someone has been studying during the parliamentary break.

**The Hon. Michael Gallacher:** He is working all the time. Our backbench is flat-out.

**The Hon. Michael Egan:** He is working against you!

**The Hon. Duncan Gay:** He is that good they call him "The Accountant".

**The Hon. JOHN DELLA BOSCA:** I thought that I would call him the F-factor. The F-factor refers to the experience factors that are calculated in the premium formula. The new premium order for the next premium year has not yet been approved by me as the relevant Minister under the regulations. I am not in a position to give any particular commitment about the structure of new premium orders but I am in a position to repeat the commitment that has been consistently given by the Premier, the Treasurer and Minister for State Development, and me in relation to the overall premium level. This commitment has been accepted by all peak employer organisations, and the Government has maintained good faith in relation to it despite a need to change the actual structure and method of calculation of premium on a number of occasions, including the most recent change in the way it defined wages as part of the premium calculation.

**The Hon. Duncan Gay:** Are you going to put it up again? Is it going up again?

**The Hon. JOHN DELLA BOSCA:** The Deputy Leader of the Opposition is missing the point. The average premium level for WorkCover premiums in the new premium order will be consistent with the previous undertakings given by the Premier and the Treasurer.

**The Hon. Duncan Gay:** So it is going up!

**The Hon. JOHN DELLA BOSCA:** It will not go up. I take this opportunity to make an obvious point about workers compensation and premium levels. If the Opposition is or has ever been concerned about the level of premiums of workers compensations—I do not think it is concerned about anything to do with a sensible workers compensation system—it could have supported the reform program of the Government in relation to workers compensation. The Opposition had an opportunity to do that and on the last occasion it declined to support the workers compensation package of the Government.



**The Hon. Duncan Gay:** Did you or did you not get it through Cabinet?

**The Hon. JOHN DELLA BOSCA:** I got it through without your support. When the Leader of the Opposition was the shadow Minister, a critical part of the reform package was voted down by the Opposition, and he knows that. For that reason members of the Opposition have no credibility when they talk about premiums going up or down because everything they have done and said in this House has contributed to pressure being put on the workers compensation system, not on improving it. I repeat the Government's general commitment that the average level of premiums will not be increased.

### PAROLE SYSTEM REFORM

**The Hon. PETER PRIMROSE:** My question is addressed to the Minister for Justice. Will the Minister advise on the latest developments concerning the parole system in New South Wales?

**The Hon. JOHN HATZISTERGOS:** I thank the Hon. Peter Primrose for his interest in this matter. Honourable members would be aware that the parole system in New South Wales has been under regular review since the days of the previous Coalition Government. In 1989 Michael Yabsley, who had the power himself to parole individuals but found it very troublesome to do so, actually established the independence of the Parole Board. He said at the time:

I have no intention of turning the office of the Minister for Corrective Services into a kangaroo court based on my opinion about the sentences that offenders should serve.

A few years later, John Hannaford stated quite clearly that decisions regarding parole:

... must be made without political interference and are quite properly the responsibility of independent statutory bodies.

When he introduced his reforms, he also stated:

... the ultimate carrot for good behaviour—the opportunity to be released in the shortest possible time.

That was the attitude of the Opposition as it reformed the parole system at the time. When this Government came to office it continued that process of reform. In the Sentencing Amendment (Parole) Act 1996 the present Government gave a statutory right to a victim of a serious offender to make a submission to the Parole Board. The Government enacted the Criminal Legislation Amendment Act 2001, which required the Parole Board to take into account the potential trauma to the victim and the victim's family if an offender is released on a particular day. The Government enacted the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001, which clarified and re-enforced existing laws whereby the Parole Board may impose non-association and place restriction conditions on a parolee.

The Government enacted the Crimes (Administration of Sentences) Amendment Act 2002, which removed the requirement of a victim of a serious offender to obtain approval to make an oral submission about the release of the offender. The Government also enacted the Crimes Legislation Amendment (Parole) Act 2003, which made the Parole Board accountable to the public that it served by requiring it to give explicit reasons why it decided to release an inmate to parole and to increase the numbers of parolees under supervision.

Today I have announced a further step towards the continuing improvement of the parole system following Cabinet's approval of legislation to change the parole system in this State. The reforms will make the functioning of parole more closely aligned with community expectations. First of all, the board will be renamed the State Parole Authority in order to dispel any doubt as to what its functions are. Those functions are to make decisions and to be a discerning analyst of who is to be granted parole and not a body whose job is the management of parolees within the system. It is the role of the Department of Corrective Services to drive the parole preparation process. The latest reforms envisage a parole system that is a benchmark for community safety that applies rigorous criteria and yet strikes a judicious balance between community safety and offender rehabilitation. The Probation Service of the department will be required to report to the authority on identifiable and transparent criteria and whether they have been met by offenders in making parole decisions.

Key features of the reforms are making community safety the primary issue in an expanded list of matters to be taken into account by the authority, and providing a rapid method to suspend an offender's parole and the issue of a warrant for arrest in the case where a person poses a serious or immediate risk of harming another person or in other specified circumstances. They will provide that the authority will not be able to parole a serious offender unless that person is first assessed as appropriate by the Serious Offenders Review Council, except in exceptional circumstances.

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

**The Hon. JOHN HATZISTERGOS:** The reforms will clarify that the authority is essentially a decision-making body, and they will ensure that victims will be spared the anguish of unnecessary hearings by having automatic rights of offenders to public hearings removed where the authority so determines after having expressed an intention to refuse parole.

Further key features are: to provide that the authority will be required to give reasons when it decides not to revoke a parole order; to expand the members of the authority by including members who have knowledge of the interests of victims; to expand the list of information available to victims about the offender when the authority is considering the offender for parole; to provide that where a parole order has been revoked, the authority will not consider the case again for a minimum of 12 months unless that would result in a manifest injustice; and to place the onus on the offender to satisfy the authority that release is appropriate in the public interest having regard to the need to protect the safety of the community.

While parole is a pivotal phase in the rehabilitation of an offender, it is imperative to remember that not all offenders are eager to address their offending behaviour and, just as we do not force people to undergo therapy, offenders that are to be given parole must manifest a desire to behave lawfully and amend their wrongdoings. This new legislation will build on the New South Wales Government's past improvements to the operation of the parole system and incorporate reforms much more sympathetic to the situation of victims. They are largely intended to assist the State Parole Authority with its decision-making process and to ensure its independent status is maintained and enhanced.

#### **ABSENCE OF THE HONOURABLE EDDIE OBEID**

**Ms LEE RHIANNON:** I direct my question to Mr Kelly, the Leader of the House. Considering that Mr Obeid was given time off to travel to Lebanon during April and May, and considering that the Leader of the House later rescinded this decision and requested he return to Australia on the first available flight, does the Leader of the House regard that for the past two months Mr Obeid has not been serving the people of New South Wales? Will the Government ask Mr Obeid to pay back his monthly salary and electoral allowance to the people of New South Wales, the total of which is \$23,624.50 for April and May? Given that this House is faced with yet another scandal starring Mr Obeid, which follows on from the 2002 pecuniary interest scandal when he blamed his accountant, will the Leader of the House be asking Mr Obeid to resign from this Parliament?

**The Hon. MICHAEL EGAN:** I will take the honourable member's question. I take the question because I read the following in this morning's *Daily Telegraph*:

The Greens will today call for Treasurer Michael Egan to force Mr Obeid to pay back almost \$24,000, the equivalent of two months wages and allowances.

I got so excited when I read that, because there is nothing I would like more than the power to be able to dock the pay of members of Parliament. It would be a constitutional first. It would re-assert the supremacy of the Crown over the Parliament, and the precedent of my being able to dock members' salaries is a power I would love. I promise that if you give me that power—and it is within your power to give it to me; a simple piece of legislation passed by this House and then by the lower House can give me that power—I will use that power impartially and fairly. I promise you. And I would love to have it.

**Ms LEE RHIANNON:** I ask a supplementary question. I would appreciate it if the Treasurer could elucidate his answer. Maybe he would like to put a submission to the remuneration tribunal, and maybe he could tell us how he will ensure that Mr Obeid will abide by the code of conduct of members of this House and the commitment he gave when he was sworn in as a member of this place in 1991 to serve the people of New South Wales.

**The Hon. MICHAEL EGAN:** I will elucidate my answer. When I say that I would exercise such a power to dock members of their pay fairly and impartially, I can say I would enthusiastically strive to do that with Ms Lee Rhiannon. She would be the first customer off the rank. In relation to the honourable member's other claims and assertions, if she has any imputation to make against a member of this House, she knows the standing orders, and she can do so by substantive motion.

## CLARENCE VALLEY COUNCIL AND COFFS HARBOUR CITY COUNCIL BOUNDARY CHANGES

**The Hon. MELINDA PAVEY:** My question is directed to the Minister for Local Government. Is the Minister aware that a recent survey of 500 Red Rock and Corindi residents found that 80 per cent of respondents wished to be returned to Clarence Valley administration, instead of being transferred into the Coffs Harbour local government area? Will the Minister now give an undertaking to those residents that he will initiate a formal inquiry into making the boundary changes necessary to bring those coastal villages back under Clarence Valley Council?

**The Hon. TONY KELLY:** A formal process is laid out in the Local Government Act, and that includes the co-operation of both councils. The proclamation that we produced for the Clarence Valley requires Clarence Valley Council and Coffs Harbour City Council to resolve any outstanding issues, and to make submissions to me concerning any boundary alterations considered appropriate. The administrator of Clarence Valley Council has requested my consideration that the villages of Red Rock and Corindi remain within the new Clarence Valley Council area. However, I am advised that Coffs Harbour City Council does not agree with the proposed boundary changes. Letters will be sent to Clarence Valley Council and Coffs Harbour City Council requesting further clarification on this matter.

## PACIFIC EDUCATION RESOURCE EXCHANGE PROJECT

**The Hon. KAYEE GRIFFIN:** My question without notice is addressed to the Minister for Community Services. What action is the Government taking to keep young people in the Pacific Island community connected to education?

**The Hon. CARMEL TEBBUTT:** Last month I had the pleasure of launching the Pacific Education Resource Exchange Project [PERX]. It is a program aimed at improving school outcomes for students in years 5 to 9 across a number of primary and high schools in the Canterbury-Bankstown area. Reverend the Hon. Dr Gordon Moyes also was at the launch. PERX is being auspiced by Wesley-Dalmar in partnership with the Pacific Island Women's Advisory and Support Service and the Uniting Church's Pacific Island Council. As I said at the launch, the Government is very grateful for this partnership because we believe it will provide substantial opportunities to young people in the Pacific Island community residing in New South Wales.

PERX is part of the New South Wales Government's Youth Partnership with Pacific Island Communities program, which is an initiative within the Communities Solutions Program. The Youth Partnership with Pacific Island Communities aims to identify and address issues facing young people. It has three main goals: to promote the wellbeing of young people of Pacific Island backgrounds, to increase parent support and education to help parents prevent risk-taking behaviour by children and young people, and to provide children and young people with better learning opportunities and recreational activities for long-term development.

Evidence shows that if we can keep a young person connected to school and education, a broad range of successful outcomes will be delivered. And, of course, it makes good sense. Young people spend an enormous amount of their lives at school, and if they enjoy school and feel it is a worthwhile activity, they will have much more successful outcomes. Students who are well connected to school display greater resilience and achieve better academic outcomes, leading to increased employment and education opportunities. Students who are connected to school also demonstrate improved social, emotional and cognitive development, and improved health and wellbeing, including lower levels of risk-taking activities. So there are benefits for the whole community, not just the students and their families.

School retention rates, basic skills tests, and outcomes in the School Certificate and Higher School Certificate tell us that currently young Pacific Island people are not fulfilling their potential at school. However, this does not have to be the case. We owe it to young people to help them to realise their full potential. PERX is a practical way of achieving this for young Pacific Island people. Two family support and community development workers will be employed by Wesley-Dalmar in partnership with the Pacific Island Women's Advice and Support Service and the Uniting Church's Pacific Island Council to deliver this project. The project will deliver assistance to families to support their children in their education.

The program also aims to give parents a greater insight into how the education system works in New South Wales. For parents who are not from New South Wales or Australia, it can be very difficult to gain such an understanding, as well as know what they can do to help their children perform well at school. The program

will recruit members of local Pacific Island communities to train as mentors to work one-on-one with young people and families. PERX will focus on the positives: the achievements, strengths and resources of the Pacific Island communities and its young people.

These strengths are evident in the closeness with which communities have been involved in the development of the project and the central role local Pacific Island people will play in delivering its services. I was also pleased to announce that the Government will allocate a further \$4.5 million to the New South Wales Youth Partnership with Pacific Island Communities program, which builds on the strong partnership formed between the Government and Pacific Island communities that came about as a response to community concern about risk-taking behaviour by some children and young people. The funding will provide for further programs to bridge the gap between parents and young people with, again, a key emphasis on encouraging young people to stay at school. Programs such as the Pacific Education Resource Exchange will— [*Time expired.*]

#### **EASTERN CAPITAL CITY REGIONAL COUNCIL ADMINISTRATION CENTRE**

**Ms SYLVIA HALE:** I direct my question to the Minister for Local Government. Is he aware that the administrator of the new Eastern Capital City Regional Council, Terry Brandstone, who is also standing in the coming council elections on 26 June, has budgeted \$4 million to build a new council administration centre in Bungendore? Given that the draft budget will be signed off on 22 June, only four days before the election, will he require deferment of the decision to build a new centre until after the election to avoid any perception of pork-barrelling in those elections?

**The Hon. TONY KELLY:** As honourable members are aware, the financial assessment of boundary alterations was based on the best available information at the time. The financial reports of Yarrowlumla shire were not submitted on time. Consequently, the Boundaries Commission used 2001-02 information when it carried out its assessment. Any action of an administrator is taken to be the action of a council, because administrators act as councils. Obviously, the centre will not be built by the time of the council elections. It will be a matter for the new council to decide whether to proceed with it or not. Merely making reference to a project in a budget does not mean that the project will go ahead.

**Ms SYLVIA HALE:** I ask a supplementary question. Does the Minister agree with the community that the proposal to build a \$4 million centre in Bungendore, where most of the residents of the council live, will create a perception of pork-barrelling?

**The Hon. Michael Egan:** Point of order: Clearly the question was seeking an opinion upon an opinion.

**The PRESIDENT:** Order! I remind members that supplementary questions must comply with the same rules that govern questions, and questions may not ask an opinion of a Minister.

#### **COMPETITIVE TENDERING POLICY**

**The Hon. CHARLIE LYNN:** My question is directed to the Treasurer. Does the Government still have a competitive tendering policy? Does it extend to the Sydney Harbour Foreshore Authority, given that Arena Management was to be handed the management contract of the Sydney SuperDome under the Sydney Harbour Foreshore Authority's bid?

**The Hon. MICHAEL EGAN:** The premise of the question asked by the honourable member is false.

#### **QUARANTINE LAWS**

**The Hon. TONY CATANZARITI:** My question is directed to the Minister for Primary Industries. Will he update the House on attempts by the Federal Coalition to weaken our quarantine arrangements?

**The Hon. IAN MACDONALD:** I am sure I do not have to remind honourable members that today is National Apple and Pear Day. As I have advised the House previously, farmers have been under a cloud of uncertainty—

**The Hon. Michael Gallacher:** It is also one year since the Millennium trains were brought back. We do not want to remember that, do we?

**The Hon. IAN MACDONALD:** Is the honourable member going a bit batty over there? What does that have to do with apples?

**The Hon. Michael Gallacher:** In honour of National Apple and Pear Day why don't you change the name of Orange?

**The Hon. IAN MACDONALD:** No, I will not do that. Orange has a good name. Today is National Apple and Pear Day. If the Leader of the Opposition behaves himself, at the end of my answer he will get an offer he cannot refuse. Our apple and pear growers, as part of their campaign, have been so kind as to give us a box of red delicious apples from Batlow, and when members leave the Chamber today they can take with them an apple courtesy of the apple and pear growers of this State. As I have advised members previously, farmers have been under a cloud of uncertainty since 19 February when Biosecurity Australia announced it wanted to water down vital import laws. Farmers in affected industries—pig meat, bananas and apples—immediately expressed strong concerns about the threat of imported disease.

Those fears deepened when serious flaws forced the withdrawal of the banana import risk assessment, which must now be reconsidered. As I pointed out at the time, that action naturally raised questions about the quality of the data related to the other two assessments. The Federal Government—including the agriculture Minister, Warren Truss—has failed to answer those questions. Instead, the Federal Minister repeats the mantra that State and Federal governments agreed at the recent Primary Industries Ministerial Council to focus on the scientific reasoning behind these decisions. I could not agree more with Mr Truss' enthusiasm for science.

**The Hon. Duncan Gay:** Point of order: I think the Minister may be misleading the House. I saw a decision of the Primary Industries Ministerial Council that stated that all State Labor agriculture Ministers reaffirmed their endorsement of Australia's science-based import risk assessment process. I cannot understand why the Minister is being critical of a process that he supports.

**The Hon. Michael Egan:** To the point of order: Clearly, the Deputy Leader of the Opposition is trifling with the House. That was not a point of order. Madam President, I submit that the appropriate response would be for you to throw him out of the House.

**The PRESIDENT:** Order! I remind members that they must not make debating points while taking a point of order. The Deputy Leader of the Opposition was not taking a point of order, and he knew it.

**The Hon. Duncan Gay:** The apple industry needs protecting, but not by hypocrites.

**The Hon. IAN MACDONALD:** Who is the hypocrite? The Deputy Leader of the Opposition is very sensitive because of The Nationals' inability to protect these industries. That is his problem. That is why he had to jump up; it was certainly not because of anything he took out of context. There was considerable debate at the Primary Industries Ministerial Council about this issue. The State governments were upset with the Commonwealth for somehow trying to broker them into the decision.

**The Hon. Duncan Gay:** Did you abstain? Did you really support our apple growers and abstain?

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

**The Hon. IAN MACDONALD:** The honourable member ought to be very careful about making statements like that. He is sensitive because the Federal Government and The Nationals locally are not protecting the apple growers, the banana growers and the pork industry in this State. The enthusiasm Mr Truss has for science is not matched by his words. If only he would put his words into action and ensure that the gaping holes in Biosecurity Australia's methodology are thoroughly reviewed and closed. I note that The Nationals spokesperson—*[Time expired.]*

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

**The Hon. IAN MACDONALD:** Fortunately the Apple and Pear Growers Association in conjunction with the New South Wales Farmers Association have no qualms about making their concerns known to the Federal Government, unlike the Deputy Leader of the Opposition. Today they took to the streets to hand out free fruit in key centres including Hyde Park, Wynyard, Penrith and Wollongong as part of National Apple and Pear Day.

**The Hon. Duncan Gay:** So they should, because they are right. You should have abstained.

**The Hon. IAN MACDONALD:** Abstained from what?

**The Hon. Duncan Gay:** This decision. You are part of this decision.

**The Hon. IAN MACDONALD:** The Deputy Leader of the Opposition does not know what the decision was about. I will write to him and let him know. Maybe his staff can explain it to him. I can inform the House of the success of this protest. About 1,000 signatures were collected at Hyde Park station alone and about 4,000 fresh New South Wales apples were given out.

**The Hon. Charlie Lynn:** Were there any pairs?

**The Hon. IAN MACDONALD:** It is National Apple Day.

**The Hon. Charlie Lynn:** What about pairs for Eddie?

**The Hon. IAN MACDONALD:** It is spelled a slightly different way. Producers fear that diseases such as European canker, thrip, apple leaf curling midge and the highly contagious fire blight could devastate local industries. Fire blight is endemic in New Zealand, and industry estimates suggest it could cost our national apple and pear industries nearly \$830 million—it affects both industries. It could threaten 5,700 jobs along the production line and jeopardise the future of key rural and regional centres, including Bilpin, Orange, Forbes, Batlow and Tumut. I have no doubt that apple growers will continue their campaign, as will pork and banana producers. On 24 May pork producers announced that they would take the issue to the Federal Court to try to protect their industry. For the benefit of honourable members, courtesy of the Apple and Pear Growers Association, I invite them to take a red Batlow delicious as they leave the Chamber.

### COMMERCIAL FISHING LICENCES

**The Hon. JON JENKINS:** My question without notice is directed to the previous Minister for Agriculture and Fisheries and current Minister for Primary Industries. Is he aware of a continuing farce in the commercial fishing licence buy-out scheme? How many commercial fishermen who were bought out have since repurchased underused fishing licences from others, such as oyster farmers, and are now practising commercial fishing again? Will he inform the House of the total reduction in numbers of commercial fishing licences operating in New South Wales? How many commercial fishermen who were paid out to cease fishing activities have recommenced those activities under a new licence? How many dead, unused or underused commercial licences are still out there and can still be used to recommence fishing activities? Will he take action to monitor this process?

**The Hon. IAN MACDONALD:** I thank the honourable member for his question. The New South Wales Government is committed to developing a viable and sustainable commercial fishing industry and to ensuring that fisheries resources are available to recreational fishers. In 2002, 30 recreational fishing havens were established along the New South Wales coast using funds from the recreational fishing licences. To help ensure that there was no increase in commercial fishing pressure in many areas that remained open to commercial fishing, 251 commercial fishing businesses were bought back by the Government. This Government is also rolling out a comprehensive and representative network of marine parks and has purchased an additional 47 commercial fishing businesses to help establish marine parks at Jervis Bay, Solitary Islands, Lord Howe Island and Cape Byron, bringing to 298 the total number of businesses bought back.

Currently there are approximately 1,450 commercial fishing businesses in New South Wales. I am advised that approximately 115 of those are considered to be non-active. The Government does not discriminate against anyone who wishes to enter the commercial fishing industry. There are no plans to prevent former fishers from re-entering the industry by purchasing the fishing entitlements of another fisher. I am advised that of the 298 fishers who have been bought out, only approximately 15 have chosen to re-enter the industry by buying out another fisher.

### TORRINGTON BUSH FIRE BRIGADE

**The Hon. RICK COLLESS:** My question is directed to the Minister for Emergency Services. Is he aware that the Torrington bush fire brigade still has an old petrol-driven Bedford truck as its primary attack firefighting tanker truck? How many petrol-driven tankers remain to be replaced in rural bush fire brigades?

**The Hon. TONY KELLY:** I am not aware of the brigade's fire appliances. What I am aware of is Torrington's problem of being located in two council areas because the boundaries dissect the main street. I undertake to obtain information in response to the honourable member's question.

**The Hon. MICHAEL EGAN:** If honourable members have any further questions, they may wish to place them on notice.

**The Hon. Rick Colless:** I have a supplementary question.

**The PRESIDENT:** Order! The time for questions has expired. I repeat what the Leader of the House has said. If members have other questions, they may place them on notice.

#### **AUSTRALIAN DEFENCE INDUSTRIES SITE REDEVELOPMENT**

**The Hon. MICHAEL EGAN:** On 11 May I responded to a question without notice from Ms Sylvia Hale. I wish to add the following clarification to my original response. Local government is the consent authority in this case. If approval is not given by local government, I am advised that the State Government would not be liable for compensation. However, I am advised that if the State Government changes the planning provisions that apply to this area through a new or amended Sydney Regional Environmental Plan No. 30—St Marys, the Government might be exposed to legal action through breach of contract. There is a development agreement in place between the joint venture and the Government, and a change to the regional environmental plan may breach the development agreement.

#### **MANLY QUARANTINE STATION**

**The Hon. JOHN DELLA BOSCA:** On 6 May the Hon. Dr Arthur Chesterfield-Evans asked a question without notice relating to the Manly Quarantine Station. The Minister for the Environment provided the following response:

The Premier has asked that I reply to the Hon. Dr Arthur Chesterfield-Evans on his behalf.

I am advised that, subsequent to the Commission of Inquiry major findings and recommendations, PriceWaterhouseCoopers were commissioned to prepare two reports at the request of the Department of Environment and Conservation.

One report relates to the costs and benefits of the revised lease proposal by Mawlands and assesses whether this represents value for money. This report also assesses whether the rental structure is realistic based on the cash flows provided. The other report relates to the assessment of the financial capacity of Mawland Hotel Management Pty Ltd.

I am advised that both reports have now been received by the Department of Environment and Conservation.

I am further advised that executive summaries of both reports have been made available to Manly Council, the local Member of Parliament, Mr David Barr MP, and Mr Ian Cohen MLC.

Bob Debus

**Questions without notice concluded.**

#### **AXIOM EDUCATION CONSORTIUM CONTRACTS**

##### **Return to Order**

**The Clerk** tabled, pursuant to resolution of the House of 31 March 2004, additional documents from the Department of Education and Training received from the Director General of the Premier's Department relating to the Axiom Education Consortium.

#### **MINI-BUDGET DOCUMENTS**

##### **Return to Order**

**The Clerk** tabled, pursuant to resolution of the House of 11 May 2004, the documents received on Tuesday 1 June 2004 from the Director General of the Premier's Department relating to legal advice provided by the Crown Solicitor to the Secretary of the New South Wales Treasury relating to the mini-budget.

**The Clerk** advised that, pursuant to the standing orders, the documents were available for inspection only to members of the Legislative Council.

**CRIMES AMENDMENT (CHILD NEGLECT) BILL****Second Reading****Debate resumed from an earlier hour.**

**Ms SYLVIA HALE** [5.05 p.m.]: Prior to question time I was pointing out the inappropriateness of the threat of imprisonment as a response to dealing with child neglect. I referred briefly to the instance cited by the Hon. John Ryan of a woman who refused to reveal the substance that her daughter had swallowed. That is a particularly interesting incident because the woman's failure to co-operate with the hospital authorities was the result of her fear of a gaol sentence for possession of illegal drugs. It was the woman's fear of going to gaol that made her reluctant to tell the hospital authorities what drugs her daughter had ingested. Her fear worked actively against the best interests of the child. The point is that the prospect of a gaol sentence can compound the evil it was meant to deter rather than address the causes of the initial problem.

In conclusion, let me also point out that this bill is once again an attempt by the Government to portray itself as tough on delinquent parents whereas in reality it does very little to address the serious social problems associated with child neglect. As such, the Government does nothing but pander to shock jocks and hysterical talkback radio audiences.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.06 p.m.]: I have mixed feelings about this bill. Although I do not support it, I do not oppose it, because I believe it bridges a gap in legislation. The difference between this bill and the Hon. John Ryan's bill is fairly minor in consequences. This legislation criminalises neglect of children. Members spend a great deal of time in this House ensuring that there are absolutely no loopholes in the Crimes Act and that in all circumstances people can be put in gaol, instead of considering whether gaol actually works and spending time working out techniques for reducing the incidence of crime. If members put as much time into considering the latter as trying to find ways of locking people up to ensure that they do not escape the net, we would be much better off.

A number of incidents were referred to in the debate, particularly in the long speech by the Hon. John Ryan. He mentioned the case of a man in Gosford who had a four-week old baby hidden in grass but would not tell people where it was. Although no-one was clear about the man's motives, the incident alerted people to the fact that child neglect is not treated as a crime. Another example involved a BMW with tinted windows that was stolen from a service station in Western Sydney. The kid who stole it and took it for a quick joy-ride was chased by the police and he abandoned the car across a footpath. He ran because he was afraid of being caught for car stealing and that caused a delay in his reporting the fact that a baby was in the back of the car.

The person whose property adjoins the nature strip where the car was abandoned did not open the car to look inside and could not see the baby through the car's tinted windows. Consequently, the baby died of exposure to excessive heat before the car was discovered by the police—something which I am sure will trouble the conscience of the property owner for many years. That was a tragedy, but to some extent it can be understood that the youth who took the car for a joy-ride—an irresponsible action, which presumably he will grow out of when he passes adolescence—probably wanted to test himself or do something for a thrill. Presumably many people who commit crime during adolescence will mature and go on to live law-abiding lives. But that young man will have that action on his conscience, and that is a great tragedy.

The third case discussed concerned a mother who was prostituting herself and reluctant to admit that her child had taken ecstasy tablets. No doubt she was frightened to admit that she also was using a banned substance, because she would go gaol; she was scared of that penalty. Although we say that people should go to gaol, we are also about sending messages to people. If one is trying to send a message, generally during conversation, one says one's piece and looks at the face of the other person to gauge the response. Indeed, as one delivers one's message, in a split second one tries to determine whether the message is being received, and one adapts one's message accordingly. If that is not successful, one tries to work out how to get the message across more effectively.

This simple one-size-fits-all determination of how long a gaol sentence should be seems to be sending a message without any thought of achieving successful results. If we put such people in gaol at \$65,000 a year, how many years would we give them and what would that do to the reoffending rate? Would a long term or short term in gaol lead to someone reoffending more or fewer times? That man in Gosford was totally indifferent to the fate of his four-week-old baby—although he is a parent he did not care for and did not want



the child anyway—but he might be more scared of a gaol sentence than of leaving his child alone, if he knew the consequences. Of course, if the youth who stole the car were gaoled, he could be influenced by other inmates to commit further crimes on his release. Would not sending him to gaol mean that he has a better chance of a life without crime? Would the prostitute mother take her child to gaol with her? Would she get off the drugs while in gaol?

**The Hon. John Ryan:** She could be on parole.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** How would that help? If she were on parole, why put her in gaol? The Hon. John Ryan is conceding that it is not worth putting her in gaol. The question is: What are we doing to fix the problem? I do not have a problem with the capacity to put people in gaol. I am worried that no bills passed by this House have the capacity to do something more intelligent than putting people in gaol, and that there is no discussion about that. Once people are in gaol, once they have been given the message that they will all go to gaol, the shock jocks are satisfied, and we consider that we have done a great day's work. That is an absurd proposition. Just as one would analyse any other problem and its solution, we should ask: Why are people committing crime and what can be done to stop them?

Presumably the woman was prostituting herself because she needed money to purchase illegal drugs. The illegality of drugs is often the cause of crime. It was said that as the woman was in possession of a trafficable quantity of drugs she was likely to go gaol and, therefore, she was reluctant to admit that her child had swallowed drugs, because that would have drawn attention to her likelihood of a gaol sentence. The illegality of drugs causes a great deal of the problems, and that is compounded by the poverty that is created by satisfying an expensive drug habit. There is the problem of the debilitating effect of the drugs and the effect of the pharmacology of the drugs on people's confidence. That problem is compounded by poverty and the behaviour of people in getting money for drugs. That provision is not necessarily the best way to deal with delinquent parents. To then impose a \$22,000 fine on someone who is probably in receipt of welfare is tantamount to a bad joke.

There is no point in fining someone thousands of dollars if that person has no money. In those cases a fine is of no use in addressing the problem. I am not saying that the Crimes Amendment (Child Neglect) Bill should not be passed, but the Government ought to introduce programs to help people. Then we could say that a certain number of people may reoffend under program A, and that a certain number of people may reoffend under program B, and that a certain number of people may reoffend if we put them in gaol. We could then make a systematic judgment over time. As bills are introduced in ever increasing number, every time a shock jock makes a statement or a jury hands down a verdict or a magistrate makes a finding that is critical of some loophole in the law, that could be fixed. But never is the same energy put into determining how to stop reoffending and the related social harm.

I confess that I have become very angry with people who have engaged in self-destructive behaviour. Certainly that is a problem to which attention has been drawn during inquiries into the drug problem—and lately I have been a committee member on a number of inquiries concerning drugs. The inquiries have reinforced my experience that people become very frustrated and appear to want to destroy themselves. A busy doctor, working hard to get rid of disease and suffering, might think that those who have brought such affliction upon themselves through misadventure should go to the end of the queue. It is difficult to not take that attitude. I remember exhorting an alcoholic on his forty-third admission to hospital to stop drinking or he would die. I remember writing 13 diagnoses consequential to her drinking that I had identified in one chronic alcoholic on her second-last admission before she died.

I remember saying during the recent inquiry into the Inebriates Act that I had told that person on a number of her admissions that if she continued along that path she would die of alcoholism. She replied, "Ah, yes, treatment by exhortation. It does have a bad prospect of success you know." I said, "Yes, of course, my experience is that treatment by exhortation does not work very well." On one occasion at Port Kembla I amputated a leg of a man following the failure of a femoral popliteal artery bypass graft. The man had a bad heart and bad lungs caused by smoking. As I finally managed to get him off the ventilator I said, "Look, mate, you've got to stop smoking or you will lose the other leg." He was not able to beat his addiction to smoking and duly lost the other leg. Again, the failure to deal with addiction was the problem.

Perhaps because I left the hospital system early I do not have much difficulty with people who are addicted to hard drugs. The crimes I have heard about since becoming a member of this House have dealt more with illegal drugs, the difficulty of treating those addicted, and the fact that medical and mental health

professionals have similar experiences of counter-transference in their attitude to patients. This is a difficult problem for people at the front line, myself included, who are annoyed that people become addicted to drugs and neglect their children.

**The Hon. John Ryan:** It is more than annoying.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** We find it annoying, infuriating and frustrating, and we want to punish them because we are unable to help them. Drug addicts waste our resources and their own, and hurt their children. Basically we should go beyond that anger and ask: What is likely to be successful? It is not enough to merely pass a moral judgement if it is totally unsuccessful in achieving an outcome. We are trying to achieve an outcome, to have a society in which there is less evil and less harm. We have to do that intelligently, beyond our initial visceral reactions.

I do not oppose the Crimes Amendment (Child Neglect) Bill but I believe that we should analyse how we, as legislators, could work out penalties or different approaches to formal penalties in an attempt to lessen child neglect. We should address issues such as the decriminalisation of hard drugs. If we eliminate theft and prostitution—the behaviour that is necessary to enable people to obtain money for hard drugs—we will reduce the harm. We therefore will have to deal only with the pharmacological and marketing effects of those drugs. When we address sentencing issues we should not simply look at criminal matters and determine how long people should be put in gaol and then shrug our shoulders as fatty foods make people even fatter. We save money by reducing exercise and flogging off school playgrounds. We wring our hands because eating is legal but we take a strong line in relation to illegal drugs.

We should be far more intelligent in our approach and encourage some behaviours and discourage others. We need punitive instruments but we also need instruments that provide encouragement. We want to achieve certain things in relation to the marketing of drugs and we want to educate people about their misuse. We must direct our resources into those areas and take a more holistic approach to encouraging and discouraging certain behaviours in society. That will lead to a revolution in sentencing and in legislative thinking. This bill, which is stuck in an outdated and ineffective paradigm, will correct certain anomalies. It is anomalous to have a larger penalty for neglecting a pet than for neglecting a child. By the same token, in a broader framework this bill misses the point. We must draw attention to some of the options that could be considered.

**Reverend the Hon. FRED NILE** [5.22 p.m.]: The Christian Democratic Party supports the Crimes Amendment (Child Neglect) Bill, which arose as a result of the establishment of a working party of officers from the Department of Community Services [DOCS] and the Attorney General's Department which reviewed offences in the Crimes Act and the Children and Young Persons (Care and Protection) Act 1998 relating to child neglect. Some honourable members said in debate that parents have neglected their children, that they have endangered children's lives, or that the lives of some children have been lost. In many cases those parents were drug addicts.

Contrary to the policy of the Australian Democrats of providing addicts with heroin, the policy of the Christian Democratic Party would be to implement a system that resulted in drug-addicted parents going into rehabilitation programs. In fact we would make rehabilitation compulsory, especially for young parents who have a responsibility for children. They need help to defeat their drug addiction. I have said on other occasions that I have visited Sweden and observed its compulsory and successful drug rehabilitation programs. That is the way to go. We should not give in to these drug problems or simply hand out heroin, as is proposed by Clover Moore, Lord Mayor of Sydney.

She proposed that we decriminalise heroin and establish an injecting room at the Block in Redfern. I am pleased that that proposal was strongly opposed by Aboriginal people who held a protest meeting at the weekend. This bill, which deals with the unfortunate realities that we face in society, will insert a new section 43 in the Crimes Act to delete the words "unlawful abandonment and exposure of a child" and insert instead the words "intentionally abandons or exposes a child". It would have been difficult in the past for courts to prove what was lawful and what was unlawful. The bill will insert a new section 43 which will state:

A person who, without reasonable excuse, intentionally abandons or exposes a child ...

is guilty of an offence and liable to imprisonment. That provision will make it easier for the courts. The Minister referred to the defence provided by the term "without reasonable excuse" and said in her second reading speech:

It will be the role of judicial officers to determine whether an individual can establish this defence. Trivial or shallow reasons will not assist an individual being prosecuted under this section.

The Minister also said that another person, other than a parent, could be found guilty of this offence. Perhaps we are focusing too heavily on parents. We heard of the recent case of children being abandoned in a stolen car. Children could be in danger of serious injury or even die. The bill will make it an offence for a person who has parental responsibility for a child under 16 years of age to intentionally or recklessly fail to provide that child with the necessities of life, which could cause death or serious injury. Apparently, the necessities of life include, but are not limited to, things such as not providing a child with adequate food, clothing, medical treatment, accommodation or care.

One of the things that went through my mind when I was reviewing the bill was the problem that is faced by the parents of children who have run away. Those parents have contacted me and said that it was rumoured that their 16-year-old children were on the streets in Kings Cross, in some cases engaged in prostitution. Those parents have said to me that when they contact the Department of Community Services they do not receive a great deal of co-operation and in some cases the department will not tell them whether their children are on the streets in Kings Cross or where they can be located. Even though those children are under the age of 16 the department believes that they have certain rights.

I do not believe that children under the age of 16 have those rights. Their parents have rights and responsibilities. I believe that the Department of Community Services should be more co-operative. I presume that these complaints have been levelled at individual DOCS officers; it might not be the policy of the Minister or the department. However, over the years more than one case has been brought to my attention. If the Department of Community Services wilfully interferes with the responsibility of those parents and something happens to their children, could the Department of Community Services be charged with placing them in a dangerous situation? The Christian Democratic Party supports the bill.

**The Hon CARMEL TEBBUTT** (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [5.27 p.m.], in reply: I thank all honourable members who contributed to the debate on this important piece of legislation—the Crimes Amendment (Child Neglect) Bill. All honourable members either indicated that they support the bill or said that they will not oppose it. Some honourable members might have approached this issue from a different perspective, but they failed to recognise that this legislative proposal is only one part of an overall response to child neglect and abuse in New South Wales—an issue to which I will refer in more detail later. I refer, first, to the comments that were made earlier by the Hon. John Ryan relating to the history of this bill. I acknowledge that the honourable member introduced similar legislation.

The comments that I made in response to the Opposition's bill were in order to clarify the Opposition's claim last year that a person who commits a criminal act of negligence and who puts a child's life in danger or at serious risk of physical harm cannot face a gaol sentence. That is not the case. I stand by the comments that I made at the time. I said that section 43, however archaically worded it may be, provided for imprisonment for five years if someone unlawfully abandoned or exposed a child under the age of two. That has now been amended to the age of seven. At the time the Government indicated that it would review those provisions. That is precisely what it has done. The legislation was amended last year and this bill seeks to make more substantial amendments. The Government did not indicate at any time that it would not look at the provisions in the Crimes Act to ensure that they were contemporary and appropriate. Our position always was, however, that it is far more appropriate for custodial provisions to be included in the Crimes Act rather than in the care legislation for the reasons that I outlined in my second reading speech.

I will now respond to several issues raised by the Hon. John Ryan as a result of correspondence he received from Professor Parkinson, who has also written to me. I respect his views; he is a renowned professor with substantial experience in child protection legislation. However, I am sure he would agree that he is not the sole repository of knowledge on these issues, and I do not agree with the majority of his proposals. I have received advice from both the Department of Community Services and the Criminal Law Review Division of the Attorney General's Department. I will put on record some responses to issues raised by Professor Parkinson.

As to the language in section 43, Professor Parkinson points out that the word "exposes" remains unchanged in the legislation. I am advised that the term "exposed" is defined as "left or being without shelter or protection; vulnerable; open to attack". The word encompasses exposing a child under seven years to the elements, such as exposing a child to the cold or to heat, and such exposure can cause a danger of death or of serious injury to the child. Examples include leaving a child outside in the cold in winter or leaving a child in a

hot car. I do not accept that the word "expose" is in some way an old-fashioned term that should be changed. In fact, the Government felt that on balance it is best to leave the term untouched due to the possibility that important nuances might be lost if it were replaced.

Turning to the age of the child in section 43, Professor Parkinson noted that the section 43 offence applies only to children under seven years of age. That is a pertinent and relevant point and it is an issue that the Government will keep under review. However, this age is consistent with the Queensland legislation upon which these amendments are modelled and, where possible, similarity between State legislation assists with consistent application and interpretation. Professor Parkinson referred in his correspondence to car thieves abandoning children and expressed the belief that the legislation will not always allow for the successful prosecution of a car thief who finds that a baby is in the back of the car after he or she has stolen the car. While the section is not one of strict liability in that it imports a requirement of intention, it should cover the example provided by Professor Parkinson.

As to the issue of parental responsibility, Professor Parkinson argues that the term "parental responsibility" in section 43A will not cover all people who have a parental responsibility type relationship with a child, such as de facto partners of parents, relatives who have a care-giving responsibility for a child without any legal transfer of that responsibility and authorised carers where the Minister or someone else has legal parental responsibility for a child. The Government does not accept that the term is limited to those who have parental responsibility by reason of birth or court order. It is intended that the section cover persons—including de facto partners—determined on a case-by-case basis, who actually exercise parental responsibility. This can arise from particular circumstances and courses of conduct and could extend to de facto partners, older siblings and relatives who have assumed parental responsibility of a child in a particular situation. It is not intended to create a broad offence applicable to anyone caring for a child in any situation. The offence recognises the special role of people who exercise parental responsibility rather than just dealing with a child.

Professor Parkinson expressed concern that the term "necessities of life" is not as modern or comprehensive as it could be. The Government did not want to define or narrow the term but wanted to leave it as broad as possible in order to cover all possible situations where a person with parental responsibility for a child has, without reasonable excuse, intentionally or recklessly failed to provide a child with the necessities of life and that failure causes a danger of death or of serious injury to the child. In my second reading speech I said that it would at least encompass food, clothing, medical treatment, accommodation or care. However, it could also encompass air and water and other things not contemplated at this time. It could also include the example given by Professor Parkinson, whereby a child is kept locked in a cupboard for days on end over a number of years.

The Hon. John Ryan and Professor Parkinson pointed out that section 44 still has certain inadequacies. I agree with that. It is agreed that a further review of section 44 is necessary, with a view to seeing whether the section caters adequately for neglect situations involving other vulnerable groups. However, although this area clearly falls within my ministerial portfolio responsibilities it would also encompass the portfolio responsibilities of at least the Minister for Health, if not those of other Ministers. This review is continuing but it would be unwise to repeal the section until consultations have occurred with the various groups who may be impacted by any amendment to the section.

The Hon. John Ryan made some comments to the effect that the Government did not have a satisfactory commitment to addressing child abuse and neglect. I have spoken on many occasions about the complexities that confront both the Government and the community in addressing child abuse and neglect. Any substantial response to addressing child abuse and neglect and protecting children and young people in New South Wales clearly requires appropriate legislative framework that must cover both care matters and the capacity to prosecute those who are responsible for perpetrating neglect or abuse. But it must also cover the government and non-government services that work with vulnerable families to try to prevent child abuse and neglect or provide appropriate care and support for those children and young people who cannot live with their families.

It seems to me that the Opposition's attention to this issue is quite one-sided. The Opposition has focused clearly on legislative solutions—I have stated that the Government accepts the importance of an appropriate legislative framework—but has failed to make any real commitment to resourcing properly child protection services in New South Wales. The Leader of the Opposition reconfirmed this position as recently as a couple of weeks ago when he stated that the Opposition's funding and costing proposals outlined in the lead-up to the last State election—which indicated clearly that the Opposition would not go ahead with the

Government's significant commitment of \$1.2 billion over five years to improving child protection and out-of-home care services in New South Wales—would stand. The best legislation in the world will not protect children and young people if the system that underpins that legislation is not resourced properly.

If the services that work with vulnerable families—family support services, early intervention services and respite services—are not in place, if the caseworkers needed to support families and to fulfil the statutory requirements for which the department has responsibility are not recruited, if the out-of-home care services that offer greater options to children and young people who cannot live with their families, particularly those young people who display very challenging behaviours, are not established, the best legislation in the world will not provide appropriate care and protection for children in New South Wales. I point out that the Opposition has made no commitment that in government it would employ additional caseworkers, provide extra resources for Joint Investigative Response Teams—which deal with the most serious child sexual abuse and physical abuse matters—increase early intervention services or improve options for out-of-home care. We must approach this issue honestly if we are serious about improving care and protection for children and young people in New South Wales. We must address both the legislative framework issues and the services provided by government and the community.

Ms Sylvia Hale asked how this bill addresses the problems of a family living in poverty. As I said in my second reading speech, that is precisely why the Government does not believe custodial sanctions should apply automatically in all cases of child neglect. While such an approach might have superficial appeal it will not resolve the problem of child neglect. However, we must recognise that there are cases—some of which have been referred to in the debate today—that demonstrate a complete and inexcusable failure to care for a child to such an extent that the child's life or health is seriously endangered. In those circumstances a custodial penalty should be an available option. I have always indicated that the Government views this legislative approach as just one part of an overall array of responses that are needed to deal with the very complex matters that can lead to parents neglecting their children.

In relation to the matter raised by Reverend the Hon. Fred Nile, it is certainly not government or departmental policy to impede the restoration of young adolescents to their families unless care and protection issues require the department to take that approach. No doubt, dealing with adolescent issues and teenagers who are going through a difficult time and may well be experiencing some family breakdown is one of the most difficult functions of the department. It is something that I acknowledge we need to do better, and we are committed to making an increased effort in that area. The policy of the department and the Government is the appropriate restoration of teenage children to their parents, unless child protection issues preclude it.

In conclusion, the Government acknowledges that neglect issues are complex and challenging. It believes that the tough but workable changes proposed in this bill, along with the broad array of support services to which I have previously referred that are available to vulnerable families and children, will ensure a better system of protecting children and young people in New South Wales. I commend the bill to the House.

**Motion agreed to.**

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

## **STOCK DISEASES AMENDMENT (ARTIFICIAL BREEDING) BILL**

### **Second Reading**

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.42 p.m.]: I move:

That this bill be now read a second time.

The artificial breeding industry is a thriving and diverse industry. It has been instrumental in improving the performance, type and production of a wide range of animals, including cattle, sheep, goats, pigs and horses. The industry is not confined to domestic markets, but is an active player in the worldwide trade in genetic material, via frozen semen and embryos. For example, exports of bovine semen in 2003 were valued by the Australian Bureau of Statistics at \$1.63 million. Slightly more than 10 per cent of these exports came from New South Wales. These figures are anticipated to be substantially higher in 2004 due to the United States of America having its markets cut off due to an exotic disease incident last year.

Australian businesses market semen and ova to Europe, the United States of America, Argentina, Brazil, Chile and South Africa. The Chinese market for bovine semen is also set to expand significantly.

Participants in this industry select, breed, offer and supply quality genetic material. Livestock producers wishing to use the services of the industry have access to a variety of breed improvement and progeny selection programs. These programs look to collect semen or embryos from superior sires or dams and subsequently distribute this elite genetic material into the on-farm production sector. For the information of the House, particularly those honourable members who rarely leave the city, I will briefly outline what is actually involved in this process.

The term "artificial breeding" means artificial insemination and embryo transfer. Artificial insemination is the most common procedure. It involves collection of semen from high-quality male stock and diluting it and freezing it in straws. A large number of straws can be produced in this way from a single animal. These straws are stored and later thawed and inseminated into cows. The net effect is that one male animal can produce a very much larger number of offspring than is possible with natural mating. Embryo transfer operates by collecting a large number of donor eggs from high-quality donor cows using a technique called super ovulation. The eggs are fertilised with high-quality semen and usually frozen to suspend their development. The fertilised ova are then implanted into recipient cows. In this way, genetically superior cows can produce many times more progeny than they could with natural mating. The actual insemination of semen or placement of fertilised eggs in the female animals usually occurs on the property.

Commercial operations, where donor male and female animals are brought to a central location for their sperm and eggs to be collected, currently must be licensed. However, people may conduct artificial breeding procedures on their own stock on their own property without being licensed. The Stock (Artificial Breeding) Act 1985 regulates artificial breeding procedures involving livestock. This includes cattle, horses, sheep, goats, swine, deer, buffalo, poultry and any other species of animal declared to be stock for the purposes of the Act. The Act also provides that only premises meeting certain standards can be licensed. It also establishes a licensing scheme and makes it an offence in New South Wales to do certain things that are artificial breeding procedures at unlicensed premises. Those procedures include things like semen and embryo collection, and embryo transfer.

There are currently 34 licensed collection centres in New South Wales and six of these export artificial breeding material on a regular or irregular basis. Thirty-one premises are licensed as distribution centres. The Act also requires that certain procedures can only be carried out or directly overseen by an approved supervisor. A procedure involving a surgical incision or laparoscopy must be undertaken by a veterinary surgeon. The Stock (Artificial Breeding) Act 1985 had also previously licensed other things, involving certificates of competency, course approvals and instructors certificates for artificial breeding purposes. These were occupational licensing, rather than premises licensing, provisions. These provisions were repealed following a general review of occupational licensing and the subsequent introduction of the Regulatory Reduction Act 1996.

Artificial breeding of livestock has been regulated in New South Wales since the implementation of the Stock (Artificial Insemination) Act 1948. This Act was introduced because it was foreseen that artificial insemination would play an important part in the future of livestock breeding in New South Wales. Because of technological advancements that had occurred in the field of artificial breeding, the Stock (Artificial Insemination) Act 1948 was, by 1985, seriously outdated. Consequently a new Act, the Stock (Artificial Breeding) Act 1985, was made by Parliament. Now, almost 20 years later, it has become apparent that some change is again warranted.

The matters addressed in this bill have arisen primarily from a competition policy review of the Act. This review assessed whether the Act continues to provide net public benefits. It also considered whether the identified net public benefits could be achieved in alternative ways that minimise the restrictions on competition. Consideration was also given to regulatory best practice issues. This review was conducted by an expert panel, including representatives of the then Board of Veterinary Surgeons of New South Wales, the artificial breeding industry, and NSW Agriculture. Public submissions were called for, with more than 150 being received. Public meetings were also held in Dubbo, Parramatta, Wagga Wagga and Armidale. The review found that most of the provisions of the Act generate public benefits and should be retained.

It was considered, however, that it would be more efficient and effective to regulate the artificial breeding industry through the general legislation controlling veterinary practices and stock diseases, rather than through a separate Act. The main concerns in relation to the artificial breeding industry are to prevent the spread of genetic or other diseases of livestock, to protect consumers of the services of that industry, and to protect animal welfare. A further concern is to protect our access to export markets for artificial breeding material. The review found that registration and licensing of artificial breeding practitioners and premises who operated purely

within the domestic livestock industries did not serve a purpose that warranted retention of legislative control. The only justification found for retaining licensing was the internationally imposed requirement for Australian exporters to be government approved.

Since international trade and quarantine is constitutionally a Commonwealth responsibility, the review also recommended that licensing of artificial breeding centres for export purposes should be through a national scheme administered by the Federal Government, rather than under State legislation. In fact, many participants in the artificial breeding industry are not licensed, and do not have to be. Veterinarians, for example, and technicians employed by farmers to collect semen or embryos on the farmer's property, do not have to be licensed. The licensing provisions also do not apply to farmers or their employees carrying out artificial breeding procedures on their own stock on their own land. It is therefore proposed that, except in relation to export premises, licensing of artificial breeding premises will be abandoned.

Let me hasten to assure the House that this will not give rise to any increased risk of disease transmission or exotic disease outbreaks. Nor will it in any way diminish our disease response capability. This Government is well aware of the importance of artificial breeding facilities and practices in relation to the control of diseases of livestock. It is obvious, for example, that the collection of semen or embryos from animals incubating disease and the subsequent use of that material could lead to the rapid and diverse spread of the disease. However, licensing of premises is not considered necessary to deal with this type of problem.

In this regard, I would point out that we do not have licensing requirements for individual livestock producers, but still have a very effective system for managing endemic and emergency animal diseases. In addition, AUSVETPLAN—the national plan for managing emergency animal diseases—already covers artificial breeding centres, and will continue to do so. However, as an added disease control precaution, NSW Agriculture will compile a register of known artificial breeding premises. This register will assist inspectors to speedily locate premises for inspection if the need arises. Information about the location of these businesses is readily available because they operate as commercial businesses. Of course, the provisions of the Privacy and Personal Information Protection Act will be complied with in respect of the register.

As I will explain, passage of this bill will increase the potential regulatory control on artificial breeding centres and practices for disease control purposes, by extending many of the provisions of the Stock Diseases Act 1923 to cover artificial breeding material and equipment. As members would be aware, the Stock Diseases Act 1923 is the main regulatory instrument for the control of livestock diseases in this State. The key concern when dealing with the domestic livestock industry is to ensure that minimum acceptable standards of disease prevention and control are enforced. In New South Wales these standards are imposed through the Stock Diseases Act 1923. It follows that artificial breeding centres should have to meet requirements equivalent to those imposed under that Act. If additional requirements are imposed by international trading partners, meeting those requirements should be pursued through Commonwealth arrangements. These principles underpin the Stock Diseases Amendment (Artificial Breeding) Bill 2004.

The bill also recognises and accommodates the fact that, in the context of artificial breeding, the concept of "disease" needs to be extended to include undesirable genetic conditions or deformities. Given the close similarity between the objectives of the Stock Diseases Act 1923 and the Stock (Artificial Breeding) Act 1985, and the desirability of consistent regulatory treatment of similar problems, it is proposed to bring the artificial breeding industry under the umbrella of the Stock Diseases Act 1923. The Stock Diseases Amendment (Artificial Breeding) Bill 2004 therefore provides for amendments to the Stock Diseases Act 1923 to include the control of diseases, deformities and conditions which can be transmitted by artificial breeding procedures or artificial breeding material.

As a result of these amendments, the array of disease control and prevention powers under the Stock Diseases Act 1923 will also apply to artificial breeding. This will ensure that treatment of this issue is consistent with the disease control measures applied to livestock industries across the State. For example, under the amended Act it will be possible to order tests of animals used to source artificial breeding material, to prohibit the sourcing of artificial breeding material from animals affected by certain diseases or genetic weaknesses, and to order the destruction of affected artificial breeding material. It will also be possible to control or prohibit the movement of affected artificial breeding material into and out of protected zones and quarantine areas. Currently, it is a condition of the granting of a licence to collect semen or embryos that certain disease-related tests be carried out on the source animals. An example of this is testing rams for ovine brucellosis. The amendments will allow this type of requirement to be applied by a regulation under the Stock Diseases Act 1923.

There will, of course, be full public consultation on the regulations that will be required to apply appropriate and necessary disease control provisions to the artificial breeding industry. And the current Act will not be repealed until these regulations are in place. These are all sensible provisions to ensure that artificial breeding activities do not become vectors for the transmission of infectious stock diseases or undesirable genetic traits in animals.

These provisions will support and underpin the efforts of organisations like the Australian Embryo Transfer Society, the Australian Dairy Herd Improvement Scheme and other groups that use artificial breeding services and techniques to ensure the quality and safety of artificial breeding material. The review recommended that only veterinary practitioners be permitted to carry out artificial breeding procedures that involve surgery. The Veterinary Practice Act 2003 already accommodates this recommendation. The Act provides for the list of veterinary procedures that can be performed only by a veterinary practitioner to be set out in the regulation. An advisory committee will make recommendations as to the procedures that should be listed and will consider artificial breeding procedures involving surgery.

The Act already provides that artificial breeding procedures that do not involve surgery, that is those with low animal welfare implications, are able to be carried out by any person. The Stock Diseases Amendment (Artificial Breeding) Bill does not re-create licensing or approvals of artificial breeding centres in New South Wales to export semen and embryos. However, this should not be a cause of alarm to the industry. The Australian Quarantine and Inspection Service, the Federal agency responsible for compliance with international quarantine requirements, already approved these premises. The current arrangement is that rather than having independent licensing arrangements the Commonwealth approval refers to the New South Wales licence. If an official artificial breeding centre is licensed by New South Wales Agriculture it can also be approved for export purposes.

This type of double licensing is unnecessary and inefficient for both government and industry. New South Wales is advised that the Australian Quarantine and Inspection Service is moving towards the establishment of an independent national licensing system for export centres. Therefore it is intended to maintain the existing licensing arrangements in New South Wales only until such time as a national system is put in place. When this happens licensing will transfer to the national system and the licensing scheme under the Stock (Artificial Breeding) Act 1985 will be able to be repealed. This approach will ensure continued compliance with the requirement for export centres to be government approved. Let me assure the House that the proposals in the Stock Diseases Amendment (Artificial Breeding) Bill are fully intended to protect, not threaten, our export trade in artificial breeding material.

I repeat, we will not remove our licensing arrangements until and unless we are confident that an effective national system is operating; nor will exporters face any additional requirements. The export standards established by the Australian Quarantine and Inspection Service and international industry code of practice already apply in New South Wales. Exporters are already familiar with these standards, and will benefit by being able to deal directly and only with the Federal service in seeking export approval. The experts who reviewed the Stock (Artificial Breeding) Act 1985 were unanimous that these changes should be made, and more recent consultation indicates that the bill has the support of the industry. In summary, I believe the Stock Diseases Amendment (Artificial Breeding) Bill introduces a number of simple, yet significant, reforms that will protect livestock producers, exporters of artificial breeding material and animal welfare by ensuring that the artificial breeding industry continues to be controlled appropriately. I commend the bill to the House.

**Mr IAN COHEN** [6.05 p.m.]: The Greens support the bill. As we heard from the Hon. Henry Tsang, representing the Minister, it is important legislation in an industry in which exports of bovine semen in 2003 were valued by the Australian Bureau of Statistics at \$1.63 million. Slightly more than 10 per cent of these exports came from New South Wales. The distribution of elite genetic material into the on-farm production sector is an important industry to the rural sector. The Stock (Artificial Breeding) Act 1985 regulates artificial breeding procedures involving livestock, including cattle, horses, sheep, goats, swine, deer, buffalo, poultry and any other species of animal declared under the Act to be stock.

The legislation effectively brings the industry up to date with the system currently in use in today's modern agricultural industry. It establishes a licensing scheme and makes it an offence in New South Wales to carry out certain artificial breeding procedures at unlicensed premises. The Greens are concerned that these types of activities be undertaken at licensed premises. It is important that this type of industry be regulated. In the past 20 years there have been a number of amendments to various stock breeding Acts. It is clear that change is again warranted given the shift of emphasis in the industry and technological changes. A review was



conducted by an expert panel comprising representatives of the then Board of Veterinary Surgeons of New South Wales, the artificial breeding industry and NSW Agriculture.

The main concerns of the artificial breeding industry are to prevent the spread of genetic or other diseases of livestock, to protect consumers of the services of that industry and to protect animal welfare. A further concern is to protect our access to export markets for artificial breeding material. This type of legislation goes a long way to providing that certainty to potential overseas customers. I understand that New South Wales farmers and breeders are constantly increasing their markets in places like China. It is important that we have adequate legislation to protect these processes, enforce controls and ensure acceptable standards of disease prevention. The Greens recognise that the Stock Diseases (Artificial Breeding) Bill is a significant step forward in ensuring that certain disease-related tests are carried out consistently, particularly on source animals. We congratulate the Government on its introduction.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [6.07 p.m.]: This bill arises from a national competition policy [NCP] review of the Stock (Artificial Breeding) Act 1985 in conjunction with a review of the Veterinary Surgeons Act 1986. Honourable members will recall that the Veterinary Surgeons Act 1986 was repealed last year and replaced with the Veterinary Practices Act 2003. The review was never released officially. Recently, when my office sought access to the review from both Cabinet and the office of the Minister for Primary Industries access was denied. I was pleased to hear the Hon. Henry Tsang quote from part of the review—we are getting closer to finding out what it says. I am disappointed that the Minister for Primary Industries is not in the Chamber to hear debate on the bill.

The NCP review assessed whether the provisions and restrictions of the Stock (Artificial Breeding) Act were in the public interest. Although it found that most were in the public interest it was decided that it would be more logical and efficient to regulate artificial breeding under existing veterinary practice and stock diseases Acts. The bill repeals the Stock (Artificial Breeding) Act and amends the Stock Diseases Act 1923 to control and prevent the spread of disease and undesirable results from artificial breeding techniques. At the outset I state that the Opposition will support the bill.

Currently, the Stock (Artificial Breeding) Act 1985 provides for restrictions over who may carry out or supervise an artificial breeding procedure. It requires licensing of artificial breeding premises and imposes mandatory standards upon them. Artificial breeding is the collection, processing, handling, storing and distribution of semen or ova, artificial insemination and ovum transfer. By repeal of that Act, any artificial breeding procedure that does not involve surgery effectively will be deregulated. But with the tightening of disease controls relating specifically to artificial breeding, many concerns are allayed relating to so-called deregulation.

I will now deal with the bill and highlight the Opposition's concerns, or support, in relation to each clause. Clause 2 deals with the proclamation. The Opposition strongly supports the requirement that proclamation of the bill be delayed until at least 30 June 2005 when, hopefully, an effective national system will be operating to replace the current licensing arrangements for premises and operations that are dealing with international markets.

Clause 5 provides for the repeal of the Stock (Artificial Breeding) Act 1985 and the Stock (Artificial Breeding) Regulations 1995. As I mentioned, those Acts will be repealed in line with competition policy and to streamline legislative processes. The Opposition supports the latter intentions, but not at any cost. However, it should be noted that the Veterinary Practice Act 2003, which recently received assent, and the Stock Diseases Act 1923, as amended by this bill, will provide a level of legislative control over the artificial breeding industry in place of the repealed Act. As I indicated earlier, clause 2 specifies that this bill will not be proclaimed until a national system has been implemented to control the international sale, distribution and importation of artificial breeding materials.

Quality control in artificial breeding centres is important. I am aware that the New South Wales Farmers Association has expressed concerns about this matter. The Opposition also was initially concerned that the bill would remove important monitoring systems that have been in place for some time. Indeed, farmers and all domestic and international customers of these centres have a right to expect that the centres will maintain quality control, whether or not they are licensed under the Stock (Artificial Breeding) Act. I have spoken with a number of industry stakeholders and concerned farmers and it is evident that the current State Government's commitment to follow-up checks of licensed artificial breeding premises was unimpressive, to say the least. And I suspect that with funding being reduced by \$37 million this year, a further \$37 million next year and \$58 million the year after, it is not likely to improve.

Many people have told me that, despite licensing protocols, this industry has been self-regulating for a long time. The Stock (Artificial Breeding) Act provided for a protocol and, consequently, some level of quality control. The amendments to the Stock Diseases Act 1923 were intended to address this issue. I am aware that some farmers are concerned that there will be no need to license laparoscopic insemination procedures for dairy farms or sheep properties but the Opposition is satisfied that the Veterinary Surgeons Act covers this issue adequately. All procedures in New South Wales that involve surgery, including laparoscopic insemination, fall under the Veterinary Practice Act 2003, and comprehensive quality control and safety provisions for those are provided by that Act, but not by this bill.

After consultation with the relevant stakeholders, I am aware that there is some debate whether New South Wales should legislate to give non-veterinarians the power to perform operations such as laparoscopic insemination. Some Australian States have already legislated so that non-veterinarians are able to perform specific operations such as laparoscopic insemination. Other States, including New South Wales with its Veterinary Practices Act 2003 and Queensland with its Veterinary Surgeons Act 1936, consider laparoscopic insemination to be a procedure of veterinary science. As such, there are strict laws stating that only veterinarians may perform this procedure.

When debating the Veterinary Practice Act 2003 on 1 November 2003 I made the point that some farmers who were represented by the New South Wales Farmers Association wanted artificial insemination of sheep excluded from the major surgery listed in section 64 of that Act. This means that the procedure currently must be carried out by a veterinarian, but not necessarily in a surgery. That was agreed to. Indeed, it is quite appropriate that this form of insemination take place on a farm. I cannot imagine anyone agreeing to the proposition that entire flocks of sheep should be trucked to a local veterinarian clinic for insemination when the same veterinarian can carry out the procedure on a property that has reasonable stockyards. That said, the Opposition is of the view that Australiawide consistency in this form of artificial insemination would be desirable. I urge the Minister for Primary Industries to raise this issue with his colleagues at the next primary industries ministerial council.

However, in relation to quality control and the removal of licensing systems for artificial breeding procedures in premises, it is, of course, in the interests of the small artificial breeding industry in New South Wales to implement the highest standards possible. Consequently, there will be a certain level of self-regulation in the name of the industry's self-interest. Sole reliance on industry self-regulation introduces the risk that poor standards and controls will result in infection and shoddy quality semen being sold and used throughout the State and this nation. This could mean that the industry, and possibly animal health, will suffer. Concerns should be allayed through amendments to the Stock Diseases Act 1923 to extend the provisions of that Act that regulate artificial breeding centres for disease and quality control purposes.

By virtue of the amendments in schedule 1, artificial breeding centres will have to meet certain requirements, and the full range of disease control and prevention powers will apply to these centres. While the Stock (Artificial Breeding) Act dictated that these centres abide by quality control provisions through their licensing agreements, the Stock Diseases Act should now enforce quality control through regulation. Furthermore, artificial breeding centres that export semen will still be subject to approval processes through the Australian Quarantine and Inspection Service, which is required to approve such premises. I listened intently to the commitment given by the Hon. Henry Tsang for joint control at the initial stage and subsequently a move to single control.

Schedule 1 amends the Stock Diseases Act 1923 to control and prevent the spread of disease resulting from artificial breeding procedures. The Opposition broadly supports these amendments, with a few reservations. The provisions of this schedule amend section 7 of the Stock Diseases Act to give inspectors the authority to enter any land, building, vessel, aeroplane or airship for the purpose of inspecting or treating any artificial breeding material or detaining or taking possession of material which is or could be infected. These are in line with powers that already exist under the Stock Diseases Act for other purposes, and they will fill the gap left by those provisions under the Stock (Artificial Breeding) Act.

However, the Opposition shares the concerns of the Legislation Review Committee. Its draft report on this bill raised concerns that the provisions convey broad powers of entry to enforce the Act, particularly that the bill may give inspectors the power to enter private dwellings at any time to enforce the Act in relation to artificial breeding material. I am aware that the committee has written to the Minister to seek his advice on those powers and will raise that question in Committee, unless the Minister addresses the matter in his reply. The Opposition agrees also with the committee with respect to the amendment to section 19 of the Act, which relates

to inspectors having the power to seize stock and materials with no compensation to the owner. Under that amendment, after being cleaned and/or treated, any stock or artificial breeding material that has been seized by inspectors can be sold or destroyed, with the proceeds of any such sale being disposed of at the Minister's discretion.

A good deal of money is invested in this industry, and it is only logical that should inspectors seize and then sell any stock or artificial breeding material, and should that seizure and sale be made in the absence of any evidence or any judicial determination that the owner has broken the law, the owner deserves to be compensated with the net proceeds of the sale, or to have the stock or material returned to him. The Opposition will urge the Government to consider the committee's concerns in Committee, and I look forward to a response to those concerns. Two important issues must be addressed, and that should come as no surprise to the Government because the committee's report to the Minister contains those concerns.

As with any changes to legislation that affect our vital agricultural industries, I have concerns about the Government's ability to properly monitor and enforce the changes. The focus must be on protecting the welfare of our livestock, producers and exporters of artificial breeding material. Refining the legislation process so that we have a more effective and streamlined approach to disease control and monitoring is absolutely essential, particularly in the current environment of emerging animal diseases and biosecurity scares. The economic viability of an artificial breeding industry must also be fostered and encouraged so that standards remain high. As the cuts bite deeper and deeper into this portfolio area I, along with many honourable members, wonder how long those high standards can be maintained. Despite the concerns I have enumerated, the Opposition supports the intent of the provisions of the bill, which are laudable. I hope that the Minister can respond to the concerns I have raised.

**Reverend the Hon. FRED NILE** [6.23 p.m.]: The Christian Democratic Party supports the Stock Diseases Amendment (Artificial Breeding) Bill, which implements the results of the national competition policy review of the Stock (Artificial Breeding) Act 1985 by repealing that Act and transferring its disease control provisions to the Stock Diseases Act 1923, as amended. The bill raises the question of whether the National Competition Council should be disbanded. As happened with alcohol, competition is causing controversy in this area also. I urge the Government to recommend to the Commonwealth Government that it disband the National Competition Council. Artificial breeding is important to society and agriculture.

A friend of mine started a new occupation after a successful career as a major printer in Sydney. He decided to venture into artificial breeding in the Sutton Forest area. I visited him a number of times at that property. For some reason, despite spending a great deal of money, he did not have any success. Finally he reached the point of failure and sold his property. Obviously, the artificial breeding business is not as simple as it seems; it requires skill and persistence to be successful. I note that the premises licensing provisions will not be repealed until the Commonwealth has fully implemented a national program for the approval of artificial breeding premises that export semen and embryos. Clearly, that indicates control over the exportation of semen and embryos, but will the result be a lack of control over what happens in Australia, especially in New South Wales? If there is no licensing or control of internal matters, how will records be maintained? I assume a history will be kept of the origin of the semen or embryos in order to locate the source of any future disease problem or genetic problem. A history of breeding is maintained, so I assume a history of artificial breeding will also be maintained. However, from my reading of the bill, it seems that that system will not be regulated.

The competition policy review of the Stock (Artificial Breeding) Act 1985 recommended also that only those artificial breeding procedures that involve surgery should be restricted to being performed by registered veterinary practitioners. On a number of occasions veterinary representatives have briefed honourable members on their concerns about some developments. I have not been advised that they have any particular problems with the bill, but they have concerns about the impact of the national competition policy recommendations. The Legislation Review Committee criticised the extreme power provided to inspectors to enter land or buildings where livestock is kept, or vehicles in which livestock is being transported, to enforce the Act without a warrant. That power may be justified by the public interest to prevent the spread of disease in artificial breeding material. I question whether there is sufficient evidence of public interest for that power. The committee noted also that there does not appear to be any constraint on entry powers or the times at which such entry may be made. The report stated:

The Committee is concerned that the amendment may provide inspectors the power to enter private dwellings at any time to enforce the Act in relation to artificial breeding material ...

The Committee refers to Parliament the question of whether these powers of entry trespass unduly on personal rights and liberties.

I am concerned about those powers. Certainly, in the implementation of the bill such powers should not be abused. We support the bill.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [6.29 p.m.], in reply: I thank Mr Ian Cohen, the Deputy Leader of the Opposition and Reverend the Hon. Fred Nile for their contributions to debate on this bill. The Legislation Review Committee, the Deputy Leader of the Opposition and Reverend the Hon. Fred Nile raised a number of concerns in relation to it, which I will answer in turn. I always respond to any issues that are raised by the Deputy Leader of the Opposition.

**The Hon. Duncan Gay:** You have still not fixed up that bus.

**The Hon. HENRY TSANG:** The honourable member should wait; we will fix it. Firstly, the parliamentary Legislation Review Committee is concerned about the power of inspectors to enter land or a private dwelling to enforce this Act. The committee has asked what limits exist on the power of entry. There are a number of legal and practical limits to that power. Under the Stock Diseases Act inspectors are trained only to exercise their power reasonably and strictly in accordance with the Act. They receive training also on the consequences of inappropriately exercising those powers. NSW Agriculture has a chain of command to ensure that all staff follow documented procedures in the application of their powers.

Inspectors who are found to have misused their powers face disciplinary action and can have their appointments withdrawn. In most cases an inspector enters a property only by invitation, usually as a result of an owner or a veterinarian reporting a notifiable disease. If an owner does not co-operate, an inspector may need to enter the property using his power under the Stock Diseases Act to prevent animal disease from spreading. Even though that happens rarely, it is important to maintain that power of entry to protect the whole community from the irresponsible actions of a few. The second concern that was raised by the Deputy Leader of the Opposition and the Legislation Review Committee is that limits apply in relation to when an inspector may enter a property.

For all practical purposes, the answer to that question is that an inspection can occur only during daylight hours and with the knowledge of the owner. That is because stock can only effectively be examined for disease during daylight hours. Inspectors also need assistance from owners to locate and muster stock before inspecting them. Honourable members should not be concerned about inspectors entering private dwellings without consent. Inspectors are interested in places where livestock are kept, not where humans live. Thirdly, the Legislation Review Committee is also concerned about who should keep the proceeds of sale of any animal or item sold using a power under the Act—an issue that was pointed out earlier by the Deputy Leader of the Opposition.

The committee is concerned that I, or the Government, will have the power to direct what happens to those proceeds. I can assure the House that where the owner of a seized animal or item can be identified, the net proceeds of the sale will most likely be returned to the owner. I hope that satisfies the concern of the Deputy Leader of the Opposition. However, in many cases, no owner can be found after a reasonable search. Owners of seized animals are often reluctant to come forward, particularly when an animal is diseased or when it is of little value to them. In those cases I need a flexible power to dispose of the money. This power allows me to direct that the money be used to benefit the relevant industry or to control a particular disease.

Lastly, the Legislation Review Committee is worried that the Parliament does not currently have power to review the diseases of stock that are proclaimed under the Act. Similarly, the committee is concerned that the Parliament does not have power to review proclamations that prohibit the importation into New South Wales of artificial breeding material. Those concerns can be considered when this longstanding and effective Act is reviewed. However, I note that in the meantime checks and balance are available to ensure that the proclamation power is used wisely. For example, any member of this place or the other place can air their opposition to a proclamation.

The Minister and I, as Parliamentary Secretary, can consider any opposition and propose amendments or the repeal of any proclamation that is made. In addition, an application can be made to the Supreme Court to challenge the legality of any proclamation. We must keep in mind that the proclamations about which the committee is concerned are related to animal disease control. Before a disease is proclaimed there has to be a good reason for government intervention. Usually, diseases are proclaimed only if failure to control the disease could result in significant trade, animal health or human health implications. Sometimes commercial forces can lead to livestock producers putting their interests ahead of the interests of the community.

Honourable members will recall the devastation of the United Kingdom livestock industry as a result of a pig owner failing to report foot and mouth disease. Furthermore, some owners will sell livestock because they are diseased. Consequently, control of animal diseases is subject to market failure. The Government needs to be able to impose disease control when it is for the benefit of the public of this State. Only very important diseases are proclaimed under the Act. Sometimes new diseases emerge and they need to be proclaimed swiftly so that they can be controlled before they spread. It would be impossible to control an important animal disease unless we retain the ability to quickly proclaim it and respond to it.

I refer again to the concern expressed by the Deputy Leader of the Opposition that deregulation may reduce standards. I respond by stating that there have been no prosecutions for breaches of the licensing or operating requirements under the Stock (Artificial Breeding) Act 1985. That is because there is no market for defective genetic material and operators are therefore obliged to comply with the standards expected by the customer. It is true that the Act helped raise the standard of operation of artificial breeding centres. Health testing of donor sires and females is standard procedure, as is proper veterinary supervision of premises. This has been a good outcome. It is now evident that customers can take direct action against suppliers of diseased or otherwise defective semen or embryos.

That means that government regulatory oversight of most of the provisions in the Stock (Artificial Breeding) Act is superfluous. Nevertheless, there are provisions in the bill to enable action to be taken to deal with serious disease issues, if necessary. Stockholders in the industry have been consulted and agreed to New South Wales adopting similar proposals to those adopted in other States. In conclusion, as we know, the artificial breeding industry is an important part of the livestock industry in New South Wales.

The Stock (Artificial Breeding) Act 1985 helped to establish a sound foundation for the artificial breeding industry as it was emerging. I am confident that the research and consultation undertaken by the National Competition Policy Review Group into the Stock (Artificial Breeding) Act and the recommendations that it made to the Government were well founded. The bill will implement those recommendations and it provides, I believe, a sound basis for disease control in the artificial breeding industry. I commend the bill to the House.

**Motion agreed to.**

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

*[The Deputy-President (The Hon. Tony Burke) left the chair at 6.40 p.m. The House resumed at 8.15 p.m.]*

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Orders of the Day Nos 6 and 7 postponed on motion by the Hon. John Della Bosca.**

## **COMPULSORY DRUG TREATMENT CORRECTIONAL CENTRE BILL**

### **Second Reading**

**Debate resumed from 12 May.**

**The Hon. GREG PEARCE** [8.19 p.m.]: The Compulsory Drug Treatment Correctional Centre Bill is intended to provide the legal basis for a drug treatment correctional centre, which, according to the Special Minister of State, will be the first drug-free gaol in New South Wales. That is a useful point at which to commence debate on this bill, which is an admission that drugs and drug use are rife in New South Wales prisons. It is a Clayton's drug-free prisons bill. The reality is that if offenders do not enter the New South Wales prison system as drug addicts, they are more than likely to be drug addicts when they leave. It is a great disappointment that this bill is the Government's only response to that problem in our prisons. We should all be greatly concerned that the Government's policies have created an environment that is conducive to drug addiction—particularly new drug addiction—in the State's gaols.

The Carr Government's drug-free gaol policy is a pale imitation of the Coalition's 2003 election policy that aimed to free New South Wales prisons from drugs. This legislation allows only one wing of one prison to be set aside to accommodate 100 inmates in a drugs program. It fails to take the first step in freeing our gaols from drugs: stipulate a drug-testing regime for prisoners. The Coalition's election policy provided for prison inmates to be subjected to fortnightly drug testing. This legislation does not contain a similar provision—in fact, it stipulates no programs other than that which might be established by the Drug Court to ensure that prisoners in the program are free from drugs. Unlike the Coalition's policy, the bill fails to stipulate a zero-tolerance drugs policy. The legislation effectively offers offenders a get-out-of-gaol-early card. In his second reading speech the Minister said:

Under the bill, a compulsory drug treatment personal plan will be drawn up to provide the basis of each offender's treatment and rehabilitation program. In addition to drug treatment, inmates will be taught ... social skills, preparation for the job market, management of debt, and management of leisure time.

He continued:

The Drug Court will order an offender's progression to the next stage of the program after a minimum of six months if they have complied.

Those objectives are laudable, and if it were only the case that someone going into one of our gaols could expect to be taught social skills, preparation for the job market, management of debt and management of leisure time we would all applaud this legislation. But one has to ask where this legislation really fits into the approach of the Carr Government to the drug problem, in particular, in our prisons. I draw to the attention of the House some statistics and media reporting which occurred in April. The Bureau of Crime Statistics and Research and the National Drug and Alcohol Research Centre were reported to have analysed the court appearance records of 11,126 people who were on the State's public methadone program over 12 months. The Premier's servant, Dr Weatherburn, concluded in his report:

After adjusting the time spent in custody, offending rates were found to be significantly lower for most people when they were on methadone treatment than when they were off it.

They are trying to argue that giving methadone to heroin addicts, or to people who are not addicts at all, improves crimes rates. It is really quite an extraordinary abuse of statistics for anyone to try to come up with those sorts of conclusions. The report continued:

It is estimated that for every 100 people on methadone for one year, New South Wales had 12 fewer robberies, 57 fewer break and enters and 56 fewer motor vehicle thefts.

It is beyond me how those figures can be arrived at. The Department of Health recently provided statistics to Mr Phil O'Grady who is active in this area. On 1 July 2003 the Director of the New South Wales Health Drug Program wrote to Mr O'Grady and stated that at the time of the Drug Summit the number of people on the methadone maintenance treatment program was 12,388 and by mid-2003 the number had increased to 18,097—quite an extraordinary growth. At the time of the Drug Summit the so-called clients in the Correctional Health Service on the methadone maintenance treatment program was 928 and by mid-2003 it had increased to 1,834. That is a massive increase in the number of people who are on the government-supplied methadone maintenance treatment program, many of whom are prisoners in our correctional institutions.

Contrary to the statistics quoted by Dr Weatherburn, I draw to the attention of the House some 1995 statistics in the National Drug Strategy Report series that evaluated private methadone clinics and reported on the characteristics of various methadone patients. The conclusions reached were: 72 per cent of methadone patients were dependent on social security for income; 15 per cent were dependent on crime; 20 per cent were dependent on income-generating crime after more than one month of treatment; 15 per cent sold take-away methadone doses for income; 83 per cent were female clients with criminal convictions; and 95 per cent were male clients with criminal convictions. For those who are convinced that the methadone program really works, 54 per cent of persons used heroin after 6 to 12 months of treatment, and 33 per cent of persons used heroin after 12 months of treatment.

**The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile):** Order! I give a special welcome to members of the public who are attending A Little Night Sitting program organised by our parliamentary education department. You are very welcome, and I hope you find your visit to the Legislative Council informative.

**The Hon. GREG PEARCE:** The jury is really out on some of these policies and it may be the case that some of them should be rethought. In relation to the question of reduction in various health problems, according to a report called, "Hepatitis C Report 2002", the lead author, Dr Alex Wodak, said that unless changes occur hepatitis C infections would be estimated to be as high as 836,000 by 2020. The increase was 6,000 infections a year in 1997 to 16,000 a year in 2002. The health statistics are of concern.

Though the Opposition will not oppose the bill, I should point out that the only drug-free gaol that New South Wales will have will be established at the Parklea Correctional Centre, and when it becomes operational at the end of 2005 it will deal with just 100 adult male offenders. To qualify, an inmate must be a repeat offender who has been convicted of a drug-related crime three times in the previous five years. Offenders may enter the scheme if they have between 18 months and three years of their non-parole period remaining. Offenders will be ineligible if guilty of serious offences, including murder, manslaughter, sexual assault, firearm-related offences or commercial drug trafficking. There are three stages to the program, and the Minister has outlined those. The legislation will be administered by the Drug Court, and is prospective, but it will allow inmates convicted in the 12 months prior to the commencement of the Act to be eligible for the program.

The Government has chosen to go soft on the State's first drug-free gaol because of the limiting of drug testing and the lack of penalties for offenders who breach conditions. After being in the program for only six months an offender can be given day release, and after a further six months can be out of gaol on home detention. Thus an offender who was given a three-year minimum sentence could go home after serving only 12 months in prison. In other words, this will enable repeat offenders who claims their crimes are drug related to have most of their prison sentence diluted to home detention. It is hard to come to a conclusion that the State's first drug-free gaol is other than window-dressing because it fails to tackle the problems of drug crime, drug addiction and drugs in gaol. However, the Opposition will not oppose the bill.

**The Hon. JOHN TINGLE** [8.31 p.m.]: I will speak very briefly in support of the bill. Nobody could argue with the points made by the Hon. Greg Pearce about the inadequacies of the methadone program and the risk of hepatitis C from needle infections. I think we all know about those matters. But I would take issue with the honourable member's suggestion that this is an issue on which the Government is going soft. If anything ever required us to feel our way carefully, to be sure what we were doing in our efforts to deal with the drug problem, then surely this is it. It is something we have not tried before. It is a thing we do not understand, and it is something we have to get right. In my book, this is not only a good idea, but it is quite essential. Having had some experience at fairly close hand of very serious drug abusers, I know that the nature of the beast of the drug abuser is that the abuser usually cannot help himself or herself. Drug use is something that gets a grip on them and over which they are absolutely powerless.

This scheme is aimed specifically at recidivists. From my point of view, that makes it a particularly important and necessary scheme to try. Recidivists are all the more helpless when in the grip of an addiction. They are probably incapable of making a decision to voluntarily enter into a rehabilitation program, or even incapable of keeping that program going if they do enter into it voluntarily. I guess this is one of the ways in which we give those people a chance to allow us to do for them that which they cannot do for themselves.

There are other schemes, not identical to this one, designed to give people the chance to get themselves out of their drug habit, if they are prepared to take that chance, such as the Magistrates Early Referral into Treatment Program, which courts may offer to people who appear before them on drug offences. There is probably a network of these programs dealing with drug offenders at different levels. I suspect this is just part of the jigsaw that is falling into place and eventually will give a complete picture. I do not believe that the proposal is unduly heavy handed. It aims only at the hardest cases, with a series of qualifications that offenders must meet before they can be referred into this system. Only the most serious offences and the more serious penalties that can be applied qualify someone for entry into the system.

We keep talking about the war against drugs. We have not had a war against drugs in this country for years. What we have seen is a retreat before drugs. We are not waging war on them. We are giving in to them. We make concession after concession. We back down. We seem to be in some confused state of mind of not wanting to be seen to be punitive towards somebody who is, after all, suffering a form of sickness. Consequently, we just keep giving up. We are not prepared to tackle the problem in what we might call a full-on confrontation. The problem is that what is sickness to the addict is also a major problem for the community in the form of crimes that are associated with it, and the ongoing cost of treatment, which often seems to achieve little permanent result. I believe it is time to stop retreating and take the offensive again—to attack the enemy. The enemy is not the addict; the enemy is the drug, and of course the people who peddle drugs. If we need to try

other ways, we should. We need to try as many ways as we can to break the vicious cycle of supply and addiction. This bill may be one way. It is well worth a try. I support the bill.

**Reverend the Hon. Dr GORDON MOYES** [8.35 p.m.]: On behalf of the Christian Democratic Party, I indicate that we will support the Government's Compulsory Drug Treatment Correctional Centre Bill. The object of this bill is to amend certain Acts of Parliament to establish a scheme to provide for the compulsory treatment and rehabilitation of recidivist drug-dependent offenders. Under the proposed compulsory drug treatment scheme certain eligible convicted offenders are to be referred to the Drug Court of New South Wales for assessment. To be eligible for the program an offender must: first, appear to have a long-term drug dependency; second, have been convicted of an offence related to the offender's drug dependency and lifestyle and been sentenced to imprisonment with an unexpired non-parole period of at least 18 months but not more than 3 years; and, third, have been convicted of other offences at least three times in the previous five years.

The proposal will provide a legal basis for the first Compulsory Drug Treatment Correctional Centre. This will be a secure wing of the Parklea Prison, and it will be established before the end of 2005. It will deal with only a small number of offenders—approximately 100 male offenders—and, if then considered suitable, the program will be extended to female offenders. My visits to the Emu Plains women's prison on a number of occasions have revealed to me that approximately 83 per cent of all females in prison have offended while under the influence of drugs. It is quite obvious to those who spend time talking to the women in the Emu Plains prison—as I have done—that they are still able to find drugs, are being supplied with drugs, and are using drugs.

The Government is seeking better outcomes in respect of offenders who have such a long-term drug addiction and an associated life of crime and constant imprisonment. Those people have failed to enter into any voluntary-based drug rehabilitation programs. Might I say there is no compulsion to undertake a rehabilitation course. The only compulsion relates to staying in the prison while the course is conducted. Overseas jurisdictions, particularly in Scandinavia and The Netherlands, have shown that compulsory links to the justice system is one good option for dealing with such repeat offenders.

The program is dedicated to be abstinence-based compulsory treatment, rehabilitation and education. As was mentioned by the Minister when speaking about this bill, the treatment is in a number of stages, with each determining that a person, through personal case management and individual development plans, might move on to the next stage. It is estimated that 80 per cent of all offenders in our prisons committed offences while under the influence of alcohol and other drugs. The compulsory scheme I approve. I say that because, in a not-for-profit organisation, I have set up a number of drug rehabilitation programs that involve personal case management and individual plans as well as staged development of persons. Of course, the people in those programs enter them voluntarily, rather than undergo programs that are in the prison system.

The proposed scheme consists of three stages. One is the closed detention area, where they will be in a secure wing in Parklea Prison, then under closed detention they will have to undergo an agreed series of programs that will include helping offenders to attend training programs, social programs and drug treatment programs. Offenders will then be able to progress from one stage to the next, provided they have spent at least six months in the previous stage and have shown some sign of progress. The bill empowers the Drug Court to regress an offender to a lower stage of detention if the offender fails to comply with his or her personal plan. My experience is that case management and establishing a series of key performance indicators challenges people to lift their performance to a certain level. If they fail upon the agreed program they will regress in the staged process.

It is important that the Government put this in its armoury of programs to deal with drug abuse in our community. It will cost about \$6 million in the first year and will deal with only a small number of offenders, but it will provide another option to the courts. We have spent a great deal of money on non-performing areas of work. For example, the current Mayor of Sydney, Clover Moore, has advocated the development of a medically supervised injecting centre for Redfern similar to the one in Kings Cross, against the wishes of the Aboriginal community, who have made it clear that they do not want a supervised injecting centre. It is important to realise that in the assessment of the medically supervised injecting centre there is no room for great enthusiasm. For example, the evaluation of the medically supervised injecting centre indicated that the operation is feasible, that a number of people went through the centre, but to quote from the New South Wales Parliamentary Library Research Service Briefing Paper No 7/04:

There was no detectable change in heroin overdoses at the community level, but a small number of heroin overdoses managed at the centre may have been fatal had they occurred elsewhere.



I questioned the medical supervisor of the centre about what she meant by "may have been fatal" elsewhere. Dr Ingrid van Beek indicated that even if a person nodded off to sleep, that person would be regarded as having been saved by the centre. I said that nodding off to sleep was not necessarily a precursor to death, but she indicated that in some situations a person who nodded off to sleep may deteriorate seriously. I would not claim that anything had been done to rescue a person who nodded off to sleep in the centre. The briefing paper stated that the medically supervised injecting centre may refer people for drug treatment, especially if they are frequent attendees. But in speaking to other agencies involved in the treatment of confirmed heroin addicts, few centres would comment that they had ever seen any referrals of such persons.

Certainly organisations such as the Salvation Army and Wesley Mission have never received such referrals. Contrary to the findings of the medically supervised injecting centre evaluation, some police officers, business owners and community members maintain that the centre attracts drug dealers who conduct activities near the centre. Because drugs are not provided, people have to find the money to purchase them. The centre is a honey pot: dealers know that people in the area want drugs. That would not happen if compulsory treatment were carried out within a correctional centre. In December 2003 the local area commander, Superintendent Dave Darcy, was quoted as saying:

I'm trying to improve the railway station as an amenity the best way that I can but I've also got the injecting centre across the road and I can't do anything about it... [the centre is right] in the heart of Kings Cross at a point in time when things are so dynamically changing within our business community. I believe it's in the wrong place and business is hurting because of it.

His opinion would be supported by the indigenous people of Redfern if such a plan were mooted for that area. We support a person under management of personal care and development plans in the correctional centre moving through the various stages of education and rehabilitation. It is not the full answer, but it is a positive answer. We commend the Government for the Compulsory Drug Treatment Correctional Centre Bill, which is one of the continued armoury of suggestions for dealing with the drug problem that Reverend the Hon. Fred Nile has mentioned in this place over many years.

**The Hon. ROBYN PARKER** [8.46 p.m.]: I support the Compulsory Drug Treatment Correctional Centre Bill because of my concern and ongoing interest in doing whatever we can to try to beat drug addiction and deal with the huge problem that drugs cause in our society, but not without some reservations about the establishment of a drug-free gaol. The Coalition supports a drug-free gaol. We could go so far as to say that all gaols should be drug free.

**The Hon. Peter Breen:** The Coalition supports all gaols being drug free.

**The Hon. ROBYN PARKER:** That is right. The average person in the community probably assumes that they are drug free. It is quite an admission of failure for the Carr Government to say, "Sorry, we haven't maintained a situation where prisoners don't get access to drugs." Why is that? It is easier said than done, but the Government could start by making an effort to search everyone who walks through the gates of gaols—not just some people, not just hit and miss, not just every second person. I have visited people in gaols and I have watched what goes on. It is a weak effort to say that those who work in gaols do not need to be searched. If drugs are in gaols they are getting in somewhere and somehow. I know it is a huge problem, but let us not throw our hands in the air; let us make sure that we have at least proper search mechanisms for adults, children and staff who enter the gaols. We should assume that as our starting point.

I assume that the average person thinks gaols are already vehicles of rehabilitation and that people with a drug problem who go to gaol undergo some sort of rehabilitation program. Unfortunately, that does not seem to occur. We are creating a gaol to deal with those problems, which is good news for the 100 people who will use the service, but we would have assumed that the Department of Corrective Services would offer much broader drug treatment and rehabilitation across the gaol system. I do not have the latest statistics regarding the number of people who are in gaol as result of drug-related crimes. This afternoon a book entitled *Drug Offences: An Update on Crime Trends* landed on my desk, but I have not had the time to read it. It is wrong to say that drugs mean crime, because not all crime is drug related. But somewhere along the way those who have a drug problem are more than likely driven towards crime.

At the outset I accept that the scarcity of rehabilitation programs in gaols is one failure of the Government. Another failure is that this legislation is a watered-down version of a Coalition election commitment. However, the Coalition's commitment was much tighter than the Government's commitment. This drug-free gaol, as opposed to other gaols, provides for only one wing in one prison to be set aside to accommodate 100 inmates in the program. I am not sure what the rationale is for deciding on 100 inmates or

where the program should be, but I acknowledge that it is a step along the way. I am not sure why women are not included in a similar trial and why the proposed trial is restricted to men. Recidivists with a record of drug offences need to be addressed first.

I am a great supporter of the Magistrates Early Release into Treatment Program and the Drug Court, which provide diversionary and rehabilitation programs for those in the early stages of entry into the criminal justice system. However, I believe that those options should be expanded to other groups. This legislation leaves huge gaps in the description of the manner of testing, what the testing regime will be, whether people will be tested on a weekly or fortnightly basis, and what mechanism there will be for testing when they have moved through the home detention stage and from the first and second stages to the third stage. The legislation is also deficient in setting out what happens when someone fails a test. How many tests will people fail before they are put back into the general prison system? This bill represents a commitment to addressing the problem, but it is only a token solution. The legislation needs a lot of tightening up so that everybody knows what its provisions will mean upon implementation.

The bill presents a three-stage program involving closed detention or full-time incarceration, semi-open detention involving day release, and attending work training and home detention. Those stages seem to be a reasonable way of progressing someone through the system, but I am not sure whether the program includes intensive drug treatments, re-entry programs, peer support programs or other programs that are collateral to home detention. The three-stage program will certainly need support programs to make it effective. The jury is still out on the effectiveness of compulsory rehabilitation. Recently I read some very interesting studies that show the success rates for compulsory rehabilitation for drug and alcohol treatment, but everything must be tried for people who are drug dependent, particularly recidivist criminals who have a serious drug problem.

The people of New South Wales have been waiting a long time for this bill. I recall this legislation being mooted six months ago, but it seemed to disappear into the ether. I am pleased that it has been restored to the Government's agenda, but it has taken some time to finally appear. Given the Premier's comments about being tough on drugs and being serious about drugs, I wonder why it has taken so long to finally come to fruition. In spite of all the gaps in the legislation, this debate provides members with an opportunity to examine its provisions and to reassess it in two years to test its success. I understand that similar programs have been successful in other States. At least a variety of treatment programs for offenders and drug addicts is being tried, but I would like to see it extended.

I would also like to see a tightening up of the testing regime. I ask the Minister in his reply to address the issues I have raised concerning support programs and the consequences of someone failing a drug test. I believe it is important to strengthen search and security provisions to ensure that people who enter gaols—all gaols, not just the drug-free gaol—do not have drugs in their possession. The community expects no less. In spite of all the inadequacies of this legislation, I support it because it is better than nothing.

**Ms LEE RHIANNON** [8.56 p.m.]: The Greens will not oppose the bill but we do not offer our wholehearted support for it. The Greens have placed on the record many times their strong preference for rehabilitation over mindless punishment by incarceration. The basis of the justice system should be to prevent crime by offering support and rehabilitation for those facing prison or for those who are in prison. A justice system that is based on punishment and vengeance will produce only hardened, recidivistic criminals. It is not a deterrent and it is not a solution. It does not make our society safer. A more constructive and more preventive strategy would be to reduce drug addiction among the criminal population.

The Greens' preferred approach is for more money to be spent on drug treatment programs, detoxification, residential rehabilitation, outpatient counselling, methadone, free heroin trials and safe injecting rooms. Any health professional or drug expert will tell honourable members that that is the way to get results. People involved in politics who are not tied to the major parties' law and order agenda also agree with that approach. I congratulate Sydney's Lord Mayor, Clover Moore, on supporting the policy of introducing an increased number of safe injecting rooms—a Greens policy. Failing a health-based approach, the next best option is the Governor's experiment with rehabilitation programs that sit within the justice system. These include the Magistrates Early Release into Treatment [MERIT] Program and the Drug Court, which the Greens supported with reservations. The MERIT Program allows magistrates to refer drug-addicted people who are charged with property crimes to treatment and rehabilitation programs.

Minister Debus is quoted in an excellent new research paper from the New South Wales Parliamentary Library as saying that the MERIT Program is now available in 50 Local Courts. The program has assisted 2,735

defendants. Of those, 1,349 have successfully completed the program and another 368 are still undertaking it. The Drug Court began in February 1999 and takes referrals of drug and property offenders from local courts and district courts. An offender's sentence is suspended for up to 12 months while they take part in rehabilitation and treatment programs. While many of those who come to the Drug Court are unable to finish their program, it is a novel approach that has delivered some useful results. However, there are some problems: the Drug Court is more costly than health services and harm minimisation policies. The court has not consistently weaned participants off drugs. It also leaves those participants dangling on the brink of the criminal justice system and they are often required to spend periods in gaol. The Greens believe that the Drug Court could be improved by linking it more closely to the health system.

This brings me to the Greens concerns with the present bill, which does the opposite: it links the Drug Court initiative directly to the prison system, and that is the core of our concern. Parklea Prison's new drug wing is a strange hybrid of punishment and rehabilitation. It continues the Government's efforts to tackle drug addiction as a cause of crime, and is in some sense a rehabilitation project. But it is a heavy-handed approach; it is coercive and compulsory. The Greens acknowledge that many drug addicts present a major challenge to those who would help them, but that does not mean the system has to deal with them as severely as the Carr Government is proposing. Apparently inmates of the Parklea facility will spend their first six months without contact visits. I understand they can have what are called box visits, but this seems very harsh, particularly as people are sent to that facility against their will.

Everyone knows that extreme measures are often required when hardened addicts go cold turkey. However, again, such a course should be voluntary. The Greens support the views of Dr James Bell and I urge members to listen to these comments. Dr Bell is the medical director of the Langton Centre in Sydney. In an interview about the Parklea drug prison on the ABC's *PM* program on Thursday 26 February Dr Bell said:

By and large treatment is voluntary, it involves working with people.

Gaol is locking people up, containing them and trying to force them to change their ways.

The earliest treatment programs for opiate dependence were in prisons, in Fort Worth and Lexington, and they were really very unsuccessful in reducing recidivism and relapse.

The evidence is that treatment works best in a voluntary setting.

Prison has its own place and it's needed to contain people who are anti-social, but I don't see treatment within prison being a particularly successful option.

Some disagree with Dr Bell, claiming that coercive gaoling of addicts in drug prisons does work. The Greens' instinct is to support Dr Bell's analysis. The Greens would prefer to see more health and harm minimisation programs than an increase in gaol refurbishments and coercive programs. We argue also that it is most cost effective to handle drug addiction in that way. We would enthusiastically support a bill proposing those kinds of measures. Although we are not enthusiastic about this bill, we are prepared to allow it go forward. The Greens hope that the Government will undertake regular reviews of this facility, and we call on the Minister to give this undertaking in his reply to this debate.

**The Hon. PETER BREEN** [9.02 p.m.]: Unlike all other members of the House I am opposed to this bill. When I first heard about the Compulsory Drug Treatment Correctional Centre Bill I thought it was a joke. Anyone who knows drug addicts knows that they never respond to anything that is compulsory. It is as if the compulsion that drives them is the very thing that they most loathe and detest. My sister, who is a recovering heroin addict, tells me that serious drug addicts generally respond to treatment only when they have made the decision themselves to walk the road of recovery. Whether as legislators, corrections officers or health care workers, none of us is capable of forcing a serious drug addict to go down the recovery track.

That is the reason I am opposed to the bill. It is the element of compulsion in the bill that I am concerned about. It ought to be redrafted and renamed the "Voluntary Drug Treatment Correctional Centre Bill". I am sure that the Special Minister for State would support such a bill. In a recent discussion with him, he indicated that he expected that in practice the way the legislation will operate is that most people who go in for treatment will do so voluntarily. I add that the program simply will not work if it is compulsory, and if the compulsory element of the bill is enforced. The Minister's good work on the injecting room trial is well known and I hope he applies the same spirit to this bill. The drug injecting room trial recognises the need for harm minimisation and the fundamental principle that drug addiction is a medical and social problem. It is not a legal problem.

Needless to say, serious drug addiction becomes a problem for the criminal justice system when drug addicts commit crime to feed their habits. As Peter Fitzsimons wrote in the *Sun-Herald* last weekend in response to Clover Moore's good idea of a safe injecting room at Redfern, harm minimisation is the only sane approach to hard drugs. By way of contrast, the bill is not about harm minimisation, but about forced treatment, which is a contradiction in terms and something altogether different from harm minimisation. It would be a choice between compulsory cold turkey on the one hand and some kind of catharsis on the other. Earlier I spoke to the Minister very briefly about this and said that there is a serious problem when someone who is suffering from psychosis or mental illness is using hard drugs to mask that illness: if the drugs are taken away, the psychosis or the mental condition will need to be dealt with. Unless proper treatment is in place to deal with that, the bill is likely to create more problems than it solves.

Some of the State's worst drug addicts will be involved in this program and serious questions could well be raised about cruel and unusual punishment of prisoners. Perhaps other drugs exist for the treatment of serious drug addicts, but I am not aware of them. The latest buzz in the prison is to crush certain pharmaceutical drugs into powder form and smoke them with tobacco. Prisoners and drug addicts have endless resources when it comes to feeding their addictions. The bill reminds me of the Minister for Justice's original but ill-conceived plan to install electronic jamming devices in the State's prisons to prevent inmates using mobile phones. I understand he is hawking the plan around the countryside.

**The Hon. John Hatzistergos:** What is ill-conceived about it?

**The Hon. PETER BREEN:** The idea of a telephone jamming device in prisons is quite farcical, and the chances of the Federal communications Minister agreeing to such a proposal are Buckley's and none, in my opinion. When I was a member of the Parliament's law and justice committee I took part in a tour of Silverwater prison and I was told that a recent raid of the State's prisons netted more than 200 mobile phones. Admittedly, that was before the comprehensive ban that now exists on taking mobile phones into prisons. I assume that a large number of illegal mobile phones are still found in the State's prisons if the Minister for Justice still has plans to install electronic jamming devices. If the authorities cannot find mobile phones, they cannot find drugs, and that is the crux of the problem.

As with the problem of mobile phones, the symptoms of prisoner drug addiction cannot be addressed without addressing the causes of the problem. Just as a jamming device to deter the use of mobile phones is an acknowledgement by the Department of Corrective Services that it cannot stop mobile phones going into prisons, so too is the drugs-free prison an acknowledgement by the Government that it has lost the war on drugs so far as our prisons are concerned. I am not alone in that opinion, and I draw the attention of honourable members to the *Sydney Morning Herald* editorial of 31 October 2003, in which the idea of this bill was first mooted. The editorial stated:

Illicit drugs, of course, are as illegal inside jails as they are outside. Yet, despite the authoritarian structure of jails, these drugs are as next to freely available within as they are outside. Mr Carr thinks it appropriate to blame federal authorities for not halting the flow of illegal firearms into Australia while his Government tolerates scandalously porous jail security. Each day in NSW, prisoners produce about six positive drug tests. The real number of users is undoubtedly much higher than shown by the limited testing program. Drugs are smuggled into jails by willing participants, from visitors to corrupt guards.

The editorial questions whether drug corruption is so entrenched in gaols that the drugs-free prison will "fall at the first hurdle", to use the words of the editorial writer. If the drugs-free prison succeeds in keeping drugs from getting in, why not apply the principles involved to all the State's gaols? The editorial stated:

Mr Carr needs to invest more energy ensuring drug-free jails are the New South Wales norm, not limited to a shortlived alternative trial.

Honourable members may not be aware that that editorial provoked a very interesting response from Commissioner Rod Woodham. In a letter to the *Sydney Morning Herald* published on 3 November 2003 Commissioner Woodham said that New South Wales prisons system "has one of the most stringent drug detection practices in the world". The commissioner's letter then went on to quote some interesting statistics:

In the first six months this year there were 164,143 cell searches, 231 searches of the entire centre—

whatever that means—

19,000 visitor searches and 150 vehicles were searched. As a result 294 inmates were found with drugs and 149 visitors were found with drugs or contraband resulting in visit restrictions and police charges.

Those statistics raise more questions than they answer. So far as visitors are concerned, the 149 visitors found with drugs out of the total number of 19,000 searched represents a strike rate of 0.8 per cent. From my observation of prison visitors and drug searches, the figure should be much higher. Two weeks ago at Goulburn gaol, for example, a weekend search of prison visitors netted seven syringes, a quantity of methadone, 0.4 grams of crystal amphetamines, 1.4 grams of marijuana and a quantity of liquid heroin. This information is available because a representative of the Ombudsman's office happened to be present during the searches.

Extrapolating these results for one weekend at Goulburn across the State's 37 prisons, I believe it is simply inconceivable to suggest that 149 visitors were found with drugs in the first six months of 2003 out of the 19,000 visitors searched. The question that has to be asked is: How many of those 149 visitors had drugs for their own personal use and how many were trying to smuggle drugs into the prison? That is a relevant question on the occasion when drugs are located in a visitor's car, for example, or in prison lockers where visitors are required to leave their valuables.

**The Hon. John Hatzistergos:** What a load of rubbish! Isn't it illegal?

**The Hon. PETER BREEN:** Isn't what illegal?

**The Hon. John Hatzistergos:** Having drugs. Sorry, I might be a bit old-fashioned, but I thought it was illegal.

**The Hon. PETER BREEN:** I am not disputing the fact that it is illegal. I am questioning the drug search statistics at prisons and whether the statistics that Mr Woodham produced to the committee reflect the drug trafficking that is going on in the prison system. I suggest that it is not. If prison visitors place personal property in lockers and that personal property includes drugs, the point that I want to make is that it does not represent a legitimate figure of the drugs that people are attempting to smuggle into prisons. Those drugs are for visitors' personal use and it is not intended that they be taken into the gaol. Nevertheless, they are arrested on Corrective Services property and charged and that charge goes into the statistics as a drug find.

I happen to know something about that because one of those 149 visitors who were apprehended in the first half of 2003 was my sister who took \$20 worth of marijuana in a foil on a prison visit. She had it in her handbag, she put it in the locker and, as she went to visit a prisoner, she was searched and was required to retrieve her handbag from the locker. The search obviously revealed the marijuana foil and it went into the statistics. That is the point that I want to make. But it is not really a demonstration of the statistics that are relevant to the search of prisons.

The second statistic quoted by Commissioner Woodham raises even more concern than the strike rate for visitor searches. Locating 294 inmates with drugs out of 164,143 cell searches represents a strike rate of less than 0.2 per cent, assuming that there is one inmate in each cell. Of course most inmates are two out, which makes the figures even worse. So where are the drugs and why is it that Commissioner Woodham cannot find them? The latest figures on random drug testing in prisons indicate that 10.9 per cent of prisoners test positive for drugs. Given that 80 per cent of prisoners are intoxicated or drug-affected at the time of their arrest, and 70 per cent of prisoners will use illicit drugs at some time during their incarceration, the number of prisoners affected by illicit drugs at any one time is likely to be much higher than that figure of 10.9 per cent. I raised with Commissioner Woodham those statistics and my concern about the low strike rate for finding drugs in prison at the budget estimates hearing in December last year. The commissioner provided the committee with the following information:

We remain very proactive, say, with urinalysis results. Urinalysis results come from a section in our intelligence section that goes to the operational arm. I think we mentioned this the last time we were here, that the mix of inmates changes from time to time in correctional centres, and so does the type of drugs they try to smuggle in. So, at this stage we have 40 drug dogs and we have drug interdiction, and (I know that) at least five large correctional centres over the weekend we had major drug interdiction operations in an attempt to stop drugs coming into prison.

The statistics on the results of drug searches are completely out of whack with anecdotal evidence and the commissioner's own observations to the Parliament's budget estimates committee. In my opinion we are not being told the truth about drugs in prison, and that makes me very sceptical about this legislation and about the idea of a drugs-free prison.

On any visiting day at any of the State's 37 prisons if the dog squad is in attendance the number of prison visitors falls by about half. One can see visitors cruising around the block like pilots waiting to land their

aircraft during peak hour at Kingsford Smith airport. Once the drug dogs make a strike or go into passive alert mode, to use the correct terminology, visitors stream in because they know it takes about an hour of interrogation before the dog handler is free to begin searching again. For those visitors who do not have the patience to wait, or who do not have sufficient petrol in their cars to cruise around the block, it is simply a matter of sending in what is known in the business as a bunny visitor. If before visiting a prison someone puffs on a marijuana cigarette or rub drugs on his or her body or clothing, the drug dogs go into passive alert mode as soon as that person arrives for a visit. The dogs and their handler are put out of action for the next hour and, as a result, the gate is opened for the next wave of visitors and their drugs.

Commissioner Woodham advised the budget estimates committee that there are 40 drug dogs in New South Wales and, as we know, there are 37 prisons, so it is not difficult to work out why so many drugs get into prisons. What is not so easy to work out is why Commissioner Woodham has so much difficulty in finding the drugs once they are in the prisons. That is the point I wanted to make, and that is the question that neither Commissioner Woodham nor the Minister has never been able to answer. The Department of Corrective Services is supposed to have zero tolerance to illicit drugs, but I am inclined to the view that drugs are used as a management tool in the State's prisons in the same way that alcohol was once used to reward and punish prisoners.

These days one could not buy a drink in gaol, particularly when one remembers that the effects of alcohol are unpredictable, while drugs almost always have a calming effect. I would not want to rush to any conclusions, but perhaps the only way to manage rising prison populations and the increasingly difficult and cramped conditions in prisons is to allow prisoners a bit of slack so far as drugs are concerned. Given the track record of Corrective Services when it comes to finding drugs in prison, the only way to police the proposed drugs-free prison would be to conduct urinalysis tests on the 100 proposed inmates on a daily basis. I understand from the Minister that there will not be any contact visits for the first six months of incarceration in the drugs-free prison.

**The Hon. John Hatzistergos:** There is limited contact.

**The Hon. PETER BREEN:** Any contact visit will result, in my experience and in my opinion, in some kind of transfer of drugs between visitors and people in the so-called drugs-free prison.

**The Hon. John Hatzistergos:** Do you suggest we have no contact visits in the correctional system?

**The Hon. PETER BREEN:** I am suggesting to the Minister that he has to police the system much better than he polices the existing system, as the existing system does not work.

**The Hon. John Hatzistergos:** Would you do that by having no contact visits in the correctional system?

**The Hon. PETER BREEN:** I am suggesting to the Minister that he should control drugs in prison—

**The Hon. John Hatzistergos:** What is the answer to the question? Tell us what you want?

**The Hon. PETER BREEN:** The answer to the question is that the Minister has the problem of controlling drugs in the prison. He cannot control it in the existing system and he is trying to suggest to us with this legislation that he will be able to control it at Parklea.

**The Hon. John Hatzistergos:** Would you like to be strip-searched when you next go to prison? Just tell me. If you want to, we can organise it.

**The Hon. PETER BREEN:** What the Minister is saying is completely unreasonable.

**The Hon. John Hatzistergos:** Is that what you suggest? That everyone be strip-searched?

**The Hon. PETER BREEN:** That is what the Minister has to do to stop drugs getting into the prison. He agrees with that, yet he is having this so-called drug-free prison. It does not make sense.

**The Hon. John Hatzistergos:** Tell me what you want.

**The Hon. PETER BREEN:** It is not my problem. It is the Minister's problem. He is the Minister. He has to address this problem and he has to solve it. He has introduced legislation that will create a so-called drugs-free prison and he has no procedures in place to stop drugs getting in to prisons. I will be interested to see how it works. The only way that the Minister can check it is by conducting urinalysis tests every day, and that will cost \$7.3 million over 12 months, otherwise he will not even know whether it is working. This legislation is ludicrous.

**The Hon. John Hatzistergos:** You should actually read it before you talk about it.

**The Hon. PETER BREEN:** I have read it.

**The Hon. John Hatzistergos:** I do not think you have.

**The Hon. PETER BREEN:** You always say that when you cannot answer the questions. You always say, "You have not read the legislation." You designed the legislation. It is your Government's legislation and you have not told us how you will stop drugs getting in.

**The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe):** Order! The honourable member will address his comments through the Chair.

**The Hon. PETER BREEN:** It is all very well to say that we will have a drugs-free prison but how will the Minister stop drugs getting in? He has not told us that. In my opinion this bill offers no solutions to a medical and social problem, and is not a good use of the resources of the people of New South Wales. I seek the indulgence of the House to offer one possible explanation for the widespread use of drugs in New South Wales prisons and the reason I believe the idea of a drugs-free prison is fatally flawed. I refer to the complete breakdown in relations between the Department of Corrective Services and the Independent Commission Against Corruption [ICAC].

**The Hon. John Hatzistergos:** What a load of rubbish!

**The Hon. PETER BREEN:** The Minister would say that. On the one hand he is the former head of the Independent Commission Against Corruption oversight committee, and on the other hand he is now the Minister responsible for Corrective Services. They are two completely different roles. The Minister is now trying, in his new role, to rationalise the actions taken by him in his old role, and it is not working. Honourable members will be aware that Corrective Services Commissioner Ron Woodham is no fan of the ICAC. He was once the subject of an adverse finding of corruption by the ICAC over his handling of prison informers. This finding was subsequently overturned by the Supreme Court. The ICAC was then asked to consider a recommendation of a committee of this Parliament that it investigate allegations of cronyism within the department relating to Mr Woodham. In the past year I have been the subject of an ICAC investigation, which incidentally will come to a head at a public hearing in the first week of July.

**The Hon. John Della Bosca:** We're on your side.

**The Hon. PETER BREEN:** Thank you very much. Will you represent me?

**The Hon. John Della Bosca:** That's taking it a bit far.

**Reverend the Hon. Fred Nile:** Are you selling tickets?

**The Hon. PETER BREEN:** It will be standing room only. One outcome of this investigation is that I sympathise with Mr Woodham in his feelings about the ICAC. I am not surprised that he feels some animosity towards that organisation. In my 30 years as a practising solicitor and barrister in New South Wales I have never dealt with such an incompetent and unprincipled organisation.

**The Hon. John Della Bosca:** What do you really think?

**The Hon. PETER BREEN:** You will hear more about that after the public hearing. I cannot tell honourable members about it today. It comes as no surprise to learn that the Premier has ordered a judicial inquiry into the ICAC and that three of its top executives have left in the past six weeks. Another outcome of the ICAC investigation into my affairs is that I have become a lightning rod for people with complaints about the

way in which the ICAC operates, and I would like to mention two of those complaints in the context of the Compulsory Drug Treatment Correctional Centre Bill. The first complaint is from a corrections officer who is unhappy about the way the ICAC dealt with his complaint concerning drugs in prison, and the other complaint is from a prisoner who was given certain promises by the ICAC in return for information and for whom arrangements were made to become an informant. Needless to say these are extremely sensitive matters involving the security of both the prison officer and the prisoner. I regret that Parliament is the only forum in which the information can be made public. I note in passing the observation of the Ombudsman in an issues paper published in July this year, in which he says:

The Protected Disclosures Act 1994, as it is currently drafted, is inadequate to achieve two of its three core objectives.

It is most disappointing that the Ombudsman has found that the legislation designed to protect whistleblowers does not achieve that purpose. As I have discovered from the prison officer and the prisoner, people providing information to the ICAC about drugs corruption in Corrective Services do so at their peril and without the benefit of effective protected disclosures legislation. I also add that any reservations I might have had about raising these matters in Parliament were put to one side when the ICAC Commissioner, Irene Moss, wrote to the *Sydney Morning Herald* on 25 May 2004 and said that recent investigations into prisons "prove our success in exposing corruption in New South Wales". The truth is that the ICAC is completely ineffective so far as addressing drugs corruption in prisons is concerned because it gets to investigate only those prison officers and prisoners that the department decides to give up. The recent ICAC operation in the high-risk management unit at Goulburn, for example, was referred to the ICAC by Commissioner Woodham.

Let me explain further using the cases of the two whistleblowers I have mentioned. The Corrective Services officer complained to me that he had found a significant quantity of drugs in another officer's locker. He also reported the theft of property belonging to Corrective Services. The officer reported these matters to his immediate superior. When nothing was done he went to the ICAC, which gave him the name of its liaison officer within Corrective Services. Concerned about the proximity of the liaison officer to Mr Woodham, the officer instructed his solicitors, who made a formal written complaint to the ICAC.

**The Hon. John Hatzistergos:** Point of order: This has nothing to do with the bill before the House. I understand that the Hon. Peter Breen has an obsession with the ICAC that probably transcends the issues that are germane to this debate, and latitude has been extended to him. However, he is now proceeding to discuss personal agenda items relating to the ICAC that frankly have nothing to do with the establishment of a compulsory drug treatment centre. Madam Acting-President, I ask you to direct him to draw his remarks back to the bill.

**The Hon. PETER BREEN:** To the point of order: May I say most emphatically that I do not have a personal obsession with the ICAC. I think the ICAC normally does a very good job but it has somehow gone off the rails. It certainly is not doing a good job so far as protecting New South Wales citizens from drugs being smuggled into our prisons. The whole purpose of mentioning the ICAC in the context of this debate is to explain how the ICAC is not doing its job in protecting prisons from the constant flow of drugs.

**The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe):** Order! As I understand it, the objectives of the bill relate to the introduction of legislation to deal with compulsory drug treatment within Corrective Services. To the extent to which the Independent Commission Against Corruption is relevant, I would have thought that it was only in passing. Provided the Hon. Peter Breen mentions the Independent Commission Against Corruption only in passing and relates those comments to the objectives of the legislation, he may continue. However, the purpose of the bill is not to discuss the Independent Commission Against Corruption.

**The Hon. PETER BREEN:** I acknowledge that the purpose of the bill is not to discuss the ICAC; but neither is it the purpose of my contribution to canvass in any way the workings of the ICAC except to the extent that it has a responsibility under the ICAC legislation to deal with complaints about alleged corruption. The issues before the House in the context of this bill relate to the problem of drugs being smuggled into prisons. That matter directly affects the ICAC, which often receives complaints about prisons. In that context I refer to whistleblowers who have come to me with complaints about their treatment by the ICAC.

In the first case I mentioned, the ICAC offered to send a "please explain" letter to the department on behalf of the whistleblower but could not do so without disclosing his identity. So the whistleblower simply had to say, "Well, I can't pursue the complaint any further." There is no security under the whistleblower legislation for people who make complaints to the ICAC, or to any other organisation for that matter. It is important to recognise that in policing drugs within the prison system whistleblowers—both prisoners and warders—will



inevitably come forward. Unless a system is established to protect those people and to offer them support throughout the complaints process, the illegal activity and corruption in our prisons will continue. In these circumstances it is hardly surprising that the Ombudsman is concerned about the adequacy of the protected disclosures legislation in achieving its objectives.

The second complaint that I received about drugs in prisons came from a prisoner who had made certain information available to the ICAC and agreed to become an ICAC informant. He faced the same problem as the first complainant: the department compromised him. The informant received no support from the department, the ICAC or from any other State body. So he had to abandon his complaint. Unless there is recognition of those situations in the legislation—which there is not—or in other legislation, particularly the Protected Disclosures Act, then these kinds of activities will continue because of the problems around drug addiction.

I am opposed to the bill and the principles that underlie it. While the Government points to overseas jurisdictions such as the United States of America and the Netherlands as examples of successful compulsory treatment programs, a significant body of evidence exists that compulsory drug treatment has been a failure elsewhere. In the late 1970s British Columbia enacted legislation to force heroin addicts into compulsory treatment and it was an abysmal failure. Within 12 months the legislation and the treatment centre it spawned were gone. A group of addicts who had been incarcerated at the centre were interviewed, and out of that group all were still using heroin, and three who had not been drinkers before became alcoholics as well as drug addicts.

Lobby groups in Canada are particularly vocal about the failure of mandatory treatment programs because experience has shown that such programs are less successful than voluntary treatment and result in a waste of health care dollars. Similar observations have been made in Sweden. Progressively stricter legislation means Sweden currently has one of the toughest drug law regimes in Europe, and has long had a policy of forcing drug addicts into compulsory treatment centres. A Swedish social physician who has researched these programs since 1987 concluded that, of those forced into compulsory treatment, up to 10 per cent die of drug abuse after they have been released, compared to a death rate of 3 per cent in non-treated street users. That 10 per cent die after coming out of the program, compared to only 3 per cent who are non-treated street users, is a significant and extraordinary statistic.

A 1992 Swedish study concluded that of those people who underwent compulsory treatment after six months only 9 per cent were abstinent and 7 per cent had died. The most significant lesson we can learn from Sweden is that the mortality rate among the compulsory drug treatment group is higher than those who undergo voluntary treatment. I know that Reverend the Hon. Fred Nile had the benefit of seeing the compulsory drug treatment program in Sweden firsthand, and when he came back from his inspection he published a very good report about it. But the situation in Sweden has changed since the visit of Reverend the Hon. Fred Nile in about 1998.

**Reverend the Hon. Fred Nile:** In 2000.

**The Hon. PETER BREEN:** I apologise. In April 2002 a report prepared by the Swedish Parliamentary Research Branch concluded that the Swedish drug policy is restrictive in relation to other Western European countries, and that the use of compulsory treatment now appears to be uncommon. Its effectiveness has been questioned and in the past several years there has been a shift away from compulsory and institutional treatment and towards outpatient treatment. I downloaded that report from the Internet today and it surprised me that the situation in Sweden has changed. In New South Wales, Dr James Bell, Medical Director, Langton Centre, Sydney, who specialises in drug treatment, says that compulsory drug treatment trials have been unsuccessful. In an ABC interview on 26 February Dr Bell said:

The evidence is that treatment works best in a voluntary setting. Prison has its own place and it's needed to contain people who are anti-social, but I don't see treatment within prison being a particularly successful option. The earliest treatment programs for opiate dependence were in prisons, in Fort Worth and Lesington, and they were really very unsuccessful in reducing recidivism and relapse.

In conclusion, I do not support the legislation and I am sorry to be the only member of the House not to do so. I recall the comments of Commissioner Woodham before a parliamentary committee last year that we already have voluntary drug treatment programs in prisons. In effect, we have voluntary drug-free prisons. It seems to me that that is a very important basis on which we should be building this program, that is, the voluntary aspects of it and the programs that are already in place, particularly those that are run by organisations with a lot of

experience in this area, such as Narcotics Anonymous. To be going down the track of being the first jurisdiction in Australia to be introducing this Compulsory Drug Treatment Correctional Centre Bill seems to be a frolic of some kind that the Minister is on. For the life of me, I cannot work out what the Minister hopes to achieve by it other than to demonstrate that compulsory drug treatment does not work. It has been demonstrated that it does not work in other countries. He should change it to the Voluntary Drug Treatment Correctional Centre Bill.

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [9.35 p.m.]: My colleague the Special Minister of State has carriage of this legislation and will reply in more detail to various issues that have been ventilated, and no doubt the House will have other opportunities to debate the issue of drugs in prisons. I intervene somewhat reluctantly to refute what I consider an unfortunate comment made by the Hon. Peter Breen that somehow there is a breakdown in the relationship between the Department of Corrective Services and the Independent Commission Against Corruption [ICAC], and, moreover, that because of previous events concerning the commissioner and complaints made about him which were investigated by the ICAC that somehow affects the professional relationship which ought to exist between the watchdog agency and the department.

I make it perfectly clear that the department is extremely well oversighted by some 13 different oversight agencies. The professional conduct division of the department investigates all allegations that are brought to its attention. The ICAC, along with other watchdog agencies, including the New South Wales Police Corrective Services Investigation Unit, has access to all of those records. In other words, if an allegation is made and received by the department, NSW Police or the ICAC has the option to take over that investigation or allow investigations to be oversighted by the department and to intervene as appropriate. To suggest that there is some selectivity in what the department would refer to the ICAC is an unfortunate reflection upon the very fine work done by officers in that unit. There is no selectivity.

The matters that went to the ICAC concerning officers, one of which has not been the subject of a report, were as a consequence of reports that came to that division of the department, were immediately referred to the ICAC, and resulted in controlled operations being placed by the ICAC which resulted in those revelations. I completely refute the suggestion of a breakdown in the relationship between the department and the ICAC or any other agencies. I would be very concerned if there were any substance to those suggestions. The aim of the Department of Corrective Services is to ensure that any person who is involved in wrongdoing or misconduct is brought appropriately to account.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [9.38 p.m.]: The Compulsory Drug Treatment Correctional Centre Bill establishes a regime of compulsory treatment and rehabilitation of drug-dependent recidivist criminals. Under schedule 1 [5], offenders who are convicted and sentenced for "offences against the person", as outlined in part 3 of the Crimes Act, in trafficking commercial quantities of prohibited substance will be exempt from the scheme. It is intended to rehabilitate long-term drug addicted people with a history of criminal activity related to the feeding of that habit. The Minister said that it is an initiative of the Cabinet Office, Health and Corrective Services combined. This is an experimental bill that I hope will be honestly assessed on its merit. And if it fails I hope it will die as a failed experiment and not be prolonged as an unsuccessful initiative for political reasons. It is clearly better if the experiment succeeds.

It is very encouraging to look at and try the best innovations in the world. One has to acknowledge a trial, and if it fails one should not put more resources into it. On the other hand, should it succeed, it is good that the Government is taking evidence-based initiatives and comparing those with the alternatives. The Hon. Peter Breen demonstrated that someone who participates in a program in gaol should be compared to someone in gaol on no program. If they simply go to gaol at a cost to the State of \$65,000 a year, or whatever, there will be more costs under a program.

Under this bill the Drug Court of New South Wales will be empowered to order an offender to serve a sentence in compulsory drug treatment detention in the proposed Compulsory Drug Treatment Correction Centre at Parklea. It might be said that the Drug Court has a credible and creditable record. In that regard, I mention the competence of Neil Milson. All institutions, particularly those that are new, are very much creatures of the people who staff them and whose vision and energy carry them through. When I went to the Drug Court I was disappointed to learn that Neil Milson is not well. However, the fact that the court has a credible record and is functioning very well is attributable to his efforts as the inaugural judge of that court. It is important that the Drug Court will assess who will be detained in the Compulsory Drug Treatment Correction Centre, because the Drug Court has expertise and experience in that area.

Convicted offenders who appear to have a long-term drug dependency, have been convicted of an offence related to drug dependency and lifestyle, have been sentenced to imprisonment with an unexpired non-parole period of at least 18 months but not more than 3 years, and have been convicted of other offences at least three times in the previous 5 years will be subject to compulsory drug treatment. So this select population has been identified as a target for this experimental program. That is a way in which alternatives to simply locking people up should work. A target group should be selected which, on available evidence, has a reasonable prospect of success under the protocol that has been determined. Subsequently, the statistics have to be reviewed by an independent body that has statistical and experimental expertise. It is heartening that the Bureau of Crime Statistics and Research is involved in this respect.

While serving a sentence by way of compulsory drug treatment detention, the offender will be required to comply with a very stringent compulsory drug treatment personal plan, attend for counselling, be subject to periodic drug testing, and receive training that will prepare him or her for re-integration into the community and finding skilled employment. The Drug Court will supervise an offender serving a sentence in compulsory drug treatment detention, will be empowered to impose sanctions or grant rewards in response to the offender's level of compliance with the program, and can terminate an offender's participation in the scheme and return the offender to regular correction detention. The Drug Court will also be empowered to determine conditions for parole for participants who have successfully completed the scheme.

As a general practitioner who at times has attempted to do testing to determine whether someone is clean or not clean—meaning that their urine does not or does contain degradation products of drug use—I know that the practicalities of supervising this scheme are somewhat invasive of people's privacy, or even their civil rights. I can vouch for the fact that it is certainly an unpleasant task for a general practitioner to perform in a normal setting. But the Drug Court does have expertise in this area and is supervising the scheme. So, in the absence of detail about searches of cells and so on, if one is simply looking at the outcomes from checking the urine of inmates, clearly one knows that drugs are being used. The key question then becomes whether the person who is in the program is actually complying with it as required.

There are three stages of compulsory drug treatment proposed under the bill. Stage 1, closed detention, is where the offender will be kept in full-time custody at the Drug Treatment Correctional Centre at Parklea. Stage 2, which is semi-open detention, is where the offender is to be kept in detention at the centre. However, the Drug Court has allowed an offender to attend employment, training or social programs. Stage 3 is where an offender may reside in accommodation approved by the Drug Court, but under intensive supervision. I understand that that is the equivalent of the current Drug Court outpatient program.

In an article in the *Australian* of 20 October 2003 the Premier is quoted as having said that a panel to scientifically evaluate the treatment centre will be established and chaired by the Director of the Bureau of Crime Statistics and Research [BOCSAR], Dr Don Weatherburn. The Australian Institute of Criminology looked at the link between lifetime offending and drug use of adult male inmates in four Australian jurisdictions between December 2000 and June 2001. The results of this survey demonstrated that the relationship between drug use and crime is far from simple. Of offenders who admitted illegal drug use, 54 per cent reported offending prior to any use of illegal drugs, 17 per cent reported using drugs prior to committing any offence, and 29 per cent reported offending and drug use occurred concurrently in the same year.

The Select Committee on the Increase in Prisoner Population, of which I was a member, found that 12 per cent were serving sentences for drug-related offences and 60 per cent of male offenders and 70 per cent of female offenders had a history of illicit drug use. So it is clear that drug use is an extremely important aspect of crime in our society today. In the light of allegations in the submission made by Sergeant Huxtable to the inquiry that drugs were a major part of the social problems in that area, I asked witnesses who appeared before the committee whether they felt that decriminalisation of hard drugs was a good idea. Of course, what was called the Noble experiment—the banning of alcohol in the United States of America, with the loftiest of motives of reducing the harm that alcohol was causing to society as a whole—ended in still considerable alcohol use, though perhaps less use than there would have been had alcohol not been illegal, along with a legacy of crime and gangster activity that was considered to be far worse than any benefit that might have been gained from the prohibition on alcohol.

If one looks at the figures given to the Select Committee on the Increase in the Prisoner Population, we know we must look hard at whether the current prohibition policies for hard drugs are working. Clover Moore was courageous enough to say that she was of the opinion that those policies should be looked at. That does not mean that drugs should be given out free of charge, as was suggested earlier today by Reverend the Hon. Fred

Nile. It merely means using a more intelligent spectrum of penalties and sanctions to discourage a whole range of societal behaviours, and not simply increasing incarceration periods and other such means. It is clear that to reduce recidivism we need to develop multifaceted approaches to reducing crime, and this bill should be seen as part of developing long-term solutions.

From my point of view, this scheme is fairly limited in its scope. It is in a highly supervised environment and affects a very small percentage of the population. But we have to encourage the Government when it is moving in the right direction. Compulsory drug treatment in other institutions has had mixed success. A recently released library briefing paper by Rowena Johns entitled "Drug Offences: An Update on Crime Trends, Diversionary Programs and Drug Poisons—Briefing Paper No 7/04" states, on page 66:

#### **Compulsory drug treatment detention in the Netherlands**

Criminal courts in the Netherlands have the power to place recidivist drug addicted criminals into drug treatment in special prison units in major cities such as Rotterdam, Amsterdam and Utrecht. These compulsory placement orders are called ... translating into English as "Order under the criminal law for the care of addicts".

The aim is to combat the problems caused by recidivist drug addicts who commit property offences to fund their habits and negatively impact upon the public amenity by injecting and discarding needles. The short sentences of imprisonment usually received by this group of offenders previously meant there was insufficient time to make progress in treatment. Therefore, placing these addicts into a facility by means of compulsion represented an opportunity to change their behaviour.

Drug users are eligible for the program if they have been convicted regularly but treatment interventions have failed to be effective. The maximum placement is two years. There are 3 stages of treatment, during which the offender is given increasingly more freedom yet also more responsibility.

The phases are similar to those in the bill. The paper continues:

Besides intensive drug treatment, assistance is provided with work training, housing, managing money, and other life skills. There is a strong local connection with the municipal council of the city where each program is located because drug addicts will hopefully be reintegrated into that community.

#### **Prison drug treatment programs in the USA**

Substance abuse treatment is available in the Federal prison system and various State prisons in the United States of America ...

In 2002, about 50 of the Federal prisons had a residential drug abuse treatment program and 16,243 inmates participated in the program. This compares to 12,541 participants in 2000 and 15,441 in 2001. Inmates are housed in a separate unit of the prison reserved for drug treatment. Admission criteria include: the Bureau of Prisons determining that the inmate has a substance use disorder; the sentence is of sufficient length; and the inmates must be willing to sign the agreement to participate in a residential drug abuse treatment program. The program is typically 9 months in length, with a minimum of 500 hours of drug treatment. Apart from drug treatment, the inmates spend time in education, work skills training and recreation. Evaluations have found that inmates who complete the program are less likely to be re-arrested and less likely to use drugs when compared to similar offenders who did not participate.

These overseas programs are working sufficiently successfully to be trialled here. It is important that we give them a go. Obviously, there are problems: compulsion, the taking of resources from other areas, putting people in gaol for longer terms, and the failure of programs in British Columbia referred to by the Hon. Peter Breen, on which I am not able to comment. There is some scepticism from Dr James Bell of the Langton Clinic, who runs voluntary programs and who has a vested interest because he does not want to lose resources to compulsory programs, which is fair enough. On the other hand, the advantages are that it is new; it is innovative; it is evidence based; it extends beyond the walls of the prisons; it is supervised by the Drug Court, which has expertise in such supervision; and the results are overseen by BOCSAR, which has excellent credibility. It is worth a try, and I support the bill.

**The Hon. Dr PETER WONG** [9.53 p.m.]: I reluctantly support the legislation, which smacks of a lame attempt to placate the populist law and order junkies and keep up their steady fix of nonsense law and order legislation at the behest of the talkback pushers. Although we accept that the Government is genuine in attempting to end the revolving-door syndrome, sending people with addictions into compulsory treatment may not help them. It may be the wrong way to go and it may increase the death rate. As the Hon. Peter Breen stated, a voluntary scheme would be a much better alternative. The Swedish study, which he showed me, indicated that the mortality rate among the compulsory group is higher than among the voluntary group. Even though it is only one study, it tells us that the proposed compulsory drug treatment correctional centre may blur the picture of drug rehabilitation and the end result will not be as effective as the Government would like.

Often, people who are addicted to mood-altering substances suffer from dual disorders. A study chaired by a former member of this place, Dr Brian Pezzuti, indicated that about one-third of prison inmates suffer from

mental illness. The Government has recognised this, but the current plan allows for many such individuals to slip through the cracks. In some cases there is an aggressive cycle of an addiction feeding mental illness and vice versa. Treating the chemical addiction does not treat the cause of self-medication, trauma, depression, psychological factors or any manner of mental illness. Subsection (3) of new section 5A of the Drug Court Act states:

A person is not an eligible convicted offender if, in the opinion of the Drug Court:

- (a) the person suffers from a mental condition, illness or disorder that:
  - (i) is serious, or
  - (ii) leads to the person being violent, and
- (b) the mental condition, illness or disorder could prevent or restrict the person's active participation in a drug treatment program.

This is an acknowledgement by the Government that at least a proportion of prisoners are in gaol because of mental illness. So far the Government has done nothing for them. The Government recognises that these individuals are ineligible and is attempting to separate them from the rest. But what happens to them? They are sent into the prison system. People with mental illness should be in a hospital for the mentally ill. I cannot see that this compulsory treatment option will deal with the revolving-door syndrome in most cases. This is where the Government should spend its money and focus its attention. The Government has sidestepped the issue. What it is suggesting is against the principles of good medicine. What we require is a good facility for the dually addicted and mentally ill who find themselves on the wrong side of the law.

People who have a dual disorder should be catered for, just as are those deemed eligible under this bill. Any participation in that sort of program must be accompanied by follow-up and monitoring of the addiction. Addicts whose drug of choice is heroin are especially vulnerable. Because they are not in a voluntary program, their compulsion to use heroin is not removed. When they emerge from compulsory treatment their tolerance of opiates is well down. If they use, the probability of them overdosing is extremely high. Many who use after release have died from an overdose. That highlights the danger of the compulsory element of this program.

The role of psychiatrists and psychologists in this program has so far not been addressed. If patients are being detained, they ought to be treated by qualified psychiatrists so that their progress can be monitored and the outcomes tabled. As many honourable members have mentioned, this legislation has been drafted in haste. No-one has seen the guidelines for the treatment program and no strategy has been provided. The Government does not have a clear vision of what it intends to do. I sense that the Minister's approach is to just try it and see what happens; it may work.

In the context of compulsory drug treatment, I refer to the recent Redfern inquiry, in which some advocates mentioned the decriminalisation of heroin. As a doctor, I do not believe that is the answer. To illustrate my opposition to that suggestion, I provide the House with the hypothetical example of making cigarettes available to smokers. Would we expect there to be fewer smokers in our community as a result? The answer indubitably is no. I am amazed that doctors and many good-hearted people believe that by providing more drugs, society will have fewer problems. Such a suggestion is completely contradictory to the tenets of good medicine. I am also amazed that anyone would advocate an injecting room for Redfern on the basis of support for Aboriginal people and respect for their rights and opinions. It has been clearly shown that the community does not want injecting rooms. I think the proposal reflects an arrogant and ignorant attitude.

**The Hon. John Della Bosca:** Point of order: A number of members have made quite broad-ranging contributions to this debate, which is appropriate in the interests of a robust debate on a fairly important bill. However, I ask you to point out to the member that he is now straying well outside the leave of the bill.

**The Hon. Dr PETER WONG:** I beg to differ. The legislation clearly mentions compulsory drug treatment in correctional centres. It deals specifically with people who are in prison as a result of drug addiction. The injecting room and decriminalisation of heroin are totally related to this bill.

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! The member should not stray from the scope of the bill.

**The Hon. Dr PETER WONG:** In deference to your ruling, I will summarise. In Cabramatta there are fewer drug addicts because there are no injecting rooms and it is therefore less likely for people to find themselves in prison for drug offences. Many in the Cabramatta community do not want injecting rooms, and I am sure that a similar attitude adopted by the people of Redfern will assure a good outcome.

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

### ADJOURNMENT

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.04 p.m.]: I move:

That this House do now adjourn.

### ARMIDALE TO GRAFTON ROAD UPGRADE

**The Hon. CHRISTINE ROBERTSON** [10.04 p.m.]: Recently it was my privilege to represent the Minister for Roads at the opening of the rebuilt Armidale to Grafton road. The final section of gravel road had been reconstructed and sealed after its \$6 million cost was fully funded by the State Government. The Armidale to Grafton road consists of two sections, the Waterfall Way between Armidale and Ebor, which is 92.4 kilometres long, a State road managed by the Roads and Traffic Authority [RTA], and the regional road between Ebor and Grafton, which is 107.4 kilometres long and managed by the newly created Clarence Valley Council.

**The Hon. Melinda Pavey:** And not before time!

**The Hon. CHRISTINE ROBERTSON:** I acknowledge the interjection by the Hon. Melinda Pavey. It is incredibly important to note that this road and the Walcha to Gloucester road were among the first initiatives adopted by Country Labor—even before it was officially known as Country Labor—as soon as the Carr Labor Government was re-elected.

**The Hon. Melinda Pavey:** After Stuart Sinclair raised it.

**The Hon. CHRISTINE ROBERTSON:** A good while before Stuart Sinclair came onto the scene. The Waterfall Way stretch of road is fully funded by the State Government and has been significantly upgraded in recent years by the replacement of bridges at Wollomombi and Chandler rivers, Burying Ground Creek, Ponds Creek, Cooney Creek and Majors Creek and Jocks Water, as well as several kilometres of new approach roads, the addition of six new overtaking lanes and reconstruction, widening and realignment of pavements.

The other regional road is managed by local government. The councils have received financial assistance grants from the State Government to improve the condition of the road. In July 2002, the former Pristine Waters Council completed the sealing of a five-kilometre section of gravel road at a cost of \$3 million. The remaining eight-kilometre section of gravel road in the Clouds Creek area was completed in May 2003 after the provision of additional direct State Government funding. I personally congratulate the employees and the council members on a superb job. I must add that I take a special interest in this road because it is the road I use when travelling to the Clarence Valley. The road has made a phenomenal difference, if only to facilitate my taking a break.

The route was identified as a high-priority route in the Action for Transport 2010 report. In 1999 the Government announced assistance totalling \$3 million over three years to complete the sealing of what was then 13 kilometres of unsealed roadway between Ebor and Grafton. This work was tirelessly championed by the former member for Clarence, the Hon. Harry Woods. Its completion is a testament to his efforts. The Armidale to Grafton road is both a scenic route used by tourists and an incredibly important part of the regional road network. The logging industry uses the road, and it has made an incredible difference to the way farms in the area operate. Apart from reducing wear and tear on vehicles, it provides a very efficient way to transport goods from one side of the Great Dividing Range to the other. Despite being a local road by definition, the Carr Labor Government recognised its regional significance and fully funded the roadworks, which has led to positive effects for both sides of the Great Dividing Range.

The Armidale to Grafton road is also an excellent example of what can happen when the different tiers of government, in this case State and local, work together for the benefit of local regional communities. A few

weeks ago this House agreed on the need for such co-operation from the Federal Government to join the State Government in funding the Pacific Highway upgrade. I was pleased to read the comments of the Federal member for Page, Mr Ian Causley, in the *Daily Examiner* on Monday 10 May. The article stated:

Federal Nationals Member for Page Ian Causley says he will continue to fight for funds to upgrade the Pacific Highway as a joint effort with the Carr Government in New South Wales.

Works on sub-standard sections of the highway are supported by both the Federal and State governments.

Mr Causley said although the NSW Government was responsible for planning and constructing the roadworks under the Pacific Highway Upgrade Program he recognised the communities along the route wanted to see more action and an end to buck-passing.

### **PROGRAM OF APPLIANCES FOR DISABLED PEOPLE**

**The Hon. JOHN RYAN** [10.09 p.m.]: I draw attention to the combined concerns of 33 non-government agencies that recently made vigorous representations to the Government for additional funding for a very important program, the Program of Appliances for Disabled People [PADP]. The program provides funds to financially disadvantaged people who require aids and appliances for daily living, such as wheelchairs, special seating, hoists, prostheses and other items. Some of the agencies involved in this campaign include the Australian Council for Rehabilitation of the Disabled, Arthritis New South Wales, the Combined Pensioners and Superannuants Association, the Council for Intellectual Disability, Family Advocacy, the MS Society, Northcott, Paraquad, People with Disability Australia, the Physical Disability Council of New South Wales, the Spastic Centre, and the Wesley Mission Disability Support Services, to name a few.

The Government has been responsible for the PADP since 1987. It was initially designed to provide aids and appliances to people with disabilities, but it is administered by the Department of Health. The Department of Ageing, Disability and Home Care also makes a contribution to the scheme. Eligibility for the scheme is extremely tight. Applicants have to be in receipt of a government subsidy such as a disability pension or an equivalent income. That condition virtually eliminates children whose parents work full time and adults with partners who work full time irrespective of other major disability-related expenses or the number of children in the family. Another factor that has squeezed precious funds from the scheme is a decision by the Department of Health to add recurrent oxygen requirements to the PADP without a parallel increase in funding. Now 30 per cent of the funding for the PADP is taken up by the essential supply of oxygen and equipment to people with respiratory health problems.

Over the past two weeks those groups have been making their point by daily sending a fax to the Premier, the Minister for Health and the Minister for Community Services outlining the details of distressing cases that are missing out because of inadequate funding to the PADP scheme. Those cases include a school-age boy with a severe neuromuscular condition who has been waiting nine months for a new power-drive wheelchair to replace the one he has been using for six years. After a recent stay in hospital, he can no longer sit in his wheelchair for longer than a few hours without a lot of pain. The seating is totally inadequate and causing pressure sores. This means that his school day is severely interrupted while he has to lie down during class time. He has been told that he still has several months to wait before he gets funding.

A 10-year-old boy with muscular dystrophy has lost the ability to walk and has been waiting 12 months for a power-drive wheelchair to move around at home, school and in the community. He needs customised seating to cater for his physical needs. He has scoliosis and weakening muscular control, which means that he requires a chair that can tilt back in order for him to stay upright. The chair he needs costs \$15,000. However, he has been granted only \$10,000 through the PADP. His family is expected to find the other \$5,000, and if they cannot do so he will not get the chair, and they will lose the funding.

A six-year-old boy with muscular dystrophy had to make two separate applications and waited two years to be granted a mere \$400 to fund some thoracic supports for his shower-commode chair. During the two years wait for funding he was unable to use the shower-commode chair because it did not have the appropriate thoracic support. Now that his family finally has the funding they are unsure if their son will be able to use the chair because he has grown so much in the last two years. That case illustrates one of the ludicrous aspects of the PADP; there is little co-ordination between the various grants for different aids and appliances. My office has received many applications which have indicated that children have finally received a wheelchair, only to discover that it no longer suits their size because they have grown.

It is my pleasure this evening to join with the 33 organisations in appealing to the Government to make an increased commitment to the PADP in the forthcoming State budget. Funding for that scheme is extremely important and I am sure all members of the House would care to join those very respected organisations in appealing to the Government for increased funding for a very important scheme.

### TAFE FUNDING

**Ms LEE RHIANNON** [10.14 p.m.]: In the past four years, the Government has spent \$450 million on new gaols. In the same period it has cut \$400 million from TAFE. This gives one a sense of the Government's warped vision, and the disastrous budget decisions that result from that vision. The massive cuts to TAFE are resulting in damage to individuals and our social fabric. Every time I meet with TAFE teachers or students, I hear yet more horror stories about what those cuts have meant to them. For example, during a recent visit to Lismore I met staff from various campuses of the North Coast Institute of TAFE. Their message was simple: fewer people are enrolling at TAFE, and they are spending less time there. People who were paying \$260 for a one-year course are now paying \$300 per module—that is, between \$3,000 and \$4,500 for a full course. What an incredible disincentive for people from disadvantaged backgrounds, who hope to better themselves through a TAFE education.

The decisions of the Labor Government are hurting the very people Labor is supposed to represent. One has to ask: where is Mark Latham's ladder of opportunity now? The figures provided to me by the North Coast TAFE teachers tell the story: there has been a 30 per cent drop in student contact hours; teachers are being allocated seven hours to deliver a 40-hour module; and \$3 million worth of teaching hours have been cut, which has slashed the number of part-time teachers. In the horticulture section, all part-time staff have gone. There are still six full-timers, but no full program—because there is no money to buy plants and raw materials; and all this for a course that has a waiting list of 130 students! This push towards the commercialisation of TAFE is happening at the expense of students, particularly students from poorer backgrounds, who need TAFE most of all. Earlier this year I met staff and students from Miller and Hornsby TAFE colleges.

Their stories underline why the Government's policy on TAFE is so wrong. The enrolment for the course at Miller on community services dropped from 15 to 6 when fees were introduced. One of the students, a mother of six, told me how much she enjoyed the course she was able to undertake now that all her children were at school. She said she hoped that it would assist her to find employment. The Miller TAFE students expressed strong concerns about the unfairness of the fixed-rate fee, which can result in a student studying full time for three semesters paying the same as a part-time student over two semesters. The imposition of fees is causing much hardship for apprentices, who are on low wages. One young man told me how he started on \$130 a week as an apprentice electrician, and that he did not know if he could continue now that he had to pay fees. The Miller students have lost the tutorial support that provided invaluable assistance for students with literacy problems and learning difficulties.

Hornsby TAFE has experienced a big drop in numbers. One of the teachers described how many of his students had dropped out and found labouring jobs. Young people who have left school have often turned to TAFE to pick up on their education. This option is being lost. The TAFE teachers described how the new TAFE fee structure was expanding the number of working poor—workers whose meagre wage pushes them into the category of having to pay for the TAFE courses. Some do it hard, forking out the money for fees; others give up on expanding their education. A number of young women students with young children described how the fees will probably push them out of TAFE, as they cannot afford fees on top of child care costs.

When I have told the Minister, Dr Refshauge, how hard it is for many students and what they are experiencing, he has attempted to justify his Government's policies by arguing that exemptions for people experiencing hardship are available. However, the TAFE Commission has refused to process many applications for such exemptions. On 23 January, Justice Boland directed the Department of Education and Training to take all practicable steps that are available to it in the time available to further advertise the opportunity to gain exemption. One student, Mr George Samuel, was evicted from the Ultimo campus of the Sydney institute by a security guard for applying for an exemption from fees based on hardship.

I congratulate Mr Samuel for taking the TAFE Commission to the Supreme Court. The Minister and the TAFE Commission should apologise to Mr Samuel and withdraw all increases in fees and charges for TAFE courses. The Greens congratulate teachers, students and all those supporters of public education who have campaigned to have the Labor Government reconsider the 2004 TAFE fee increases.

### NEW ENGLAND AREA HEALTH SERVICE AND HUNTER AREA HEALTH SERVICE AMALGAMATION PROPOSAL

**The Hon. JENNIFER GARDINER** [10.19 p.m.]: I draw to the attention of the House one of the biggest political issues that has erupted in northern New South Wales—namely, the mooted intention of the



New South Wales Labor Government to amalgamate the New England Area Health Service with the metropolitan-based Hunter Area Health Service. In recent days the Labor Government's apparent intention was a major talking point when my colleagues from The Nationals and I held a series of discussions with community leaders and constituents in the Tamworth, Barwon and Northern Tablelands electorates.

We had meetings in Tamworth, Barraba, Bingara, Inverell, Wallangra, Tenterfield, Glen Innes and Armidale. In each centre constituents expressed outrage, disbelief, shock and horror at the apparent intention of the Labor Government to amalgamate these area health services. The New England Area Health Service, created by Bob Carr's first health Minister, Dr Refshauge, without consultation with anyone in New England as to its geographic area or boundaries, covers a large swath of New South Wales. It includes far-flung communities from Tamworth to Tenterfield, Barraba to Boggabilla, Manilla to Mungindi.

Many New Englanders hold the view that it was far too big an area health service in the first place, so the news that it is now to stretch from Tenterfield to Newcastle is unwelcome news indeed. The Hunter Area Health Service has its headquarters in metropolitan Newcastle. The opening words in the report of the New South Wales Ministerial Advisory Committee on Health, which was chaired by the Rt. Hon. Ian Sinclair, are as follows:

Few Government portfolios engender more impassioned debate than health when changes in methods of service delivery are proposed.

This is particularly so in smaller rural communities where health services, especially hospitals, are seen as part of the social fabric of the community.

The first paragraph of the main findings of the Sinclair report contain these words:

To bring about improvements in the delivery of and access to quality health, aged care and human services in small rural centres there needs to be a collaborative approach between government and non-government providers across the health, aged care and transport sectors. More importantly, area health services need to fully involve local communities in identifying their needs and in planning services.

The Sinclair report highlighted a lack of communication between "levels of government, management, health professionals and the community" as one of the five most significant barriers in adapting health services to changes in community needs. That report was published in April 2000. Nothing has changed. In the northern communities that I visited I took the opportunity to ask constituents and community leaders whether there had been any consultation with anyone that they knew of about a radical enlargement of the geographic area of the area health service and its centralisation to Newcastle. The answer in all cases was no. There had not been any consultation at all.

In addition to the Sinclair report, the Labor Government commissioned a major review of NSW Health chaired by Mr John Menadue. The Menadue report reinforced the Sinclair report in stressing the need for consultation with rural communities when the State Government proposes changes to health services. The Menadue report states:

We believe that it is a fundamental right for all members of the community to be involved in the management of changes to their health care system. As taxpayers, citizens and residents, they are the principal stakeholders and are entitled to a sense of ownership of the health care services they receive. This is especially true in rural communities, where ... the local health facility is often a major source of employment.

The Sinclair report recommended "that mechanisms for ongoing consultation with the community, including the use of committees, existing health councils and multipurpose service advisory committees be strengthened" and "that there be an ongoing commitment to two-way dialogue between area health services and community bodies with their roles between the health councils, the advisory committees and the area health services".

In its submission to the General Purpose Standing Committee No. 2 inquiry into rural and regional New South Wales health services which was conducted in the Parliament before last, the Australian Medical Association in New South Wales submitted that the State Government should reappraise the area health service structure because "it would appear that most of these areas are too big and that the type of services they cover are too disparate". Four years later exactly the same cries are being heard from the heart of country constituents in relation to the situation in the north and north-west of New South Wales. It is as though the upheavals generated by Dr Refshauge's changes have not been heeded. The suggestion that the New England Area Health Service should be centralised to Newcastle demonstrates that the Carr Labor Government listens only to NSW—Newcastle, Sydney and Wollongong—and the proposals are abhorrent.

## WILDERNESS ACCESS

**The Hon. JON JENKINS** [10.24 p.m.]: I continue an adjournment speech that I was making on 11 May. Let us first turn to the creation of Kosciuszko National Park. Kosciuszko National Park was set up in 1943 by the then New South Wales Premier, William McKell, who was later knighted. He knew the area well and gave as a key reason for proclaiming the park:

... the creation of a winter sports ground greater than any in Switzerland and the development of an immense tourist area that would compare favourably with any in the world. [The park] would be as famous as any of the great tourist resorts of Europe or the United States, and would prove a magnet for overseas visitors.

The Green extremists want all the leases phased out and the whole of the park off limits to people forever—in other words, locked up as wilderness. They recommended as much to the Premier in 1990 when he was Leader of the Opposition. Before honourable members think that this is a bunch of crazy loonies who fell out of the stupid tree and hit all the branches on the way down, they should take a look at the signatures in this letter. They include Sue Salmon from the Australian Conservation Foundation, Judy Messer from the Nature Conservation Council of New South Wales, Rod Bennison from the National Parks Association, and Milo Dunphy from the Total Environment Centre.

I say to honourable members and to all who will listen that to do so will ensure the complete destruction of this precious jewel and guarantee the extinction of every animal, fish and plant species unique to the park. In the next few minutes I will try to tell honourable members why. Without realising it we have inadvertently completely changed the natural landscape of our bush. This concerns the subject of hazard reduction burning, something to which the conservation movement is strongly opposed. When Europeans arrived in Australia it consisted of a series of biota highly adapted to what we now call hazard reduction burning. The reason for that is that this is what the Aborigines had been practising for 50,000 years or so.

They were greatly assisted in that exercise by the existence in Australia of what was called the fire tree, or the eucalypt. The eucalypt promotes fire and it is resistant to fire, so in a regime of constant burning eucalypts have a higher survival rate and one tends to get the type of monoculture remarked upon by early scientists, including Charles Darwin. Early settlers repeatedly remarked on the constant burning carried out by the Aborigines and often described the Australian landscape as grasslands with widely spaced trees. Abel Tasman, describing Australia in 1642, said:

Amongst the trees, two were remarked whose thickness was two, or two and a half fathoms, and the first branches from sixty to sixty-five feet above the ground ... the country was covered with trees; but so thinly scattered, that one might see every where to great distances amongst them ... Several of the trees were much burned at the foot.

Joseph Banks, when describing Bulli, stated:

The country today again made in slopes to the sea ... The trees were not very large and stood separate from each other without the least underwood; among them we could discern many cabbage trees but nothing else which we can call by any name. In the course of the night many fires were seen.

Joseph Banks, when describing Botany Bay, stated:

... very barren place without wood ... very few tree species, but every place was covered with vast quantities of grass—

that was before the Europeans arrived—

... the trees were not very large and stood separate from each other without the least underwood.

A few years later, John White, when describing Frenchs Forest, said:

After we had passed this swamp we got into an immense wood the trees of which were very high and large, and a considerable distance apart, with little underwood or brush.

Captain John Hunter, when describing Parramatta at the same time, stated:

... and at the head of the harbour, there is a very considerable extent of tolerable land, and which may be cultivated without waiting for its being cleared of wood; for the trees stand very wide of each other, and have no underwood; in short, the woods on the spot I am speaking of resemble a deer park, as much as if they had been intended for such a purpose ... The grass upon it is about three feet high, very close and thick.

The most telling statement was the one made by Charles Darwin. He had this to say:

The extreme uniformity of the vegetation is the most remarkable feature in the landscape of the greater part of New South Wales. Everywhere we have an open woodland; the ground being covered with a very thin pasture.

Since the arrival of Europeans in Australia we have, by preventing Aboriginal fire practices, changed the landscape. There is a variety of reasons for this, ranging from the preservation of post and rail fencing in the early days of the colony to the conservation movement's current opposition, which appears to be largely ideologically driven. As a result we typically have much greater fuel loads now than in pre-European times. A fuel load is defined in tonnes of litter per hectare on the forest floor. Considering the effect of this—and referring to a New South Wales bush fire personnel training manual—typical data for the relationship between fuel load and fire intensity is roughly as follows. At 7.5 tonnes of fuel load per hectare, which takes about four years to accumulate, fires have relatively low intensity. Bird habitat is largely undisturbed and animals can dodge around the slow-moving fire front. At 15 tonnes of fuel load per hectare, which takes about eight years to accumulate, we are entering crowning wildfire territory. At 30 tonnes of fuel load per hectare, crowning wildfires are common with, in windy conditions, fireballs of up to 300 metres in front of the fire. We are now in the extremely dangerous category of completely uncontrollable, self-sustaining wildfires. I will continue my remarks at the next opportunity. [*Time expired.*]

### NEW SOUTH WALES-ASIA BUSINESS ADVISORY COUNCIL

**The Hon. HENRY TSANG** [Parliamentary Secretary] [10.29 p.m.]: The New South Wales-Asia Business Advisory Council was established in 2000 to provide advice to the New South Wales Government about our business relations with Asia and to inform the business community about the range of services offered by the Government to grow business with Asia. Last month the advisory council organised an important briefing for the New South Wales business community on the importance of the growing network of free trade agreements [FTAs] between individual Asian countries. The New South Wales Department of State and Regional Development and the New South Wales office of the Department of Foreign Affairs and Trade hosted the briefing jointly, and it was very well attended by more than 100 representatives from many bilateral chambers of commerce and trade organisations, business representatives, academics, bureaucrats and other interested parties.

The purpose of the briefing was to provide an expert overview of the extent of the Asian free trade network and of the general geopolitical developments in Asia. The initiative for the briefing came from members of the New South Wales-Asia Business Advisory Council, who saw the emerging trend for such a network of free trade agreements as a potential impediment to the export opportunities of New South Wales and Australian companies. It was thought that the briefing discussions would assist in understanding the impact of this network on New South Wales businesses. I thank the three important and knowledgeable experts in the field who addressed the briefing. Dr Geoff Raby, Deputy Secretary of the Department of Foreign Affairs and Trade, gave an overview of the extent of the Asian FTA network and Australia's negotiating efforts. Dr Raby was well placed to give this overview as he also serves co-jointly as Australian Ambassador to the Asia Pacific Economic Co-operation organisation and was previously Ambassador and Permanent Representative to the World Trade Organization.

Michael Jenkins Crouch, executive chairman of the iconic and very successful Australian company, Zip Industries, was another speaker who provided an insight into the impact of the network on export-focused New South Wales businesses. I also thank the other speaker, Rowan Callick, who is Asia-Pacific editor for the *Australian Financial Review*. Rowan has written extensively about the region, particularly on regional trade. The panel's discussion was moderated by a very active member of the advisory council, Dr Stephanie Fahey, who is a leading scholar in Asia-Pacific affairs and Director of the Research Institute for Asia and the Pacific at the University of Sydney. The briefing was important and highlighted the concerted efforts of the New South Wales Government in helping New South Wales companies and businesses to trade in Asia.

It is very important that New South Wales businesses know about the movements within up-and-coming trade networks in countries such as Japan, China, Singapore and Thailand. It is essential that the business community follow closely developments in the closer economic partnership arrangement between Hong Kong and the People's Republic of China and Australia's proposed free trade agreement with China. While this rapidly growing network of free trade agreements between Asian trading partners presents opportunities for the countries involved, we must know what sort of impact it will have on New South Wales companies. The feedback I received was that the briefing provided an overview of the extent of the Asian FTA network and of general geopolitical developments in Asia, and offered an understanding of the impact of the

network on New South Wales businesses. Most importantly, the briefing provided useful information for companies looking either to enter new markets or to expand existing interests in the region.

I acknowledge the participation in the briefing of other advisory council members with significant expertise in trade with Asia. They are: Douglas Park, from the Korean Chamber of Commerce; Orawan Taechaubol, from the Thailand chamber of commerce; Dr Minshen Zhu; and Neville Roach, a very knowledgeable business and information technology professional who is president of the Indian chamber of commerce.

**Motion agreed to.**

**The House adjourned at 10.34 p.m. until Wednesday 2 June 2004 at 11.00 a.m.**

---