

# LEGISLATIVE COUNCIL

Tuesday 1 March 2005

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**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.

## LEGISLATIVE COUNCIL VACANCY

### Election of Gregory John Donnelly

**The PRESIDENT:** At a joint sitting held on 23 February 2005 Gregory John Donnelly was elected to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Michael Reuben Egan.

## OATH OR AFFIRMATION OF ALLEGIANCE

The Hon. Gregory John Donnelly took and subscribed the oath or affirmation of allegiance and signed the roll.

## GENERAL PURPOSE STANDING COMMITTEE NO. 2

### Extension of Reporting Date

**Motion by the Hon. Patricia Forsythe agreed to:**

That the reporting date for the reference to General Purpose Standing Committee No. 2 relating to the Budget Estimates and related papers be extended to Thursday 24 March 2005.

## TABLING OF PAPERS

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

State Emergency and Rescue Management Act 1989—Reports for the year ended 30 June 2004:

State Emergency Management Committee  
State Rescue Board

**Ordered to be printed.**

## LEGISLATION REVIEW COMMITTEE

### Report: Budget Estimates 2004-2005

**The Hon. John Hatzistergos**, on behalf of the Chair, tabled a report entitled "Legislation Review Digest No. 2 of 2005", dated 1 March 2005.

**Ordered to be printed.**

## GENERAL PURPOSE STANDING COMMITTEE NO. 3

### Report: Budget Estimates 2004-2005

**The Hon. Amanda Fazio**, as Chair, tabled report No. 15, entitled "Budget Estimates 2004-2005", dated March 2005, together with transcripts of evidence, tabled documents, correspondence and answers to questions taken on notice.

**Report ordered to be printed.**

**The Hon. AMANDA FAZIO** [2.45 p.m.]: I move:

That the House take note of the report.

**Debate adjourned on motion by the Hon. Amanda Fazio.**

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Order of the Day No. 2 postponed on motion by the Hon. Tony Kelly.**

## **PARLIAMENTARY ETHICS ADVISER**

**Consideration of Legislative Assembly's message of 23 February 2005.**

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

- (1) That the appointment of Mr Ian Dickson as Parliamentary Ethics Adviser, which expired on 22 February 2005, be extended on a month-by-month basis until superseded by a further resolution of this House, and
- (2) That any extension be for a maximum of 12 months.

**Message forwarded to the Legislative Assembly advising it of the resolution.**

## **POLICE INTEGRITY COMMISSION AMENDMENT BILL**

### **Second Reading**

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [2.46 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

### **Leave granted.**

I am pleased to introduce the Police Integrity Commission Amendment Bill 2004.

The Government established the Police Integrity Commission (PIC) in 1996 in response to recommendations by the Wood Royal Commission.

The Royal Commission identified systemic corruption within NSW Police and found deficiencies with existing oversight mechanisms.

The Government accepted the Royal Commission's recommendation that a permanent independent body be established to detect, investigate and prevent serious police misconduct and corruption.

In order to fulfil the tasks set out for it, the PIC was given broad ranging oversight and investigation powers.

The PIC's role in the detection, investigation and prevention of serious police misconduct and corruption remains as vital today as it was at the time of the Royal Commission's recommendation.

The reforms proposed in this Bill have come about as a result of the review of the Police Integrity Commission Act.

As is now common, the Act required that its policy objectives and terms be reviewed five years after its assent.

I am pleased to report that the review found that the Act, and the PIC in giving effect to its provisions, has proved effective in detecting, investigating and preventing police corruption and other serious police misconduct.

The review did identify a number of potential improvements to the legislation.

This Bill gives effect to the recommended amendments.

The Bill seeks to amend the Police Integrity Commission Act 1996 so as to:

- (a) confirm the independence and accountable nature of PIC;
- (b) enable a jury to convict a person who has made conflicting statements of which at least one must be false;
- (c) enable the Police Integrity Commission (PIC) to communicate information to the Commissioner of Police on the understanding that the information is confidential;
- (d) replace the requirement for the PIC Commissioner to obtain the Minister's concurrence when authorising a police officer to exercise any investigative, surveillance or enforcement functions under the PIC Act with a requirement that the PIC Inspector be notified of the authorisation;
- (e) enable the PIC to dispose of certain documents and things in accordance with the directions of a Local Court;
- (f) provide for the service of documents by fax and by e-mail; and
- (g) provide for a further review of the PIC Act at the end of five years from the date of assent to the proposed Act.

The Bill also amends the *Police Act 1990* to require the Commissioner of Police to consult with the PIC or Ombudsman, as the case requires, before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of those bodies.

I would now like to take the opportunity to address some of the reforms in more detail.

#### **INDEPENDENCE AND ACCOUNTABILITY**

The Bill proposes to give greater prominence to PIC's independence and accountability.

The amendments recognise that PIC's independence from the NSW Police is not commonly understood in the broader community and, given the importance of this distinction, specifically acknowledges this independence by clarifying the principal objects of the Act.

#### **DISPOSAL OF DOCUMENTS**

Schedule 1, clause [2] of the Bill will enable the PIC to seek the directions of a local court in connection with the disposal of documents and things seized pursuant to a warrant in the course of its investigations.

The PIC's current inability to dispose of these items means that it is required to hold onto inadmissible and prima facie illegal material dating back to the Wood Royal Commission, including drugs and child pornography.

This material should be destroyed.

#### **SECRECY PROVISIONS**

Currently, information that PIC refers to NSW Police or other agencies for investigation or action is automatically subject to secrecy provisions.

These provisions prevent the recipient from recording or further disclosing this information unless the PIC Commissioner or Inspector provides specific permission.

The automatic application of this provision may impede an agency from efficiently and effectively investigating matters.

Schedule 1, clauses [3] and [4] resolves this situation by providing that the secrecy provisions do not apply to referred material unless PIC specifically advises that they do.

#### **CONFLICTING STATEMENTS**

The courts have held that, where a person makes conflicting statements when providing evidence to PIC or the PIC Inspector, the prosecution must specify which of the two items of inconsistent evidence is false.

This presents a difficulty in obtaining a conviction for giving false statement of evidence under the existing arrangements as it is often not possible to know which statement is false.

Accordingly, Schedule 1 [5] applies the provisions of the *Crimes Act 1900* that relate to perjury and false statements when false evidence is given to PIC or the PIC Inspector.

This will enable a jury to convict a person who made conflicting statements before the PIC of which at least one was false, even if it is not known which statement is false.

#### **MINISTERIAL CONSENT**

The Act currently requires the Minister to agree before a police officer can carry out any investigative, surveillance or enforcement functions for PIC purposes.

These matters are operational in nature and should not require Ministerial consent.

Arrangements that would require the concurrence of the Minister or the Commissioner of Police before a police officer can perform investigative functions on behalf of the PIC could hinder timeliness and effectiveness of an operation.

The Bill introduces a requirement for the PIC Commissioner to notify the PIC Inspector of the granting of any such authorisation.

This recognises the important oversight role of the Inspector, who is well placed to inquire into and monitor the exercise of the power.

#### **CHANGES TO POLICE ACT 1990**

The Police Integrity Commission Act and Police Act 1990 prevent the Commissioner of Police from taking disciplinary action against members of NSW Police who are subject of PIC or Ombudsman investigations, as the case may be, unless either of those bodies consent, or are at the very least are consulted. The consent requirements interfere with the ability of the Commissioner of Police to properly manage NSW Police.

The Bill removes this consent requirement.

In cases where an officer is subject to either an investigation by PIC or the Ombudsman, the Commissioner of Police may take appropriate criminal, dismissal or other management action against that officer following consultation with either the PIC Commissioner or Ombudsman.

#### **CONCLUSION**

In conclusion, this Bill will ensure that there continues to be appropriate independent and accountable oversight of police conduct in New South Wales.

The proposed amendments will enable PIC to carry out its important functions in the most effective and efficient way possible.

I commend the Bill to the House.

**The Hon. DAVID CLARKE** [2.47 p.m.]: The Police Integrity Commission Amendment Bill, which is not opposed by the Opposition, arises from the required five-year review legislated under the Police Integrity Commission Act 1996. The objects of the bill are as follows:

- (a) to apply the provisions of sections 331 and 332 the Crimes Act 1900 to proceedings for an offence under section 107 of the PIC Act... so as to enable a jury to convict a person who has made conflicting statements of which at least one must be false...
- (b) to enable the Police Integrity Commission... to communicate information to the Commissioner of Police and to other persons or bodies on the understanding that the information is confidential, and
- (c) to replace a requirement for the PIC Commissioner to obtain the Minister's concurrence when authorising a police officer to exercise any investigative, surveillance or enforcement functions under or for the purposes of the PIC Act with a requirement for the PIC Commissioner to notify the PIC Inspector of the granting of the authorisation, and.
- (d) to enable PIC to dispose of certain documents and things (being documents and things seized for the purposes of it its investigations) in accordance with the directions of a Local Court, and...
- (f) to confirm the independent and accountable nature of PIC, and
- (g) to provide for a further review of the PIC Act at the end of 5 years...

The Bill also amends the Police Act 1990 so as to require the Commissioner of Police to consult with the PIC or the Ombudsman, as the case requires, before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of those bodies.

The Police Integrity Commission, an important body in our State, serves to ensure that misconduct and corruption in our police force are investigated and exposed. Police officers constantly put lives on the line in the course of their duties and they constantly face varying degrees of danger. They are entitled to the praise, respect and admiration that are rightly due to them. Their good name must be protected and upheld. The great majority of police officers maintain the highest standards of integrity, honesty and good conduct in the course of their duties.

The Police Integrity Commission serves to ensure that the good name of police officers and their integrity and honesty are maintained by exposing those few police who, through their corruption, undermine the reputation of the great majority. It is vital that the Police Integrity Commission is maintained as an effective body with the powers, resources and capacity necessary for it to discharge its designated purpose. The bill assists in helping the commission to do just that, but only to the extent to which the bill goes. The provisions in the bill could be better. The Opposition shadow Minister for Police, Peter Debnam, enumerated in the other place well-founded concerns that the review process required by the Police Integrity Commission Act 1996 has

been carried out in a flawed and defective manner. He points out, for example, that, contrary to what was intended originally, there has been no second round of public consultations. He further points out that the Government has failed to respond fully to some 26 recommendations in the discussion paper.

I direct the attention of honourable members also to the speech pertaining to this bill given in the other place by the Labor member for Liverpool, Paul Lynch. He is the chairman of the parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission, and has a great deal of insight into and understanding of the Police Integrity Commission, its formation and operations. His speech is, in many respects, constructive and forthright. He expresses a number of his well-considered concerns regarding the review process—or what passes for it—that has been carried out. He makes some constructive suggestions that are certainly worthy of consideration and could well have improved the bill's effectiveness and purpose. Unfortunately, the Minister for Police and the Government have not taken those proposals on board. So the Opposition, having expressed its concern about the review process from which this bill results and having noted that the bill could have been more effective, does not oppose its passage.

**Reverend the Hon. Dr GORDON MOYES** [2.50 p.m.]: The provisions of the Police Integrity Commission Amendment Bill are the result of a review of the Police Integrity Commission Act. As many of us know, the Police Integrity Commission [PIC] was established as a result of findings of systemic corruption within NSW Police by the Wood royal commission. The lack of effective oversight within the system pointed to the need for an effective, independent and accountable entity that would take action in identifying and providing solutions to the presence of serious misconduct and corrupt conduct within NSW Police. Accordingly, the Police Integrity Commission was established and charged with this responsibility.

Some of the major provisions of the bill include an emphasis on the independence and accountability of the Police Integrity Commission and the clarification of the dynamic between the Commissioner of Police and the PIC or the New South Wales Ombudsman in the sphere of the Commissioner of Police taking management or disciplinary action against a person subject to scrutiny by the PIC or the Ombudsman. The Christian Democratic Party welcomes the initiatives in this bill. With the recent identification of corrupt conduct within NSW Police exposed by information about Detective Chris Laycock's conduct, there is no doubt that any measures to consolidate and strengthen the PIC's powers are timely and much needed.

The bill confirms that the PIC is an independent and accountable body. This confirmation is required given the unique nature and functions of the PIC. The bill applies certain provisions of the New South Wales Crimes Act 1900 that make more specific the repercussions arising from a person making a false or misleading statement. At present section 107 of the Police Integrity Commission Act simply says that the making of a false or misleading statement at a PIC hearing is an offence, without specifying any particular ramifications arising from this offence. However, the application of sections 331 and 332 of the Crimes Act 1900 make it plain that, first, the jury may find a person guilty of the offence when conflicting statements are made and it is clear that one of the statements is false; and, secondly, that a person may be denied a right to acquittal because a false or misleading statement is made.

Facilitation of communication between the Commissioner of Police and other entities is also engendered by this bill. When communication is delicate or sensitive the commissioner must make clear the understanding that the information is confidential. When no such understanding is made clear the communication will not be subject to secrecy provisions. The bill allows for the Commissioner of Police to authorise the exercise of certain investigative, surveillance functions by the police. The current legislation requires the Minister's consent for such an authorisation. The bill does away with this requirement by asking that the commissioner solely notify the inspector of the giving of such an authorisation as soon as practicable. On the one hand, this move is commendable because it streamlines the outworking of the commissioner's functions. On the other hand, the commissioner is made a receptacle of more power, which must be used wisely.

The bill amends also the Police Act 1900 so as to require the Commissioner of Police to consult with the PIC or the Ombudsman before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of these bodies. This is important mainly for two reasons. Firstly, given the nature of the action to be taken by the Commissioner of Police, it is wise to consult the PIC or Ombudsman, who would act as a sounding board regarding management or disciplinary action. Secondly, it is important for the commissioner to be accountable to these bodies, especially as the investigating body would presumably have an intimate understanding of the merits of the case made against the person. Thus the investigating body would have a good idea of the appropriateness of the commissioner's proposed action against the subject. The bill allows the PIC to dispose of potentially illegal documents in accordance with the directions of a local court. The second reading speech of the Minister for Police states:

The PIC's current inability to dispose of these items means that it is required to hold on to inadmissible and prima facie illegal material dating back to the Wood royal commission including drugs and pornography. This material should be destroyed.

Lastly, the bill provides for a further review of the Police Integrity Commission Act at the end of five years from the date of the bill's assent. Such reviews are essential to ensure that Acts remain relevant and up to date. The Christian Democratic Party welcomes the initiatives in this bill.

**Ms LEE RHIANNON** [2.55 p.m.]: The Police Integrity Commission Amendment Bill is based on a discussion paper about a review of the Police Integrity Commission Act undertaken by the Ministry for Police. It is a disappointing bill, born out of a shabby review process. For a start, the former Minister for Police failed to meet his obligations under section 146 of the principal Act. In fact, he overstepped his deadline for tabling a report in Parliament by a staggering two years and three months. What was tabled eventually was not a final report of the review but a strange hybrid beast, labelled both a "discussion paper" and a "report". One would think the Government would at least have had the sense to call it a "preliminary report".

For the first round of the review the Ministry for Police issued no consultation document to guide discussion. The executive summary proposed a further round of consultations. These never occurred. Submissions were invited from 17 heavyweights of the system but only three private submissions were received. Considering that one object of the Act is to "protect the public interest by preventing and dealing with police misconduct", one would expect the review team to put more effort into ascertaining whether the public thinks this and other objects have been met. Individuals such as members of the family of Eddie Murray, a 21-year-old Aboriginal man from Wee Waa who died in police custody in 1981 and whose case was referred to the Police Integrity Commission [PIC], were not asked to provide a submission or to meet the review team even though they had experienced first-hand problems with alleged police misconduct and were frustrated by the workings of the PIC.

The chairman of the parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission has noted that the former Minister for Police failed to meet the statutory requirements of the review. He commented that some recommendations were made apparently to placate certain stakeholders and are poorly supported by argument. He expressed concern that certain recommendations do not demonstrate a full appreciation of the parliamentary committee's statutory functions and have the potential to undermine the role of the committee. The bill fails to adopt many of the 26 recommendations of the discussion paper, and the Minister has given us no reasons to explain that failure. I hope he will do so when he replies to the second reading debate.

A significant number of the recommendations leave issues unresolved. Some of these involve important issues—for example, a proposal for the PIC, not the Ombudsman, to have jurisdiction over the corrupt conduct of civilian employees of NSW Police. There is concern that corrupt enterprises involving sworn and civilian NSW Police employees may be falling through the gap between the two agencies. Despite support for the proposal from key players, the review recommended further consultation. Two years later we are none the wiser, with no suggestion as to what form this further consultation should take and within what time frame. Reviewing legislation is an important accountability process. Parliament has recognised this by requiring many of its Acts to be reviewed every five years or so. However, we are seeing more and more of these kinds of shabby reviews from the Government.

Ministers responsible for a review often fling the job to the responsible department, as occurred recently with the Public Lotteries Act, the Fines Act and the State Records Act. Review reports can be depressingly devoid of rigorous policy analysis or vision for change. The report of the review of the State Records Act has as one of its recommendations a proposal to make a small number of minor amendments to clarify certain existing provisions and facilitate operations. This recommendation is backed up by flimsy observations that "the review identified the need for a number of minor clarifications and other changes to facilitate the operation of the Act".

Who knows how that got signed off? We are missing the hallmarks of quality law reform, such as a review conducted by an independent reviewer, not captured by the department or the Minister, able to do the networking and community work necessary to build trust and facilitate change; comprehensive community consultation guided by a solid public consultation document; and genuine policy alternatives emerging from a thoughtful final report. The terms of reference that led to this bill clearly do not extend to assessing how well the PIC has been performing. Nonetheless, the review discussion paper written by the police ministry went out of its way to praise the commission's work. It said the review process clearly demonstrated the need to retain the PIC. Chapter 4, boldly headed "The continuing need for the Police Integrity Commission", states:

There has been significant progress in addressing police corruption and misconduct since the Final Report of the Royal Commission, and the Police Integrity Commission has played an integral role in that process.

It continues:

... since it commenced operation ... the Commission has contributed to the transparency with which police corruption and other forms of serious police misconduct are dealt with in NSW.

This is far from the full story. Honourable members would be well aware of the criticism that has been heaped on the PIC since it commenced operation for its delays in reporting, its resource intensive operations, its inadequate processes and its empty findings. If the review had sought the views of the family of Eddie Murray, whose case was referred to the Police Integrity Commission in 2000 for preliminary investigation, the glowing support for the PIC in the report may have had to be rewritten. Eddie's tragic death in custody was followed by an inquest and then an inquiry by the Royal Commission into Aboriginal Deaths in Custody. Significant new evidence was revealed in 1997 when Eddie's body was exhumed. It was revealed that Eddie had suffered a fracture to his sternum that had most likely occurred immediately prior to his death.

As I have noted previously in the House, in the three years that the PIC held the case it managed to procure a mere nine documents, order the creation of only four more and talk to just 11 people. Eddie's mother died during the lengthy preliminary investigation period. Eddie Murray's family was devastated by what it considered to be very poor investigations conducted by the commission, and the lack of communication it had from the agency. There were serious allegations of police misconduct and allegations about the integrity of some police officers. While the PIC noted that public and private hearings are among the commission's most successful strategies in encouraging potential witnesses to assist in investigations, the PIC did not hold a public hearing into this case, which denied the family and the Murray's family's legal representatives the opportunity to participate in the investigation.

No covert operation was mounted, despite the PIC's initial observation that using the commission's considerable powers in this area would be the most likely way that new evidence in the case could be obtained. While the PIC has considerable ability to compel witnesses to give evidence, police and former police officers involved in the case were not interviewed under oath. It took two years before the PIC obtained any information or assistance from the legal body that represented the Murray family and that had amassed a large amount of information on the case. The case was de-prioritised by the PIC for Operation Malta and Operation Florida. The commission failed to put out a public report on its inquiry.

In determining that the public interest did not require the making of a report to Parliament in relation to matters that have previously been the subject of coronial and royal commission inquiries, the commission was quite wrong. There were significant systemic reasons to show that the investigation was carried out with due vigour, assuming, of course, that it was conducted in such a way. Given that the matter involved Aboriginal-police relations, deaths in custody and police misconduct, it deserved full transparency. While the PIC remains a necessarily secretive body due to the need to protect its methodology, and sometimes whistleblowers, these issues were not a feature of the Eddie Murray preliminary investigation.

The disrespect for the feelings of the Murray family shown by the attitude of the PIC in not releasing a publicly accessible report, open to inspection and criticism, has led to allegations of mismanagement of the case by the PIC, and consequently further tarnished the commission's already dubious reputation. Ironically, one of the important facets of the bill is the PIC being an accountable body. The Eddie Murray case has been the subject of several investigative television programs and many newspaper articles. They reveal the Murray family's disappointment regarding the PIC inquiry into Eddie's death. Without a final report that the public can read and judge, we have no way of knowing whether the PIC's investigations into Eddie Murray's death met the PIC's stated objective of giving the New South Wales public confidence in NSW Police and the agencies charged with overseeing them.

The PIC released a report into Operation Tower, which looked into complaints made about police by high-profile lawyer John Marsden, yet does not do so for a grieving Aboriginal family. One can only speculate as to the reasons the two cases were treated so differently. Possibly John Marsden now has confidence in the actions of NSW Police, but I can assure the House that the Murray family, and significant sections of the Aboriginal community who are aware of the PIC's actions in the case, do not. It can be argued that these are the very citizens of New South Wales who would benefit the most from having greater trust in the police force. There are reasons to question the management of the PIC's handling of Operation Colorado, the inquiry into the manner of Eddie Murray's death. I have sought some answers regarding the nature of the investigation from the Minister for Police, with an entirely unsatisfactory response.

Another question regarding the case concerns the length of time it took the PIC to obtain a copy of the Royal Commission into Aboriginal Deaths in Custody transcript. It decided to do this on 21 October 2002. It applied through the Office of Prime Minister and Cabinet, which sought and obtained approval from the Aboriginal and Torres Strait Islander Commission. The relevant documents were obtained by 6 January 2003, 10 weeks later. Yet when the former Minister for Police, Paul Whelan, had a briefing prepared prior to handing the matter to the PIC, a single solicitor was able to retrieve a copy of the transcript through the Premier's Office—something it seems the entire investigative apparatus of the PIC was unable to do. Yet the PIC had been given Whelan's report when the case was handed to it, which suggests that a fundamentally important document to the case had not been thoroughly examined.

The PIC sent a letter to the Murray family's legal team at the completion of the investigation, which described in broad terms the steps it had taken in its investigation of the matter. However, it declared that this information should be subject to the strict confidentiality provisions in section 56 of the Police Integrity Commission Act. While secrecy provisions are rewritten in this bill to facilitate investigations, they can still act as a powerful tool to suppress public scrutiny of the PIC's work. Meanwhile, the PIC used its considerable powers and resources as part of Operation Banff to investigate a missing blood sample belonging to the former Attorney General, Jeff Shaw. When Eddie Murray's father heard of this development he shook his head, saying there are two laws in this country: one for politicians and one for Aboriginal people. This bill's amendment to underline the commission's accountability and independence is a hollow gesture. It is time the Government took its mandate seriously and genuinely provided the people of New South Wales with agencies that meet appropriate standards of service and transparency.

**Reverend the Hon. FRED NILE** [3.09 p.m.]: I support the Police Integrity Commission Amendment Bill and the remarks of previous speakers. There is no doubt that we need the Police Integrity Commission. An issue before the people of New South Wales is corruption within the police force and putting corrupt police behind bars. Every effort must be made to maintain the reputation of the police force, but we need to have a balance in our relationships with the police force. Poor decisions made by some magistrates, such as Ms O'Shane, offhandedly in dismissing cases brought before the court involving police being insulted while carrying out their duties, have sown the seed of events such as that which occurred over the weekend at Macquarie Fields.

Such decisions encourage young people to feel they can attack police—not just with words, but with bottles, cans, stones and other missiles. Therefore courts need to be very careful in their handling of complaints against police. Those cases need to be treated seriously. Greater efforts should be made by government to support the police in this regard, with heavier sentences for those who swear at or otherwise insult police and obstruct them in carrying out their duties. That will send a message to the public that New South Wales police are protecting citizens of this State and that they should be encouraged and supported in that role.

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [3.10 p.m.], in reply: I thank honourable members for their contributions to this debate. I shall respond to a number of matters raised by honourable members, particularly Ms Rhiannon. First, Ms Lee Rhiannon criticised the delay in tabling the report of the review of the Police Integrity Commission Act by the previous Minister for Police. I understand that the former Minister for Police released the Report on the Review of the Police Integrity Commission Act 1996, to be tabled in Parliament in December 2002. However, following an administrative oversight during the reallocation of portfolios, the report was not officially accepted by the Parliament. When this became known, the report was immediately tabled on 21 September 2004.

Ms Rhiannon put forward a number of arguments in relation to issues surrounding processes for the Police Integrity Commission, which, as all honourable members would be aware, is an independent body. Much of the honourable member's criticism related to the circumstances of one individual case, and the failure of the Police Integrity Commission to hold a public hearing and make a public report. Of course, those were decisions that the commission made. To suggest that they were somehow driven by an agenda is highly offensive to the integrity of that body. Moreover, if there were any issue or complaint about the way the Police Integrity Commission handled those matters, it was open to the honourable member or any other honourable member to have those matters ventilated either before the Inspector of the Police Integrity Commission or ultimately through the parliamentary committee process.

Several submissions to the statutory review of that Act queried the accountability mechanisms. This bill addresses some of those issues. The proposed amendments strengthen the principal objects of the Act to give

greater prominence to the Police Integrity Commission's accountability and independence. In light of the important functions that the commission fulfils in detecting, investigating and preventing serious police misconduct and corruption, it is vital that the broader community have a clear understanding of, and confidence in, the Police Integrity Commission's independence. I do not think that process is assisted by the sorts of scurrilous attacks made in the course of this debate.

Another issue that was raised—I think by Ms Rhiannon—related to expansion of the powers of the Police Integrity Commission to cover civilian employees. The honourable member criticised the proposal to have further consultation. On the one hand, she complained that the review process itself was, according to her, adversely affected by lack of consultation. But, when it is proposed to have further consultation, the honourable member complains that the Government does not have a position in relation to that matter. The facts are that, following consultation, the expansion of jurisdiction is not supported as New South Wales Police civilian employees should be considered in the same way as are other civilian employees in the general public sector. Of course, they are accountable for their conduct through the Independent Commission Against Corruption. So there are no cracks, as Ms Rhiannon sought to suggest.

Moreover, the proposal to expand the Inspector's jurisdiction along similar lines to cover non-PIC officers where there is connection with the activities of police officers is addressed by the fact that the Independent Commission Against Corruption provides appropriate oversight for non-PIC officers, including situations involving joint operations between the Police Integrity Commission and bodies such as the New South Wales Crime Commission. Further, the Crown Solicitor's advice on this matter indicates that the Police Integrity Commission Act already allows the Inspector and the Independent Commission Against Corruption to co-operatively deal with concerns arising from Police Integrity Commission joint operations, with there being considerable flexibility in how such matters are managed. For instance, the Inspector could investigate matters relevant to the Police Integrity Commission and refer other matters to the Independent Commission Against Corruption for investigation. Alternatively, the whole matter might be referred to the Independent Commission Against Corruption, which could then investigate and at any time refer relevant matters back to the Inspector to further deal with as appropriate.

This position recognises the respective functions of the Independent Commission Against Corruption and the Inspector. The Police Integrity Commission Act specifically establishes the office of the Inspector to oversee the Police Integrity Commission, while the Independent Commission Against Corruption has been established as this State's broad-ranging corruption watchdog. The recommendation, which was I think originally put forward by the joint committee, would create an unnecessary system of dual oversight for non-PIC officers involving joint Police Integrity Commission operations, and as such is not supported. I commend the bill to the House.

**Motion agreed to.**

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

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Orders of the Day Nos 4 and 7 postponed on motion by the Hon. John Hatzistergos.**

## **STATE RECORDS AMENDMENT BILL**

### **Second Reading**

**The Hon. ERIC ROOZENDAAL** (Parliamentary Secretary) [3.17 p.m.]: I move:

That this bill be now read a second time.

The purpose of the State Records Amendment Bill is to introduce measures to streamline operations under the State Records Act 1998 and to update some of the Act's provisions. The proposed amendments are the result of a comprehensive review of the State Records Act conducted by the State Records Authority last year, and outlined in the report tabled. The review found strong support for the objectives of the State Records Act.

Stakeholders noted the importance of having sound, up-to-date public records legislation for the purposes of protecting the State's rich official archives, and ensuring efficient, accountable government in the digital age.

There was general agreement that the Act's provisions have been effective in securing those objectives. In particular, submissions referred to improvements in records management across the New South Wales public sector since the commencement of the Act in 1998. However, although the objectives of the Act remain valid and its terms appropriate, the review concluded that certain amendments were desirable in order to update the Act and improve its operation. The first of those amendments concerns public access to records more than 30 years old. One of the great achievements of the State Records Act 1998 was to introduce a statutory open access period, providing for public access to State records that are more than 30 years old, irrespective of whether the records are under the control of the State Records Authority or of a public office.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! I remind the Hon. John Ryan that interjections are disorderly at all times. That reminder is directed also to the Hon. Greg Pearce.

**The Hon. ERIC ROOZENDAAL:** In its current form the Act provides that such records are open to public access where the public office responsible for the record issues an open to public access direction. The Act also makes provision for records containing sensitive information to be closed to public access by a closed to public access direction from the public office responsible. The bill seeks to strengthen the existing provisions by including an explicit presumption in favour of opening a record to public access. Public offices are required to have regard to this presumption when deciding what type of access direction to give. In addition, to further streamline the process the bill states that any record more than 30 years old, but not yet the subject of an access direction, is to be made available within 14 days of the initial request for access, unless the public office responsible for the record make a closed to public access direction within this time. Existing safeguards to protect a record from disclosure where it contains information still sensitive after 30 years are to be retained.

Access directions made by public offices are currently not subject to review. However, in response to widespread support for the introduction of some form of review mechanism, the bill provides that the State Records Authority can request a review of an access direction by the Minister responsible for the public office that gave the direction. Consistent with this approach, the bill requires public offices to provide reasons, upon request, for closing State records more than 30 years old. Public offices may authorise earlier public access. The Act currently provides that a public office responsible for a record that is not in the open access period may authorise the State Records Authority to make the record available to public access. However, this provision presumes that the record in question is in the custody of the State Records Authority. This is not always the case. The record in question may in fact be in the custody of the public office or a regional repository.

The wording of the current Act means that where a public office provides early access to a record in its own custody or in the custody of some other person, it is unclear whether the public office would be protected by the liability protections of the Act. The bill recognises that it is desirable for public offices to be protected from liability, as the State Records Authority is where they provide public access under the Act to records less than 30 years old. Accordingly, the bill makes it explicit that where public offices provide appropriate early access to State records within their custody they, too, are protected by the liability protections of the Act. The Act creates certain summary offences relating to the unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record. Proceedings for these offences must be commenced no later than six months from the date the offence was alleged to have occurred. However, by their very nature these offences often do not come to light within six months. To enable the State Records Authority to meaningfully carry out its protective functions under the Act, the bill increases the limitation period from six months to two years.

The legislation currently contains, by way of a schedule to the Act, guidelines on normal administrative practice. As the guidelines form part of the legislation, it is difficult for them to be readily updated as business practices change and new issues arise. The bill proposes a more flexible approach whereby the guidelines in schedule 1 are to be repealed and the guidelines prescribed instead by the regulations, making them easier to update as required. The focus of the State Records Act is on official records. However, in administering the Act the State Records Authority has found difficulties in the relationship of the Act to collections of private records held by certain public offices. To prevent these records from being treated as State records, the Act exempts private records held by State collecting institutions. The Act lists these institutions and provides that any other public office can be prescribed by regulation as a State collecting institution. However, where a public office is prescribed as a State collecting institution by regulation, the Act also provides that State records held in the collection of State collecting institutions before the commencement of the Act are exempt from provisions of the

Act relating to records management, control and access. The bill amends the Act so that private records can be excluded from the operation of the Act without exempting State records that should remain covered.

The purpose of the proposal is to correct an unintended result of the Act. The change will mean that in future where a public office is prescribed as a State collecting institution, private records held by public offices are excluded from the coverage of the Act, but State records held by the institution will be covered by the Act. The current arrangements for State collecting institutions already listed will be retained so that collections held by these institutions before the commencement of the Act will not be subject to the records management, control and access provisions of the Act. The rationale for this is that existing State collecting institutions, such as the State Library of New South Wales, are recognised as already having sufficient measures in place for managing collections held before the commencement of the Act. The current Act enables the State Records Authority to provide services on a commercial basis. However, in the absence of clear authority this power could be interpreted as limited to New South Wales. The State Records Authority offers services beyond New South Wales, such as licensing thesaurus products to the Commonwealth and various State governments, and to other organisations in Australia and overseas.

To ensure that the State Records can continue to provide such services and products in other States and overseas, any doubts about the authority's power to operate outside New South Wales should be removed. The bill will amend the Act to make explicit that State Records has clear powers to provide commercial services outside New South Wales. The Act allows State Records to be used with the same legal effect as the corporate name of the State Records Authority of New South Wales. However, a number of other archival institutions have been renamed State Records or similar since the passage of the Act, so confusion may arise. The authority uses State Records NSW when there is a possibility of such confusion. This bill amends the Act so that State Records NSW will have the same legal effect as its corporate name. The State Records Act represents a positive approach to public records management. It promotes the importance of sound records management from the moment records are created, and the importance of protecting archives. Its objectives remain valid. The amendments that I have outlined today will serve only to strengthen this Act, and further improve records management across the New South Wales public sector. I commend the bill to the House.

**The Hon. DON HARWIN** [3.25 p.m.]: The State Records Amendment Bill 2004 may seem like a boring subject, but our State's public archives are a fundamental cornerstone in the preservation of the social and political history of our community. They are a vital resource for academics and scholars in understanding our past and the decisions that have shaped our current circumstances. As an extremely amateur archivist, who, two years ago, oversaw the deposit of some 169 boxes of records into the State Library, which is one of the State collecting institutions referred to by the Hon. Eric Roozendaal, it is of great interest to me. Some of the collections in the custody of State Records NSW include historical electoral rolls, records of births, deaths and marriages, Department of Education subject files from 1875 to 1948 which, I am sure, our colleague the Hon. Jan Burnswoods would have had occasion to look at during her previous life as a Department of Education historian. The collection also includes collectors' books from the 1901 census, land grants from 1788 to 1856, a select list of professions and occupations from the nineteenth and early twentieth centuries, surveyors' field books, police service records, insolvency records, gaol photographs, orphan school records, shipping files, papers of former colonial secretaries and reports of cases heard by the magistracy from 1788 to 1820.

Our State records have an enormous wealth of material that would be of interest to our historians. It is in our interests to have State archives that can maintain and make accessible as many collections of important, private and government institutional materials as possible. We must undertake every effort to ensure that legislation in no way undermines the integrity of the disclosure and assessment process relating to our State repositories. We must ensure that in our efforts to make archive papers open to public access we do not compromise privacy considerations. As well as a breach of somebody's privacy, this potentially could discourage individuals and institutions from entrusting their materials to our State archives and, as a consequence, deny future historians the benefit of a comprehensive record of our times. Before considering all the details of the bill, it is worth considering in greater depth the role that State Records fulfils. As the State archives and records management authority, State Records operational targets are concerned with the handling of the State's official archives and with improving public sector record-keeping practices.

These overall aims form the basis for the following objectives: first, to establish and monitor standards for the creation, management and disposal of State records; second, to provide practical advice, guidance and training to New South Wales public sector bodies in all aspects of records management; third, to provide centralised and cost-effective storage and retrieval services for the semiactive records of public sector agencies; fourth, to identify those State records that should be retained as State archives and authorise and oversee the

disposal of those that should not; fifth, to document and catalogue State archives in their functional and administrative context; sixth, to develop appropriate environments for the storage and preservation of State archives and to ensure that those practices are utilised in regard to archives stored elsewhere; seventh, to employ techniques and technologies in the field of preservation, storage and retrieval that deliver the best management outcome for the State's archives; eighth, to make State records that are more than 30 years old available for public access and use; ninth, to interpret, promote and enhance our public awareness of the State archives collection; and, tenth, to make the best use of information technology and communications in the delivery of State Records services.

State Records pursues these 10 objectives in a challenging operational environment. Of major concern is the inexorable physical deterioration to which the archives are subjected, particularly the film-based and magnetic media parts of the collection, which require urgent attention but which State Records is currently poorly equipped to deal with. Arresting or minimising decay in the archives is at the centre of the organisation's focus. Another area of concern regarding the archives is the large proportion of material that remains inadequately catalogued. This remains a major barrier to the ability of State Records to make the archives more accessible. It also severely limits moves to improve the online access to its collections through digitisation.

Making the archives more accessible to people in regional and rural New South Wales is another challenge that is facing State Records. The authority's major facilities and the bulk of its collections material are located in Sydney. In order that the collections are available outside the metropolitan area, State Records is taking steps to deliver a greater range of its services electronically as well as to utilise more up-to-date technology in relation to these online services. In conjunction with these developments, State Records has made special efforts over recent years to better serve the people of regional and rural New South Wales by retaining archives of local and regional significance in the communities to which they relate. These primary challenges for State Records, and the core initiatives being pursued in response, are all being played out in the context of tight fiscal restraint.

As with most government agencies, State Records is functioning with progressively reduced resources. The maintenance of services is increasingly reliant on reduced operational overheads, which makes the successful implementation of additional strategies and services particularly difficult. I note the comments of the chairperson of the State Records Authority, Dr Shirley Fitzgerald, in the 2002-03 annual report:

During the year, State Records and its board struggled with the challenge of operating with significantly increased costs and a largely static funding base. This is making it increasingly difficult for State Records to carry out its diverse range of functions and meet its statutory obligations.

She later concluded with the remark:

To put it simply, State Records needs additional funds to undertake its core functions and must find innovative ways to meet this need.

I note that the State Records Authority is receiving funding from a committee upon which I serve to preserve and examine documents related to the establishment and development of responsible government in New South Wales. One of the projects of the Sesquicentenary of Responsible Government History Project Committee is to develop a comprehensive guide for scholars that identifies and describes key records and primary source materials relating to the field with the aim of enhancing future research.

Major events and movements to be covered by this guide include the appointment of a Legislative Council to advise the Governor in 1824; the machinery and process of government; the formation of Queensland as a separate colony in 1859; the proposed formation of the Riverina as a separate colony in the 1860s; the granting of universal manhood suffrage; the extension of the vote to include women; and the New South Wales parliamentary Standing Committee on Public Works between 1888 and 1930. This valuable guide will be a gateway to the State's political archives for all researchers, and it is a most worthwhile undertaking.

Despite the troubling financial environment in which the authority currently operates, the annual report reveals that the authority continues to achieve some notable successes. Some of the key highlights recently have been the online display of archival photographs for the first time; the expansion of the web site index to cover convict records, gaol photographs, surveyors' letters and early colonial court records; and the provision of funds under the Archives in the Bush grants program to regional repositories in New England, Broken Hill, Newcastle and Wagga Wagga for documentation projects, infrastructure upgrades and preservation works.

Another key initiative outlined in the annual report was the development of the 2002-05 corporate plan for State Records. The number one goal under this plan is to review the operation of the State Records Act 1998 to ensure that it remains valid for the Government's policy objectives and seek any necessary amendments. This review was launched last year in accordance with section 82 of the Act, which required that such a review be undertaken once the Act had been in effect for five years and that its outcome be tabled in Parliament within 12 months.

The first stage in the review was the preparation of an issues paper to facilitate public consultation. Distributed at the start of 2004, the issues paper contained discussion of the review process as well as an outline of the purpose and operation of the Act. It also identified a list of some key issues relating to State Records. This document was then used as the foundation for meetings with key stakeholders as well as general public meetings in Sydney and Western Sydney and regional centres such as Armidale, Orange and Wagga Wagga. The paper was also the framework for a general call for written submissions. However, the issues paper was not viewed as being exhaustive, and additional matters raised in the meetings or submissions were also assessed. Thirty-two submissions were received from a range of individuals and groups, with the majority coming from public offices covered by the Act.

The principal findings of the review were very positive. Both official stakeholders and the general public indicated strong support for the objectives of the State Records Act, with none of the comments or submissions questioning the value of the Act's fundamental aims. Further, the feedback received by the review confirmed the importance of sound and up-to-date public records legislation in the protection of the State's archives and the scrutiny of government efficiency and accountability. The review revealed general support for the effectiveness of the current Act's provisions in securing these objectives. Particularly, the review noted that improvements in records management across the New South Wales public sector was widely regarded. However, the review identified measures that could enhance its operations through simplification and increased efficiency. As a consequence, the review made seven recommendations to the Minister for the Arts involving changes to the Act. These recommendations form the basis of the bill that is before the House today.

The most significant of the bill's provisions concern public access to records that are over 30 years old. The Act in its current form provides for public access to State records that are over 30 years old, regardless of whether the documents are held by the State Records Authority or a public office. Such records are made open when the public office responsible for their management issues an open to public access direction. In the case of records containing sensitive information, the relevant public office may currently deny access, without explanation, by issuing a closed to public access direction. This bill seeks to strengthen this area of the Act's operation in a number of ways. Firstly, the bill states an explicit presumption in favour of opening to public access records that are over 30 years old, with public offices being required to have regard to this presumption that when determining what form of access direction to issue. Secondly, in the instances when the public office deems it necessary to refuse public access to particular documents, the relevant public office will be required to state the reasons for the decision and the State Records Authority will be empowered to request a review of the decision by the Minister who is responsible for the relevant public office.

As access directions are not currently subject to any review mechanism, this is a welcome amendment; although I note that the Act will not specify what the Minister must take into account in such a review. Finally, this bill seeks to expedite the process of opening State records that are more than 30 years old but directing that those records that are not subject to a closed to public access direction be made public within 14 days of an application for access, rather than the current period of 30 days. On this point, the Legislation Review Committee duly noted that while an efficient access service is in the public interest, this provision could result in the public release of private information, should there be a failure to make a public access direction within this shortened time frame. This raises the concern that this provision may trespass unduly on personal rights and liberties.

In addition to the provisions regarding the accessibility of records that are over 30 years old, the bill seeks to make a variety of other amendments to the Act. In relation to the early opening to public access of records that are less than 30 years old, the bill seeks to extend to public offices the protection from liability under the Act that is currently applicable to the State Records Authority. In its current form, the Act provides that a public office may authorise the State Records Authority to make open to the public documents that are less than 30 years old. Should the document be under the control of the authority, there is no issue with liability protection; however, if the record is in the custody of a public office, it is not made clear under the current wording of the Act whether the relevant public office would be protected by the same provisions. This bill seeks to clarify this uncertainty by explicitly stating that the liability protections of the Act extend to those public offices that provide appropriate early access to State records in their custody.

With regard to the privacy implications of this clause of the bill the Legislation Review Committee, sought advice as to whether public offices, in determining whether to grant early access to particular records, would be subject to the non-disclosure provisions in the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002. In a written response the Premier has subsequently assured the committee that in such decision-making processes public offices would be subject to these provisions. This is relevant and important for the House to understand in considering the amendments that will be moved in Committee. Another section of the bill clarifies ambiguity in the current Act by specifically allowing the State Records Authority to provide commercial services outside New South Wales. That is welcome.

The bill seeks to extend from six months to two years the limitation period on prosecutions for summary offences relating to the unauthorised disposal, removal or alteration of State records. As such offences may not be discovered within six months, this extension is an entirely appropriate step which will better enable the authority to fulfil its protective functions under the Act. The last aspect of the bill on which I will comment is the one about which I hold the greatest concern—I hope it has now been satisfied—and that is in relation to private records held by recognised State collecting institutions. The bill amends the Act so that private records can be excluded from the operation of the Act without exempting State records that certainly should remain covered. This provision is included so that in the future when a public office is prescribed as a State collecting institution State records held by that office will be covered by the Act but private records held by that institution will be excluded.

As I mentioned at the very beginning of my comments on the bill, the protection of private records held by State collecting institutions and offices is vitally important to the integrity of our archives. It would be a disastrous blow for our historical records if prominent organisations and individuals lost faith in the security of our archive repositories and consequently decided to destroy their records or to continue to hold them privately rather than to donate them to institutions such as the State Library of New South Wales for preservation. I cannot emphasise enough the importance of ensuring that the conditions relating to confidentiality imposed by private contributors when depositing material with State collecting institutions are always respected. On this point I am pleased to see the assurance given by the Premier to the Legislation Review Committee in relation to this aspect of the bill. The Premier noted:

Private records given to a State collecting institution are excluded from the operation of the Act, provided the record forms part of that institution's collection. An example would be a collection of letters written by a private individual which have been donated or purchased for the library of the State collecting institution.

There can be no doubt on this matter as it is of fundamental importance to the value of our archive collections to future generations. I think that the Parliamentary Secretary repeated those assurances in his speech, and they are welcome. In conclusion, it is noted that the changes in this bill will have no impact on the budget and are in accordance with the recommendations of the review conducted earlier this year. As the bill is consistent with the Coalition's commitment to open and accountable government, we shall not oppose it.

**Reverend the Hon. Dr GORDON MOYES** [3.43 p.m.]: The main motivator behind the State Records Amendment Bill is the need to streamline operations under the State Records Act of 1998. The proposed amendments are the result of the review of the State Records Act conducted by the State Records Authority earlier last year. The review found that the main objectives of the Act were still appropriate, and it did not recommend any changes to these objectives, but recommendations were made that certain amendments should be instituted in order to update the Act and to improve its operation. Previous speakers spoke about the significance of our State archives and also of the importance of electronic retrieval systems. I concur with these remarks and I do not believe that anything further needs to be added on that point. However, one of the most significant measures taken in the bill is the creation of a presumption in favour of public access to State records that are at least 30 years old.

Under the current system of public office it simply makes an assessment as to whether the nature of the record warrants the document's protection and thereby decides to make or not make the record open to the public. Creating a presumption in favour of public access for these records not only provides mandatory guidelines to public offices in their decision-making processes but also gives the public an expectation that more often than not their request for the record will be upheld. Where State records are at least 30 years old and not the subject of an access direction the public office responsible for the record is to make a public access direction. Specifically, the direction may be a closed public access, direction or an open public access or direction.

Under the present scheme the public office has one month from the date on which a person requests a record to make a decision whether the record should be open to the public or not. If the public office fails to make a decision within the one month period the record is automatically assumed to be open to public access. The bill proposes to decrease the period of one month now to 14 days. The 14 days has been said by the Australian Privacy Foundation to be a ridiculously short time frame for an agency to complete this task because records already held by State Archives need time to be physically retrieved before they can be properly reviewed. In my dealings with the State Records Authority, and with one particular public office, the public office took full advantage of the fact that it had one month to make an access direction.

I stressed the point that I needed the record urgently but it took the full one month to consider making a direction. Shortening the period to 14 days will go towards ensuring prompt and efficient service to the public. As the author of a large number of published works, most of them based on historical records, I can tell you that the one month time frame was always too long and shortening it to 14 days will help many authors and others who want to use public records. Allowing a public office instead of the State Records Authority to provide access to records less than 30 years old is an efficient measure. Doubts as to whether public offices comply with privacy legislation may be removed when section 57 (4) is read. It states:

This section does not authorise a public office to permit public access to a State record in breach of any duty or obligation (such as a duty of confidentiality) that the public office may have with respect to the record.

It is also important to note that under the bill when a closed public access direction is given by a public office—that is, when public access to a record is not permitted—the public office must give its reasons for giving the direction both to the State Records Authority and to any person applying to access the record. The authority may also request the public office responsible to have the direction reviewed by the Minister for the public office, and this review must be finalised within three months, in consultation with the authority. However, because most of the records will now be in electronic form and will be accessible electronically this will remove much of the delay. It certainly will help those who are interested in writing or in other research to have those records available easily. Lastly, the bill extends the limitation period for commencing proceedings for offences against the State Records Act from six months to two years. That is a commendable move because, quite frankly, sometimes it takes longer than six months for the State Records Authority to realise that an offence may have been committed under the Act. The Christian Democratic Party commends the bill to the House.

**The Hon. JOHN RYAN** [3.49 p.m.]: I wish to speak briefly to the bill to represent some of the interests of people called genealogists, who make an enormous use of State records. There is an awful lot of comment about how State records are used by loftier researchers such as historians and even journalists. But, believe it or not, the most frequent users of our State records are likely to be people doing family history, trying to find out scraps of data about earlier members of their family. It is a pastime that is becoming increasingly interesting to members of the community. Many baby boomers and people just a little older are starting to want to know something about their family records. Almost everyone in some way has been touched by a government service or department or has interacted with them and people search through government records in order to find scraps of evidence about their family members.

Families gain an enormous amount of pleasure from that pastime. It is pleasurable to find a piece of paper, no matter how insignificant, that still contains the signature of relatives of whom there might be no photographs or other physical evidence of their existence. Records might tell us where they are buried, something about what they did while they worked in the service of government and, more tragically, something about how they died because those records were maintained or kept either by the police or by a coronial office. On odd occasions people look through State records to try to find photographs of family members. The Commonwealth is a vast treasure trove of family records and photographs. It is miles ahead of State governments in its ability to catalogue, index and provide access to those records.

Dozens of families are beginning to discover very precious resources and the records of family members, in particular, those who were involved in the First World War and the Second World War. My wife's family gained enormous pleasure from finding the only photograph of one family member who was involved in World War II and who sadly died on the Burma railway. A single photograph of this impressive looking young man was maintained and kept by the archives authority of Australia. My wife's family was able to get that photograph from the national records authority. Additionally, my family also gained pleasure from finding the records of an ageing relative who worked with Australia Post all his life. He was in a nursing home for many years.

As we sat by his bedside we got him to recount stories of his boyhood, his working years and his family life. The problem was that this ageing relative did not necessarily know the order in which many of these events

happened. I decided that one way to find out would be to go through Australian records and obtain his working history. That gave us details of his salary and, importantly, it told us where he worked and when he worked there. He recalled meeting Prime Minister Chifley while working in the post office at Parliament House. I thought that he was not the right age, that it did not make much sense and that it could not possibly have happened. However, Uncle Fred was right. He was working in the Parliament House post office at the relevant time.

Those are the sorts of uses to which genealogists and family historians put those records. It is a mundane procedure but it gives many families a great deal of pleasure. Provided the fees are not too extortionate families are often prepared to pay for the privilege of accessing those records. Records are not only a wonderful and valuable cultural resource; they are also a valuable commercial resource. People in New South Wales and in Victoria are fortunate to have some of the best-kept records of births, deaths and marriages in the world. Anyone whose family members have lived for any time in New South Wales would have an extremely good chance of tracing them through births, deaths and marriages records.

The records of all births, deaths and marriages are indexed and they are available on the Internet. People are able to access original records and in some instances they are able to access material submitted by the person who reported the birth, death or marriage. They are able to find signatures of and personal details about family members. I said earlier that this appears to most of us to be a mundane process, but it is extremely exciting to those who are trying to search these records. I pay tribute to the Church of Jesus Christ of Latter Day Saints—an organisation of which I am not a member and that I do not understand very well. Because of its interest in genealogy we owe it an enormous debt for indexing all our births, deaths and marriages and for making it possible for everyone to access details about every person born in New South Wales, right back to the First Fleet.

We are able to access those indexes because the church took all our records, indexed them in the order in which they occurred, and gave them a reference number. Those records are now available on the Internet and we are able to access them easily. Many families have gained enormous pleasure from working out who their grandparents might have been, the parents of their grandparents and where they lived. They use those records as a means to research other issues. For example, if they know the town in which a relative lived they search graveyards to establish where that relative was buried. My colleague the Hon. Don Harwin said earlier that the archives authority might need more resources to carry out its useful work.

I suggest that more of the material that is available to the State Records Authority should be indexed. If it is not indexed people will have difficulty in establishing whether certain records exist. Quite often the useful records that exist—records that would give people the sort of pleasure I described earlier—cannot be found because the material is not properly indexed. My colleague the Hon. Don Harwin has given the State Records Authority an enormous number of records from the Liberal Party. In 30 or 50 years people might want to access those records. They might know that a family relative contested preselection for the Liberal Party at some time. They might know that records relating to those preselections are available in the public library but they would have no idea of the people that those records cover.

An index would enable those records to be accessed and they would quickly be able to determine whether the family records they were looking for were available. They would no longer have to search endlessly for those records. Another area of importance relates to digitising records. It is a somewhat dull exercise but we all understand how many records can be copied electronically and made available on a digital database. That would enable people in Australia to access on the Internet the births, deaths and marriages records available in the United Kingdom. If we were able to digitise these records an enormous number of people would want to access them.

As I said earlier, this is a commercially valuable proposition. Because the births, deaths and marriages records in the United Kingdom are hard to access—they are not indexed in the way in which I described earlier—people tend to look for access to census records. For a small fee people in Australia can obtain 1901 census records, which list the areas in which families lived and who their relatives were. When that service was first made available on the Internet it was incredibly popular. So many people tried to access those records that the web site of the Government in the United Kingdom went into meltdown and had to be shut down for a couple of days. The records were not available for months until that Government found a better way to provide access to them.

Every person accessing those records paid \$20 to download data and to look at it. Clearly it is a commercially valuable resource. I recall being a member of a parliamentary committee that was chaired by my

former colleague Dr Marlene Goldsmith. That committee examined the issue of making births, deaths and marriages records accessible to the public. Those members who remember the Hon. Dr Marlene Goldsmith would know that she was enormously sensitive about her age and she did not want people to know how old she was. So the recommendations of that committee regarding access to things like the indexes of births, deaths and marriages were extraordinarily conservative. However, they will stand the test of time because by international benchmarks they are largely consistent with what happens overseas.

One area in which we could make a difference—I am sure that my colleague would be horrified to hear what I am about to say if she were still a member of this Chamber—would be to give people in New South Wales access to the register of deaths index, not after 50 years as is currently the case but after 25 years. People know when someone has died and usually there is nothing very sensitive about such an issue. If people had access to a death certificate they would be able to identify the parents and the brothers and sisters of the person who had died. That would make family research exercises enormously easy. I commend the bill to the House.

**The Hon. JAN BURNSWOODS** [3.59 p.m.]: I am delighted to support the State Records Amendment Bill, which, as previous speakers in this debate have pointed out, authorises a standard five-year review of the existing legislation.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio)**: Order! Members are reminded that interjections are disorderly at all times. If members wish to have private conversations, I ask them to please turn off their microphones.

**The Hon. JAN BURNSWOODS**: This bill amends the State Records Act 1998, which replaced the original Archives Act 1960. The bill follows a review of the State Records Act, which found broadly that the terms and objects of the Act remained valid and appropriate but that a number of relatively small amendments were needed.

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

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### ROADS FUNDING

**The Hon. MICHAEL GALLACHER**: My question is directed to the Minister for Roads. What action is the Minister taking to increase State funding of roads that are deteriorating as a result of the large number of trucks that are now forced to use these roads to transport grain because of the decisions taken by the Minister for Transport and by his successor to close restricted rail branch lines? As Minister for Roads, will the Minister now seek to have the new Minister for Transport increase maintenance funding of restricted branch lines to ensure that as much grain as possible is transported by rail, therefore lessening the impact on the roads budget bottom line?

**The Hon. MICHAEL COSTA**: I do not want to debate the question and I will not debate the question.

**The Hon. Rick Colless**: You're not allowed to debate the question. Just answer the question.

**The Hon. MICHAEL COSTA**: Those opposite want us not to have supplementary questions but then they interject. We will remember that. I thought we had an arrangement. The Leader of the Opposition confuses two different funding sources in his question. The bulk of funding for the matters that he refers to is unrelated to funding for the roads budget. The Leader of the Opposition clearly knows that because during the previous Parliament I confirmed, as Minister for Transport Services, that the Government was considering a review of grain lines. That is a matter for the Minister for Transport. The review is ongoing and until it is completed no sensible discussions can be had about this matter.

However, I point out that the critical issue in relation to roads funding is AusLink, which outlines the major funding strategies currently under discussion between the State and the Commonwealth and includes many of the roads that will potentially be impacted by heavy truck movements. The negotiations between the Commonwealth and State about AusLink must be resolved. Under those proposals we find that the Federal Government has once again reduced roads funding to the State Government or is putting in place a set of

arrangements that will reduce the available funding for things such as maintenance, safety and urgent minor repairs. In fact, the AusLink proposal that is currently on the table reduces funding in that area from about \$117 million per annum to approximately \$95 million by 2005-06. In addition, there will be an estimated shortfall of \$96 million under the current AusLink package. That is of concern. There is also a 20 per cent shortfall in funding for major projects, such as the F3, and an estimated shortfall of about \$62 million—

**The Hon. Michael Gallacher:** You'll only be able to give this answer once, won't you? This is everything. Talk about the tarpaulin answer: it covers everything.

**The Hon. MICHAEL COSTA:** We will get it on the record. The Leader of the Opposition led with his chin and he will get it right back. The estimated shortfalls in a range of projects indicate clearly that the Federal Government is using the AusLink program as a political tool to pork barrel. We have seen this with the grants program and now the AusLink program is being used to pork barrel.

**The Hon. Rick Colless:** Point of order: The question clearly relates to State funding for roads not Federal roads funding. Will you direct the Minister to return to the issue of State roads funding?

**The PRESIDENT:** Order! While it is a convention that Ministers may make general remarks in their responses to questions, I remind the Minister that his answer must be relevant.

**The Hon. MICHAEL COSTA:** The State roads budget is funded from two sources: half of it comes directly from State revenue and the other half comes from Federal Government specific grants. So any discussion about road funding in New South Wales must refer to the funding arrangements between the State and Commonwealth. That is a fact of which the Opposition is obviously ignorant. It destroys any credibility Opposition members might have when discussing road funding. AusLink is absolutely critical: half our funding in this area comes from the Commonwealth and it is cutting funding. Those opposite should ask their Federal colleagues about road funding arrangements, particularly AusLink. I am happy to take further questions about this issue as I have more and more facts regarding the cut in funding from the Federal Government.

#### WE HELP OURSELVES METHADONE TREATMENT FACILITY

**The Hon. CHRISTINE ROBERTSON:** My question is addressed to the Special Minister of State. Can the Minister inform the House about any additional treatment options now available for people on methadone?

**The Hon. JOHN DELLA BOSCA:** Yes, I can, and I thank the Hon. Christine Robertson for her question. Last week I visited the We Help Ourselves [WHOS] facility at Chippendale to discuss and confirm new Carr Government funding for an initiative that allows women to withdraw from methadone in a residential drug treatment facility. The Government has appointed We Help Ourselves to provide seven beds for women to withdraw from methadone or other opioid maintenance drugs in a stand-alone service. We Help Ourselves already operates a separate 14-bed facility at Surry Hills, which it will convert to become a men-only service. It will run the new women's facility from a location in Sydney's inner west.

This initiative is part of the Carr Government's strong and detailed plan for drug treatment, education, prevention and law enforcement. Although methadone is recognised as being a long-term treatment, with an excellent record of assisting users to free themselves from heroin and stabilise their lives, there is growing recognition of the need for more options to assist people to move to abstinence when they are ready to do so. There is no one-size-fits-all approach for people withdrawing from heroin. Methadone is an excellent option for some. However, some of the women I met last week wanted an alternative—one of them after 19 years on methadone. The We Help Ourselves service will provide intensive 24-hour support and care to residents in a mix of short- and long-term programs to help them move to abstinence. It is expected that the typical length of stay will be three to six months.

**The Hon. Michael Gallacher:** That's what you should call your land tax policy: We help ourselves to your money.

**The Hon. JOHN DELLA BOSCA:** Services will include: behavioural treatment, social and community—

**The Hon. Christine Robertson:** Point of order: I am unable to hear the reply of the Minister due to the noise from the other side of the House.

**The PRESIDENT:** Order! Members who wish to chatter should leave the Chamber.

**The Hon. JOHN DELLA BOSCA:** Thank you, Madam President. I will endeavour to speak over the interjections. Services will include social and community living skills training, individual and group-based therapeutic activities, relapse prevention strategies, case management of each resident, strategies to assist residents back into the community, and post-treatment follow-up. The aim of this initiative is to provide a safe and secure residential setting for women who wish to withdraw voluntarily from methadone or other opioid maintenance drugs. This proven model of treatment from the excellent We Help Ourselves organisation will equip patients to achieve healthier and more productive choices when confronted with the consequences of their drug use.

The initiative will also free places on the pharmacotherapy treatment program for methadone and buprenorphine so that more heroin users can access services to address their addiction. The \$237,000 per annum for this initiative is sourced from the Carr Government's four-year plan of action on drugs. We Help Ourselves is a non-government organisation and registered charity that has been providing alcohol and other drug rehabilitation services for 33 years. WHOS, as most members know, operates several facilities in Sydney and in the Hunter Valley. I am certain that Garth Popple and the dedicated WHOS personnel will deliver this new service in an efficient and effective way, and I wish them every success with their new operation.

#### OFFICE OF FAIR TRADING GOULBURN AGENCY

**The Hon. DUNCAN GAY:** My question is directed to the Minister for Fair Trading. Is the Minister aware that following the closure of the Office of Fair Trading agency in Goulburn locals have been denied face-to-face access to fair trading services? Why is the Minister for Fair Trading engaging in false and deceptive advertising by keeping contact details of the closed agency—including a disconnected telephone number—on the Office of Fair Trading web site? Will the Minister bring the full force of the Act to bear against himself?

**The Hon. JOHN HATZISTERGOS:** The issue in relation to the Goulburn office arose as a consequence of the Business Enterprise Centre, with which we had a mailing agreement in Goulburn, closing at the end of last year. It was carrying out transactions until December 2004. The Goulburn District Chamber of Commerce closed its facility as a shopfront in December 2004, which made it impossible for Fair Trading to continue its mailbox service from that facility. Fair Trading is now in the process of identifying new premises in order to continue its Goulburn service, which we expect to commence shortly.

#### PAROLE BOARD COMMUNITY REPRESENTATION

**The Hon. PETER BREEN:** My question is directed to the Minister for Justice and Minister for Fair Trading. Is the Minister aware that Robert Bruce Inkster and Peter John Walsh, both ex-policemen, have been appointed as community representatives to the Parole Board? Does the Minister agree that those appointments do not reflect the composition of the community at large, as specified in the relevant legislation? Does the Minister acknowledge a potential conflict of interest in that Mr Inkster and Mr Walsh may have had previous dealings as serving policemen with inmates whose parole they are reviewing? Does the Minister acknowledge that the relevant legislation has a provision for at least one police officer to be appointed to the Parole Board? Is it the Minister's intention to stack the Parole Board with current and former police officers?

**The Hon. JOHN HATZISTERGOS:** The answers to the questions seriatim are: Yes, no, no, yes and no.

#### CARBON CREDIT CERTIFICATES

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Primary Industries. Would the Minister update the House on the initiatives that are in place to help increase the number of trees being planted, and what impact that will have on the level of carbon dioxide in the atmosphere?

**The Hon. IAN MACDONALD:** Forest areas have long been recognised as having a positive impact on the environment. However, accountants and economists the world over have traditionally ignored the true economic and environmental value of our trees. Thankfully, that is changing. In 2003 the State Government introduced its Greenhouse Gas Abatement Scheme. The scheme provides a major incentive for electricity retailers to invest in renewable energy, low emission energy and carbon sequestration. Our forest plantations are playing an increasingly important role in this effort. Last month, Forests New South Wales became the first

body in Australia authorised to create and sell carbon credit certificates based on our forest plantations. These certificates provide a new form of currency. In short, they help capture the real financial value of our forests.

Electricity retailers can purchase certificates to help meet their obligations to offset greenhouse gas emissions in the State. Today I inform the House that Forests New South Wales has reached yet another milestone, by successfully registering its first batch of carbon credit certificates. They are based on 10,000 hectares of new eucalypt forests in northern New South Wales. The credits generated from these trees are equal to the removal of more than 160,000 tonnes of carbon dioxide from the atmosphere per year. And that is just the tip of the iceberg. Based on the area of the State's eligible hardwood and softwood plantations, it is estimated that Forests New South Wales could eventually create up to 500,000 carbon credit certificates per year, currently valued at more than \$5 million. Having tradeable carbon certificates provides a real incentive for electricity retailers to work with Forests New South Wales to create new plantations, and planting more trees can deliver a win for our regional communities, through more economic activity.

I must point out to the House that the Greenhouse Gas Abatement Scheme was designed to be Kyoto consistent. Unfortunately the Commonwealth has so far refused to join other industrialised nations in signing up to that important protocol. While the Commonwealth's stance will not affect domestic retailers wanting to use the carbon credit certificates, it severely limits our ability to attract international investment into new and expanded plantations. Fortunately I can report that a number of international companies are still looking to partner with Forests New South Wales, in the belief that Australia will soon change its position. For instance, February marked the fifth anniversary of a groundbreaking partnership with Tokyo Electric Power Company, which has seen more than 5,000 hectares of new forest plantations in New South Wales. By 2010, the partnership is expected to deliver between 10,000 and 40,000 hectares of new hardwood and softwood plantations.

In 2003, the Italian-based global semiconductor manufacturer, ST Microelectronics, agreed to work with Forests New South Wales to plant up to 12,000 hectares of trees, as part of its strategy to deliver zero net greenhouse emissions by 2010. Labor—both at the State and Federal level—will continue to push the Commonwealth to ratify Kyoto. We have had considerable discussions on this very issue with a close colleague of mine, Mr Anthony Albanese, our Federal spokesperson for the environment. He has made several energetic speeches in Federal Parliament on this matter. Not only does it help countries meet greenhouse gas reduction targets, but it also advances a very real and important new global market.

The longer the Coalition Government fails to ratify Kyoto, the longer Australia remains locked out of key business opportunities, opportunities that will deliver economic, social and environmental benefits to our regional communities. While the Commonwealth continues to stall, the Carr Labor Government is once again demonstrating its leadership in helping address the challenges of climate change.

#### FUNERAL INDUSTRY REGULATIONS

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is addressed to the Minister for Education and Training, representing the Minister for Health. What is the Minister's view on proposed changes to the regulatory framework for the funeral industry proposed by the Funeral Industry Council? Will the Minister propose any changes to the existing regulations of the funeral industry in 2005? Does the Minister share the concerns expressed by the Combined Pensioners and Superannuants Association, the Council of Social Service of New South Wales and others about the effect of the proposed changes on small operators in the funeral industry, who are not represented on the Funeral Industry Council, and on the cost of funerals, which has nearly tripled in the past decade? How will the Minister meet these concerns in any changes to the regulations?

**The Hon. CARMEL TEBBUTT:** I will refer these questions to the Minister for Health, and undertake to get a response as soon as possible.

#### YOUNG PEOPLE DISABLED ACCOMMODATION

**The Hon. JOHN RYAN:** My question is directed to the Minister for Disability Services. Has the Minister met any of the 400 to 1,000 younger people with a disability who are inappropriately living in nursing homes in New South Wales? Does the Minister or the Government generally have any new plans to assist those people to move to appropriate community-based accommodation?

**The PRESIDENT:** Order! I call the Hon. Eddie Obeid to order. I call the Hon. Eric Roozendaal to order.

**The Hon. JOHN DELLA BOSCA:** I have already started to meet with a wide variety of people and interest groups from the disability sector that are affected by the operations of the Department of Ageing, Disability and Home Care. The Government acknowledges that the community is concerned about younger people with a disability living in nursing home accommodation, particularly as they are often living with residents of a significantly older age group. Young people are only placed in nursing homes following objective, professional assessment that indicates they have significant clinical care needs that cannot be otherwise met. Often they have experienced a catastrophic accident or have an acquired brain injury and require extensive nursing home care.

Their support needs are difficult to meet through alternative services. It is acknowledged that this often locates them geographically some distance from family connections and from the communities they may have otherwise lived in. But the number of young people living in nursing homes is relatively small. People under the age of 50 make up less than 1 per cent of the total nursing home population in New South Wales. In recent years the rates of admission have declined. Nevertheless I recognise that younger people living in nursing homes are a particularly vulnerable group and their care needs can change quite rapidly and will definitely change over time. As a result, the Government has undertaken a number of steps to improve the level of support and reduce future admissions, and most of those initiatives were commenced under the administration of my colleague, the Hon. Carmel Tebbutt, the Minister for Education and Training.

Younger people with a disability living in nursing homes have priority access to the Government's Attendant Care Program, which supports people with a disability who are able to live independently, to meet their personal care needs. The Government increased the program by an additional 100 places, through extra funding of \$7 million in 2003, bringing the total places to 314. Staff of NSW Health and the Department of Ageing, Disability and Home Care often collaborate to case manage and identify other appropriate care arrangements as an alternative to a young person being placed in nursing home care. Further, the Government is exploring ways to support young people with clinical support needs to maintain links with the community through the Government's community access programs.

As honourable members, including the Hon. John Ryan, would appreciate, nursing homes are the responsibility of the Commonwealth Government, and this issue requires a collaborative approach. That is why the New South Wales Government negotiated a bilateral agreement with the Australian Government to work together to develop better support services for this group. Work to be undertaken includes mapping of the characteristics of those young people who are currently in nursing homes, developing better assessment techniques, and identifying appropriate service models to improve support for this group. This work is a significant and essential step to finding long-lasting and more effective solutions to young people's placement in nursing homes.

#### PERIODIC DETENTION COMPLIANCE

**The Hon. KAYEE GRIFFIN:** My question is addressed to the Minister for Justice. What is the latest information regarding the operation of periodic detention, and are there any proposals for its expansion?

**The Hon. JOHN HATZISTERGOS:** I thank the Hon. Kayee Griffin for this important question. Periodic detention compliance rates are now at a record high. In fact, the overall average rate of compliance for 2004 was 82.6 per cent; but the compliance rate climbed to as high as 85 per cent. This is to be contrasted with the position when the Coalition parties were in office, when the compliance rate was below 60 per cent, and only once in all of its seven years in office reached 70 per cent. So compliance rates are now at a record high, in contrast with what they were specifically when the Coalition was in government.

In addition, it is important to note that the New South Wales system has been changed radically over the term of this Government to ensure those high compliance rates, specifically through a number of legislative changes that have ensured rigour in the system whereby persons who absent themselves may have additional periods added to their sentences: a week for the first two absences and compulsory revocation on the third absence without leave. Notwithstanding Labor's good record, the Opposition has unashamedly criticised periodic detention arrangements. In January 2004 the acting Opposition leader, Mr Stoner, issued a press release saying that the periodic detention system in New South Wales is a farce. On radio 2GB on 13 January he said:

The problem is the number of detainees who are not presenting for their detention ... that figure is shocking.

He must have had in mind Federal periodic detention compliance rates, which sometimes have fallen to as many as 40 per cent of Federal offenders not bothering to turn up for periodic detention. They do not bother to turn up

because 12 steps are involved in revoking periodic detention orders for Federal offenders, all of which take enormous amounts of time and effort, and even then ultimately may not result in revocation because the courts have discretion whether or not to revoke a periodic detention order where the person does not attend. So that is what I think Mr Stoner had in mind. But, even if he was criticising the New South Wales system, it is interesting that only a couple of weeks ago the shadow Minister was in Dubbo advocating construction of a periodic detention centre in the Dubbo area. The Coalition criticised the scheme in January, but in February said that the Dubbo prison should have a periodic detention centre. The shadow Minister said:

It can be used to try and change the behaviour of offenders and make sure that there's a punishment.

We need more options for the punishment of offenders. Magistrates need an alternative to locking people up in jail.

This is the system that they criticised as not being effective. Now they want a periodic detention centre in the mid-west. Interestingly, they advocated where it should be located. The shadow Minister said it could be in either Dubbo or Wellington, adding, "I am happy to be guided by the community on that." I am interested that Wellington featured in this debate, because only a few months ago he told us that the construction of the Wellington Correctional Centre was a political decision made by the Government against the advice of the Department of Corrective Services. So he wants a program that he does not support to go to a gaol that he believes should not exist. That is the policy of the Opposition in relation to a periodic detention centre. It is interesting to note how the Wellington community has responded to this call. I want to quote from the *Wellington Times*—

**The Hon. Duncan Gay:** Tell us about the tenders for the gaol.

**The Hon. JOHN HATZISTERGOS:** We will get to that later.

**The Hon. Duncan Gay:** You do not want to talk about that, do you?

**The Hon. JOHN HATZISTERGOS:** The Deputy Leader of the Opposition is like a bird of paradise on heat! Let us get back to the issue of periodic detention. The *Wellington Times* of 18 February 2005 said this:

Mayor Tom Knowles has reservations with Mr Humpherson's proposal saying he believed the mobile community service operations for crime offenders currently being used are preferable to periodic detention and are working well.

[Time expired.]

**The PRESIDENT:** Order! Is the Hon. Kayee Griffin seeking to ask a supplementary question?

**The Hon. Kayee Griffin:** No.

#### MARINE PARK SANCTUARY ZONES

**Mr IAN COHEN:** My question is directed to the Minister for Primary Industries. Scientists have recommended that 20 per cent to 50 per cent of all marine waters be in sanctuary zones. How can the Government and the Ministry for Primary Industries claim to be committed to the protection of the State's environment when the current figure for New South Wales marine waters in sanctuary zones is less than 3 per cent?

**The Hon. IAN MACDONALD:** Mr Ian Cohen asked me this question at an estimates committee hearing. Scientists have recommended as the honourable member asserted. The Lord Howe Island marine park is a 27 per cent marine park sanctuary zone. In relation to the Byron marine park, the proposal put before the community by the Minister for the Environment, the Hon. Bob Debus, and by me is that it be 27.5 per cent, and further consultation is being conducted at the moment before a final decision is made. These are the first of the marine parks, other than the two located further south, which have been in existence for some time. We believe that we have roughly got it right with both the Lord Howe Island and Byron sanctuary zones. We have good representations of marine life contained within the sanctuary zones, and we will be basing our future actions on marine parks on similar sorts of decision making.

#### GREENWELL POINT PUBLIC SCHOOL STAFFING

**The Hon. PATRICIA FORSYTHE:** My question without notice is addressed to the Minister for Education and Training. Is Greenwell Point Public School, on the South Coast, targeted to lose one of its three

permanent teachers? If so, will the Minister extend the same opportunity to retain a teacher, despite falling enrolments, as the Minister afforded Scarborough Public School last week? Is the Minister aware that for each of the past four years, enrolments at the school have increased in early term 2 by between 9 and 17 students? Is the Minister further aware that enrolment projections for 2006 will see the school have sufficient students for the employment of three permanent teachers?

**The Hon. CARMEL TEBBUTT:** As I advised the House last week with regard to government schools and staffing, we allocate teaching staff according to a formula that is based on student enrolments, and that ensures that resources are distributed equitably across the State. The formula varies according to the type of school and the particular needs of students, and at the end of each year principals anticipate how many students are expected to enrol at their schools in the following year, and the teacher staffing levels are reviewed at the beginning of the school year once actual enrolments are known. I am not aware of the circumstances of Greenwell Point Public School, but I would be happy to look into the situation and come back to the honourable member with further advice.

### ENGLISH LANGUAGE AND LITERACY ASSESSMENT

**The Hon. JAN BURNSWOODS:** My question is directed to the Minister for Education and Training. Will the Minister tell us what action the New South Wales Government is taking to improve literacy in New South Wales schools?

**The Hon. CARMEL TEBBUTT:** I am pleased to advise the House that the English Language and Literacy Assessment [ELLA] was held today in New South Wales schools. This year more students than ever participated in the ELLA test, an estimated 157,374 in total. All year 7 students in Government schools—more than 58,000 across the State—sat the test today. In addition more than 43,000 non-government school students were tested and 54,000 year 8 students from 94 per cent of Government schools were retested. The ELLA test has been administered in New South Wales schools since 1997. This Government introduced the test to assess the literacy skills of students as they make the transition from primary school to high school. The test includes reading, writing and language, including knowledge and use of spelling, punctuation and grammar. The voluntary year 8 test was introduced in 1998 to give schools the opportunity to retest students who sat the test the previous year and assess the success of their programs and literacy teaching over the year.

Both the year 7 and year 8 tests give teachers the opportunity to diagnose students' literacy problems so that specific programs can be designed to suit each student's individual needs. The test takes about 3½ hours. Larger print and Braille versions are provided for students with visual impairment. The test is written by practising classroom teachers and officers from the Educational Management and School Accountability Directorate. The material is selected carefully and designed to assess a range of literacy skills. The writing tasks are intended to test students' abilities to recognise the purposes for writing and to write effectively in different subject areas. The writing is marked by teachers who are trained to assess the skills students demonstrate in a range of areas, including text structure, punctuation and spelling. Marking is conducted at a central marking venue and in schools around the State. School-based marking gives teachers the opportunity to learn the criterion-referenced approach to the assessment of writing.

The English Language and Literacy Assessment is based on the New South Wales curriculum. It is a basic skills test and part of the Government's focus on literacy and numeracy that has resulted in New South Wales students achieving results among the best in the world. The ELLA test is designed to show what students can do, and allows their performances to be compared from year to year. Each year since the first test was introduced in 1997 a new group of schools has participated in writing, and this provides teachers with valuable professional development. The ELLA test results provide teachers and schools with information about a student's literacy achievement, which can be used to tailor teaching and learning programs to better help students. After analysing results from the test information, combined with the results from classroom work, teachers can adjust teaching strategies.

The ELLA test results will be used also to report on year 7 national benchmarks. Reports will be sent out to schools in the first week of term 2, and students who are identified as being in the low achievement level will receive specialist follow-up assistance. The New South Wales Government is committed absolutely to improving the literacy skills of students in this State. Some of our results were highlighted last year in the OECD testing when New South Wales students were second only to students from Finland in literacy. We are achieving exceptional results in New South Wales because we are committed to ensuring that schools are focused on teaching our children and young people the basics in reading and writing.

## DEPARTMENT OF AGEING, DISABILITY AND HOME CARE INTELLECTUAL DISABILITY ASSESSMENT

**Ms SYLVIA HALE:** I direct my question without notice to the Minister for Disability Services. Will he explain why the Department of Ageing, Disability and Home Care has no assessment tool that takes into account the level of a person's intellectual disability? Why does his department use a definition of disability that takes no account of a person's intellectual impairment? Is he aware that this definition of disability has resulted in people with a profound intellectual disability, but a moderate physical disability, being classified as only moderately disabled even if they are dependent completely on a full-time carer to feed, clothe, bathe and toilet them?

**The Hon. JOHN DELLA BOSCA:** I am surprised by the honourable member's assertion. My only reaction is to seek further advice and to provide her with that advice. My understanding, and my advice until the honourable member asked her question, was that the department uses a number of internationally verified tests that originated in the World Health Organization to assess people for intellectual disability. All I can do is test the advice I have against her assertions and come back to the House with a further answer.

**Ms SYLVIA HALE:** I ask a supplementary question. The Minister referred to the World Health Organization standards. Is he aware that those standards and definitions apply only to physical disability and not to intellectual disability and that therein lies the problem?

**The Hon. JOHN DELLA BOSCA:** That was not my advice. I understood, and the point of my response was, that there were World Health Organization standards to assess intellectual disability. As I said, I am happy to test the assertions in her question against current advice and provide her with a further answer at the earliest possible opportunity.

## WORKCOVER NATIONAL CERTIFICATE OF COMPETENCY HOLDER RETESTING

**The Hon. CHARLIE LYNN:** My question without notice is directed to the Minister for Industrial Relations. Is he aware that tomorrow is the deadline for forklift operators who do not wish to be retested for their licences to return them under threat of prosecution from WorkCover? Is he aware also that the situation was caused by a fault in the management of accredited licence testers by WorkCover and that it is causing a great deal of stress to small business owners and operators who did the right thing? Is he aware that according to section 296 of the occupational health and safety regulation 2001 WorkCover is not authorised to use the threat of retesting and/or surrender of licences in response to this failure? Given that most small business owners and operators complied properly with the licence testing criteria at the time they were tested, and given that faults within the testing accreditation system were not of their making, will he accept that operators who have operated their machines safely and without accident since they were tested should be deemed to be safe by WorkCover and allowed to retain their licences?

**The Hon. JOHN DELLA BOSCA:** That is an excellent question. In short order the answer to the question is yes, but I must provide some detail to qualify it. Previously I advised the House about action taken by WorkCover to improve its assessment processes for specific workplace competencies, including forklift driving. Honourable members will recall that under current occupational health and safety legislation people who operate equipment such as forklifts and cranes or undertake work such as scaffolding or rigging must have a certificate of competency issued by WorkCover. Before people apply to WorkCover for their certificate they must be assessed as competent by an accredited assessor. In addition, all construction workers must complete a general health and safety induction training course conducted by either trainers accredited by WorkCover or qualified persons working in a registered training organisation that delivers a WorkCover approved course before they start work.

As a result of questions asked last week by the Leader of the Opposition in this place, honourable members would be aware that the Independent Commission Against Corruption is conducting an ongoing investigation into corrupt activity by a small number of accredited assessors and trainers. It has been determined that approximately 20,000 people hold certificates of competency that were issued during the period of misconduct. Honourable members would recall also that WorkCover began a retesting program for workers who received certificates of competency from such assessors during this period. Certificate holders have the option of being retested at TAFE at the expense of WorkCover or by an assessor at their own cost. WorkCover has staged the notification of the retesting process to ensure that it is undertaken smoothly within the resources available to TAFE and WorkCover.

Clearly, it would not be sensible to advise 20,000 people to book at the same time to be retested. To date, approximately half of all affected certificate holders, more than 9,000 in total, have been contacted by registered mail. In addition a list of cancelled certificates is displayed on the WorkCover web site so that employees as well as employers can ensure that their certificates are current. As I indicated previously in the House and in public, WorkCover expects that retesting for all competencies involved, not just forklift driving, will be completed by the end of this year. The Government responded quickly and efficiently to identified problems in the accredited trainer and accredited assessor processes.

I remind the House that since WorkCover notified the Independent Commission Against Corruption about potential irregularities, it has established an audit management unit to conduct rigorous audits of its approved service providers, including testers and assessors of competency. It has implemented an amnesty period in 2004 to allow any workers who obtained certificates of competency without completing a proper knowledge or practical assessment to hand in their certificates and avoid prosecution; cancelled or suspended over 60 accredited assessors; cancelled or suspended over 20 accredited trainers; conducted a number of compliance blitzes involving random retesting of operator knowledge of and competency in the use of equipment; changed the administration of compulsory health and safety induction training for construction workers to minimise the likelihood of corrupt activities, including the introduction of the construction induction card by WorkCover; and established an industry database for cardholders.

The Government and WorkCover have taken, and will continue to take, action that is necessary to ensure a robust health and safety competency testing and training system. We are very sensitive to the fact that it is important to small business and people who require various competencies to conduct their businesses that they should be able to do so efficiently and smoothly. The Government and WorkCover are also sensitive to the fact that we do not want people who do not have proper safety competency to be operating machinery, thereby placing the lives of their colleagues at risk.

#### FEDERAL GOVERNMENT AUSLINK PROGRAM

**The Hon. EDDIE OBEID:** My question without notice is addressed to the Minister for Roads. Will he inform the House of the status of AusLink discussions between New South Wales and the Commonwealth?

**The Hon. MICHAEL COSTA:** I thank the Hon. Eddie Obeid for that very, very important question. It is obvious that he is absolutely on top of all issues and ready for his comeback one day. The question is fundamentally important because it goes to the heart of funding arrangements between the Commonwealth and the State in relation to road transport. Last week I pointed out to the House the \$2.6 billion rip-off by the Commonwealth Government. As honourable members will recall, I pointed out that the Commonwealth was taking \$2.6 billion more in goods and services tax [GST] revenue from New South Wales taxpayers than it was returning.

**The PRESIDENT:** Order! I call the Hon. Melinda Pavey to order for the first time.

**The Hon. MICHAEL COSTA:** Today I advise the House that under the current Auslink proposals the Federal Government is also taking funds from the New South Wales taxpayers that should go to our roads system. Under the current Auslink arrangements, there are a number of outstanding issues that are critically important. First, the funding is not indexed. Second, there are no commitments to completing agreed projects beyond 2008-2009. Projected property acquisition costs also are not included in new projects. They also have various arrangements built into the negotiations that look toward reducing contract prices and tenders based on adopting the Federal industrial relations system.

The Government of New South Wales has taken the view that the national code of practice for the construction industry and associated implementation guidelines will not be the basis for any arrangements in regard to the conclusion of an agreement on Auslink. There are a number of other issues that I am sure honourable members, particularly those from the North Coast, will be very concerned about. There is a requirement under the Auslink arrangements for higher mass limits for heavy vehicles on New South Wales roads. I know that all honourable members opposite are concerned about this. The Federal Government is requiring New South Wales—

**The PRESIDENT:** Order! I call the Hon. Rick Colless to order for the first time.

**The Hon. MICHAEL COSTA:** There will be higher mass limits for heavy vehicles on New South Wales roads as part of the funding agreement. I do not want anyone coming into this House complaining about

regional or State roads when the Federal Government is arguing for us to accept, as part of the funding arrangements, more heavy vehicles on New South Wales roads. This all occurs in the context of the Federal Government gouging \$4 billion in fuel excise from New South Wales motorists and returning to the State only approximately \$500 million of that fuel excise. Last week I referred to \$2.6 billion in GST revenue being ripped out of the State. Today I advise the House of the \$3.5 billion in fuel excise that is being ripped out of the State and away from New South Wales taxpayers. It is a disgrace.

### SEXUALLY TRANSMITTED DISEASES

**Reverend the Hon. Dr GORDON MOYES:** I ask the Minister for Education and Training a question without notice. Is the Minister aware of reports that indicate that sexually transmissible infections in New South Wales have risen by extraordinary rates in the last few years? For example, is the Minister aware that in New South Wales rates of chlamydia have increased by more than 300 per cent in the last five years; that syphilis, which the *Sydney Morning Herald* described as particularly common among homosexuals in the community, has increased by more than 200 per cent; and that HIV infections have increased by 11 per cent? Is the Minister aware of studies that suggest that there is no evidence that more condoms lead to lower incidences of AIDS, and that in places such as Africa, where HIV is pandemic, higher levels of condom availability have not resulted in lower HIV prevalence? Can the Minister confirm that abstinence is emphasised in our New South Wales schools safe sex education, and not just condom use, as a tool for promoting better life outcomes, self-esteem and self-worth, and fewer pregnancies?

**The Hon. CARMEL TEBBUTT:** I take it that the Reverend the Hon. Dr Gordon Moyes was asking that question of me in my capacity representing the Minister for Health, because I fail to see how the significant first part of the question relates to my portfolio. However, I am happy to answer the last part of the question, which relates to the sex education curriculum in government schools. I will refer the remainder of the question to the Minister for Health and undertake to obtain a response as soon as possible. With regard to the last part of the question, in New South Wales sex education is part of the personal development, health and physical education key learning area and all students study this component from kindergarten to year 10. I am advised that sex education in our schools is taught in the context of relationships and involves a discussion about personal relationships and sexual health and the development of skills, communication, decision making and problem solving.

It is considered that this approach to sex education encourages students to develop a coherent set of personal values based upon respect for themselves and others. It is important to stress that parents play a crucial part in sex education and schools collaborate with parents in relation to the content and nature of the sex education programs in schools. Schools have a responsibility to inform parents about the program. Parents always have the final word in these matters. If they have moral or religious objections to sections of the program, they are able to withdraw their children from these classes.

**Reverend the Hon. Dr GORDON MOYES:** I ask a supplementary question. Can the Minister indicate that there will be a review of the program in the light of the increase in sexually transmissible infections?

**The Hon. CARMEL TEBBUTT:** No, I do not intend to review the program on the basis of what the honourable member has indicated. Nonetheless, obviously this is an area, like other areas in the curriculum, where there is constant oversight and monitoring by the department to make sure that it is effective. Recently the Federal Minister for Education, Science and Training made some comments about the sex education curriculum and indicated that he will be seeking further advice from all States and Territories about what they teach in their sex education classes in schools. We will of course co-operate fully with the Federal Government in that regard.

### CROWN LAND ENCLOSURE PERMIT RENTALS

**The Hon. RICK COLLESS:** My question is directed to the Minister for Lands. How does he justify his contradictory comments made at the 2005 Western Division Local Government and Shires Association conference in Hay that rent increases for road enclosure permits from Crown land will not be based on market values when his department's Crown Road Purchase Fee Schedule, distributed to the State's 32,000 affected landholders says, "the purchase price of the land will be based on market price"?

**The Hon. Melinda Pavey:** Good question! Get out of this one, Tony.

**The Hon. TONY KELLY:** It is a very good question. I am particularly pleased that the Coalition has taken some interest in the Hay Western Division conference of the Shires Association. At times in the past, particularly at Bourke, Coalition members turned up at these conferences in great numbers—but those occasions happened to be just before the last State election. However, Coalition members were conspicuous by their absence yesterday. I think there was an apology from Adrian Piccoli, who turned up later in the day. It was particularly noted that a number of Coalition members of the upper House did not bother to turn up. I reiterate what I told the conference yesterday: the permits will be based on the Valuer General's valuation.

#### **ORANGE CITY COUNCIL FORMER GENERAL MANAGER CORRUPTION ALLEGATIONS**

**The Hon. PETER PRIMROSE:** Will the Minister for Local Government please update the House on Orange City Council?

**The Hon. TONY KELLY:** As honourable members would be aware, this issue arose in Parliament last week. I informed members at the time that in relation to this matter the Department of Local Government would seek the advice of the Crown Solicitor. The Crown Solicitor was asked to consider a transcript of the contents of a recording purporting to be that of the former Orange City Council general manager Mr Allen Dwyer. The Crown Solicitor was asked whether the transcript of the tape disclosed any conduct that might amount to criminal conduct under the Local Government Act 1993, the Local Government (Elections) Regulation 1998, the Parliamentary Electorates and Elections Act 1912 and the Crimes Act 1900. I can advise the House that the Crown Solicitor has concluded that the transcript of the tape does not reveal any criminal conduct by Mr Dwyer. As a result, I have been told today by the Director General of the Department of Local Government, Mr Garry Payne, that he intends not to pursue the matter any further. I am satisfied that the matter has been looked at in depth and no further action is required. The Crown Solicitor concluded that while Mr Dwyer's apparent attempt to influence staff may have been inappropriate or ill-advised, it does not constitute a breach of criminal law. As I said last week, this issue has been fanned by irresponsible comments by the Greens and the Opposition. I note that the Greens are not in the Chamber to hear my answer.

#### **PRIVATE ABORTION INDUSTRY**

**Reverend the Hon. FRED NILE:** I ask the Minister for Education and Training, representing the Minister for Health: Is it a fact that private abortion clinics in New South Wales charge clients \$200 in cash over and above the Medicare rebate? Is it a fact that in Tweed heads an abortion clinic charges women with no Medicare card anything up to \$600 cash extra for an abortion procedure? Is it a fact that at a Sydney abortion clinic a receptionist also serves as an untrained counsellor for women seeking an abortion? What has the Government done to protect vulnerable women from such exploitative behaviour? Will the Government launch a full review of the private abortion industry in New South Wales, including the evasion of State and Federal taxes?

**The Hon. CARMEL TEBBUTT:** I do not seek to debate the question, but it would seem to me that the matters Reverend the Hon. Fred Nile has raised are matters for the Federal Government. Nonetheless, I will refer the question to the Minister for Health for his response.

#### **RURAL FIRE SERVICE TANKERS**

**The Hon. CATHERINE CUSACK:** My question is directed to the Minister for Emergency Services. Why has he left 10 unroadworthy category 9 Rural Fire Service tankers that are up to 310 kilograms overweight in use on the mid North Coast? Given that if these were private vehicles they would be immediately ordered off the road, how many unroadworthy tankers has the Minister allowed to stay in service across New South Wales?

**The Hon. TONY KELLY:** The question would obviously have been better put on notice, because it is a detailed question about specific tankers. However, I take it that the vehicles referred to are part of the 2,500 new tankers that our Government has provided to the Rural Fire Service over the past 10 years, part of the record budget that we have given to the Rural Fire Service. The Rural Fire Service is committed to providing its volunteers with safe and effective firefighting tankers and equipment. The category 9 tanker built for the Birdwood rural fire brigade by a regional bodybuilder did not meet the Rural Fire Service's stringent safety standards. A major rectification program under the supervision of engineers from the Rural Fire Service in Sydney ensured the tanker was returned to the brigade in a safe and fit condition. A number of similar vehicles have been identified as potentially not meeting the gross vehicle mass specified in the service's 1999 standard if they are used at the limit of their capacity.

The Rural Fire Service is investigating the extent of the problem. I understand that so far 22 vehicles have been checked and identified as of concern. The engineers are currently examining a number of solutions so that the tankers remain in service. Obviously, one is to limit the amount of water that goes into them in the interim. They are also ascertaining whether further vehicles do not comply. The safety of our firefighters is paramount. Until such time as a permanent solution can be found the commissioner has issued instructions that these light appliances can be used in a safe working manner. I have asked the Rural Fire Service to address the issue of a long-term fix as a matter of priority. I understand that most of the vehicles were designed and built to council specifications. The Rural Fire Service will work closely with the councils to progress the implementation of a solution to this matter.

### MAITLAND FLOOD FIFTIETH ANNIVERSARY

**The Hon. HENRY TSANG:** Can the Minister for Emergency Services advise the House of the State Emergency Service's work to help the Hunter Valley remember the lessons of the 1955 floods?

**The Hon. TONY KELLY:** On the weekend I joined the State Emergency Service in commemorating the fiftieth anniversary of the 1955 flood, which caused much devastation in the Hunter Valley, particularly in Maitland and Singleton. I am aware that it affected other parts of the State as well, but the flood was particularly bad in Maitland and Singleton. The weekend theme was "Remember, Commemorate, Prepare". It highlighted the need to learn from the past and for the community to be well educated about flood safety and how best to prepare and protect themselves and their property should the worst ever happen again. I am sure that my colleague the Minister for the Hunter will attest that these were catastrophic floods, causing some \$2 billion worth of damage and claiming the lives of 17 people in the Hunter.

Maitland was the hardest hit, with about 15,000 people evacuated and more than 5,000 homes flooded, including 130 that were destroyed or left uninhabitable. Fourteen people died in the city. In Singleton another three people died and about 1,600 homes—up to 95 per cent of Singleton—were affected. The 1955 floods were the first well-documented disasters in Australian history, with graphic newsreel footage of the swirling floodwaters, the damage and misery vividly bringing the floods to the attention of the nation. I am sure most of us are familiar with the newsreel footage that was later used in the iconic Australian movie *Newsfront*. With the floods still in living memory for so many people in the Hunter, the weekend's commemorative displays and activities were well attended. Looking around the area I saw that it was a testament to the resilience of the community that Maitland and the surrounding area not only recovered but went on to prosper. If there was a positive to come out of the disaster it was that the floods led to the formation of the State Emergency Service, which is commemorating its fiftieth anniversary this year.

Without an organised emergency service in place to take control and offer assistance, flooded residents came to each other's aid, with help also from the army, the Royal Australian Air Force and local miners from the Cessnock coalfields. In fact I met Jim Commerford, who at 91 attended the functions the other day. During the flood he organised miners from the Cessnock area to help rescue people. The Government of the day—and I must advise that the Premier of that Government was Joe Cahill, and its Treasurer was Jack Renshaw, who was born in Wellington—recognised the need for a body of trained volunteers with good local knowledge to be available at short notice to help the community in such disasters. That was the genesis of the State Emergency Service. Since then volunteers in their orange overalls have become the recognised and respected face of the State Emergency Service. Their community spirit, commitment and hard work in the most trying circumstances are constantly inspiring. The SES also is now a leader in planning, education and preparation for floods in this State. Its work has delivered great benefits for many communities, including in the Hunter. Of course, over the intervening 50 years extensive flood mitigation works have taken place to help protect the community.

The Hunter SES also devotes a great deal of energy to educating people about flood safety, how to prepare, and how to protect themselves and their homes. The SES in Maitland and Singleton produced a series of FloodSafe guides providing specific information on flooding conditions and helpful safety advice. I congratulate everybody who worked hard at last weekend's events to put together the flood anniversary display at Singleton, a large flood safety information and memorabilia display involving many local agencies at Maitland, and the flood boat training day at Morpeth. In addition to remembering those who lost their lives, those events were a fitting recognition of the people who worked so selflessly to rescue others.

**The Hon. JOHN DELLA BOSCA:** If honourable members have any further questions, I suggest they place them on notice.

**OFFICE OF FAIR TRADING GOULBURN AGENCY**

**The Hon. JOHN HATZISTERGOS:** Further to the question asked earlier by the Deputy Leader of the Opposition relating to the Office of Fair Trading, I am advised that currently a Fair Trading officer is located in the State office block in Goulburn between 10.00 a.m. and 3.00 p.m. on weekdays to take applications and receive complaints. There is no change to the telephone inquiry service.

**Questions without notice concluded.****STATE RECORDS AMENDMENT BILL****Second Reading****Debate resumed from an earlier hour.**

**The Hon. JAN BURNSWOODS** [5.03 p.m.]: Before proceedings were interrupted for the taking of questions I said that I strongly supported the State Records Amendment Bill. This bill is a routine bill that follows a five-yearly review of the State Records Act 1998 and involves a substantial rewriting of the State Archives Act 1978. The Hon. Don Harwin, who spoke on behalf of the Opposition, said that he supported the bill, as did other honourable members. The Hon. Don Harwin referred to education records, with which I am familiar. Many years ago Jim Fletcher, a fellow worker in the education department, and I were permitted—somewhat unusually under the principles of records and archives management—to rearrange school records in a form that I believe has proved useful for a large number of researchers. I have heard that the most frequently used original records held by the State Records Authority were a collection of books formerly located in schools, including admission registers, punishment books, lesson books, class rolls and so on. Those education records form an important part of the categories of records held by the State Records Authority.

I do not think it is necessary to go through most of the amendments that this bill seeks to make because the Hon. Don Harwin, on behalf of the Opposition, and speakers such as Reverend the Hon. Dr Gordon Moyes have already gone through them. However, I wish to comment on what I believe to be some concerns about the bill and to refer to some amendments that will be moved in Committee. I draw attention to the explicit presumption in the bill relating to the public access of 30-year-old records, as some people are concerned about that issue. Honourable members have received correspondence from the Australian Privacy Foundation relating to reducing from one month to 14 days the period in which a public office can deal with an issue. I refer from experience to an example that strongly supports the amendments in the bill. In theory the Australian Privacy Foundation has some concerns but in practice I do not think those concerns will cause much trouble. Last year I wrote an article for the *Australian Dictionary of Biography*. That article was about Ken Booth, a former Treasurer of New South Wales, whose short biography will appear in volume No. 17 of the *Australian Dictionary of Biography*. I have also written other articles.

Ken Booth was a teacher and an employee of the department, but there was some discrepancy in the published records relating to the period in which he worked in the new Murrumbidgee or Riverina office and in the college that later became the University of Newcastle. Ken Booth was also associated with the technical college. I sought to look up the teacher records with which I was familiar in the period in which I worked with them in the education department. Although Ken Booth had been dead for many years and the period in question related to 1951 or 1952, I was surprised to discover that the department made no public access order in relation to these records and I could not look at them. Eventually the matter was resolved and I was able to look at the records. The department did not get anyone to examine those categories of records and to make the necessary order. Bureaucracies always have a lot of priorities and they tend not to put a great deal of resources into what they consider to be lower priorities. Because they did not have to do anything, they failed to examine the category of records and to make the necessary order. Some of the records in question dealt with people who, if they had been alive, would have been about 120 today. People die, they retire and they resign, but a set of records may go on for decades. I gave just one example but there are many others.

In theory people believe that privacy matters are important—and they are—and that 14 days is a relatively short period within which to deal with some issues. In practice the categories of records that we are dealing with—in all cases they are more than 30 years old—remain in public offices rather than being transferred to the State Records Authority as they form part of a series of records that cover a substantial period. That is an example of what happens. It is a good idea to shorten that period as we are moving towards an explicit presumption in favour of public access. Some departments—and education is certainly not one of

them—have been able to hide behind current rules, sometimes out of laziness and sometimes for other reasons. There are other categories of records that are older than 30 years, for example, records relating to adoption, to certain matters associated with child protection and to crimes against children. There are strong reasons for keeping records for a longer period because of their sensitivity and because of the harm that they could do to families and to those associated with them. But the rules provide for that to be done adequately.

This is a sensible bill. This is an example of a five-yearly legislative review working well. A lot has happened in the State Records Authority. We have seen an extension of its authority to universities and to local government. An enormous amount of work has been done over the past few years. I pay tribute to David Roberts, Director of the State Records Authority, who is in the gallery, Shirley Fitzgerald, the chair of the board, and other board members. I know from my experience in representing Parliament on the board that they have worked very hard in an important area of State bureaucracy that oversees not only the State's heritage but also records that are often of urgent, day-to-day significance. I suspect that State Records New South Wales is one of those State organisations that is little known and little heralded. We are fortunate to have that authority and its officers, who simply get on with the job and do it well.

**Ms LEE RHIANNON** [5.10 p.m.]: The State Records Act 1998 aims to manage and protect public records, providing mechanisms to enable the public to access these records in certain circumstances. The Greens acknowledge that the thrust of the Act is to foster transparency and accountability in government. We welcome the explicit presumption of the State Records Amendment Bill in favour of openness regarding records that are more than 30 years old and improvements to review mechanisms. However, the Greens also recognise the need to protect people's privacy adequately. Certain proposals in this bill would increase the possibility that sensitive personal information in some public records would be released. Accordingly, we have drafted amendments that I will move and explain in Committee.

Two provisions in particular would effectively undermine the privacy protection that individuals now have as a result of the New South Wales Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act. This matter was brought to our attention by the Australian Privacy Foundation, a non-government organisation dedicated to protecting the privacy rights of Australians. The foundation's role is of increasing importance considering the wrecker job that the Carr Government has done on Privacy NSW in recent years. It is extraordinary that it is nearly two years since Chris Puplick departed and we are onto our third acting part-time commissioner on a rolling three-month agreement, with no full-time privacy commissioner in sight, as promised [by the Government]. It is another broken promise and an absolute disgrace.

I thank the Australian Privacy Foundation for its efforts and note that my remarks today are based on much of its advice. Records governed by the State Records Act include patient records from psychiatric hospitals and the employment and service records of employees and volunteers. The importance of employees' records is emphasised by the issue of the Aborigines who did not receive their full pay and entitlements and who are now in a position to claim them because some of the relevant records were kept. Current records could play a monumentally important role in future so it is critical that we get the laws right now. The submission of Privacy NSW to the review of the State Records Act that led to this bill noted that:

State records have a much greater focus [than Federal records] on the direct provision of services to clients ... [and] as a result the breadth and sensitivity of personal information held in State records poses a greater range of privacy risks if disclosed.

The Greens do not believe that certain provisions in the bill, which we will address in Committee, have been justified convincingly either in the report of the review of the State Records Act or by the Minister. The amendments have considerable privacy risks while delivering no appreciable benefits in terms of improving government transparency or accountability. The Carr Government's disregard for people's rights to privacy is most disappointing. The Premier, in this bill and in his running down of Privacy NSW, shows that he is unwilling to support simple protection for people's rights that have been hard won over many decades. Curiously, the proposed "early access" scheme amendment, which allows agencies to provide access to information in records before the expiration of 30 years—and which the Greens will seek to improve through amendment in Committee—was not even recommended in the report of the review of the State Records Act that was tabled in Parliament. This review was not independent but conducted by the State Records Authority. The report of the review says that 32 submissions were received from "a range of groups and individuals" and that public meetings were held. However, we were not given details of who provided feedback to the review or how the views expressed contributed to the final recommendations. The report includes an astonishingly vague recommendation—No. 7—that says:

... it is proposed to make a small number of minor amendments to clarify certain existing provisions and facilitate operations.

What in heavens does that mean? Could anything be more unclear? Perhaps that is the door this proposal snuck through. I am not sure, but we are certainly none the wiser from reading the recommendation. I look forward to moving the Greens amendments in Committee, where we will make a positive contribution to improving this bill.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.15 p.m.]: The State Records Amendment Bill is a great disappointment. It is worrying how little change it makes with how much fuss. I will explain why that is worrying later. The State Records Bill was introduced in 1998 to replace the Archives Act 1960. The second reading speech of the then Minister Assisting the Premier on the Arts, the current Attorney General, said that there is a perception that:

... governments and other public institutions should be more accountable, coupled with a recognition by several royal commissions in New South Wales and interstate of the link between accountability and good record keeping.

Indeed, one of the stated objects of the State Records Act is:

... to make provision for the creation, management and protection of the records of public offices of the State and to provide for public access to those records.

Do I hear this Government championing the cause of open government? That is not likely. Object (d) of the bill is:

... to explicitly state that there is a presumption in favour of public access to State records that are at least 30 years old.

The only thing wrong with that statement is the inclusion of the "at least 30 years" proviso. In Committee I will move a simple amendment to the bill that will seek to change "30 years" to "30 days". This will have the effect of allowing New South Wales to have truly open government, as is the case in New Zealand. The bill will state explicitly that there is a presumption in favour of public access to State records that are at least 30 days old. In my speech during the second reading debate on the Government (Open Market Competition) Bill, which was passed by this House on 5 September 2002, I outlined the problems of secrecy in this State. I mentioned that problems with the Federal freedom of information [FOI] regime are reflected in the regimes of our States, including New South Wales. These problems include a lack of independent oversight of the FOI process, a persistent culture of secrecy, prohibitive charges and the excessive use of exemptions—especially commercial in confidence and Cabinet in confidence.

Strangely, New Zealand has led the way in providing government information to the public. The Official Information Act came into force in 1982—23 years ago. It was widened in 1987 and then reviewed in 1998 but not amended. The Chief Ombudsman of New Zealand, Sir Brian Elwood, spoke at an open government forum that I organised in November 2002 and praised the success of the New Zealand legislation. He said the usual concerns about the sky falling in were expressed when the legislation was introduced—business claimed that it would collapse, the Government was not supposed to survive and so on. It was claimed that the country would become unworkable and that individual privacy would be decimated. Of course, none of that happened and the regime works very well. I have argued for a long time that the paradigm of this country's FOI legislation is wrong: the presumption is non-disclosure unless there is a reason to disclose. The New Zealand legislation turns this presumption around so that information is made available unless there is good reason under the Act to withhold it. Claims of commercial in confidence or Cabinet in confidence are not enough. As the years of the Carr regime have dragged on, it has become more and more apparent that less and less important information is seeing the light of day.

Requests for information are routinely denied, usually with the pathetic cry that the information is commercial-in-confidence or a Cabinet document. The Government (Open Market Competition) Bill was not as extensive as the New Zealand legislation, which I was not aware of at the time because I had not yet conducted the seminar. The bill, which merely looked at government contracts and the accountability of people getting government money, was introduced by Ms Clover Moore in the lower House and was sent to the Public Accounts Committee by the Government. The Public Accounts Committee travelled to Great Britain and the United States of America, but it did not travel to New Zealand. I suggested that is where the action was. However, I did not do so in an official conversation or correspondence. The Public Accounts Committee decided, without much noise from the Opposition, that no changes would be made to the existing freedom of information regime. I was disappointed when the Government did not support the bill introduced by Ms Clover Moore in the lower House, which was my legislation.

It is important to protect documents, and the best way to protect them is to make them available to the public as soon as possible. A great amount of the work of the ICAC, the committees of this House and the

Auditor-General is taken up trying to get to the bottom of what decisions are made, who made them and who benefited from them, because all the documents are secret. There is no better guarantee of confident administration than transparency. Recently there have been serious incidents of documents being destroyed or going missing. The tobacco industry destroyed its documentary evidence, which prevented a plaintiff from pursuing her claim of health damage from the tobacco industry—and they were not even public documents. The industry had a deadwood document policy, as it was called, to get rid of the evidence.

In the United States of America a heroic man whose job was to go through the documents and find things that might be incriminating to the tobacco industry for its nefarious practices was so horrified by what he was being asked to destroy, it is believed, he leaked the documents. Those documents have formed the basis of a large amount of document disclosure in the United States of America, which have formed the basis of a number of tort law suits that are finally bringing the tobacco industry to court. Ian Callinan, QC, was appointed to the High Court after some somewhat controversial actions in relation to the process. The High Court said that the tobacco industry could not be prosecuted for destroying documents. In short, the destruction of the documents was helpful to the industry, and it got away with it.

Documents are important. People have told me about their difficulty getting documents in relation to the closure of Beacon Hill High School. As I have said before, documents in relation to the sale of Sydney markets—which was valued at \$202 million in 1992 and sold for \$83 million in 2002—have been extremely difficult to obtain. A number of cases have been taken on by Cianfrano in the Administrative Decisions Tribunal [ADT] against a number of government departments. The Government has tried to hide the documents. Cianfrano, an orchardist from Orange, beat the Queen's Counsel appearing for the Government in the ADT. Fortunately, the ADT proceedings were less expensive than a court case, although mention has been made of an appeal to the Supreme Court.

This Government sells our assets and hides the documents about it. Therefore, when the Government introduces a State Records Amendment Bill one ought to look very closely at it. Documents relating to the Honeysuckle project in Newcastle, the M5, the M2 and the cross-city tunnel should be made available to the taxpayers of this State. They want to know how and where the Government is spending their money. They also want to know which of the assets the Government is managing for the future is now being flogged off, as though the Government were the owner. In December 2002 Ross Coulthart, an investigative journalist with Channel 9, spoke at my open government seminar. He pointed out that the treatment of documents in the United States of America is much better than in New South Wales. He said that documents need to be organised online in a systemic fashion. Why are the documents not classified according to a master classification and made available online so that people can search for them in a systematic fashion?

People can waste huge amounts of money looking for documents in the New South Wales system. Indeed, if the relevant department wants to be obstructive it can very easily do so. Again, this issue is conspicuously missing in the Act. This bill follows the report to Parliament of May 2004 carried out by State Records New South Wales in relation to the review of the State Records Act. Effectively, State Records New South Wales was reviewing itself and it came up with fairly minimal recommendations, as one would expect. One of the recommendations was an extension of the limitation period from six months to two years to prosecute unauthorised disposal. However, the important caveat is found in the explanatory note, which states:

Section 21 (2) of the Act provides that a person does not commit an offence of unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record by doing anything in accordance with "normal administrative practice in a public office": within the meaning of section 22. Section 22 describes what is considered to be done in accordance with normal administrative practice and refers to Schedule 1 to the Act, which contains guidelines on some aspects of normal administrative practice. The guidelines do not limit what constitutes normal administrative practice.

That would presumably be defined in law on a case-by-case basis. The explanatory note continues:

**Schedule 1 [5]** provides for those guidelines to be prescribed by the regulations rather than be in Schedule 1 to the Act.

**Schedule 1 [21]** repeals the guidelines in Schedule 1 to the Act.

The bottom line is that under this bill normal administrative practice will not be governed by schedule 1 to the Act, but by a regulation that we have not seen yet. This is the Trojan horse of this legislation. It is all about redefining "normal administrative practice" in a regulation that the Government can change at whim. That is worrying. I foreshadow that I will move an amendment in Committee to remove that provision so that the definition of "normal administrative practice" remains in schedule 1 to the Act and is not some guideline or regulation that can be brought in whenever the Government wants. My foreshadowed amendment is especially important given the Government's appalling track record in relation to hiding information.

I was disappointed in the speech made by Mrs Jillian Skinner, a member of the Legislative Assembly, on the bill. She said the bill would enable happy little histories of local schools to come to light more easily after 30 years. It is, in fact, a much more dangerous bill than that. After 30 years there is a presumption of availability which, under a closed public access directive, has an interesting Kafkaesque ring to it. The Minister has the discretion to hide it. This bill provides that after 30 years the presumption is that documents are obtainable, but the Minister can still stop it. If the Minister can stop it, why not make it 30 days or 30 minutes? The Minister will have absolute control over the information. There is a Trojan horse in the normal administrative practice guidelines. I am happy because I have an amendment that deals with that Trojan horse. I commend my foreshadowed amendment to the House.

The Greens spoke about privacy, a very important issue. Chris Puplick, an energetic Privacy Commissioner, did a very good job addressing the effects of technological advances in database searches and dealing with cameras on every street corner recording who a citizen was with, and when. He estimated that each day a person walking from Wynyard station through the city to Parliament House would be photographed 50 times by closed-circuit television cameras. That is the extent of one's privacy in respect of freedom of association and so on. Privacy often has been seen as being opposed to open government. The Government is very concerned about privacy when that enables it to hide information that, under open government, might trample some person's privacy. The only privacy consideration with most policy information is to identify the person who made a poor decision—for example, on the sale of Sydney markets—and to follow up on the question of whether a deal was good or not. Of course, in that instance it was not, and I will have more to say about that at a later date.

So the idea that privacy is in opposition to open government is generally without merit. Nothing in the amendments that I will propose seeks to remove provisions of the Privacy Act. If the Government is so concerned about privacy, why does it not appoint a privacy commissioner and have a sensible discussion about this bill and the implications for privacy of moving more towards open government? It has not even considered that matter. In fact, this bill's importance comes from what it does not contain.

The other matter I want to talk about is technology. We now have online more and more records and larger volumes of information. The first thing to do would be to put government files online as they are created, so that a citizen can find out what files a department has on them. Given that departments supposedly are acting in our interests, regulations or the Act should contain provisions requiring that this material be available online to facilitate searches, as well as contain defining provisions relating to access to that information. The bill does not contain provision for technology that would facilitate access to such information. It does not really deal with current circumstances. It is about what will happen in 30 years time unless the Minister makes a closed to public access directive.

The bill also provides for more corporate aims in terms of recovery of moneys. That is something of a worry in the sense that, if the primary objective of this legislation becomes raising money from the provision of information, then fees for applications made under the freedom of information legislation—which are already outrageously priced—will be even more expensive. Last week I made a number of points about a State property assets register. This is a major State resource, and we need to know what is going on with property in New South Wales. It would appear that the Government does not want to make that information available. The reason, I believe, is that it wants to flog off some of that property. The Government states that individual requests can be made. Of course, one has to pay for the provision of that information. In other words, access to information will be a large source of revenue, rather than a public right or something done for the public good. The worry is that State Records New South Wales will be a cash cow, giving out little bits of information—even records that are 30 years old! One cannot help wondering whether the Government is proposing another revenue grab, as it often does.

The bill does not have a lot to recommend it. I will propose amendments to fix it by shortening the time after which State records must be made available, so that we can get real information. That would go some way to ensuring that this bill will facilitate access to information. I propose changing that period from 30 years to 30 days. A Minister who does not like that information becoming available after 30 days may still move to bottle up that information—as is very frequently done in New South Wales. In New Zealand all information is public unless an application is made to the Ombudsman.

A Minister who does not like the Ombudsman's adjudication can approach the Supreme Court for an order that will keep information secret. That has worked very well in New Zealand since 1982. So the idea that my proposal would not work is nonsense. Normal privacy laws will still apply. I propose shortening the period

from 30 years to 30 days. This will get rid of the Trojan horse of regulation and introduce more convenient and normal administrative practice. Honourable members who wish this bill passed should support my amendments, otherwise I am afraid the bill will be of no use at all.

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.35 p.m.], in reply: I thank honourable members for their contributions to the debate. Public access to the records of government is a fundamental right in a democracy. The State Records Act 1998 promotes the principles of accountability and access by requiring public offices to create records of their business and administrative transactions and ensure that records of significant value are preserved. The current Act provides for public access to be given to State records more than 30 years old, by way of the public office making an open to public access direction. The public office also has the option of issuing a closed to public access direction where appropriate. The amendments proposed by the bill will strengthen this process by explicitly stating that there is a presumption in favour of public access to State records that are at least 30 years old.

The bill introduces a requirement that public offices provide reasons for giving closed to public access directions and will establish a mechanism for the review of access directions. The bill provides for State records that are at least 30 years old and not the subject of an access direction to be made available for public access, unless a closed to public access direction is given to them, within 14 days—rather than the current one month—after an application to access the record is made. In addition, the bill clarifies that public offices providing appropriate early access to State records under the Act are protected by the liability provisions of the Act and introduces an additional safeguard requiring public offices to have regard to the Attorney General's guidelines in assessing whether to authorise early public access. The bill supports the key principles of the Act, streamlines its operations and updates relevant provisions. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

#### **In Committee**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.39 p.m.], by leave: I move Australian Democrats amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1. Insert after line 13:

**[4] Sections 5 (2), 50 and 73 (4) and clause 7 of Schedule 3**

Omit "30 years" wherever occurring. Insert instead "30 days".

No. 2 Page 3, schedule 1. Insert after line 21:

**[6] Part 6, heading**

Omit "30 years". Insert "30 days".

The essence of these amendments is to shorten the time in which the system becomes open. The bill provides a presumption of access to the public in 30 years, provided that the Minister does not use his or her discretionary power to make a closed public access [CPA] directive to keep secret any document or documents the Minister does not want made public. The amendments provide a presumption of public access to documents in 30 days, which would ensure transparency in government in New South Wales and thus improve infinitely administration in this State. However, the provisions of the privacy and the health legislation would continue to apply to individuals. I urge honourable members to support the amendments because they will change the approach to transparency from an assumption of secrecy to an assumption of openness. This approach has worked perfectly well in New Zealand for 23 years. I commend the amendments to the Committee.

**The Hon. DON HARWIN** [5.40 p.m.]: The Opposition will not support the amendments. Earlier I detailed at some length the review process and the breadth of consultation with affected stakeholders, all of whom signed off on the appropriateness of this provision, so that the Hon. Dr Arthur Chesterfield-Evans would understand why the Opposition could not support them. I am advised also that the Hon. Dr Arthur Chesterfield-Evans is wrong when he says that his amendments reflect the law in New Zealand. He is talking about freedom of information legislation, or the equivalent, in New Zealand. I have just been advised by the head of archives of the State Records Authority that archives legislation in New Zealand quite clearly has a 30-year provision. I ask the Hon. Dr Arthur Chesterfield-Evans to consider his position carefully. I have outlined in some detail why

these amendments would be a silly rule for the State's collecting institutions and private collections of papers deposited by individuals and organisations. For those reasons the Opposition cannot support the amendments.

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.42 p.m.]: The Government opposes the amendments moved by the Hon. Dr Arthur Chesterfield-Evans and thanks the Opposition for opposing them. Under the current State Records Act the statutory open access period provides for public access to State records that are more than 30 years old. The amendments of the Hon. Dr Arthur Chesterfield-Evans propose to change the open access period from 30 years to 30 days under the State Records Act. The Hon. Don Harwin is quite right: the intentions of the Hon. Dr Arthur Chesterfield-Evans are misplaced and a little confused. A statutory regime already exists to provide a right of public access to documents held by public agencies, regardless of the age of the document: the Freedom of Information Act.

**The Hon. Catherine Cusack:** I do not think he referred to that.

**The Hon. HENRY TSANG:** He should know that such a provision exists. The State Records Act does not override anything in the Freedom of Information Act, which enables people to access documents that are less than 30 years old. The State Records Act provides that documents more than 30 years old are in the open access period and, therefore, open to public access. The bill includes a presumption in favour of open access. The 30-year rule is the most common model governing public access in public records legislation in comparable jurisdictions elsewhere in Australia and overseas. Most sensitivities in public records have dissipated by this time. To provide, as the Australia Democrats have suggested, that all State records should be open to public access as soon as they are 30 days old would have serious privacy implications. Agencies would spend all their time issuing public access directions rather than focusing their efforts on core business. As members of the Committee can see, the proposed amendments are undesirable and should not be supported. The Government opposes the amendments.

**Reverend the Hon. FRED NILE** [5.44 p.m.]: The Christian Democratic Party does not support the amendments, because they may hinder people using the archives system and prevent its operation.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** [5.45 p.m.]: The idea that the State Records Amendment Bill is totally separate from freedom of information [FOI] legislation and that I should be barking up the FOI tree is interesting. State records are the material that FOI is all about because that is what people want to look at, not fossilised records that are 30 years old. The New Zealand legislation is the best because it is a change in the paradigm, which is what I am trying to achieve. Comparable jurisdictions are bumbling along with everything closed for 30 years unless otherwise demanded or conceded. I agree with the Minister that other jurisdictions provide for a period of 30 years. The standard is pretty low. I do not believe the New Zealand legislation was retrospective, although I would have to read its detail. I have never heard such a nonsense as the Government suggesting it is concerned about privacy issues.

The Government has not appointed a permanent Privacy Commissioner. Instead it has renewed the contract of the temporary commissioner. Nothing in the recommendations of the report that seems to have been implemented in the bill reveals how much thought was given to privacy considerations. It is business as usual. Perhaps the idea that the Government would use all its efforts on closed public access [CPA] directives is true because it is so used to closed public access that Ministers might spend their entire day worrying about them. The Ombudsman, Brian Elwood, who gave a speech on the subject in the forum I organised in December 2000, said that when the legislation was first enacted his in tray was so full of requests for exemptions under freedom of information provisions because it provided transparency that he did not know what to do. His ambit position was to knock all of them back. They took him to the Supreme Court, which was the final arbiter—

**The CHAIR:** Order! I remind the Hon. Dr Arthur Chesterfield-Evans that the Committee is considering the State Records Amendment Bill, not matters relating to the Privacy Commissioner.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I understand the point clearly. The Supreme Court ruled on openness. The few requests for exemptions he received after that were perfectly reasonable, and he granted most of them. The sky did not fall in once the paradigm had changed. The Ministers did not have to worry because even if people looked at the records it did not affect the function of the State. The idea that Ministers would spend their lives writing closed public access directives and worrying that all the information had to be kept private is a nonsense. The amendments certainly are shifting a paradigm, but that is their objective.

**Amendments negatived.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.49 p.m.], by leave: I move Australian Democrats amendments Nos 1, 2 and 3 in globo:

No. 1 Page 3, schedule 1 [5], lines 19–21. Omit all words on those lines.

No. 2 Page 6, schedule 1 [21], lines 23–25. Omit all words on those lines.

No. 3 Long title. Omit "normal administrative practice,".

This bill is analogous to a Trojan horse. The objective of my amendments is to take the Greeks out of the Trojan horse. The New South Wales Labor Government has a very bad record of maintaining openness. If anyone doubts that, I cite *Cianfrano v Director-General, Premier's Department NSW* and how energetically this Government tried to stop information from being revealed. The danger of this bill is that no-one can be penalised for destroying documents in accordance with normal administrative practice in a public office. Currently "normal administrative practice in a public office" is defined by schedule 1 to the Act. However, the measure in item [5] of schedule 1 to this bill provides that the guidelines for interpreting normal administrative practice will be prescribed by the regulations, rather than by schedule 1 to the Act. Moreover, item [5] of this bill repeals that part of section 22 (3) of the Act which refers to guidelines in the Act that define some aspects of normal administrative practice.

In other words, the schedule in the Act that currently defines "normal administrative practice" will be repealed by this bill and regulations made by the Government will replace that definition. The Government will introduce regulations that will define "normal administrative practice". Given this Government's history of hiding relevant information from the public, that is very worrying. If members of this House do not want the Government to make regulations that will enable records to be destroyed under the definition of "normal administrative practice", they must support these amendments.

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.51 p.m.]: Regarding the three further amendments moved by the Australian Democrats, I repeat that the legislation currently provides in the schedule to the Act guidelines that apply to normal administrative practice. As the guidelines form part of the legislation, it is difficult for them to be readily updated as business practices change and new issues arise. The bill proposes a more flexible approach whereby the guidelines in schedule 1 to the Act are to be repealed and guidelines will instead be prescribed by regulations, making them easier to update as required. The Government opposes the amendments.

**The Hon. DON HARWIN** [5.52 p.m.]: I understand the concerns expressed by the Hon. Dr Arthur Chesterfield-Evans about the dangers of investing too much power in Executive Government over administrative procedure and basically about the strategy of gutting legislation and moving important details into regulations. However, I simply remind the Hon. Dr Arthur Chesterfield-Evans that it is always open to members of this Chamber, where the Government does not have the numbers, to move disallowance if he does not like the regulations. If the Hon. Dr Arthur Chesterfield-Evans decides that some parts of the guidelines relating to the normal administrative practices of State Records New South Wales and the regulations that give effect to that are unsatisfactory, he should approach the Opposition about it. Until then, the Opposition will not support his amendments.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [5.53 p.m.]: The point about regulations is that important matters slip through. At one stage I tried to have a table of contents included in the *Government Gazette*, given that the publication is pretty weighty and given that regulations slip through without being noticed. I was told that that could not be done because the gazette was compiled from a number of different departments. However, the computer program, *Word*, makes it very easy for headings in a standard font to be numbered and collated automatically and for a table of contents to be produced. The Government's regulations are hard to follow, they are easy to change and they are difficult for members of this House to detect. I believe that, given this Government's track record and its treatment of matters through regulation, guidelines should be enshrined in legislation. If it is awkward to change the definition of "normal administrative practice", that is a very good thing. I commend the amendments.

**Amendments negatived.**

**Ms LEE RHIANNON** [5.54 p.m.], by leave: I move Greens amendments Nos 1 and 3 in globo:

No. 1 Page 4, schedule 1 [9], lines 8 and 9. Omit all words on those lines.

No. 3 Page 8, schedule 1 [25], lines 5-9. Omit all words on those lines.

The Greens amendments delete the proposal to amend the Act by shortening the time in which an agency is able to respond to a request to access a record which is more than 30 years old from one month to 14 days. The bill proposes to provide an automatic right to access records that are more than 30 years old when an agency is not able to consider the sensitivity of the records in less than 14 days. Up until now, people who may have wanted to examine records that are more than 30 years old might have been frustrated in their attempts to do so, not because agencies deliberately obstructed them but through agencies failing to make a decision about whether records should be open or closed. The review of the State Records Act sought to address this problem.

The solution that the Government devised was to shorten the current time frame within which an agency must make an access decision from one month to two weeks. The Australian Privacy Foundation suggests that it appears that no genuine consideration was given to the reason for the existence of the problem before a solution to the problem was found. In the final report of the review, no reasons are given for shortening the time frame from one month to 14 days. In the Premier's second reading speech there is scant justification: he suggested that the bill is necessary to further streamline the process. The Privacy Commissioner stated in his submission to the review of the State Records Act:

It seems premature to adopt amendments to ensure greater access without a more particular inquiry into the reasons why access directions have not been made in the majority of instances. If the explanation involves institutional inertia or a lack of resources, then it may be more appropriate to bring about change through training and support rather than a drastic change to conditions of access.

The Greens believe that this bill represents a drastic change. The Privacy Commissioner opposed any proposal to provide faster access on the basis that it would be inconsistent with privacy legislation to put pressure on public authorities to disclose such records without the privacy implications for doing so being properly canvassed. He further stated that such an approach would lead to an increased risk of privacy invasive disclosures.

By virtue of amending the principal Act by this bill, an agency will have only 14 days to respond to a request for access to a record that is more than 30 years old. Fourteen days is a short time and constitutes a significant change from the present period of one month. The Greens argue that it is a short time in which to do the job that is required and contrasts considerably with freedom of information legislation, which provides agencies with 21 days in which to respond, and sometimes longer if third parties are involved.

I have outlined some of the reasons why the Greens amendments are definitely needed. The Greens clearly support the Australian Privacy Foundation's proposal, which urges the Government to allow agencies more time in which to complete the enormous task of reviewing and categorising records. The Greens wonder why the Government seeks to amend the bill in this manner. The Greens believe that the change is unnecessary. I urge honourable members to support the Greens amendments.

**The Hon. HENRY TSANG** [Parliamentary Secretary] [5.58 p.m.]: The Government opposes the amendments moved by the Greens. The bill provides that State records that are at least 30 years old and are not the subject of an access direction are to be made available for public access unless a closed to public access direction is given to them within 14 days, rather than the current one month, after an application has been made. The Greens seek to delete the amendments that shorten the time an agency has to respond to a request for access. They seek to have the one-month turnaround reinstated.

The intention of the bill is to streamline the process by providing that public offices have 14 days rather than one month to respond to a request for access. With respect, the suggestion that these amendments may have negative privacy implications is unfounded. The approach is a workable "risk-managed procedure" that is able to be undertaken effectively within the proposed 14-day period. Fourteen days is sufficient time. This does not put "pressure on agencies" as alleged by the Greens. Access directions for State records in the open access period usually cover whole classes or groups of records. The directions are made on the basis of the likely known content of records, not by item vetting. Therefore, the streamlining process should not negatively impact upon agencies in this process.

Furthermore, there are four safeguards built into section 54 (3). The first is that the section applies only to records over 30 years old that are not yet the subject of an access direction. Most records are no longer considered sensitive after 30 years have passed. The privacy concerns are far less acute. The second is that the Act encourages agencies to issue an access direction prior to the record reaching the 30-year period. Many records will already be the subject of an access direction, including closed to public access directions where there are privacy concerns with the record. If an access direction has already been issued, section 54 is of no relevance. The section is only relevant where the record is over 30 years old and no access direction has been issued.

The third safeguard is that if an agency has not yet issued an access direction for a record over 30 years old, section 54 gives it a second chance to do so. If an application for access is made, the agency has 14 days to consider whether to give a closed to public access direction or an open to public access direction. The fourth safeguard is that, arguably, as a last resort, the agency may err on the side of caution by issuing a closed to public access direction where the agency believes that it cannot properly consider the privacy implications within the 14-day timeframe. Any closed to public access direction can later be revised, reviewed or revoked. As members of the Chamber can see, the proposed amendments to section 54 do not in any way undermine the privacy protections. The Government opposes the Greens amendments.

#### **Amendments negatived.**

**Ms LEE RHIANNON** [6.03 p.m.]: I move Greens amendment No. 2:

No. 2 Page 5, schedule 1. Insert after line 40:

**[16] section 57 (4)**

Insert ", a duty to comply with the information protection principles in the *Privacy and Personal Information Protection Act 1998* or a duty to comply with the Health Privacy Principles in, with any health privacy code of practice in, or with any other provision of, the *Health Records and Information Privacy Act 2002*" after "confidentiality".

The State Records Act scheme currently provides that an agency responsible for records can authorise State Records to provide open access earlier than the normal 30 years. The Greens amendment makes it absolutely clear that an agency cannot release records as part of the early access scheme where to do so would breach its duty to comply with the information protection principles in the Privacy and Personal Information Protection Act or with the health privacy principles and other codes or provisions of the Health Records and Information Privacy Act. As the Act now stands it appears that giving such an authority to State Records could only be done if it would not breach privacy laws. In addition, it relates only to records that have already been transferred to State Archives under a disposal authority. The privacy of personal information that is of little or no genuine public interest is often protected by default because it will be destroyed under a disposal authority rather than transferred to State Archives. Under the bill, however, agencies would be allowed to disclose information from any records held in their possession well before the normal 30-year period starts.

This proposal would allow agencies to deliberately, or carelessly, circumvent existing privacy law, disclosing information in a way that would otherwise be prohibited under the New South Wales Privacy and Personal Information Protection Act or the Health Records and Information Privacy Act. Agencies could also use this new provision to retrospectively justify disclosures of personal information. They only have to consider privacy within the context of the non-binding guidelines issued by the Attorney General. These guidelines were intended to assist with decision-making in relation to records more than 30 years old, not records less than 30 years old. Older records inherently pose a lesser risk to personal privacy than more recent records. The guidelines give significantly less privacy protection than the New South Wales Privacy and Personal Information Protection Act, the Health Records and Information Privacy Act or the Freedom of Information Act.

While the State Records Act includes a provision in section 57 [4] to the effect that a public office cannot release a record in breach of any duty or obligation it might have in relation to that record, there is still a real risk that privacy may be breached. This is because public servants trying to do their job must grapple with the tricky job of assessing whether releasing records in their possession would in practice breach the Privacy and Personal Information Protection Act or the Health Records and Information Privacy Act. Also, the Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act are themselves confusing: they say that normal prohibitions on disclosures of personal or health information under these Acts are lifted whenever another Act authorises, requires, permits, necessarily implies or reasonably contemplates non-compliance with the privacy principle in those Acts. This is confusing for the people who have to carry out this work. That is why the Greens have moved the amendment, to make it absolutely clear how this aspect of the Act should work. I commend the amendment to the Committee.

**The Hon. HENRY TSANG** [Parliamentary Secretary] [6.07 p.m.]: The Government opposes Greens amendment No. 2. The amendment is unnecessary. Agencies cannot release records when to do so would breach the New South Wales Privacy and Personal Information Protection Act or the Health Records and Information Privacy Act. Section 57 (4) of the State Records Act explicitly provides that the section "does not authorise a public office to permit public access to a State record in breach of any duty or obligation (such as a duty of confidentiality) that the public office may have with respect to the record". A public office's obligations to

comply with the information protection principles in the Privacy and Personal Information Protection Act 1998 and the health privacy principles in the Health Records and Information Privacy Act 2002 come within the terms of this section. The Premier addressed this issue in a letter to the Legislation Review Committee on 10 November 2004.

**The Hon. Don Harwin:** As I did in my contribution to the second reading debate.

**The Hon. HENRY TSANG:** I acknowledge the remarks of the Hon. Don Harwin. The Government opposes the amendment.

**Amendment negatived.**

**Schedule agreed to.**

**Title agreed to.**

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

### ADJOURNMENT

**The Hon. HENRY TSANG** (Parliamentary Secretary) [6.10 p.m.]: I move:

That this House do now adjourn.

### AGRICULTURAL INDUSTRY

**The Hon. MELINDA PAVEY** [6:10 p.m.]: Tonight I speak in defence of communities and farmers in country New South Wales, in particular, in the region known as the Western Division. I defend them on the basis of a sustained attack by those who attempt to devalue their contribution to our economy and our way of life. New South Wales agriculture contributes 27.6 per cent—approximately \$8 billion—of Australia's \$29 billion agricultural production. On a recent trip with colleagues of mine in The Nationals to Bourke, Wanaaring, Tibooburra, Broken Hill, Wilcannia and Cobar I met some brilliant people and heard first-hand about how they enjoyed working in agricultural production and in other occupations in those areas.

Among those we met were Mary and Peter Bevan of Stuarts Meadow Station, which is located just outside Broken Hill. Peter Bevan, a farmer who has instituted the latest in environmental practices, separated 5,000 acres from the rest of his grazing property for an environmental and cultural refuge that has some amazing Aboriginal artefacts and grounds. Deb and Ray Hotchin from Mount Brown Station at Tibooburra are using the latest environmental practices to maintain a viable property. Many people are using the latest sustainable farming management techniques simply because of the drought. Stock levels are low but many farmers said to us that they would not increase stock levels, even after the rains, because they believe they have the right number of cattle and sheep on their properties. All those farmers make a significant contribution to the economy of our State. Paul Sheehan, a columnist working with the *Sydney Morning Herald* who normally makes a worthwhile contribution to public debate in New South Wales, made the following point when he reported on the Jared Diamond book *Collapse: How Societies Choose to Fail or Survive*:

While 60 per cent of Australia's land area and 80 per cent of its human water use are dedicated to agriculture, the value of agriculture relative to other sectors of the Australian economy has been shrinking to the point where it now contributes less than 3 per cent of the gross national product.

He wrote also:

The carbon dioxide emissions from Australian agriculture exceed those produced by motor vehicles and all the rest of the transport industry... The simplest way for Australia to fulfil its stated commitment to reduce its greenhouse gas emissions would be to eliminate its cattle.

Well, Mr Diamond, Australia has met its target not by eliminating its \$6 billion cattle industry but by reducing land clearing and reforestation a number of areas on the continent. Asa Wahlquist, rural reporter for the *Australian*, put to rest many of the claims made by Jared Diamond in his book. I congratulate her on her work generally with the *Australian*. She added a sophisticated and reasoned voice to the voice of regional and rural Australia by making the point that Mr Diamond used misleading and outdated figures with incorrect assertions. She said—and we saw this first-hand—that Australia's farmers are using the latest in sustainable techniques to

improve the environment. That became clear to us during our trip. Woody weed infestations were once prevalent in the west of the State but successive State governments have implemented environmental and land management programs to address that problem. Prior to 1788 there were no woody weeds. The Government should accept responsibility for some of the environmental degradation in the Western Division. Farmers make a fantastic contribution to our economy. Misplaced opinions of environmentalists such as Jared Diamond should be looked at with scepticism. [*Time expired.*]

### TRIBUTE TO MR ROSS TURKINGTON

**The Hon. TONY CATANZARITI** [6.15 p.m.]: I regret to report that last week New South Wales lost one of its most respected wine professionals. Mr Ross Turkington passed away on Wednesday 16 February 2005. Sadly, Turko passed away a day after he was informed that he would be honoured as the recipient of the prestigious 2005 Graham Gregory trophy. Turko had a long and difficult fight with cancer. However, it is a fantastic comfort to know that Turko knew he had been honoured with the award before he died. He was incredibly proud that his achievements were so highly recognised and appreciated by everyone in the New South Wales wine industry. They recognised what he gave back to the community.

The Graham Gregory trophy is awarded annually in honour of the late Graham Gregory, a former deputy director-general of NSW Agriculture and one of Turko's mentors throughout his career. It is appropriate that Turko's contributions were recognised with an award named after his friend; both men were amazing talents. The award, the highest mark of respect and the greatest accolade in the New South Wales wine industry, was undoubtedly granted to one of the best people in the wine industry in this State. The contributions Turko made over the years cannot be overstated. Ross Turkington's story is about a great hard-working Australian who basically stumbled into the industry in which he would become an expert.

As a young Department of Agriculture trainee Turko took up the viticultural research position on offer at the department's viticultural nursery in Griffith and accidentally stumbled into winemaking. At that stage he had no interest in winemaking and he had had very little training, but it offered a link back to some microbiology training that he had undertaken so he took it on and, as it turned out, it was an extremely fortunate accident. He always said that he had enjoyed starting on the ground floor of Australia's booming wine industry. From that ground floor he worked for NSW Agriculture—now the Department of Primary Industries—for a further 41 years.

Over those many years Turko was a viticultural research officer, the principal horticulturalist and the State's top viticulturist. His work was varied and, despite his many responsibilities, it is acknowledged that he was always regarded as someone with that common touch, someone who could talk to both departmental representatives and growers in plain language. Turko was the judge at most of the major capital city wine shows across the country. He was also the inaugural judge at regional shows in Griffith, Mudgee and Cowra, all of which celebrated their twentieth anniversary under his watch. He was one of the principal organisers of the Griffith show.

Ross was proud of his involvement in wine shows and he always believed, correctly, that those shows contributed to the high standard of Australian wines by providing regular quality benchmarks. Turko had many links with the Murrumbidgee. In 1966 he tied his love with his career, marrying a Griffith grape grower's daughter and moving into town. As his work changed and his responsibilities shifted over the years he moved back and forth across the State, owning seven houses and, at one stage, a nice citrus and vine farm. He lived away from Griffith for two periods but the lure of the channel water, Griffith's industry and development, and Margaret's family ties eventually pulled him back to the Riverina. Last week my colleague the Minister for Primary Industries, the Hon. Ian Macdonald, presented the award in Ross Turkington's honour at the Macquarie Bank Sydney Royal Wine Show awards dinner. Minister Macdonald said:

... his spirit and dedication for the NSW Wine Industry were felt by everyone who gathered tonight in his honour. For nearly five decades, Mr Turkington was a fixture of the New South Wales Wine Industry.

And he was right. For five decades Ross Turkington was the New South Wales wine industry. Ross sadly leaves behind his wife, Margaret, his son, Peter, and his daughter, Julie. He was a compassionate, loyal family man, who was very proud of his family. It is sad to see him go. The New South Wales wine industry is much worse off for having lost this great man and so is everyone who knew him. I hope that Turko is enjoying a fine bottle of wine and looking down on his family and friends right now. He will be missed.

## MENTAL HEALTH REVIEW TRIBUNAL FORENSIC PATIENTS REVIEW

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [6.20 p.m.]: The Mental Health Review Tribunal [MHRT] makes recommendations to the Minister for Health about the detention, care and treatment of forensic patients in New South Wales gaols. Under the Mental Health Act the Minister for Health not the Corrective Services Minister can determine when forensic patients are released. Forensic patients fall into three main categories: persons found not guilty of a crime by reason of mental illness; persons found unfit to be tried; or correctional centre inmates who become mentally ill and are transferred to hospital for treatment. The Mental Health Review Tribunal is required by statute to review on a six-monthly basis the care, treatment and detention of every forensic patient. The MHRT comprises experts in psychiatry and must call upon expert witnesses, such as treating clinicians and nurses who have observed a patient directly. After assessment the tribunal may recommend the release of a forensic patient, subject to conditions, when they are satisfied that the safety of the patient or any member of the public will not be seriously endangered by the person's release.

The Minister for Health may adopt these recommendations and grant the release of the forensic patient only after first notifying the Attorney General and the Director of Public Prosecutions [DPP] of the receipt of the recommendation for release. The Attorney General and the DPP then have a 30-day statutory period to reply, stating any objections they may have to the release of the patient. In November last year I asked the Minister for Health, by way of a question on notice, how many prisoners had been recommended for parole or release by the Mental Health Review Tribunal and, of those, how many had been released or paroled and how many were still awaiting ministerial approval. I also asked for the average waiting time between the tribunal's recommendation for release and the prisoner's release. The answer I received was truly astonishing.

As of November 2004 the Mental Health Review Tribunal had recommended the release of six people within the New South Wales prison system. Yet its recommendations are still to be considered by the Minister for Health. So we know of at least six people who were found not guilty by reason of mental illness, who were found to be unfit for trial or who were inmates who became mentally ill and who are still in correctional detention. The tribunal has been in existence for more than 18 years so I was surprised to learn that the level of detail that I sought in my question would apparently "substantially and unjustifiably divert public resources away from the exercise of core functions". I am surprised that this data is not collected in easily usable statistical form and assessed as part of the review process. This is of little comfort to Mr Michael Kelly, husband and father of two, who is currently in Long Bay gaol and one of the six people waiting for the Minister for Health to accept the mental health tribunal's recommendation for release.

In 1996 Mr Kelly shot a stranger in the stairwell of his block of units and was charged with causing grievous bodily harm [GBH]. Mr Kelly was suffering psychosis at the time and was terrified the stranger would harm his children. He was found not guilty of GBH on the grounds of mental illness. The irony is that if Mr Kelly had been found guilty he would probably have served his sentence and been released by now. The Mental Health Act requires the tribunal to review Michael's case every six months. Since 2002 the tribunal has repeatedly recommended that Michael be placed in the community for treatment and rehabilitation as he poses no risk and the community psychiatric team has repeatedly reported that it is ready to take him into care. His community placement would be subject to a stringent set of conditions and a psychiatrist would assess him regularly, together with the forensic case management team.

Another case is that of Mr Gregory Anthony Cassan, a diagnosed paranoid schizophrenic who was incarcerated in Long Bay prison hospital. On 2 May 2001 in the District Court at Gosford Gregory Cassan was found not guilty by reason of mental illness of the offences of malicious wounding, the use of an offensive weapon to avoid lawful apprehension, and malicious damage. During the commission of these offences Mr Cassan's diagnosed and psychological conditions were exacerbated by the consumption of amphetamines, which induced an acute psychotic episode. Two eminent forensic psychiatrists supported this diagnosis at his trial. Mr Cassan pleaded guilty to two further offences of custody of a knife in a public place and common assault. The sentencing judge ordered that Mr Cassan be held in strict custody or in such other place as the MHRT might later determine until released by due process of law.

On 17 April 2003 the MHRT conducted its fifth review of Mr Cassan. Dr Pramod Prabhakaran and the rest of Mr Cassan's treatment team gave evidence to the tribunal that Mr Cassan remained in a stable mental state with no evidence of psychosis and was fully compliant with his medication. For the second time the tribunal recommended Mr Cassan's conditional release to participate in a long-term rehabilitation program at the Salvation Army's Endeavour Community at Morisset on terms identical to those formulated at its previous review. The tribunal further added:

The Tribunal performed its statutory function at the hearing conducted on the 22<sup>nd</sup> August 2002 and conveyed its professional views about Mr Cassan's readiness for conditional release to the Minister. Having done so the tribunal can only express its own sense of frustration and disillusionment when some 5 months later further evidence was sought about issues which, in the tribunal's view, were already fully addressed in its original decision.

Why is the Minister for Health taking so long to adopt the expert advice of the Mental Health Review Tribunal and to implement its recommendations? Does he have no faith in its expertise or is this an admission that community mental health support services are so inadequate that these patients will receive better treatment in a prison mental hospital? There was justified community outrage over the detention of Ms Cornelia Rau in an immigration detention centre. In New South Wales the Carr Government is detaining at least six people that the MHRT has recommended be released yet we have seen no action from the Minister for Health to help rehabilitate forensic patients under his charge. I believe the Minister should not have discretion over decisions of the Mental Health Review Tribunal as he does not review other decisions. The Mental Health Act should be reviewed to that effect. In the meantime, some lawyers who are concerned about civil liberties are worried that the Mental Health Review Tribunal will not recommend the release of prisoners because it thinks its recommendations will be ignored. As a consequence, the mentally ill will remain in prison forever. That is most unsatisfactory.

### **WHY DOESN'T SHE LEAVE? LAUNCH**

**The Hon. JAN BURNSWOODS** [6.25 p.m.]: Last Friday I had the great honour of participating in the launch at Taree of a very important book by Marion Hosking, whom I have known for many years. Marion's book is a history of the women's refuge in Taree and was published by the refuge, Manning District Emergency Accommodation. Judging from my reading of it so far, Marion's book, entitled *Why Doesn't She Leave?*, is a fine work. It not only gives the history of the women's refuge in Taree, referencing a number of very moving and revealing case studies, but addresses the broader, difficult questions of domestic violence in our society—hence the book's title, *Why Doesn't She Leave?*, which Marion chose very deliberately. Many of the important issues addressed in the book were also explored at the launch, particularly by Anne Summers, who launched it officially.

A large crowd—it was particularly large for a community the size of Taree—was present at the launch. Marion and other speakers paid tribute to women volunteers and refuge employees; the police, who have a fine record of working with the women's refuge and women generally in recent years; and the Aboriginal community, from both the town and Purfleet. Domestic violence continues to be a difficult issue in our community. Incidents of domestic violence go unreported and are not treated seriously. Domestic violence is often not regarded as a crime. In response to cases of domestic violence people often ask, "Why doesn't she leave? Why doesn't she get out? Why does she put up with it?" Such rhetorical questions suggest that the perpetrator is not guilty and the woman—victims of domestic violence are almost always women—is responsible in some way for her treatment. Too often these questions ignore the fact that the female victims of domestic violence almost always have children, who are generally young. Asking a woman to leave her children—if that is the suggestion—is as incomprehensible to her as domestic violence is to us. I regret that even some of my colleagues have not considered this issue sufficiently.

Female victims of domestic violence are also often expected to leave their homes. A good pilot project is about to start in New South Wales that will take men away from the home in the event of domestic violence. But at present the woman is expected to leave in almost all cases. In most cases the women concerned have literally no money and it is impossible for them to leave. A bus or train fare is out of the question: there is no money for food for themselves or for the children. There is also the very real difficulty confronting a woman who seeks a degree of security and, indeed, love from a relationship and who so often is expected to take those matters and other emotional issues out of consideration.

Those and other issues are addressed in the book, which is self-published with the help of Marion's family and the women of the refuge. Certainly if anyone wants a copy of the book, I will get it for them. Anne Summers made a number of points, in particular, about the poor recent performance of the Federal Government using funds that had been set aside for domestic violence. Who could forget the funds that were translated into the infamous fridge magnet, or, more recently, the advertising campaign that was hijacked by the Federal election? [*Time expired.*]

### **NON-METROPOLITAN MEDICAL SCHOOL PROPOSAL**

**The Hon. JENNIFER GARDINER** [6.30 p.m.]: I support the three non-metropolitan universities in New South Wales in their submission to the Federal Government that it examine a proposal to establish a non-metropolitan medical school on a collaborative basis. The vice-chancellors of the universities of New England, Charles Sturt and Southern Cross have together submitted that a multi-campus model for such an initiative be examined. I have spoken before about the special focus that the Howard-Anderson Government has given to rural, regional and remote health initiatives with many programs, including clinical schools and university

Departments of Rural Health that operate in New South Wales centres such as Tamworth, Lismore, Wagga Wagga, Coffs Harbour, Dubbo and Broken Hill.

The Nationals in New South Wales see the development of a non-metropolitan medical school as a natural progression, building upon these important Federal initiatives, and our parliamentary team endorses this collaborative approach to the Federal Government. In addition to the clinical schools and university Departments of Rural Health, the three non-metropolitan universities proposing this collaborative effort have each already established an array of health-related, under-graduate, post-graduate and certificate courses.

The Charles Sturt University [CSU] has an extensive Faculty of Health Sciences. In its School of Community Health, students can undertake a bachelor degree in medical science, applied science (medical imaging), health science—nursing, and applied science—nuclear medicine. They can embark upon a bachelor of health science in nutrition and dietetics, occupational therapy, podiatry and speech therapy, and a bachelor of nursing—midwifery. As well, there are bachelor degrees in clinical practice—paramedic, pharmacy, physiotherapy, and speech and hearing.

At the Faculty of Education, Health and Professional Studies at the University of New England in the School of Health, students are offered a diploma in counselling, bachelor degrees and other qualifications in health management, a graduate diploma in gerontology as well as a master's degree in that important discipline, a bachelor of nursing as well as a bachelor of nursing studies, providing a pathway for enrolled nurses to train to be registered nurses. At Southern Cross University [SCU], in the School of Nursing and Health Care Practices there are a number of courses. In addition, SCU has a School of Natural and Complementary Medicine. All three universities already have courses in many health and medical-related areas.

In thinking about the tripartite proposal from our State's three non-metropolitan universities, it is useful to reflect upon the development of Queensland's first non-metropolitan medical school. James Cook University [JCU] Medical School is at its main campus, and commenced teaching in 2000. It is adjacent to the recently built Townsville Hospital and its work is primarily based in Townsville but the medical school has staff and resources located throughout north Queensland. The school was established in recognition of the need for advancement of medical education and research relevant to the communities it serves in northern Australia, and has a vision to be a leader in the focus areas of rural and remote health, indigenous health and tropical medicine for Australia and the wider Asia-Pacific area.

The medical school grew from the North Queensland Clinical School, which was established in 1993 and funded by Queensland Health. Before that, the Australian Institute of Tropical Medicine was established in Townsville, and later biomedical sciences were taught at JCU from the early 1970s. I note that degrees in biomedical science are also on offer at CSU in New South Wales. In 2001 the staff and resources of the North Queensland Clinical School were incorporated into the JCU School of Medicine. In 2001 the Royal Australian College of General Practitioners General Practitioner Registrar Training Program became part of the school.

One of the benefits of having a medical school located away from the capital is that north Queensland students interested in pursuing a medical career can remain near their family and friends to obtain their degrees. It has been shown that providing training in a non-metropolitan setting for students drawn from non-metropolitan backgrounds presents the best prospects for having those young people stay and practise in their rural and regional environments upon graduation.

In Canada an Australian leader in developing rural health as a distinctive part of medical education and health policy, Dr Paul Strasser, has been appointed to be Founding Dean of the Northern Medical School in Northern Ontario, which is a collaboration between two non-metropolitan universities—Laurentian and Lakehead. It is the first medical school to be established in Canada in 30 years, and the first in a rural setting. The school is preparing for its first intake of students within the next six months or so.

In Thailand the Faculty of Medicine at the Naresuan University not only trains physicians to help the country's overall shortage of health professionals but also focuses on improving and expanding the health treatment for people in the nine provinces of the lower part of the northern region of Thailand. It aims to increase the number of rural medical practitioners by taking rural students with bachelor degrees in science into the medical program. I believe it is time for New South Wales to follow in the footsteps of this model. It is time for an examination of non-metropolitan medical school in New South Wales. [*Time expired.*]

### POLITICAL ACTIVISM IN SCHOOLS

**The Hon. DAVID OLDFIELD** [6.35 p.m.]: I once again voice concerns over the kidnapping of public education by minority political extremists. In the recent editorial of the English Teachers Association, Professor

Sawyer complained that the Howard Government's re-election demonstrated that English teachers failed their students—apparently, on the basis that if the teachers had been successful, young people would not have voted for the Howard Government. Prime Minister John Howard expressed concern that commentary like Sawyer's drives more people out of the public education system.

**The Hon. Jan Burnswoods:** Brendan Nelson found out all this about eight weeks ago. Is the Liberal Party writing your speeches now?

**The Hon. DAVID OLDFIELD:** Actually, I wrote some speeches for the Liberal Party, rather than the other way round, as the honourable member suggests. The public has a right to know more about Sawyer and where he fits into the network of schoolyard propagandists who continue to foist their personal political prejudices on impressionable schoolchildren. Sawyer is an associate professor at the University of Western Sydney. He is a product of the public school system and is, perhaps in that sense, a good example of why parents should take their children out of public schools. Sawyer was appointed to the University of Western Sydney from a teaching position at Blacktown Girls High, a public school infamous for its schoolyard political activists.

One of Sawyer's close comrades, the principal of Blacktown Girls High, Edward Gavin, is well documented for using school assemblies as political platforms—something he continually denied until exposed by video evidence. Gavin misled the Minister and survived an investigation, the report of which was altered by another ideologically correct comrade and associate, Deputy Director-General, Alan Laughlin—after all, a report recommending Gavin apologise would not look good! It is scandalous that Laughlin oversaw the forcible removal of whistleblowers at Blacktown Girls High, yet left political activists to continue unhindered.

An Internet search on Wayne Sawyer confirms his continuing connection with even more comrades still in action at Blacktown Girls High: teachers who organise students to rally under their school banner for political purposes; teachers who publish school newsletters demonstrating political bias; teachers who set examination papers that reinforce a particular political mindset; and teachers who write musicals requiring students to act out the political ideologies of their teachers. On the subject of school musicals being used as political vehicles, it is instructive that Chris Bonner, President of the New South Wales Secondary Principals Council, jumped to the defence of Professor Sawyer. Bonner's political career highlight was Davidson High's disgraceful showcase of political ideology at last year's Rock Eisteddfod. Some teachers are not only pushing their personal political agenda in the classroom, but also strangely rewriting history. In one written report, a New South Wales State high school history teacher was found to tell students nonsense, including:

- Tobruk is a town in Turkey where the Australians fought the Turks in WWII
- D-Day was when British and French soldiers invaded Poland
- Japan had a communist government in WWII.

However, this little gem is my favourite:

- "Kepi" is an Aboriginal word for "hat" and was the name used by the Australian military for hats worn in the Vietnam War so as to promote brotherhood and love towards the Aboriginal race and their culture.

In case some members have the same understanding of history as the teacher in question, Tobruk is in Libya, and the battle had nothing to do with the Turks; D-Day was the 6 June 1944 Normandy invasion, and did not involve Poland; Japan was not a communist country; and, of course, the kepi is a French hat, and has nothing to do with the Australian military or Aborigines. Clearly, the teacher involved should be sacked and re-enrolled in primary school.

Recent Ministers of Education have seemed unable or unwilling to act on the issue of schoolyard political activism. The source of political activism in our schools is clearly the New South Wales Teachers Federation. As Labor is merely the political wing of the unions, and as the Teachers Federation simply peddles the Labor message, it is clear no Labor government will chase these education criminals from our schools. Those of us who understand that children should not be bombarded with political bias are hopeful a future Coalition government will cleanse our schools of peddlers of political bias. Teachers must be accurate, honest and balanced in all their teachings. But, clearly, the New South Wales Teachers Federation has proven the opposite with its ongoing lies regarding schools funding being but one example of their willingness to assault the public with misinformation. Indeed, it is more than appropriate that a list of schoolyard activists and their associates be kept for future action.

**Motion agreed to.**

**The House adjourned at 6.40 p.m. until Wednesday 1 March 2005 at 11.00 a.m.**

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