LEGISLATIVE COUNCIL

Wednesday 8 June 2005

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The President (The Hon. Dr Meredith Burgmann) took the chair at 10.00 a.m.

The Clerk of the Parliaments offered the Prayers.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (WORKPLACE DEATHS) BILL

RURAL WORKERS ACCOMMODATION AMENDMENT BILL

Bills received.

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

Motion by the Hon. John Della Bosca agreed to:

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

Bills read a first time and ordered to be printed.

PETITIONS

Anti-Discrimination (Religious Tolerance) Legislation

Petitions opposing the proposed anti-discrimination (religious tolerance) legislation, received from the **Hon. Patricia Forsythe** and. **Reverend the Hon. Fred Nile.**

Camden Maternity Ward

Petition calling on the Premier to honour election campaign commitments by reopening the Camden Maternity Ward, received from **the Hon. Charlie Lynn**.

Freedom of Speech

Petition opposing any legislation that would inhibit unencumbered discussion and freedom of speech regarding religion and introduce religious vilification in New South Wales, received from **the Hon. David Clarke**.

Unborn Child Protection

Petition requesting legislation to protect foetuses of 20 weeks gestation and to make resources available for post-abortion follow-up, received from **Reverend the Hon. Fred Nile**.

UNPROCLAIMED LEGISLATION

The Hon. Ian Macdonald tabled a list detailing all legislation unproclaimed 90 calendar days after assent as at 7 June 2005.

FAIR TRADING AMENDMENT (RESPONSIBLE CREDIT) BILL

Second Reading

Debate resumed from 5 May 2005.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.10 a.m.]: I support the Fair Trading Amendment (Responsible Credit) Bill. In October 1974 we saw the launch for the first time in Australia of a

credit card—Bankcard. It had a more rapid uptake, on percentage of population, than any other credit card in the world. That is because it was mailed to every holder of a bank account. In other countries credit cards were mailed only to those who applied for them. Within 18 months of its introduction more than one million people took up the offer of Bankcard, which had been sent to them unsolicited. At the time of Bankcard's introduction it was not viable for banks to provide the administrative services for their own cards, so they pooled resources to set up charge card services. It was not until 1988 that banks managed their own cards.

There are now more than 200 credit card providers in Australia. The profitability of this form of lending has been recognised by many players, including Richard Branson with his Virgin Money card and, more recently, the Aussie Home Loans group. It is not surprising, as the interest rates on credit cards are not regulated. A credit card provider may charge any rate of interest. The typical interest rate on credit cards is between 14 and 18 per cent. Aussie Homes Loans has entered the market with an interest rate of 10 per cent, which undercuts the other major players but is still 3 per cent above a typical mortgage rate. It was reported in May that banks took $9 billion in fees last year from consumers and businesses and that for the first time fees collected from the use of credit cards exceeded those collected from housing loans. Also, the five biggest banks reported after-tax profits of $7.86 billion, which was an increase of 20 per cent on the previous year's result.

Credit card spending has reached astronomical proportions, with the nation's credit card bill reaching $30 billion in January this year. The ease of availability of credit cards and the offers of credit limit increases have resulted in an increasing number of people getting into financial trouble. This can occur in a number of ways. Overspending is an obvious one. Sometimes one card is used to pay off another. Credit cards are used to fund gambling habits. The financial consequences of credit card debt can be loss of employment and relationship break-ups.

In 2004 the Federal Treasurer, Mr Costello, congratulated Australian households on the reduction in credit card defaults. Statistics never tell the full story. In recent times many non-conforming lenders have seized on the credit card debt crisis as a marketing tool to grab customers. In order to make a profit they consolidate a person's debts, including credit card debt, into one loan. However, if the credit card debt is consolidated into a mortgage and the mortgage is not paid, the mortgage default does not show up in the credit card debt statistics. So the statistics are false and credit card defaults are not improving. In 2002 a similar bill was introduced in the Australian Capital Territory Legislative Assembly. We believe the amendments proposed in this bill are sensible. The Australian Democrats support the bill.

The Hon. MELINDA PAVEY [10.14 a.m.]: I speak on behalf of the Opposition on the Fair Trading Amendment (Responsible Credit) Bill. I say at the outset that the Opposition will not support the bill. Whilst we appreciate community concerns about overborrowing—with people putting themselves in an unreasonable and unmanageable situation through credit card and mortgage debt—we believe there must be individual responsibility. The amendments in the bill could cost consumers dearly for credit cards or other lending facilities, and the bill encourages a nanny state. The issues need to be balanced with advice from organisations such as the Consumer Credit Legal Centre, the Australian Bankers Association and other experts in the field. The Opposition believes the requirements of the bill are onerous and will not achieve the objectives and outcomes the Greens hoped for.

The bill provides that a credit provider must not enter into any credit contract or increase the limit under any credit contract if, after reasonable inquiry, the debtor does not have the capacity to pay the amounts required under the contract or would be under substantial hardship in paying such amounts. Credit card legislation is already in place requiring a lender to provide information on the payments to be made under an increase in the contract amount. The bill requires a statement of account with minimum repayments, including the time required to pay the total sum under minimum repayments. This requirement would apply to millions of people across New South Wales. It would be an onerous task for any financial institution to provide a statement indicating the time it would take to pay a sum of money.

People appreciate that credit cards are an expensive way to borrow money. The interest on most credit cards is in the range of 16 to 17 per cent. But to require every bank statement to detail the debt level and the time required to pay would be a complicated and onerous provision and would, in the end, cost consumers more because the banks would pass on the administrative charges. The bill requires a credit card provider to supply a statement of account showing the interest-free period and prohibits the provision of credit cards over the credit limit fee provided it does not exceed 10 per cent.

The Greens have put emotional arguments in support of the bill. Ms Sylvia Hale's second reading speech was littered with very sad hardship cases. Clearly, people who cannot take responsibility for their own

financial affairs could benefit under the complicated scenario the bill expresses. But the Opposition believes, on the evidence before it, that most people do not have trouble managing their credit card and other loans. According to international reports only 35 per cent of all credit card holders pay interest on their credit card debt. That evidence was put forward by Ms Sylvia Hale. For the fortunate 65 per cent who accrue no interest the service offered by credit cards is essentially free. But for the other 35 per cent the service is very expensive.

The Consumer Credit Legal Centre [CCLC]—an independent community legal centre that provides information, legal advice, legal representation and education to New South Wales consumers in relation to credit debt and banking matters—referred to mortgage financiers providing the opportunity for people to get out of hardship credit card situations by lumping their personal debt against equity in their homes or other assets; getting rid of their credit cards, the interest on which generally runs at 16 per cent or 17 per cent; and consolidating their debts under a more cost-effective variable rate of around 6.5 per cent or 7 per cent. That has had a positive impact. The opportunity is available for consumers who find themselves in trouble. One example cited by the Consumer Credit Legal Centre was that of an elderly pensioner who accumulated more than $70,000 in credit card debts. The debts were accumulated via a series of credit card limit increases with no assessment of the client's ability to pay. That clearly is an unacceptable situation.

A number of other examples were cited by the CCLC. Those who experience difficulties with credit card debt should seek out mortgage brokers, building societies, banks or credit unions and take the opportunity to consolidate their debts. They should cut up their credit cards before they get into financial trouble. I support the work of groups such as the Consumer Credit Legal Centre, which provides advice and information to those who find themselves in financial difficulties, but I do not believe that we should support the four major amendments proposed in the Fair Trading Amendment (Responsible Credit) Bill for the benefit of the small minority of people who get into trouble. In fact, according to evidence from the Reserve Bank of Australia only 0.6 per cent of credit card holders find themselves in trouble.

There are other reasons for the Opposition's lack of support for the bill. Firstly, there was no consultation with the financial services industry in the formulation of this bill. In my view such consultation should have been undertaken. It would have been responsible and sensible for the Greens to have productive and fruitful discussions with organisations such as the Consumer Credit Legal Centre, the Australian Bankers Association and other industry representatives before drafting a bill that will have a significant impact on them, so that they might better represent the interests of those they purport to represent.

The Australian Bankers Association referred to the fact that the bill goes against the Uniform Credit Bill, which was introduced in 1993 by Wendy Machin, a former Minister for Consumer Affairs. Consumer credit legislation is national uniform legislation, and the effect of this bill would be to separate credit law from national uniform law and link it to New South Wales fair trading legislation. New South Wales would then be out of step with the other States. In addition, there are a number of micro issues: for example, the bill could lead to significant litigation to determine the level of proof necessary to determine that a debtor does not have the capacity to pay.

What would be deemed a substantial financial hardship? In her second reading speech Ms Sylvia Hale said that "financial hardship" is consistent with the terminology of the Consumer Credit Code, but the addition of the word "substantial" opens up a completely new area of interpretation. As I mentioned, the Greens quoted figures, apparently from financial sources, to the effect that approximately 65 per cent of credit card holders do not pay interest, and Australia-wide 95,000 credit card holders are in extreme financial stress. Statistics relating to the number of cardholders are not available to the Opposition at this time. We cannot make a true assessment of the situation, other than to say that we have been able to ascertain from the Reserve Bank of Australia that, according to its figures, 0.6 per cent of credit card holders are in financial trouble.

Credit cannot currently be extended without the written consent of the credit card holder. It would be an administrative nightmare to have to interview every credit card holder when an increase is sought and determine their ability to pay the amount owing, with minimum repayments, over five years. The Opposition has consulted the CCLC, and I thank that organisation for its correspondence on this issue. The Opposition has also been in contact with the Australian Bankers Association. Whilst the Opposition appreciates that it is an emotional issue, people are the custodians of their own financial responsibilities, and for the 0.6 per cent of people who get into trouble we do not support the four amendments proposed in the bill. They are onerous and would not, at the end of the day, help those who get into trouble. The Opposition will not support the bill introduced by the Greens.

Reverend the Hon. Dr GORDON MOYES [10.25 a.m.]: I am pleased to contribute to the debate on the Fair Trading Amendment (Responsible Credit) Bill. The bill is designed to increase responsibility on credit card providers to ensure that they conduct ability-to-pay assessments before increasing credit card limits. The Christian Democratic Party has a great deal of sympathy with this bill. We know that the Opposition intends to vote against the bill, but would encourage the Government to vote for it. Australians used their credit cards more than one billion times last year, finishing with a record festive season binge that pushed the national credit card bill above $30 billion for the first time. It was a bumper month for the use of plastic when 121.2 million credit card purchases were made in the one month. A record $16 billion was spent on credit cards in the month, with the amount of cash withdrawals also reaching an all-time high. However, financial services firm Virgin Money released a survey which showed that 2.5 million Australians overspent on their own estimates in December by an average of $750.

The changing Australian retail payments landscape publication in the Reserve Bank Bulletin of July 2003 indicated that we had an enormous surge of growth in credit card transactions in the late 1990s, and the ability to use credit cards for non face-to-face transactions, particularly over the Internet, has spurred their use since that time. I have had a long-term interest in this issue, and in 1977—which seems aeons ago now—I established a plan for the first credit line counselling service to be established in Australia. I am pleased to say that still exists and is, to this day, the largest credit counselling service in Australia. It became the father of financial counselling services.

I thank Ms Sylvia Hale for her references to credit counselling and to Credit Line, an organisation I established. I thank also the Hon. Melinda Pavey, who referred to the Consumer Credit Legal Centre in New South Wales, with which I have had close contact. The centre has carried on some of the work I instituted back in 1979. In those early days I established a service called Debt Line, which was later changed to Credit Line. Credit Line has very large financial counselling offices in the city, in areas such as Fairfield, Sutherland and Penrith, and in about 43 other places around New South Wales. It provides face-to-face counselling for people who are suffering credit card problems. We provide a national telephone credit help line that is used by professional counsellors to gain information on how to support their clients.

We also run a large raft of consumer education programs, including consumer education in TAFE colleges and schools, and, particularly in recent years, in gaols. Many prisoners have financial issues, and before release many of them go through our Wesley Mission education programs. We work not only in correctional centres but also in refuges and churches, and with financial counsellors and many other parties.

In 1994 I felt the need to set up the Wesley Community Legal Service, which now has five full-time lawyers. Many people who run into financial trouble do not have sufficient wherewithal to pay for private legal support. We provide advice on debt recovery and insolvency, and guidance on consumer credit. We work with people through the criminal law as a result of their misuse of credit cards and overexpenditure. We also work in the field of family law. We do not provide general legal services, but we provide legal services to those who get into problems with the law because of their misuse of money.

That flowed over to another service I established in, I think, 1984: the first gambling counselling legal service to be established in Australia. I thank the then Premier, Barrie Unsworth, who told me that his advisers had indicated that gambling would become a very serious problem in the future of this State. He asked me whether I would be interested in developing gambling counselling and, subsequently, legal services. Those services continue to this day and, once more, we are the largest provider of those services in Australia.

The Consumer Credit Legal Centre was an outgrowth of some of this work. It is an independent community legal centre providing information or legal advice on credit, debt and banking matters. The centre now operates the Credit and Debt Hotline, which was formerly the Credit Helpline operated by Wesley Mission, and it continues to provide financial counselling, information and referral services for New South Wales residents. In fact, over the eight months the service has operated, a vast number of callers have sought assistance with credit card debt.

Most of this work that was undertaken by Wesley Mission was not funded by any government. It was an initiative undertaken to help people who were unable to handle the multitude of credit cards, many of whom received cards unsolicited through the mail. Indeed, I recall that on one day I received three unsolicited credit cards in the mail. Is there a problem these days with credit card debt in Australia? All the anecdotal evidence and other evidence we can provide shows we have a severe credit card debt problem. The Reserve Bank puts Australia's total outstanding credit card debt at more than $30 billion.

The Financial Counselling Association of New South Wales partnered with an academic from the University of Newcastle to analyse clients presenting for financial counselling over a two-year period. Their study found that more than 2,500 clients who use financial counselling services for assistance in overcoming their financial difficulties indicated that their most frequent problem arose because they overspent on their credit cards. This is an important bill; I believe it puts the onus where it really belongs: on the providers of services. It is up to them to ensure that people who are given credit cards—which, in reality, extend to not just credit but also cash—have the ability to pay. The Christian Democratic Party supports the Fair Trading Amendment (Responsible Credit) Bill, and encourages the Government to also support it.

Debate adjourned on motion by the Hon. Peter Primrose.

DISABILITY PROGRAMS FUNDING

Debate resumed from 25 May 2005.

Ms SYLVIA HALE [10.35 a.m.]: We support the motion moved by the Hon. John Ryan, and I have previously put the Greens position on it. We find the Premier's remarks excessively offensive. We deplore what we believe to be misleading—almost deliberately misleading—statements by the Minister about the cuts to the Post Schools Options Program. The suggestion that funding will be restored is obviously false, because people will experience a real loss of ability to access the services they desperately need.

The Hon. CHRISTINE ROBERTSON [10.36 a.m.]: I oppose the motion. It is nice to hear Opposition members say, as the Hon. Patricia Forsythe said recently, that they care about people with disabilities and their families and carers. However, their actions speak louder than their words. The last time the Coalition won an election it cut Labor's New Start initiative, which expanded community-based accommodation for people with a disability. The New Start Program would have provided $325 million over seven years.

During its time in government the Coalition also cut 1,000 Department of Community Services officer positions. Despite the posturing of members opposite, at the last election the Opposition did not commit one additional dollar for disability services. In fact, it committed to cutting the Community Services budget by $700 million to pay for other election commitments. The Carr Government's record on disability services is very different; it has increased the disability budget by a massive 115 per cent, or $828 million, over the past nine years.

The Hon. Catherine Cusack: Point of order: The Hon. Christine Robertson is totally misleading the House—

The PRESIDENT: Order! The Hon. Catherine Cusack knows perfectly well that that cannot be the basis of a point of order.

The Hon. CHRISTINE ROBERTSON: As I said, the Carr Government has increased the disability budget by a massive 115 per cent, or $828 million, over the past nine years. As announced last week, the disability budget will increase by almost 12 per cent in the next financial year. Post school programs have received a substantial increase in funding, more than $11 million overall, over the past two years. There have been no cuts in overall funding to these programs. There is widespread agreement that the Adult Training, Learning and Support [ATLAS] Program needed to be reformed. We heard that in evidence given to the parliamentary inquiry into this issue.

The ATLAS program was a one-size-fits-all program. It did not get as many people into employment opportunities as was hoped. Neither, as a time-limited program, did it provide long-term security of support to people with a disability and their families. So while the Government has acknowledged that the reforms have caused concern in the community, the reforms show the Government's commitment to improving outcomes for people with a disability. The new programs were designed to improve access to employment for young people with a disability and to provide certainty of longer-term support for those who are not able to make that transition. The fact is that, as a result of the increases in costs levied by a number of post school program service providers, many young people with a disability received fewer hours of support, and this put pressure on their families and carers.

The Minister undertook a review of the effects of these reforms, listened to families and carers, and increased funding for post school programs to ensure that at least three days of support are provided. As a result

of the $6 million funding injection, young people with a disability who currently receive fewer than three days of support in this program will have their support increased; new participants to the program will receive at least three days of support; and people who are receiving more than three days will continue to receive this additional support. Additional hours will be available immediately, dependent on each provider's capacity to deliver services.

The Government is also moving to standardise costs by service providers. There will be a competitive tender for services commencing in 2006. This move will ensure that the arrangements with service providers are sustainable and provide the support that families need over the long term. I understand that new program specifications will detail the required outcomes for clients, allowing for their particular needs. The Government has listened to and understood the concerns of parents and carers. Again, actions speak louder than words.

I would like to add that the political building up of this issue in the community has made it far more difficult for negotiations to continue—although they certainly have, and the Minister should be applauded for that. I cannot imagine that any policy adviser or government could have expected the providers to increase their costs per hour so considerably, admittedly not across-the-board, at exactly the same time as the changes were being put into place, or that such massive changes could happen to individuals. It is incredibly important that the Minister continue his negotiations in working through this issue, and I believe that the outcome will be good for disabled persons and their carers.

The Hon. CATHERINE CUSACK [10.41 a.m.]: I wish to speak briefly to correct the record on a number of extremely misleading statements made by the Hon. Christine Robertson in perpetuating a Labor Party myth, a great Labor lie, that has been run for far too long. The truth of the matter needs to be placed on the record. The honourable member alleged that 1,000 Department of Community Services positions were axed by the Greiner Government. When the Greiner Government was elected in 1988 it inherited an absolutely dysfunctional Department of Youth and Community Services.

The Hon. Amanda Fazio: Point of order: My point of order relates to relevance. The motion is about the Adult Training, Learning and Support [ATLAS] and Post School Options programs. The first part of the motion condemns the Premier for some comments he allegedly made in Wollongong, and the second part affirms opposition to alleged cuts to the ATLAS and Post School Options programs. While we are all aware that the Hon. Catherine Cusack was employed as a staffer in the Greiner Government, her version of events about what happened in community services and the axing of Department of Community Services case workers is not relevant to the motion. I ask you to direct the Hon. Catherine Cusack to keep her comments relevant to the motion, rather than revise the history of the Western world as she sees it.

The Hon. Don Harwin: To the point of order: The Hon. Amanda Fazio was keen to take up as much of the Hon. Catherine Cusack's time as she could, but the Hon. Catherine Cusack made it clear that she was only responding to matters raised by the preceding speaker. Therefore, she was quite in order.

The PRESIDENT: Order! I have stated previously that there is a convention in the House that speeches may be wide-ranging. The point of order taken earlier by the Hon. Catherine Cusack was that the Hon. Christine Robertson was misrepresenting the position. Of course, misrepresentation cannot be the basis of a point of order. However, speeches must also be relevant, and that is the basis of the point of order taken by the Hon. Amanda Fazio, which I uphold. The Hon. Catherine Cusack might like to address the matter of misrepresentation by way of a personal explanation, which she can do at a time when there is no other business before the Chair. The member may continue, but she should ensure that her remarks are relevant to the motion.

The Hon. CATHERINE CUSACK: In response to the claim by the Hon. Christine Robertson that about 1,000 positions were axed from the Department of Community Services, I remind members of the Labor Party that under Frank Walker the organisation was restructured so many times that it was totally without coherence or sense and, as a result, in 1988 it was restructured into a single organisation. As a result of that, the department was reduced by 1,000 positions. There was not one employee in any of those positions—they were ghost positions. I recall that issue being raised at the time by the Labor Party and it was challenged by the then Minister, Virginia Chadwick, who said, "Show me the body. Name a person who has lost their job." Not one employee of the department lost their job as a result of the functional restructure of the organisation. It just shows how shocking it was that there were 1,000 ghost positions.

The Hon. Christine Robertson also said that this somehow related to the Department of Disability Services. I point out to the honourable member that disability services were attached to the Department of

Health in 1988 and were not transferred until 1990. So it is totally nonsensical to relate disability services to a restructure of the Department of Community Services in 1988. I suggest that the Hon. Christine Robertson should do her research and get her facts straight rather than rely on tired old Labor Party lies and myths in trying to justify its inadequate disability services policies.

The Hon. AMANDA FAZIO [10.46 a.m.]: I listened with great interest to the debate on this matter in the previous sitting week and I am surprised that the listening skills of some of the members opposite appear to be so deficient. The first part of the motion condemns Premier Bob Carr for attacking people with disabilities and their families who were protesting against the Government's cuts to the Adult Training, Learning and Support and Post School Options programs in Wollongong on 7 September 2004. The Hon. John Ryan claims that the Premier called the demonstrators "rabble" and claimed that their protest was of a 1960s mindset that would damage the image of the Illawarra region. I draw to the attention of members who are so keen to interject, but obviously do not bother listening, the information given by the Minister for Disability Services in this debate on 25 May. He said:

> Whatever else the Premier said on those matters, he was not talking at that Cabinet meeting about parents representing the Post School Options protesters or people expressing concern about the ATLAS and Post School Options programs. He was talking about the demonstrators in support of the Government Cleaning Service who were organised by good friends of mine in the Miscellaneous Workers Union and other organisations who were very unhappy with me at the time.

I reiterate that the Minister, the Hon. John Della Bosca, said the Premier's comments had nothing to do with the parents or people with a disability. I am far more prepared to take the word of the Premier and the Hon. John Della Bosca than this petty attempt by the Hon. John Ryan to put a slur on the Government's programs for people with disabilities. I would urge all members of the House to reject paragraph (a) of the motion, simply because it is not based on fact; it is just another typical attempt to smear anybody the Opposition possibly can.

I turn now to the history of the Post School Options Program. When the matter was last debated the Hon. Patricia Forsythe gave an impassioned speech about the good work the Coalition had done when in government. She said:

> That is why the Coalition introduced the Post School Options Program. That has been a successful program. One could argue that in time it would need reviewing and refining.

That is the key, because the Post School Options Program was a stopgap, poorly thought out program that did not achieve any good outcome for people with disabilities. It was put in place to placate the parents of people with disabilities, who could find nowhere for their children to go after they had finished their education. Many of these children had been well trained and educated to the best of their ability, but after that they had nowhere to go, in part because of insufficient funding from the Commonwealth Government to provide employment options for them. The Hon. Patricia Forsythe acknowledged that when she stated:

> I have seen people with Down syndrome with a lower level of disability work in the community at a McDonald's restaurant cleaning tables. Last week I spoke to a young man who had been cleaning cars. When they are in the uniforms and they are making a meaningful contribution their self-esteem is enormous.

I know that is true because I have been involved in this field for more than 20 years. It is wonderful to see a person with Down syndrome earn a living, buy a television, go on an overseas holiday, and participate normally in the community. However, the problem is that to gain that job or get into open employment, whether in competitive employment or an independent supported job, they must gain a place in a Commonwealth-funded disability employment service; but insufficient money is allocated for this—a fact that is widely recognised. Young people with disabilities leave the special education system with all the skills they need to be trained up to go into open employment, but there is no Federal funding. Something had to be done, so the Post School Options Program was put in place.

The Hon. Robyn Parker: By the Coalition.

The Hon. AMANDA FAZIO: Yes, it was put in place by the Coalition, with no thought about positive outcomes for clients. Under Coalition policy young people would leave the special education system at the age of 18 years, go into the Post School Options Program, and remain there until they died or turned 65, at which time they would receive the age pension. That is not a decent outcome for people with disabilities.

The Hon. John Ryan: The oldest is around 30.

The Hon. AMANDA FAZIO: This genius, the bright boy who moved this stupid motion, says that the oldest such person is 30. Under the proposals put in place by the Coalition they may be 30 now, but in 35 years

they will be 65 and there will be nothing for them. It is merely babysitting until old age. The Coalition provided no budget estimates for forward projections. It basically believed that every person who came out of special education would go into the Post School Options Program, which means that the school intake number would grow every year. This Government seeks to put in place a system that will provide positive outcomes for people with disabilities. On 25 May the Minister said:

> One fact about the Post School Options Program... is that under the former program funding was linked to how long a person had been in the program and not to a person's needs.

That is the real problem and that is why we are seeking to change it. The Minister further stated:

> I have asked the department to redesign the program so that it is linked to the needs of particular families and young people with disabilities. As part of this redesign, I have also asked the department to ensure the standardisation of costs and quality.

We can do our best for young people in the Adult Training, Learning and Support Program and the Post School Options Program, but until the Commonwealth Government actually kicks in enough money to support these young people in open employment they will never be given the opportunity to maximise their potential to participate fully in life or fulfil their visions, which, by other standards, are very modest. Their ambition is to have a job, save, have independence, perhaps go on a holiday, and choose and purchase their own clothes. These activities are available to young people if they can get into open employment.

I agree with the Hon. Patricia Forsythe when she said that young people with disabilities work at McDonald's cleaning tables or washing cars. The organisation I have been involved with has placed more than 450 young people with moderate intellectual disabilities into open employment. In some areas, particularly on the North Shore of Sydney, where it is hard to attract people to do routine, mundane jobs, young people with IQs in the range of 35 to 60 can do quite well if they are adequately trained and supported. Indeed, that organisation receives more job offers than it can fulfil because insufficient Commonwealth funding is allocated to allow the service to expand to meet those needs.

This is not just an airy-fairy statement. I believe that the Post School Options Program should continue to develop skills until those people can move on to the next stage of their life. The Coalition did not design the program that way and there has been insufficient evaluation and review under our administration. We are trying to do that now and to make changes. However, if the Coalition had remained in office, more and more young people would have left special education and been parked in Post School Options Programs, where they would have remained, without any chance of advancement or maximising their potential.

I know from when I worked in the Commonwealth in 1986, when we had to introduce the new disability services program, that any changes to the programs cause great upset to family members and service providers. These two vulnerable groups are rife for exploitation by people who run around scaring and provoking them, which is exactly what the Opposition has done. Opposition members have exploited people with disabilities by using them as victims and holding rallies. They would not do that if they had any conscience. They do not have a conscience, which is why they exploit these people. They should hang their heads in shame.

One thing that really annoys and angers me is that the Commonwealth will not provide additional funding to allow young people to follow these State Government programs through into open employment. The programs that the Commonwealth funds and that work well are actually cost neutral. Those young people go off pensions.

The Hon. John Ryan: That is so naive. They are not cost neutral.

The Hon. AMANDA FAZIO: The Hon. John Ryan should hang his head in shame because he does not understand.

The Hon. John Ryan: The vast bulk of people in supported employment do have a disability pension as well, or part pension. They are not cost neutral.

The Hon. AMANDA FAZIO: You have no idea. They are cost neutral. It has been reported a number of times in the *Australian Financial Review* that these programs are cost neutral. Many people eventually go off disability pensions or receive reduced pensions. They earn an income, pay tax, spend money, are less of a drain on the economy, and fill vacant positions. They are exemplary workers because most people with a disability who are placed into open employment have received far greater training and can stick to occupational health and

safety routines. They are much safer workers because they do not deviate or take short cuts. They turn up to work every day because for them it is a privilege to work in jobs that organisations and employers often struggle to fill. These are the real positive benefits.

The Post School Options Program was introduced by the Coalition as a stop-gap measure; it was ill thought out. The needs, aspirations and developmental opportunities for young people placed in post school options programs then were given no consideration at all. I would support the Hon. John Ryan if he moved a motion calling on the Federal Government to provide more funding to allow more people with intellectual and physical disabilities to get open employment, but he will not do that. That is typical of the way members opposite operate. Members opposite do not complain about New South Wales being ripped off by the Commonwealth Grants Commission or underfunding by the Federal Government. They simply continually and opportunistically attack the New South Wales Government for trying to do something that will improve the lot of people with disabilities.

I urge honourable members to either reject the motion outright or accept the amendment moved by Reverend the Hon. Fred Nile. The level of hypocrisy behind this proposal is such that the motion deserves to be rejected by the House. Honourable members must consider carefully what the Hon. John Ryan said. The Government introduced changes to the Post School Options Program in an attempt to fix the problems created by the Coalition Government when it lumped the program in with all other programs. When the Coalition introduced the Post School Options Program it took the pressure off the Commonwealth Government. Prior to the Post School Options Program people were putting pressure on the Federal Government to ensure that adequate funding was provided for employment programs for young people with disabilities. Once the program was introduced the pressure was off because parents thought there was a post school option for their child; they stopped hassling Federal members of Parliament for increased funding because the State Government was taking action.

Parents were so grateful to get some service that they did not stop to think about the quality and inadequacies of that service, and that it would probably do these young people a disservice in the long run. The proposal introduced by the Opposition creates a number of problems. In particular, as I said, we must look at the hypocrisy behind this motion. The budget—we examine the budget in depth every year, and probably more than most people do—shows that there has been a substantial increase in overall funding for the past two years for post school disability programs. About 700 school leavers join the program each year. This means that, despite increases in the overall budget, the funding amount for individuals has been reduced.

In 2003-04 recurrent funding was $57.3 million, in 2004-05 it was $62 million, and in 2005-06 it is $69.6 million. A $6 million injection of funding was announced on 22 May 2005. There was a lack of planning behind the introduction of the Post School Options Program. It was based on school leavers coming out of the special school system and joining the program. It was most damning that there was no strategy for people exiting the program or for progression from the program to something that might be more suitable and more rewarding. So there was a steady increase in the number of people entering the program every year and in the amount of funding but with no improvement in quality or outcomes. It was a return to the old activity therapy centres, which were basically baby minding centres for young people with disabilities.

ATLAS was a one-size-fits-all program; it did not help people with disabilities into employment opportunities. As I said, it took the pressure off the Commonwealth in terms of providing adequate funding places for young people with disabilities to go into open and supported employment. Funding was based on the amount of time in the program, not the needs of the young participants. The Government acknowledged this. Indeed, on 25 May the Minister said that he recognised that the reforms have caused concern for some families. As I said, any change in disability funding causes concern for families. The most shameful thing of all is when that is exploited for political advantage. The costs levied by a number of service providers, coupled with the changes to the program, resulted in many young people with a disability receiving fewer hours of support, placing extra pressure on families and carers.

As I said, the Minister has made a number of statements about this matter. I reiterate: As a result of the $6 million injection of funding announced by the Minister, young people with a disability who currently receive fewer than three days of support in this program will have their support increased, new participants to the program will receive at least three days, and people who are receiving more than three days will continue to receive the additional support. The Government is also moving to standardise costs in the sector, and it will be evaluating the pilot programs that have been put in place. These moves will ensure that arrangements with service providers are sustainable and provide the support that families need over the longer term. The new program specifications will detail the required outcomes for clients, allowing for their particular needs. That is an important issue.

One-size-fits-all programs are not appropriate for people with disabilities because they have a mixture of issues, be they have behavioural problems or an intellectual disability combined with physical disabilities. Programs must be tailored to suit the individual, otherwise we are delivering programs that are meaningless. In conclusion, I strongly believe that the Carr Government has a good record in disability services. Over the past nine years the budget has increased by 115 per cent. This motion deserves to be rejected. It is clear that the Premier did not make the comments referred to in paragraph (a) of the motion. Paragraph (b) is the sort of cheap shot I expect from the Hon. John Ryan in attempting to exploit young people with disabilities and their families. I urge honourable members to vote against the motion.

The Hon. ROBYN PARKER [11.06 a.m.]: I support the motion. There has been an attempt to rewrite history today, and. I simply want to put the motion in context. It arose out of a protest held in Wollongong in September last year. At that protest outrageous comments were attributed to the Premier, for which he later apologised. It has been suggested that he did not make the comments. Well, I am not sure why he apologised if he had not made the comments in the first place. The Premier commented on a protest held on 7 September 2004 by some of the most vulnerable people in our society who had taken to the streets: children and young adults with disabilities—some of them in wheelchairs. Although we are talking about this event in 2005, those people are still concerned; they have not gone away. For the Premier to call them "rabble" and to describe their behaviour as "a 1960s mind-set" is beyond belief.

The Government continually tells us about its strong and detailed plans. However, those strong and detailed plans will shaft some of the most vulnerable people in our community; they lives will be absolutely turned upside down. They live the sort of lives that we could not even imagine. Talk about walk a mile in someone's shoes! I could not walk even a centimetre in their shoes. These people, including some in wheelchairs, took to the streets to protests throughout New South Wales, including in Newcastle and outside Parliament House.

People protested in the streets because they were concerned, and because this Government was shafting them. And the Government is still shafting them. Members on the Government side of the House should not tell stories about strong and detailed plans. The only plan afoot here is to cut funding and to slash the hours that disability services can offer, instead of offering quality programs—established by the Minister for Community Services under the former Coalition Government—that will address the needs of dozens of young disabled people after they leave school and that will find creative ways to care for these needy people.

That is why the people protested in the Illawarra, in Newcastle and outside Parliament House. The Government was cutting their funding and their hours. I have been to many meetings with disability providers. Today a parent said to me, "The Government might say that I can have three days care for my son, but the change in care provider has been horrendous and it has turned our lives upside down." No transport is offered to the new provider. The parent said that she was ashamed to say she had to go for quantity, not quality.

Pursuant to sessional orders business interrupted.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 and 2 postponed on motion by the Hon. Eric Roozendaal.

ROAD TRANSPORT LEGISLATION (SPEED LIMITERS) AMENDMENT BILL

Second Reading

Debate resumed from 7 June 2005.

The Hon. AMANDA FAZIO [11.11 a.m.]: It is important that we ensure that road safety initiatives such as speed limiters are working effectively. I commend the bill to the House.

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [11.12 a.m.], in reply: I thank honourable members for their contributions to the debate and commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[*The President left the chair at 11.15 a.m. The House resumed at 11.28 a.m.*]

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 4 to 11 postponed on motion by the Hon. John Della Bosca.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (WORKPLACE DEATHS) BILL

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [11.29 a.m.]: I move:

That this bill be now read a second time.

As my speech is lengthy and has been delivered in the other place, I seek leave to incorporate it in *Hansard*.

Leave granted.

I am pleased to introduce this bill, the Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005, which will create a new offence, with a higher penalty regime, under the Occupational Health and Safety Act 2000 where a person who owes a duty under the Act engages in reckless conduct that causes death of a person at a workplace.

In October 2004 I released the Occupational Health and Safety Legislation Amendment (Workplace Fatalities) Bill 2004 for consultation. Since then the Government has consulted widely with employers and unions on the nature of the workplace death offence.

In over six months of extensive consultations about the draft bill employers have consistently told me they want the full force of the law applied to rogues whose disregard of basic safety obligations result in death of a vulnerable worker. Employers have consistently commented that they support strong action being taken against rogue employers whose conduct is negligent or reckless.

Based on these constructive views I gave a commitment that the bill would not be introduced in the form as originally released in 2004.

In a Ministerial Statement on 5 May 2005, I announced the release of a revised bill—the Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005. This is the bill I put before the House today.

The revised bill is aimed at the very small minority of rogues whose indifference to health and safety in the workplace results in death. The bill represents the most effective means of targeting those who are most culpable and deserving of greater degrees of punishment.

I turn now to the specific provisions of the bill.

The bill creates a new offence where a person, who owes a duty under Part 2 of the Act, engages in conduct that causes death of another person at any place of work and that person is reckless as to the danger of death or serious injury arising from that conduct.

Those who have duties under Part 2 of the Occupational Health and Safety Act 2000 and to whom the workplace death provision may apply include employers; controllers of work premises; directors and managers; employees; and persons hindering the aid of injured workers.

"Recklessness" has been defined as "heedless or careless conduct where the person can foresee some probable or possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences." One example of a reckless act could be if an employer directs workers to work at heights without fall protection.

The death of the person under the new offence is taken to have been caused at a place of work even if the person is injured at work but dies elsewhere, such as a hospital. It also does not matter where the culpable conduct that led to the death at work took place. An employer can therefore be held accountable for conduct or decisions taking place at corporate headquarters although the fatal injury to the worker took place at the worksite.

Under the bill a corporation which engages in reckless conduct that causes the death of a person at a workplace can also be charged under the new provision.

Directors and managers will also be liable to prosecution under the new offence, although they will have to be personally engaged in reckless conduct causing death to be convicted under the new offence. This accords with one of the prime objectives of the bill to target and punish those who are most culpable and indifferent to the health and safety of employees and others at the workplace.

The bill provides for a significantly higher penalty regime in relation to the new offence. These higher penalties are justified given the greater degree of culpability needed to be proven by the prosecution under the new offence.

The penalties for this new offence are up to $165,000 for individuals and/or up to 5 years' imprisonment; and $1.65 million for corporations. These penalties are an appropriate reflection of the gravity of the consequences of the reckless behaviour of the offender.

Under the bill a person who is charged with the new provision will be able to use the defence that they had a reasonable excuse.

What constitutes a reasonable excuse will be a matter for the court to determine on the particular facts of a case, but will require a compelling and overriding reason why reckless conduct causing death in the workplace might be excused. An example might be where, in an emergency situation, some action is taken that causes a death in the workplace. The court will be able to take the circumstances of the action into account in determining whether a conviction is warranted.

This defence is wider than that of "lawful excuse" which would relate for example to police engaging in certain conduct in the execution of their duties. This additional defence ensures that a court will take into account the inherent dangers and difficulties of particular types of work, such as policing, when considering the application of the new offence.

The current defences under section 28 of the Act will continue to apply. That is, it was not reasonably practicable for a person to comply or the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

The bill provides that the new offence can only be prosecuted by a WorkCover Inspector or a mines inspector in the Department of Primary Industries in relation to mines.

However, if either of these agencies decided not to prosecute a person following a workplace death, a union will be able to ask the relevant agency for the reasons behind the decision not to prosecute under this offence.

The bill also provides for another person to bring a prosecution with Ministerial consent. This provision takes into account circumstances where it may be necessary to prosecute either WorkCover or the Department of Primary Industries.

In addition the bill provides that the prosecution will not be allowed to appeal if a person is acquitted of charges under proposed section 32A.

The bill also includes amendments to the Criminal Appeal Act 1912 to allow a person sentenced to a term of imprisonment under the new offence a right of appeal from the Full Bench of the Industrial Relations Commission in Court Session to the New South Wales Court of Criminal Appeal.

This bill is the result of a thorough and exhaustive process of consultation. The views of all stakeholders have been well vented and the result in the form of this bill is a rewarding one. The bill is the most effective form of achieving the goal of safe workplaces by punishing those few who are indifferent to the health and safety of those at the workplace.

The Government would like to thank those unions and employer groups who have contributed so constructively to the development of this bill.

This reform ensures there will be sufficient punitive measures to punish those with the requisite degree of culpability. The vast majority of employers have nothing to fear from this new provision—it is the rogue employers who must now realize that very harsh consequences will follow their criminally reckless acts.

The community has the right to expect that the appropriate penalties and deterrents are in place to ensure that people who leave for work can return home safely to their families and friends.

I believe we all want safe workplaces. We all want our loved ones to return home safely from work. This bill is not some token measure but is an effective amendment to ensure the health and safety of everyone in the workplace.

I commend the bill to the House.

The Hon. GREG PEARCE [11.29 a.m.]: This bill follows on from legislation that was introduced by the Minister for Industrial Relations in 2004 that was strongly opposed by the Coalition, the business community and farmer organisations. Whilst the Government has removed some of the objectionable features of the earlier legislation, the Opposition continues to oppose this unnecessary bill, and we will seek to make a number of amendments to it in Committee.

In particular, the bill still denies trial by jury and allows the Industrial Relations Commission to sentence offenders to gaol for up to five years. One of the amendments we will propose in Committee will allow for appeals on fines. The bill introduces substantial fines for individuals up to $165,000 and/or imprisonment up to five years and for corporations up to $1.65 million. The Opposition does not accept that those fines should not be subject to appeal. Our major concern is the omission of trial by jury. We consider that prosecutions should be independently initiated by the Director of Public Prosecutions not by the Minister, who may be influenced by trade unions in commencing such prosecutions. That is not an appropriate situation, and we will oppose that provision. In addition, we believe that matters should be dealt with in the Supreme Court or District Court, not merely on appeal to the Court of Appeal.

The Minister has spoken about these proposals on many occasions in the past. Until recently, he sensibly resisted the union movement's push for this type of unfair and unprecedented power for the unions. On many occasions the Minister indicated he did not believe it was necessary to have this specific offence as the existing laws relating to manslaughter and other offences adequately covered the situation. The Opposition believes that is the case and that this is really a sop to the union movement. It introduces into workplace administration a level of unfairness and bias that is against the interests of employers, employees and the economy generally. I indicate once again that the Coalition opposes the bill as being unnecessary and will seek to amend it at the Committee stage.

Reverend the Hon. FRED NILE [11.33 a.m.]: The Christian Democratic Party supports in principle the Occupational Health and Safety Amendment (Workplace Deaths) Bill. The objects of the bill are:

(a) to amend the Occupational Health and Safety Act 2000 (the OHS Act) to make it an offence for a person who owes a duty under Part 2 of that Act to engage in reckless conduct that causes death at a workplace, and

(b) to amend the Criminal Appeal Act 1912 to provide for a right of appeal to the Court of Criminal Appeal where a person has been convicted and sentenced to imprisonment by the Industrial Relations Commission in Court Session for the proposed new offence.

Honourable members will be aware that General Purpose Standing Committee No. 1, which I previously chaired, conducted an intensive inquiry into serious injury and death in the workplace. The committee found alarming evidence of reckless behaviour by some employers that had resulted in the deaths of employees in the workplace. The inquiry, which thoroughly investigated this issue, heard evidence from the widows of employees who had died in the workplace, as well as from mothers whose sons—particularly young apprentices—had died in the workplace.

The evidence indicated to the committee that more needs to be done to protect the lives of men and women, especially young people, in the workplace. The committee found that too many deaths were occurring in the workplace, and I made the point during the course of the inquiry, and since its conclusion, that we quite rightly place importance on the deaths of Australian Defence Force personnel during wartime or when on peacekeeping missions—as occurred recently with the tragic deaths of nine defence personnel in a helicopter crash in Indonesia. I would add that I fully support the measures put in place to provide care and support for the families of the deceased. But it seemed that in the case of workplace deaths there was a lack of care at a number of levels, not only on the part of some employers. It is only a minority—we are not talking about the majority of employers—who avoid their responsibilities.

We also found there was a lack of care on the part of responsible WorkCover officers in providing counselling for the relatives of the deceased and keeping them fully informed about the process that was taking place. The relatives felt they were simply ignored and neglected, and that caused them a great deal of anguish. There does need to be some incentive for that minority of irresponsible employers to face the possibility that they could be found guilty, where they have been reckless in their behaviour that has resulted in the death of an employee, and that they could face not merely a fine but perhaps a prison sentence.

I agree with the opinions of Alan Jones on a number of issues, but on this issue he appears to be misinformed. During his program this morning he spent a great deal of time virtually ranting in opposition to the bill. I believe that he was fed a lot of false information. He gave the impression that if this bill is passed, employers will be sent to gaol left, right and centre. Honourable members of this House are well aware that if an employer is at fault he or she will not automatically be sentenced to a term of imprisonment. We know that even when people in New South Wales commit murder they get relatively light sentences when one considers the maximum sentence available. In other words, the courts, and in this case the commission, will have a discretion as to whether it will impose a fine or proceed to a custodial sentence, and the length of any sentence. That will be determined by the seriousness of the action or lack of care on the part of the employer.

I believe that Alan Jones and others who have attacked the bill have misrepresented it and the purpose for which it was introduced. That is a pity because it is obviously causing concern in the community—not so much amongst employees but certainly amongst employers—that this draconian legislation is being sneaked through the Parliament and that they will all face a prison sentence. I know it is a difficult issue, and has been the subject of considerable discussion. The Government has made a number of attempts in relation to the precise wording of the bill. The Government found it difficult to prepare because of the complexity of the issue in regard to workplace deaths. We are dealing with the final effort in this debate.

I believe that the Government's legislation is worthy of support. It is important that the legislation is passed so that its operation can be monitored. If there are problems with it, it can be brought back to the House

and amended accordingly. As we know with all legislation, if it is found after a period of monitoring that some aspects need improvement, amendments can be made to remedy the situation. This morning when Alan Jones attacked the legislation, he did not once refer to the objects of the bill. The first object of the bill is:

> to amend the Occupational Health and Safety Act 2000 (the OHS Act) to make it an offence for a person who owes a duty under Part 2 of that Act to engage in reckless conduct that causes death at a workplace

Alan Jones appears to be under the impression that if a death occurs, the employer will automatically face a gaol sentence. He does not acknowledge the wording of the legislation. Alan Jones kept saying that no employer could guarantee that there will be no deaths in the workplace. He suggested that the legislation forces employers into the difficult position of guaranteeing that there would be no workplace deaths. The legislation does not say that; it refers to reckless conduct. Schedule 1 inserts new section 32A, which provides:

> **Reckless conduct causing death at workplace by persons with OHS duties**
>
> (1) In this section:
>
> ***conduct*** includes acts or omissions.
>
> (2) A person:
>
> (a) whose conduct causes the death of another person at any place of work, and
>
> (b) who owes a duty under Part 2 with respect to the health or safety of that person when engaging in that conduct, and
>
> (c) who is reckless as to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct,
>
> is guilty of an offence.
>
> Maximum penalty:
>
> (a) in the case of a corporation—15,000 penalty units, or
>
> (b) in the case of an individual—imprisonment for 5 years or 1,500 penalty units, or both.

As I indicated, these are maximum penalties. The Industrial Relations Commission is given the discretion to determine whether a penalty of imprisonment should be imposed, and whether the penalty is to be three months, four years or five years. The inquiry heard evidence of reckless conduct on the part of a handful of employers in New South Wales. An example that comes to mind is that of a young apprentice who had been on the job for only a couple of days and was on top of a tall building without a safety harness. As far as we are aware, the apprentice was given no instructions about safety, and he fell to his death from that building. We were led to believe that there were attempts to throw a safety harness next to the body, to indicate that the apprentice may have been wearing it. However, there was no evidence of the apprentice being issued with a safety harness or being required to wear one. That is the kind of reckless behaviour the bill seeks to address.

The Opposition gave the impression that this is exceptional legislation. Similar legislation has already been introduced in the Australian Capital Territory, and I am not aware of any disturbing consequences. It seems to be working well as a deterrent—so far as I know, no-one has been sent to gaol in the Australian Capital Territory. The legislation would encourage employers to concentrate on providing the safest possible workplace, and ensuring that they do not engage in reckless behaviour. I believe that the purpose of the bill is not to send people to gaol but to ensure that no-one dies in the workplace. We can allow the legislation to proceed, monitor its operation and assess its effectiveness. It is very difficult to do that in an academic exercise, by saying we will not pass it but will leave it up in the air. I believe we should pass the legislation so it can be tested in the workplace. For those reasons I urge members to support the bill, even if they have reservations about it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.46 a.m.]: I am very unhappy with the Occupational Health and Safety Amendment (Workplace Deaths) Bill and with the Minister's carriage of it. I have worked in occupational health and safety medicine for 20 years, and the prevention of workplace deaths is a very important issue. I have had first-hand experience of seeing and dealing with the trauma and sadness associated with workplace deaths. I have seen many workplace injuries, although not always in the acute stage. Two people dropped dead at the workplace. Both were smokers, and, of course, their deaths were not workplace related. I managed to resuscitate one, but could not save the other.

I investigated chlorine poisonings and found the records to be imperfect. I managed to find somewhere between 13 and 23 cases of people who had significant injuries. Despite the fact that Sydney Water has an

active safety department and its own in-house workers compensation department, it is difficult to obtain statistics. Some of the injuries had had long-term sequelae. So I am always a little suspicious of the examination of industry processes and the data that is supposedly relied upon. Every two days in New South Wales someone is killed in the workplace. In 1999-2000, 181 people died from workplace-related disease and injury. That is more than the number of innocent people who died in the Bali bombing, the Port Arthur massacre and the Thredbo landslide combined. Figures provided by WorkCover to the Construction, Forestry, Mining and Energy Union show that in 2002 WorkCover successfully prosecuted 455 defendants for breaches of the Occupational Health and Safety Act.

In the WorkCover statistical bulletin for 2002-03 a fatality is included if the claim for the original injury or illness was entered into the insurer's computer system during 2002-03 and the fatality occurred subsequently during the same period. As often applies in cases of fatalities resulting from occupational diseases, death may occur at a much later time and therefore will not be recorded as a fatality in the WorkCover statistical bulletin. The data on employment fatalities is drawn solely from the workers compensation system, and these are compensatable fatalities.

A total of 1,693 fatalities were reported during the 10-year period from 1993-94 to 2002-03. Of these, 599 resulted from workplace injuries, 711 from other work-related injuries, and 393 from occupational diseases. The incidence rate of fatalities has varied between 4.9 and 12.2 per 100,000 employees over the 16-year period from 1987-88 to 2002-03. Overall, the incidence rate showed a decreasing trend during the period, with the lowest rate, at 4.9, reported in 2002-03. By way of contrast, the frequency rate was more stable between 1991-92 and 2001-02, ranging from 0.048 to 0.038. In 2002-03 the rate dropped to 0.029.

In 1987-88 the number of fatalities was 209, with an incidence rate of 10.9. In 1988-89 the number of fatalities was 244, with an incidence rate of 12.2. In 1989-90 there were 210 fatalities, with an incidence rate of 9.9. In 1990-91 there were 233 fatalities, with an incidence rate of 11.2. In 1991-92 there were 177 fatalities, with an incidence rate of 8.7 and a frequency rate of 0.05. In 1992-93 there were 156 fatalities, with an incidence rate of 7.6 and a frequency rate of 0.04. in 1993-94 there were 185 fatalities, with an incidence rate of 8.9 and a frequency rate of 0.05; in 1994-95, 177 fatalities, with an incidence rate of 8.0 and a frequency rate of 0.05; in 1995-96, 181 fatalities, with an incidence rate of 7.9 and a frequency rate of 0.05; in 1996-97, 173 fatalities, with an incidence rate of 7.5 and a frequency rate of 0.04; in 1997-98, 181 fatalities, with an incidence rate of 7.8 and a frequency rate of 0.05; in 1998-99, 163 fatalities, with an incidence rate of 6.8 and a frequency rate of 0.04; in 1999-2000, 181 fatalities, with an incidence rate of 7.2 and a frequency rate of 0.04; in 2000-01, 139 fatalities, with an incidence rate of 5.2 and a frequency rate of 0.03; in 2001-02, 177 fatalities, with an incidence rate of 6.6 and a frequency rate of 0.04; and in 2002-03 there were 136 fatalities, with an incidence rate of 4.9 and a frequency rate of 0.03.

So there is a possible downward trend, but it is pretty slow. The Australian statistics for workplace deaths do not do well by Organisation for Economic Co-operation and Development standards. A total of 136 employment-related fatalities were reported to the insurers in 2002-03. In that year 45 fatalities, being 33.1 per cent, occurred at the workplace; 31 fatalities, or 22.8 per cent, resulted from occupational diseases; road traffic accidents accounted for 18 fatalities, being 13.2 per cent; commuting accidents accounted for 41 fatalities, being 30.1 per cent; and one fatality occurred when the victim was away from work during a recess period. There were 115 male fatalities, which were 84.6 per cent of all reported fatalities.

In 2002-03 the fatality incidence rate for all industries was 4.9 per 100,000 employees in New South Wales and the fatalities frequency rate was 0.029 per million hours worked. Industry divisions that had rates above the New South Wales average were: agriculture, forestry and fishing, which had 16 deaths and an incidence rate of 31.5; transport and storage, which had 25 deaths and an incidence rate of 19.6; mining, which had 2 deaths and an incidence rate of 13.2; construction, which had 20 deaths and an incidence rate of 12.2; personal and other services, which had 9 deaths and an incidence rate of 9.6; and manufacturing, which had 18 deaths and an incidence rate of 5.3.

Labourers and related workers had the highest number of fatalities at 34. Intermediate production and transport workers had the second-highest number of work-related fatalities at 30, with an incidence rate of 13.2. Within this group, road and rail transport drivers had the highest number of fatalities at 22, with an incidence rate of 29.2. By age group, during 2002-03 the highest number of work-related fatalities occurred in the 30 to 34 age group, being 21; followed by the 40 to 44 age group with 17; the 35 to 39 age group with 15; and the 55 to 59 age group with 15.

Employees under 25 years of age accounted for 14.7 per cent of all fatalities. The highest incidence and frequency rates were recorded for the over-65 age group. There were 20 workers, being 14.7 per cent, aged under 25 years who were fatally injured in the course of their employment. Male employees accounted for 16 of these cases. Vehicle accidents were the most common mechanism of fatal injury. The most common workplace accident that led to fatalities was being hit by a moving object, and the second most common was vehicle accidents. A total of 383 occupational disease fatalities were reported during the 10-year period. Manufacturing, construction, and transport and storage had the highest numbers of disease fatalities and together accounted for 43.3 per cent of cases. Males accounted for 92.7 per cent of fatalities involving occupational diseases. Interestingly enough, of these, 51 per cent of deaths resulted from ischaemic heart disease, asbestos 7.2 per cent, followed by mesothelioma at 5 per cent and cerebrovascular disease at 4 per cent.

One's eyes glaze over when one hears these statistics. Even if a company's safety officer reports directly to the board or the senior management group, often statistics are put into injury frequency rates, time lost or other indices that do not actually analyse things very clearly. The problem with the legal system in our country and the way it apportions blame is that it tends to regard the cause and effect of death very simply. If somebody is shot the only questions asked are: Were they really shot? Did the shooting cause the death? Who did the shooting? In other words, the link between the evil doer, if you like, and the consequence is very direct. The legal system is not good at looking at the system failures that lead to these sorts of problems. I have received a large amount of correspondence about this issue. The thing that concerned employers most was a reversal of the onus of proof proposed in the bill, in that there is an absolute obligation to provide a workplace free of hazards.

That is a state of perfection that employers believe is unattainable. They are therefore concerned that if they did not provide a workplace free of hazards they would be immediately guilty in regard to any death that occurred at the workplace. At one level that is reasonable. On the other hand, there is the idea that an employer in a large corporation can simply give the order, take the cheapest quote and go ahead, but cannot be an expert in everything. The subcontractor's quote is cheap because there is no occupational health training, equipment or anything else, and the corporation effectively lets the contract to the cheapest subcontractor. The subcontractor says, "I would not have got the contract had I taken the proper safety procedures". The corporation says, "I cannot be responsible for everything. Naturally I use price as a major, but certainly not the only, criterion. I cannot be responsible for supervising subcontractors at the level at which I get them because I do not have expertise in this area". The managers all the way up the chain say they were just following orders. The person at the top of the chain says, "I cannot be responsible for that level of detail". At the end of the day everybody shuffles their feet but the result is that the person is still dead, having left behind a grieving family.

This has to be addressed. I have a Master of Occupational Health and Safety degree in Applied Science. The theory of accident causation is actually a university subject of some complexity, with a large amount of input particularly from the aviation and oil industries because they tend to have infrequent failures with fairly spectacular consequences, after which they look at things such as aircraft design, maintenance, weather, human error and so on, all of which contribute to the blame in the sense that if all the adverse factors did not coalesce the accident would not have happened.

Having observed errors in the medical system, I can describe an incident in which a very ill woman came into a hospital. The doctor in casualty was extremely busy but he gave her treatment that was very successful and she improved considerably immediately; she looked much better than when she came in. The doctor put further orders on her treatment chart and wrote that she had to go to the intensive care ward. He then went on with his work in the busy casualty department. Along came somebody else to help in this extremely busy casualty department and arranged for the patients who had been treated there to be transferred to the ward. That was quickly organised and the people were moved to the ward.

Unfortunately, the woman was not sent to intensive care but was sent to a ward, which was poorly staffed, as it was the middle of the night, and in the morning she was found dead in her bed. She needed further treatment, although the treatment in the acute phase had worked quite well in the short term. Was her death the fault of the doctor who wrote that she should go to intensive care, or the person who quickly moved her to the ward? Nothing was written except in the notes, the details of which had not been read.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

MARITIME AUTHORITY COMMERCIAL LEASES POLICY

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Ports. Has the New South Wales Maritime Authority undertaken an economic and social impact study of the authority's proposed commercial lease policy? If not, will the Minister ensure that an independent impact study is completed before the policy is handed to him for approval? Will he also ensure that such a study incorporates the social and economic effect of losing commercial sites to residential development, such as occurred with the closure of Joels Boatshed, Middle Harbour, in April 2005, and the eviction of 40 boat owners from commercial moorings?

The Hon. MICHAEL COSTA: The Leader of the Opposition has raised an important issue with which I have been involved. I am concerned about some of the arrangements proposed in terms of the draft policy. In fact, I met with the Boating Industry Association about precisely these matters and I have given the association an assurance that the draft policy will not be the final policy. I have suggested that the New South Wales Maritime Authority should sit down with the Boating Industry Association and come up with a policy that balances the requirements of taxpayers to achieve a sensible economic return on these assets against the need to protect facilities for boat users within the State of New South Wales. I think that the boating industry is happy with that process and I will continue to liaise with them. I have made an offer for them to come back and see me once they have consulted with the New South Wales Maritime Authority. On that basis I think the way we are heading on this issue should lead to a sensible resolution.

APPRENTICESHIP NUMBERS

The Hon. KAYEE GRIFFIN: My question is directed to the Minister for Education and Training. Can the Minister advise the House on recent data from the National Centre for Vocational Education Research on apprenticeship and traineeship numbers, especially as it relates to New South Wales Government initiatives to boost apprenticeships in traditional trades?

The Hon. CARMEL TEBBUTT: On many occasions in this House I have spoken about the important issue of how to tackle skills shortages in New South Wales. One of our highest priorities has been overcoming critical skills shortages in traditional trade areas by increasing both the number of young people and older workers commencing and, more importantly, completing an apprenticeship. Recent data from the National Centre for Vocational Education Research indicates that our plans are proving successful. Apprenticeship and traineeship commencements in Australia for 2004 show the strong progress that New South Wales has made in expanding vocational training in key skills shortage areas. There has been a 19 per cent increase in apprenticeship numbers, and this trend is continuing.

In TAFE and workplaces around New South Wales more than 45,000 apprentices are undertaking their training. There has been a marked growth in apprenticeships in industries that are critically important to the New South Wales economy. Automotive, building and construction, manufacturing and engineering, electro-technology and commercial cookery have all shown significant increases. This growth has not been confined to metropolitan areas; regional New South Wales is also benefiting greatly. For example, new automotive apprenticeships on the North Coast are up almost 50 per cent and new manufacturing and engineering apprenticeships in the Hunter have expanded by 40 per cent in the past 12 months. This valuable growth in apprenticeships is a direct result of previous New South Wales Government initiatives, including payroll tax exemption for employers of apprentices and trainees, public transport concessions for apprentices and trainees, expenditure of $7 million on pre-vocational training since 2003, and a greater focus on traditional trades in the Government's direct purchases of training to meet strategic industry skill needs.

Our plans will continue to ensure strong apprenticeship growth in traditional trades through our plan Securing our Skilled Workforce. The new $2 million TradeStart@TAFE pre-apprenticeship program will provide accelerated training for 450 prospective apprentices and match them with employers. The great benefit of this program is that it provides an opportunity for people who are considering an apprenticeship to understand what is involved in that apprenticeship by doing pre-apprenticeship training. It will also mean that they have completed their first-year training within that concentrated period of time, placing them at great advantage when they are linked up to a formal apprenticeship.

The $84 million for TAFE capital works will support extra places for apprenticeships and high-demand occupations over the next four years. Group training companies will receive an extra $1 million from the New South Wales Government to employ an additional 800 apprentices in traditional trades. The car registration rebate of $100 will benefit 25,000 first-year and second-year apprentices and doubling the rate of travel assistance will benefit 5,000 apprentices and trainees from regional and rural New South Wales.

We are also improving the flexibility of the traineeship system to allow for early completion of apprenticeships where full competency has been achieved. One example is to fast-track adult trade training, which will allow experienced but unqualified workers to access new training to complete an apprenticeship in less than two years. We will also ensure that 20 per cent of any trade work required in government construction projects worth more than $2.5 million is performed by apprentices. All these measures will improve the attractiveness of apprenticeships as a valued employment and training option to employers and prospective apprentices.

The report also shows a 26 per cent increase in traineeship starts in the community services and health industries, a 10 per cent increase in the food industry, a 15 per cent increase in primary industry, and a very strong 62 per cent increase in process manufacturing. I am pleased with these figures and I assure that House that the Government will continue its focus on industry's critical skill needs, especially for apprenticeships.

RECREATIONAL FISHING LICENCES

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Primary Industries. Does the Minister recall his recent announcement that recreational fishing licence fees will increase from next month? Will he guarantee that all additional revenue raised will be spent on front-line recreational programs and not used to fill government coffers? What assurances can the Minister provide to New South Wales anglers that they have not been slugged the increase to compensate for the $10.5 million cut to the Department of Primary Industries in this year's State budget?

The Hon. IAN MACDONALD: As we all know, recreational fishing is one of the most popular pastimes in New South Wales. Research suggests that more than one million people wet a line at least once a year. The industry is also vital to many communities, pouring millions of dollars into local economies and regional tourism. The State Government has long been a strong supporter of recreational fishing across New South Wales, both coastal and inland. The recreational fishing licence scheme in New South Wales plays a significant role in providing funding for important projects, such as fish restocking and habitat restoration. These moneys are invested into two recreational fishing trusts, one for saltwater fishing and one for freshwater fishing. Expert anglers sit on each trust and decide how to invest the money raised through the sale of fishing licences to further enhance recreational fishing.

The Hon. Duncan Gay: You are giving me an answer to a question I did not ask. Answer the question that I asked.

The Hon. IAN MACDONALD: If you are patient this will answer it precisely.

The Hon. Duncan Gay: I haven't got all day. People are very concerned.

The Hon. IAN MACDONALD: I have got three minutes. Since the licences were introduced in 1998, $36 million has been invested in a wide range of projects, which have helped boost the recreational sector across New South Wales. In the past year alone a record $10 million has been raised for the trusts. Last week I announced that the cost of these licences would increase slightly for the first time in four years.

From 1 July a three-day licence will cost $6, up by $1; a one-month licence will cost $12, up from $10; and a one-year licence will cost $30 instead of $25. The three-year licence will cost $75, up $5. These increases will add more than $1 million each year to the recreational fishing trusts. The New South Wales recreational fishing licence scheme is not a tax and those who assert that it is another government revenue stream are completely wrong. In fact, 90 per cent of all licence funds are invested directly into recreational fishing projects.

The Hon. Melinda Pavey: Will the Minister table documentation indicating where the funding is going?

The Hon. IAN MACDONALD: I am quite happy to table anything the Hon. Melinda Pavey likes. The majority of recreational fishers have come out in strong support of the licence arrangements. For example, a

caller to the Sally Loane program on ABC radio last week said that the scheme had been "widely successful". He said that the licence fee increase was pretty modest. He said:

> I always work on the basis that we're helping ourselves to get better fishing.

The sector's peak representative group, the Advisory Council on Recreational Fishing, reports to me directly. Its members have also expressed satisfaction with the way the scheme works. That is because, in the years since the licence was introduced, they were able to see first-hand how the money is spent. For example, in the 2003-04 financial year there was a record level of fish stocking, with 8.5 million fish released into New South Wales waters. The trust also funded the recent completion of a $120,000 project to improve fish habitats in the Clarence River. Along the coast 15 fish-attracting devices have been installed, significantly boosting the number of fish available for recreational fishers.

The trusts have also helped to fund the establishment of 30 recreational fishing havens across the State, which have helped to boost fish numbers. The slight increase in the recreational fishing licence will help to deliver an electronic system to issue the licences. The Department of Primary Industries will soon call for a tender to develop this new state-of-the-art system, which it expects to be piloted later this year. Also, for the first time, new waterproof licences will be issued. The programs funded by the sale of recreational fishing licences have proved to be a success. This small increase in fishing licence fees will have a huge effect when it comes to improving recreational fishing in New South Wales, and the money will be spent on the projects put to me by the recreational fishing trusts.

RECREATIONAL FISHING LICENCES

The Hon. JON JENKINS: My question without notice is addressed to the Minister for Primary Industries. The Government recently announced increases in recreational fishing licence fees. Did the Minister consult with any recreational fishing group whatsoever before increasing the fees? If so, which group? According to the department, licence fees have been increased to meet the demands of recreational fishers. Will the Minister explain what these demands are and where the fees will go to assist recreational fishers? In particular, will the Minister explain in some detail the $554,000 from the saltwater trust for a new research program that will help maximise the survival chances of fish caught and released? Finally, will the Minister elaborate on how an increase of up to 15 per cent in licence fees is justified, and is it a breach of the Government's commitments?

The Hon. IAN MACDONALD: This is a perfect way to go about building up the recreational fishing licence in this State. To have Opposition members jump up and down in league with the Hon. Jon Jenkins is absolutely appalling. The $540,000 catch-and-release project is a viable program. Indeed, I have attended a number of catch-and-release exercises at Botany Bay and other places that have been monitored. The department has worked out which types of fish survive with catch and release, and their percentages, and that information is being collated for the benefit of recreational fishers. In fact, I consulted with the fishing organisations.

As am required to do, I consulted with the freshwater and saltwater trusts, and they agreed that they wanted the small increase in license fees. The two major fishing shows in this State, John Clark's *Sinkers* program on 2SM and the 2KY program with Bruce Schumacher, have been favourably disposed to these increases because they know that the increases will improve the recreational fishing amenity in this State. The licence fees have not increased in four years. These modest increases will serve recreational fishers well in this State.

The Hon. JON JENKINS: I ask a supplementary question. Is the Minister aware of any research already done in respect of catch-and-release programs? If such research already exists, is it necessary to expend $500,000 of recreational anglers fees on this research?

The Hon. IAN MACDONALD: If the honourable member wanted to get sensible about this issue, he would talk to the expert anglers on the saltwater trust. Have a discussion with them! They might enlighten the honourable member about the needs of this program because they regard it very seriously. Hundreds of fishers from every major fishing organisation in this city participated in the last exercise I attended at Botany Bay. The proof of the pudding is that fishers are voting with their fishing lines on our programs and participating in our recreational research. The honourable member should talk to the saltwater trust, which recommended the program. I simply ticked it off. I gave the program a tick.

WORK AND FAMILY BALANCE

The Hon. TONY CATANZARITI: My question is directed to the Minister for Industrial Relations. Will the Minister inform the House about the New South Wales Government's submission to the Federal Government's work and family balance inquiry?

The Hon. JOHN DELLA BOSCA: I commend the Hon. Tony Catanzariti for his ongoing interest in matters of work and family balance. I am pleased to advise the House that the New South Wales Government's submission has been lodged with the Committee for Family and Human Services. The submission follows our intervention, along with the other States and Territories, in the family provisions test case in the Australian Industrial Relations Commission last year. The Carr Labor Government believes that workplace conditions are central to achieving work and family balance. Workplace conditions impact on employees who have family responsibilities and influence their decisions about both family formation and work force participation.

I am concerned about the negative impacts on Australian families if they are exposed to the ravages of the Federal Government's punitive proposals for workplace conditions. In New South Wales more than 51 per cent of families with children have parents in the paid work force. Women provide essential income to the household budget. That income pays the mortgage, the bills—it feeds the family. These families are now under threat from the Federal Government because it is hell-bent on driving down the wages and conditions of the more vulnerable workers in the marketplace. Awards provide families with security, not just for their wages but for other conditions, such as the right to a day off on a public holiday and rosters of working hours fixed in advance, meal breaks and their right reasonably to refuse overtime.

Let us look at what is being canvassed throughout the country by the Howard Government. The Howard Government wants to reduce household incomes by limiting future increases to the low paid and award-reliant workers. It wants to disadvantage families reliant on award conditions by reducing the number of allowable matters. It wants to isolate vulnerable workers by preventing unions from having access to their places of work. It wants to increase the insecurity of working families by putting jobs at the risk of unfair dismissal. The final blow to working families will be a take it or leave it job offer, conditional on signing an Australian Workplace Agreement [AWA] that guarantees only the barest minimum conditions, not those of their award. Of course, combining the AWA with the unfair dismissal changes means that they will simply have no choice.

That is not what the New South Wales Government wants for the families of this State. The New South Wales Government believes that working families and their employers need sensible direction in meeting the challenges of the future. That direction does not include the exploitation of the more vulnerable in the work force and their families. Where do job security, pay equity and work and family balance figure in the Federal Government's plans for women workers? How does its plans benefit the fastest-growing segment of the labour market over the past decade—the increasing participation of women in paid work? The New South Wales Government, in its response to the inquiry, reaffirms its resolve that the Australian industrial relations system needs to provide greater recognition of employees' family and caring commitments, as well the operational requirements of the workplace.

This is in stark contrast to the Federal Government's punitive approach to families—a scorched-earth policy that will ultimately remove a swathe of fundamental working conditions from the everyday lives—indeed the lifestyle—of Australian working families. What is the final indignity for New South Wales working families? The final indignity is that the New South Wales Leader of the Opposition will, on his own admission, scrap the New South Wales industrial relations system if elected. The Opposition will obliterate the safe harbour, the bulwark, of the New South Wales industrial system that has provided protection for working families in this State for more than a century. The decision taken by the Leader of the Opposition in the other place—which is completely out of step with his conservative State colleagues, including those in Western Australia, Queensland and South Australia—can only be interpreted as a politically opportunistic decision to shore up his support from the Prime Minister because of his weakened position in the New South Wales Liberal Party. This decision is a disgrace, and the Opposition stands condemned.

SCHOOL CANTEENS

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Education and Training, representing the Minister for Health, a question without notice. Is the Minister aware that the vast majority of school canteens in New South Wales are run on a voluntary basis by parents and citizens? Is the Minister aware of reports that the Canteen Association, which is responsible for promoting and facilitating the provision of a

nutritious and healthy food service in school canteens, has voted to restructure its executive and remove the Parents and Citizens Association representative from holding an automatic position on the board? Will the Minister explain what, if any, moves are being made to entrench a position for a Parents and Citizens Association representative on the executive of the Canteen Association on a permanent basis, given that parents across New South Wales ought to have a meaningful input into determining what type of food their children eat during school hours?

The Hon. CARMEL TEBBUTT: The question asked by Reverend the Hon. Dr Gordon Moyes is appropriately directed to the Minister for Health, but I can provide some advice because obviously it is an area in which we have some joint involvement. The information I have is that the revised board structure of the Canteen Association followed a significant consultative process, which was commissioned by NSW Health. It is designed to provide better levels of support for school canteens. Parents have always assisted the work of the New South Wales Canteen Association. I am advised that the new constitution allows for their ongoing involvement, but I will refer the question to the Minister for Health, who has direct responsibility for this area, and undertake to get a response.

DISABILITY PROGRAMS FUNDING

The Hon. JOHN RYAN: I direct my question to the Minister for Disability Services. Did one of his ministerial advisers tell Mr Jim Murphy, the man who was forced to relinquish the care of his son because of the Adult Training, Learning and Support Program funding cuts, that because of the recent addition of $6 million to the program his son would soon be receiving funding for five days community participation per week? Did this adviser go on to tell Mr Murphy that the Government had recognised it had "made a mistake" and would be restoring funding for individuals to levels equivalent to what they were receiving before the cuts? When will Mr Murphy, and post school service providers, formally be offered this additional money and told how it is to be allocated and spent, given that the Minister promised in the *Sun-Herald* that the money would be available immediately?

The Hon. JOHN DELLA BOSCA: The honourable member is a little confused, and I do not know why, because he knows a little about this area, as he continually tells me. We have allocated money in the budget process to additional services and support of the Post School Options Program. The honourable member knows we are not in the business of handing out cash contributions. The general theme of his question was whether one of my ministerial advisers suggested to Mr Murphy or anyone else that the Government had admitted it had made a mistake. What the Government admitted was absolutely consistent with the commitment given by the former Minister for Disability Services: that after a reasonable time we would conduct a review of the impact of the Post School Options Program.

We conducted that review and made appropriate changes to provide additional support. Those changes involve the seeking of additional funds. I have already made it clear why the Government made those decisions. I suspect, in the honourable member's colouring of the question to make it more interesting, admitting mistakes or indicating that reviews had found the program needed to be corrected might be a spin or imputation that Mr Murphy or somebody else—perhaps the shadow Minister—put on the conversation. The other part of the question was when is Daniel Murphy going to be receiving care? Daniel Murphy is receiving quality care by the Department of Ageing, Disability and Home Care, and this will continue.

The Hon. John Ryan: Not with his parents.

The Hon. JOHN DELLA BOSCA: The honourable member knows the circumstances behind that case as well as I do. I have told him before that I am not prepared to canvass in Parliament the details of particular cases. I am prepared to brief the honourable member separately, but I am not prepared to canvass the details of people's private arrangements in response to his questions. Leaving school is one of the most important transition periods of a person's life. It is particularly important for people with a disability. I have informed the House already that the Post Schools Options Program for people with a disability has had a substantial increase, not only with the additional funding that was found after the review of the post school options changes, but with $11 million in overall funding over the past two years.

The Hon. John Ryan: What about a substantial increase to the people who are participating?

The Hon. JOHN DELLA BOSCA: The honourable member is starting to get to the issues in regard to which we need to develop a plan. The Post School Options Program is funded by the Department of Ageing,

Disability and Home Care and is now assisting more than 3,700 people with a disability. We want to ensure that these programs continue to provide the kind of support and opportunities to the approximately 700 young people—

The Hon. Robyn Parker: Fewer days and fewer hours.

The Hon. John Ryan: Fewer in days.

The Hon. JOHN DELLA BOSCA: We will see how things go. Members opposite are very hasty to jump in with a bit of political spin. We are trying to do something to support people with a disability in a long-term, sustainable way.

The Hon. John Ryan: Like cutting the budget?

The Hon. JOHN DELLA BOSCA: No, we have not cut any budget. Honourable members cannot count if they think we have cut the budget. I will repeat the figure again because the Hon. Robyn Parker and the Hon. John Ryan are very interested in this. Approximately 700 young people with a disability commence post school programs each and every year. Honourable members know what that means in the community's commitment and in cost to the budget. There is a widespread agreement that the previous— [*Time expired.*]

STATE EMERGENCY SERVICE O'BRIEN GLASS SPONSORSHIP

The Hon. GREG DONNELLY: My question is addressed to the Minister for Emergency Services. Will the Minister update the House on the O'Brien sponsorship of the State Emergency Service?

The Hon. TONY KELLY: Over the past 50 years the volunteers of the State Emergency Service [SES] have selflessly turned out to help people in trouble in natural disasters and other emergencies. They have assisted the New South Wales community in some of its darkest hours—including the Sydney hailstorm, the Newcastle earthquake, the Nyngan flood, the Thredbo landslide and the Granville train disaster. These volunteers' hard work and commitment to community service is laudable. So it is pleasing that, as the service celebrates its fiftieth anniversary this year, its outstanding work has been recognised by our corporate community. Leading glass supplier O'Brien Glass has now formed a partnership to support the SES with a practical sponsorship agreement.

Last week I attended the formal signing of this partnership agreement by O'Brien chief executive, Ian Collinson, and SES Director-General, Brigadier Philip McNamara, at the SES Waverley-Woollahra unit. I had the opportunity to see first-hand the work our volunteers perform daily around the State, with the Kiama SES unit putting its skills to the test in a road crash rescue demonstration. Under the new sponsorship agreement, O'Brien Glass will provide $50,000 a year to the SES. This funding will be used to provide volunteers with valuable additional equipment for use in their emergency work. It will provide, if you like, the extras a unit might have on a wish list of additional gear it would like in its tool boxes. This will complement the essential equipment provided to local SES units as part of the Government's ongoing commitment to ensuring our emergency services personnel have up-to-date, safe and efficient equipment and other resources.

The coming year's record $40.6 million SES budget includes $2.1 million towards rescue equipment, flood boats and vehicles. Under the terms of the agreement, O'Brien will provide a range of equipment nominated by the SES every two months. SES divisions will be asked to nominate local units to receive the equipment to ensure it is provided where it will be of the most benefit. In addition to the $50,000 for equipment, O'Brien Glass will also provide an additional $25,000 to assist with the service's community education and information activities.

As a further token of appreciation for their efforts, all New South Wales SES volunteers will have access to discounts on O'Brien Glass products and services. That is a generous offer. This partnership is an excellent example of the New South Wales Government and private enterprise working together for the benefit of the community. It echoes a partnership between the Victorian SES Volunteers Association and O'Brien Glass that has proved a boon to the Victorian SES. I am sure this new agreement will provide similar benefits to the SES in this State. On behalf of our SES volunteers I thank O'Brien Glass for its generosity and support. I am sure all members would join with me in thanking O'Brien Glass. It is a fitting and welcome acknowledgement of our volunteers' invaluable service to the community in the year of their fiftieth anniversary.

REDFERN-WATERLOO ABORIGINAL HOUSING COMPANY LAND

Reverend the Hon. FRED NILE: I ask the Minister for Rural Affairs, representing the Minister for Energy and Utilities in his responsibility for the Redfern-Waterloo Authority, a question without notice. Is it a fact that the Aboriginal Housing Company [AHC] has been managing areas of land throughout the Redfern-Waterloo area since 1973 that was legally purchased by the AHC on behalf of the Aboriginal community with Federal funding? Is it a fact that the AHC has, at great expense to itself, produced a plan to develop the area known as the Block in Redfern for the betterment of the Aboriginal and greater community in co-operation with the State Government over three years?

Is it a fact that the Minister gave written assurance that the Redfern-Waterloo Authority would consult the AHC and the Aboriginal community regarding any issues that affect Aboriginal land? Is it a fact that the Minister undertook no such consultation before he announced on ABC radio that he intended to prevent any moves by the AHC to acquire Federal funding for the development of the Block? Is it a fact that the State Government has now taken over control of the area known as the Block from the AHC and the Aboriginal community by classifying it as "State significant" in a special supplement of the *Government Gazette* dated 25 May 2005? Will the Government ensure that the AHC ownership of the area known as the Block will be restored and recognised?

The Hon. TONY KELLY: I undertake to pass on that detailed question to the Minister for Energy and Utilities and ensure that Reverend the Hon. Fred Nile gets an answer as quickly as possible.

QUEANBEYAN RING ROAD

The Hon. MELINDA PAVEY: My question without notice is directed to the Minister for Roads. Does the Government have plans for the completion of a complete ring road system around Queanbeyan to alleviate massive traffic congestion during peak times at Jerrabomberra and trucks rumbling down the main street of Queanbeyan? Is the Minister confident that the new concrete bridge over the Canberra to Queanbeyan railway line, which forms part of the northern bypass, will be completed by December 2005 as originally promised by his Government?

The Hon. MICHAEL COSTA: The State Government has responsibility for a range of roads, primarily State roads, and funding for regional roads.

The Hon. Melinda Pavey: We want you to talk to the issue.

The Hon. MICHAEL COSTA: I am talking to the issue. The Government has funding for the types of projects I have outlined. The Roads and Traffic Authority follows a process of consultation with local communities and councils. I would be pleased to consult with the local Roads and Traffic Authority officers who are responsible for the projects referred to by the Hon. Melinda Pavey and report back to her.

NATIONAL LIVESTOCK IDENTIFICATION SYSTEM

The Hon. CHRISTINE ROBERTSON: My question without notice is addressed to the Minister for Primary Industries. Will the Minister update the House about the progress of the National Livestock Identification System roll-out?

The Hon. IAN MACDONALD: Like Mr Peter Black, the honourable member for Murray-Darling, the Hon. Christine Robertson shows a strong interest in the National Livestock Identification System [NLIS], which is a vital component of the State Government's efforts to protect our cattle and dairy industries. An efficient national trace-back system could save the industry millions of dollars by helping us to quickly and efficiently identify disease outbreaks. We are just three weeks away from one of the key deadlines of our staged roll-out of the scheme.

From 1 July all cattle leaving a property in New South Wales must be fitted with an approved NLIS electronic device. Also from that date, all transactions at saleyards and abattoirs must be recorded on the national NLIS database. I am pleased to inform the House that New South Wales is on track to successfully implement the scheme. The industry has been working hard with the Department of Primary Industries and the NLIS Advisory Committee to meet the deadlines.

The State Government has proved its commitment to the scheme and will continue to work with the cattle sector to address any implementation issues. We have provided $5.4 million to support the roll-out of the NLIS, which includes updating infrastructure at saleyards, abattoirs and major feedlots. Currently, the vast majority of the State's saleyards and abattoirs have taken advantage of the funding to install NLIS equipment. I am advised that those who are yet to do so have clearly indicated they will be finalising arrangements with the Department of Primary Industries in the next fortnight. At a recent meeting I was informed that only a few areas are yet to undertake the implementation process. In total, $1 million of industry and government funds have been directed to set up a centralised buying system. This is estimated to have delivered more than $3 million in value to producers.

In addition, the dairy industry has allocated $500,000 to further reduce the cost to dairy farmers. This subsidy scheme helps to alleviate the cost to producers and has proved successful. So far, nearly 4.3 million NLIS devices have been purchased in New South Wales, including one million in the past month alone. More than half of the State's 50,000 dairy and beef producers are now registered on the NLIS database. Together, the State Government, the Department of Primary Industries, the NLIS Advisory Committee and New South Wales producers have been working efficiently and effectively to ensure a smooth transition to the scheme.

Unfortunately, we have been doing so without support from the Federal Government. Before the 2004 election Federal Agriculture Minister Warren Truss promised funding of $20 million to the States to implement the NLIS. This funding was also included in last month's Federal budget. So far, New South Wales has yet to see one cent. I signed a letter to Mr Truss this morning in which I asked him to sort out funding access to assist our producers in New South Wales.

The Hon. Duncan Gay: You are a bit tardy.

The Hon. IAN MACDONALD: I have written to him several times and made a number of representations. New South Wales has made a significant contribution to the cost of implementing the NLIS and has provided invaluable assistance to the industry. However, the Federal Government is yet to indicate when its support will be forthcoming. We are also in the dark as to the form of its support. There has been no confirmation from the Federal Government on whether the funding will target new initiatives or will merely be used to boost existing New South Wales Government programs—which are very effective.

As I said, this week I have written to Minister Truss seeking his advice on this matter. I pointed out that as all States are reaching the implementation deadline, an announcement from the Federal Government is urgently needed. Any support from the Federal Government is appreciated, as the rapid implementation of the scheme is of vital importance to the nation's cattle industry. Again, I thank the Hon. Christine Robertson for her question. She, like Mr Peter Black, is a very strong advocate of the effective roll-out of the NLIS across New South Wales.

MENTALLY ILL PRISONERS

Ms LEE RHIANNON: I direct my question without notice to the Minister for Justice. Is the Minister aware that holding mentally ill prisoners in solitary confinement contravenes the International Human Rights standards? Will the Minister confirm that prisoners who are mentally ill are not held in solitary confinement in New South Wales prisons? If they are, will the Minister inform the House how many, and in what gaols?

The Hon. JOHN HATZISTERGOS: I take it this question arises from a story in the *Sydney Morning Herald* on 16 May 2005 which made reference to a mentally ill inmate, referred to as "MA". The diagnosis of serious mental illness within the correctional system is the domain of psychiatrists employed by Justice Health; any decision regarding the placement of inmates in beds for mentally ill patients at Long Bay Hospital does not involve the Commissioner for Corrective Services. Contrary to the assertion in the *Sydney Morning Herald* article, several psychiatric reports prepared for the courts and the Mental Health Review Tribunal maintain that inmate MA is not mentally ill.

Despite this, MA has received numerous interventions from psychiatrists and regular follow-ups by mental health nurses. MA has also been voluntarily taking psychotropic medication prescribed by psychiatrists. Nevertheless, MA has not been scheduled or managed as a forensic patient. This can only take place at the instigation of psychiatrists and is beyond the legislative authority of the Commissioner of Corrective Services. The *Sydney Morning Herald* article correctly noted that inmate MA has been extensively managed under segregation orders since July 2004.

However, it should be noted that events prior to the segregation order included five separate incidents involving fights with other offenders and two assaults on staff. MA presented as a clear risk to staff and inmates, and that risk needed to be addressed. At Parklea Correctional Centre the protocols for managing inmates under segregation, and for extending orders, were strictly complied with. Segregation orders are not imposed as punishment but to preserve safety within the correctional system. Segregation is applied judiciously and is closely scrutinised by the department and by external agencies, including the New South Wales Ombudsman. Provision has been made in legislation for the Serious Offenders Review Council to conduct an independent review of segregation orders.

The labelling of segregation in the *Sydney Morning Herald* article—and by the honourable member a few moments ago—as "solitary confinement" is misleading and misrepresents the management regime at the Parklea Correctional Centre, which involves daily access to staff, including medical staff. The Government has announced a raft of reforms to the forensic mental health system in New South Wales, with the result that in the near future alternative management options will become available to the department. These include the construction of a purpose-built, maximum security, stand-alone forensic hospital to be managed by Justice Health on behalf of NSW Health. When opened, the new forensic hospital will bring New South Wales forensic mental health services into line with national and international best practice for the delivery of forensic services to mentally ill people who have come into contact with the criminal justice system.

A request for detailed proposals was released last year, submissions have been evaluated, and a decision has been announced. Mental health screening units, one already constructed and one to be constructed, cover both male and female inmates. We will also have a new prison hospital with the capacity to manage up to 40 mentally ill inmates. That is also on the drawing board. We are also providing better advice to courts on the mental health status of offenders. The suggestion that the Department of Corrective Services engages in the practice of solitary confinement is completely wrong. The practice of segregation is well documented in legislation and is subject to rigorous analysis and overview by the external agencies I have referred to.

SOUTH SYDNEY HIGH SCHOOL STUDENT ATTACK

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Education and Training. Why did the principal of South Sydney High School fail to notify police of an attack on a brain-injured student after school bullies tried to strangle the boy?

The Hon. CARMEL TEBBUTT: I am aware of this appalling incident and can I say in the first instance that I express every sympathy and support for the parent and the student involved. It is unacceptable. The advice I have is that the students were suspended on the day of the incident. They will be counselled about their future behaviour before they return to school. I have asked the department to confirm that this action is in line with current guidelines on discipline. In the meantime, the victim is being provided with support. I must say it was very disappointing to hear of this incident so soon after we launched our strong anti-bullying program earlier this year, particularly given the campaign that was conducted during March to encourage schools to educate students about bullying. I first heard about this incident immediately prior to question time and I have asked the department to confirm that the action taken is in line with current guidelines.

TERRORIST INMATES

The Hon. HENRY TSANG: My question is directed to the Minister for Justice. What is the latest information on the management of prisoners who are classified as high risk or charged with terrorist offences?

The Hon. JOHN HATZISTERGOS: On 31 May 2005 at the Corrective Services Ministers Conference in Brisbane the State and Territory Corrective Services Ministers unanimously agreed to adopt the National Custodial Management Guidelines for the management of inmates deemed to present a special risk to national security. New South Wales has taken the lead nationally on preparing our prisons for the challenges posed by inmates who pose a threat to national security. We raised the issue in 2003 at both the Corrective Services Administrators Conference and the Corrective Services Ministers conference. The New South Wales Department of Corrective Services then hosted a National Corrections Forum on Terrorism in September 2003.

The Commonwealth held a conference on the issue in December 2003, which was attended by all key State and Federal players, and the issue was discussed again at the 2004 Corrective Services Administrators Conference and the Corrective Services Ministers Conference. One of the issues discussed at those meetings was the desirability of having a consistent regime across the country for holding in custody inmates who are a

threat to national security. New South Wales took the lead in developing the national guidelines and consulting with the other States. Given the very real dangers posed by these inmates, in October last year New South Wales became the first State to enact a special classification for terrorist inmates when we created the Crimes (Administration of Sentences) Amendment (Category AA Inmates) Regulation 2004.

These new regulations created two new inmate classifications—the male Category AA and the female Category 5—for inmates who pose a special risk to national security. Today I am able to advise the House that recently an inmate was the first in New South Wales to be classified AA. Faheem Lodhi is a prisoner on remand awaiting trial for Commonwealth terrorism-related offences. Honourable members may be aware that Lodhi is alleged to have worked closely with French terror suspect Willie Brigitte. It is alleged that prior to his arrest Lodhi undertook extensive research and obtained plans and satellite images of major infrastructure sites and military facilities. It is also alleged that he sought to acquire chemicals that could be used to make bombs.

Recently the High Risk Inmate Management Committee, chaired by a judicial member of the Serious Offenders Review Council, recommended that Lodhi be classified AA, a recommendation that has been approved by the Commissioner for Corrective Services. For inmates such as Lodhi, the new guidelines mean that he will be placed in only the most secure correctional centres, he will not be moved on escort without thorough determinations by senior security officers and extensive security measures, and his telephone calls and mail will be scrutinised to ensure that unauthorised communications do not threaten security. Mail and phone calls to and from exempt bodies will be treated somewhat differently.

Any visits will need to be booked in advance and tightly monitored, and contact visits will be allowed only with the approval of the commissioner; his associations with other inmates will be strictly limited and monitored; any interpreters and chaplains provided will be subject to strict background checks; he will be subject to special food preparation, cutlery and delivery safety measures; and his personal property will be limited and will be subject to regular searches and checks. These AA guidelines, unanimously adopted by all States, will apply to only a small number of offenders who represent a small but potentially very dangerous group of inmates who have been deemed to present a special risk to national security.

The hard lessons learnt overseas are that these strong security measures are instituted to ensure the safety and security of the correctional system and those who work and are placed within it. The reality is that certain individuals have no concern for State or national borders, and that is why the response we initiated is so crucial to ensure the incapacitation of these inmates. I am proud of the leadership role New South Wales has played in developing the national response to the incarceration of inmates who pose a threat to national security.

DINGO PROTECTION

The Hon. JOHN TINGLE: My question without notice is directed to the Minister for Primary Industries. Is the Minister aware of studies that have shown that the dingo is in danger of extinction? Is New South Wales taking any steps to ensure the survival of an iconic Australian native species? Since many of the attacks attributed to the dingo appear to actually have been made by wild dogs, or by dingo and wild dog crossbreeds, does the Government have any plans to try to control or eradicate these pests?

The Hon. IAN MACDONALD: The control of wild dogs and dingoes to protect livestock is more difficult than the control of other feral animals because of the need to conserve dingoes in core areas of Crown land. Although the dingo is unprotected under the National Parks and Wildlife Act 1974 it is regarded as a native animal, and there is a broad community expectation that it be conserved. Nevertheless, wild dogs cause substantial losses to livestock in some tableland and coastal escarpment areas. The Government recognises the need for control programs in areas where attacks are caused by wild dogs moving out of lands under its control. The Rural Lands Protection Act 1998 requires declared pest animals on Crown lands to be controlled. Wild dogs, including dingoes, have been declared throughout New South Wales; hence the Government has a statutory obligation to control wild dogs on its estate.

A whole-of-government approach to balance the objectives of preventing attacks on livestock while conserving dingoes in core areas of some national parks has been incorporated into the Rural Lands Protection Act 1998 through the pest control order for wild dogs. The order allows for the general destruction obligation for publicly managed lands to be satisfied through a wild dog management plan, with both control and conservation objectives, that has been approved for the district by the Rural Lands Protection Board.

In short, over the past few years the Government has gone to considerable efforts to promote dingo conservation. It has also taken the lead role in preparing wild dog management plans to minimise livestock

impact. These plans also include dingo conservation as a key objective. Given the very significant economic and social impact of wild dogs on rural communities, the current approach is the most effective and pragmatic solution to the difficult and contentious issue of dingo conservation and wild dog control in New South Wales. I share the Hon. John Tingle's concern about the need for this iconic Australian animal to survive. He can trust that the Government will do everything possible to ensure that happens.

SUTTOR MERINO STUD

The Hon. PATRICIA FORSYTHE: My question without notice is directed to the Minister for Local Government. Is the Minister aware of the Suttor merino stud at Hargraves, which has recently conducted pioneering development work on behalf of the wool industry to resolve the boycott of Australian wool due to mulesing? Is the Minister further aware that the State's future is under threat following a resolution from the Mid Western Regional Council to resume work on two public roads through the stud's land, despite the existence of a parallel public road that the council itself has failed to maintain over the past 40 years? Does the Minister recognise that such a resumption of work would irreparably compromise the ovine Johne's disease-free status of the stud, which is vital to its continued existence? Will the Minister make representations to the council about this proposal so that one of the State's prime merino studs is not put at risk?

The Hon. TONY KELLY: In answer to the first part of the Hon. Patricia Forsythe's question, no I am not aware. In answer to the second part of the question, I will make inquiries.

NORTH-WEST RAILWAY LINE

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Local Government, representing the Minister for Infrastructure and Planning, and Minister for Natural Resources. Given the recent announcement of impending land releases in north-western and south-western Sydney under the New South Wales Government's Metropolitan Strategy, and the increase in traffic and commuting that land releases generate, what is happening with the north-west railway line? When will the line be completed? If the line is to be constructed in phases, can the Minister provide time frames for the commencement and completion of each phase? How will the Government pay for this important infrastructure?

The Hon. TONY KELLY: I will refer the Hon. Dr Peter Wong's series of questions to the relevant Minister and obtain a suitable response.

MARITIME AUTHORITY COMMERCIAL LEASES POLICY

The Hon. DON HARWIN: My question without notice is directed to the Minister for Ports. Did the Minister inform the House on 6 May that "the State has a responsibility regarding scarce resources, critically important resources in many locations", referring to commercial boat yards and marinas on Sydney Harbour? Is the Minister aware that in early May 2005 the New South Wales Maritime Authority threatened to terminate the lease of Abbotsford Point boatshed, and remove the assets and charge the lessee for their removal if the lessee did not pay the rent increase of 400 per cent in 14 days? Is the Minister further aware that this boat yard is the oldest and smallest in Sydney Harbour and is protected by a heritage order? Will the Minister take action to ensure that the Maritime Authority issues no further threats to terminate the leases of commercial boat yards and marinas on Sydney Harbour during the period of consultation between the Maritime Authority, the lessees, and other stakeholders regarding the commercial lease policy whereby lessees meet their existing rental obligations?

The Hon. MICHAEL COSTA: I do not know whether the Hon. Don Harwin was asleep earlier in question time when I answered this question. I refer to my previous answer.

CROWN LAND CARAVAN PARKS

The Hon. PETER PRIMROSE: My question is addressed to the Minister for Lands. Will the Minister advise the House what assistance the Government provides to various caravan parks on Crown land across New South Wales?

The Hon. TONY KELLY: I am pleased to announce that during the 2004-05 financial year the Carr Government made available more than $4.5 million for caravan parks on Crown land, and that the funding for the 2005-06 financial year will be of a similar amount. There are some 900 caravan and residential parks across New South Wales. Of these, 270, or almost one-third, are situated on Crown land and supply more than one-

third of the local government approved caravan park and camping ground sites across the State. Many of these sites are situated within scenic coastal or river settings.

The Public Reserves Management Fund is responsible for providing assistance, in the form of grants and loans, to caravan parks situated on Crown land. The fund accrues income from loan repayments made by the trust managers of Crown reserves and from a caravan park levy that coastal caravan parks are required to contribute. The Department of Lands administers the fund, but the Caravan Park Levy Committee is responsible for reviewing applications for financial assistance and making recommendations to me regarding the way in which the funds should be disbursed.

The Caravan Park Levy Committee is comprised of representatives from the Department of Lands and the Local Government and Shires Associations of New South Wales. The committee exemplifies the ongoing partnership between the Department of Lands and local government in an effort to improve and foster tourism in regional areas. The vast proportion of funding goes towards a diverse range of projects. This includes the upgrade and installation of new units, television and Internet connections, new bathroom facilities, as well as infrastructure works involving water, sewerage or electricity. The funding also goes toward the provision of special-needs cabins for people with disabilities. A smaller proportion of the funds is set aside to assist the trust managers of Crown reserve caravan parks to devise a plan of management and develop strategies for their caravan parks to become as financially viable as possible.

Honourable members may be interested to know how these funds are used to improve caravan parks on Crown land. In October last year Bellingen Shire Council, as corporate trust manager of North Beach Caravan Park, was awarded a loan of $30,000. The funds went towards the construction of a new formal reception area for the park. This allowed the holiday destination to provide a much-needed amenity where patrons can enjoy improved customer service facilities and where guest registration and inquiries can take place in a more relaxed environment. The Scotts Head Reserve Trust, as trust manager of Scotts Head Caravan Park, was given a grant of $20,000 to assist in the preparation of a concept plan for the caravan park and day use areas of the reserve. The day use area is used extensively as a public access point to the beach and main recreation area. There was a need to create a buffer between the caravan park and the main recreational area, which involved removing the shared entrance.

Another example is a grant of $20,000 to Shoalhaven City Council, as corporate trust manager of the 10 holiday parks in the Shoalhaven area. The grant helped pay for the development of business and land management plans for each of the parks. Shoalhaven tourist parks included in the program are Burrill Lake, Currarong Beachside, Crookhaven Heads, Huskisson White Sands, Huskisson Beach, Kangaroo Valley, Lake Conjola, Lake Tabourie, Shoalhaven Heads, Bendalong Point, and Ulladulla Headland. Caravan parks play a vital role in the State's tourism sector. They offer affordable and convenient accommodation for the many people who visit our State's coastal and regional areas. The State Government will continue to fund these wonderful holiday destinations so visitors and the constituents of New South Wales can enjoy the many outstanding natural features of our State.

COMMUNITY SERVICE ORDERS

The Hon. PETER BREEN: My question without notice is directed to the Minister for Justice. Is the Minister aware of concerns expressed in several newspaper articles and editorials about a decline in the number of prisoners sentenced to community service orders? Is it the fact that in the past decade the number of community service orders has dropped by about one-quarter, while the prisoner population has almost doubled? Is the Minister aware that offenders given community service orders are far less likely to reoffend than prisoners serving gaol terms? What will the Minister do to stop the alarming drop in the number of community service orders?

The Hon. JOHN HATZISTERGOS: I am aware of the articles that the honourable member referred to. First of all, to the extent that the question is directed to me, the job of the Department of Corrective Services is to faithfully administer the orders of the courts. To that extent it is not the Department of Community Services that dictates who gets sentenced to custody and who gets sentenced to a community service order. I make the point that the job of the Department of Corrective Services, when requested by the courts, is to give advice in accordance with legislation as to the suitability and capacity of an offender to perform community service work. But the final decision as to whether such an order is appropriate—bearing in mind the subjective circumstances of the offender, the offender's capacity to complete the order and the nature of the offending conduct—is a question for the court.

Having said all that, I am aware of the article that the honourable member referred to that was published yesterday in the *Sydney Morning Herald* in relation to the prison population, which is currently over 9,100, and the claim that there has been a drop in the number of people sentenced to community service orders and other non-custodial options. Whilst there has been a slight drop in the number of people who have been given non-custodial penalties, 18,300 people are serving non-custodial sentences in New South Wales—twice the number of persons who are in custody.

To the extent that the courts are using custodial penalties more frequently than they may have in the past, this is perhaps reflecting the community's views on crimes and sentencing and it is also reflective of government policy, which we make no apologies for, particularly in relation to targeting repeat offenders through the bail laws that we have passed through this Parliament and the imposition of stronger sentences across the board for crimes that people commit. The figures released in April by the New South Wales Bureau of Crime Statistics and Research show that New South Wales experienced significant decreases in crime in 9 of the 16 major categories of crime between 2003 and 2004. In other categories of crime the offending conduct has been stable. Clearly, the fact that the population of offenders in custody has increased has resulted in a reduction in the number of offences that are being committed.

This year's budget has provided $118.1 million to be spent on therapeutic and other programs to address inmates' offending behaviour and to assist in rehabilitation. This is up from $64.3 million in 1995-96; in other words, a 54 per cent increase. The programs that this funding will cover include literacy and numeracy, detoxification, suicide and self-harm prevention, and drug and alcohol relapse prevention. In relation to community service orders, as I indicated, there are some 18,000 offenders from 59 district offices and the work associated with community service orders has resulted in something like $11 million worth of community work being performed. That is work that would otherwise have diverted resources from other agencies or, in some cases, the work would simply not be done because the agencies would not be able to perform it. So I acknowledge the importance of community service orders in the role they play in the system and the fact that they give offenders the opportunity to retain their liberty and perform their sentence in a community setting without going into custody. [*Time expired.*]

The Hon. JOHN DELLA BOSCA: I suggest that if members have further questions, they should place them on notice.

DEFERRED ANSWERS

The following answers to questions without notice were received by the Clerk during the adjournment of the House:

NORTH-WESTERN SYDNEY POWERLINES INSTALLATION

On 5 May 2005 Reverend the Hon. Dr Gordon Moyes asked the Minister for Lands, representing the Minister for Energy and Utilities, a question without notice regarding the north-western Sydney powerlines installation. The Minister for Energy and Utilities provided the following response:

> I am advised by Integral Energy that following extensive community consultation, Integral Energy has rejected plans to build 40 metre high steel lattice towers as its preferred approach for the Vineyard to Rouse Hill power line upgrade.
>
> The preferred design will now involve the use of lower overhead poles of between 20-25 metres in height along the existing easement as this design and route provides the best balance of environmental, social, economic and design considerations. Using the existing easement avoids the need to affect a large number of other property holders whose properties are currently not encumbered by an electricity easement. The preferred approach will be further refined with the objective of minimising its visual impact.
>
> Importantly, the preferred approach provides the increased capacity necessary to prevent blackouts in the area in the future. The Vineyard to Rouse Hill transmission line already provides power to supply 22,000 customers in the local area. Continued growth in the region means that without the upgrade, there would not be enough power for the region and blackouts would increasingly occur. The area is also one of the fastest growing regions in Sydney, with current forecasts suggesting that demand for electricity is expected to grow by around 220% in the next decade.
>
> Integral Energy has been through an extensive consultation process to ensure that the views of the local community, customers and government stakeholders have been taken into account.
>
> Integral Energy has actively consulted with the community and other interested parties over the past eight months and has listened and responded to community concerns about the potential impacts of the upgrade. Community consultation has involved:
>
> - two public information meetings held at the commencement of the project in June 2004;
> - meetings with individual landholders both prior to, and following the public information meetings;
> - the establishment of a Community Advisory Group, made up of representatives of the local council, Anti Transmission Towers Action Group (ATTAG), Vineyard Riverstone Marsden Park Development Incorporated, other local interest groups and an independent Chair;

- seven community newsletters relating to the project sent directly to homes in the area;
- various workshops to consider specific issues related to the proposed upgrade; and
- a website dedicated to the project at *www.integral.com.au/upgrade/9ja*.

Integral Energy's approach to the upgrade will be thoroughly examined in an Environmental Impact Statement process, which will be released for public comment later this year. This document will consider a total of 12 options and evaluate how integral Energy reached its preferred option. The community will have the opportunity to provide detailed feedback on the EIS, which will be placed on public exhibition later this year.

Integral Energy will continue to meet with the Community Advisory Group and inform the community through the website and newsletters as the upgrade proceeds.

IMMIGRATION

On 5 May 2005 the Hon. Dr Peter Wong asked the Special Minister of State, representing the Premier, a question without notice regarding immigration. The Premier provided the following response:

Immigration levels are the responsibility of the Commonwealth Government.

The NSW Government recognises the important contribution of migrants to the economic prosperity of Australia and the benefits of diverse and multicultural society.

At the 2001 Census, the population of Australia was 19.3 million. One third of all Australians (6.5 million people) lived in NSW and just over one-fifth of the population (4.1 million people) lived in Sydney.

Since the early 1990s, the population of Sydney has grown faster than the rest of NSW and Australia. Between 1996 and 2001, Sydney's share of Australia's Net Overseas Migration (39 per cent) was almost double its share of the general population (21 per cent).

In 2003–04, 36 per cent or 40,000 of total settler arrivals to Australia settled in New South Wales.

Through the Metropolitan Strategy, the Government is planning for Sydney's population growth of 1000 per week over the next 30 years.

Over the next 4 years, the Government will spend $34.7 billion on infrastructure, a 19 percent increase on the previous four years.

Elements of the strategy will detail the infrastructure needed to support that population growth. For example, $7.8 billion will be spent in the two new land release areas in the north west and south west of Sydney on roads, transport, schools, hospitals and other public infrastructure.

The Government understands that Business Migrants bring jobs and investment to NSW and sustain employment, often in export-oriented businesses.

The NSW Government works actively to support business migrants, and will sponsor around 200 in 2004–05 as part of its role in the Commonwealth's business migration program.

In 2004, the NSW Government sponsored around 300 skilled migrants to move to regional NSW in 2004, under regional migration programs.

The Federal Government's decision to withdraw $1.5 billion from the NSW budget over five years as a direct result of their changes to the Commonwealth Grants Commission funding formula, has impacted the level of funds available to improve NSW infrastructure and crucial services**.**

NEWSAGENTS AND KIOSKS BUS TICKET SALES COMMISSION

On 5 May 2005 the Hon. Peter Breen asked the Minister for Justice, representing the Minister for Transport, a questions without notice regarding bus ticket sales commission for newsagents and kiosks. The following response was provided:

(1-4) As the matter is currently the subject of legal proceedings it is not appropriate for me to comment.

Questions without notice concluded.

APPROPRIATION BILL

APPROPRIATION (PARLIAMENT) BILL

APPROPRIATION (SPECIAL OFFICES) BILL

FISCAL RESPONSIBILITY BILL

STATE REVENUE LEGISLATION AMENDMENT (BUDGET MEASURES) BILL

Bills received, read a first time and ordered to be printed.

Motion by the Hon. Tony Kelly agreed to:

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

Second readings ordered to stand as orders of the day.

[*The President left the chair at 1.04 p.m. The House resumed at 2.30 p.m.*]

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

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

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 150 outside the Order of Precedence, relating to the Sydney University Settlement Incorporation Amendment Bill, be called on forthwith.

Order of Business

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

That Private Members Business item No. 150 outside the Order of Precedence be called on forthwith.

SYDNEY UNIVERSITY SETTLEMENT INCORPORATION AMENDMENT BILL

Second Reading

Debate resumed from 26 May 2005.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.32 p.m.]: The Government supports the Sydney University Settlement Incorporation Amendment Bill, subject to a number of amendments that I will move in Committee and to which I shall refer shortly. The settlement is a non-profitable charitable organisation that was established by the Women's College at the University of Sydney to assist with the needs of the disadvantaged. The settlement grew out of nineteenth century tradition. This honourable tradition includes direct service, education and social reform and is based on people from different backgrounds or cultures working together in reciprocal relationships, learning from each other and working together to improve social conditions.

Since the 1970s the settlement has catered primarily to the indigenous community, particularly young people. In 1959 the Sydney University Settlement Incorporation Act established the executive committee of the settlement as a body corporate and imposed certain powers, authorities, duties and functions on the body corporate. It also vested the property of the settlement in the body corporate. The settlement owns a hall, six houses and six units in Edward Street, Darlington. Two of the houses are let commercially and the rest of the houses and units provide low-cost housing for indigenous people.

It has been reported that at least 7 of the 12 elected members of the executive committee own property in Edward Street. I understand that the executive committee made a decision to sell a number of the properties, including the hall, and to purchase another hall located in Redfern. This has generated considerable opposition from some members of the indigenous community and some members of the settlement. The bill will improve the accountability of the settlement's executive committee to its members, establish proper processes to be followed and improve the governance of the organisation.

The settlement's constitution sets out its aims and objectives and this bill incorporates them into the Act. It also requires that the constitution be read subject to those aims and objectives and that the settlement's property be used exclusively to carry out the aims and objectives. It is common for aims and objectives of organisations that are incorporated by legislation to be set out in legislation. Given their importance, this is entirely appropriate. Incorporating them into the Act affords them proper weight and a proper legislative basis. It is a simple matter of accountability and good governance to require the settlement's constitution to be read subject to the aims and objectives and that the settlement's property be used in accordance with those aims and objectives.

The fact that the settlement owns substantial real estate assets is a strong reason for establishing proper accountability mechanisms in legislation. The bill also prevents the settlement's real property from being

disposed of, unless the disposal has the approval of at least 75 per cent of members attending, and entitled to vote at, a special general meeting called to approve that disposal.

Legislation incorporating organisations often requires the approval of two-thirds of its members for the disposal of real property. The Government believes that is an appropriate requirement. It ensures that a reasonable proportion of members support the disposal while, at the same time, it does not impose an unnecessarily high requirement that might prevent the settlement from disposing of real property when there is a pressing need to do so. Therefore, the Government will move amendments in Committee to reduce the requirement to two-thirds of the members. The bill also prevents a member voting at a special general meeting to consider the disposal of real property if the member or a close relative or associate of the member may gain a financial or other benefit from the disposal.

Clearly, it is inappropriate for persons who may receive a personal benefit from the disposal of the settlement's real property to take part in such a decision. It is a common provision in legislation, and the settlement's own constitution already contains a similar provision for members of the executive committee. The bill also prevents the Registrar-General from registering a transfer of land unless the settlement lodges a sealed certificate certifying that the members have approved the transfer, as required by the Act. The Government believes that the amendments should not operate retrospectively, as this could adversely affect the interests of third parties, and lead to legal disputes and expensive and lengthy litigation. The Government will move to provide that the amendments not apply where a binding contract for the disposal of land was entered into prior to the date of assent of the bill.

The settlement's constitution allows that 75 per cent of members must approve a voluntary winding up of the settlement and disposal of any surplus property to a body with similar aims and objectives. However, the Government is concerned that it does not make provision for an amendment to be made for the winding up of the settlement, should this prove necessary. It may be necessary if the settlement becomes unable to properly carry out its functions or meet its liabilities. Therefore, the Government will move amendments to allow the responsible Minister to make an application to the court to wind up the settlement in these circumstances. The winding-up provisions in the Corporations Act 2001 will apply, with necessary modifications and any surplus property to be distributed to a body nominated by the responsible Minister.

The Government will also move amendments to include a sunset clause, which will provide that the provisions of the bill lapse 12 months after the date of assent unless a later date is specified by proclamation published in the *Government Gazette*. This will ensure that the statutory framework for the settlement will remain in place, should it remain necessary after 12 months. The bill establishes stronger accountability mechanisms and ensures that proper processes are followed. The Government supports the bill.

Ms SYLVIA HALE [2.38 p.m.]: The Greens support the bill and commend the Hon. Dr Arthur Chesterfield-Evans for introducing it. By focusing on the need for good governance the bill seeks to amend the Sydney University Settlement Act to ensure that the affairs of the settlement are conducted in a manner that is consistent with community expectations and generally accepted norms for democratic behaviour. The bill does not seek to intervene directly in the affairs of the settlement by dictating whether the settlement properties in Edward Street, Chippendale, should be sold. Rather, it seeks to institute a regime whereby any decision in this matter must be made in a manner consistent with the settlement's aims and objectives.

Those objectives are present in the constitution of the settlement, adopted in 2001, and this bill embeds them in the Act. More important, the bill will specifically prevent a member of the settlement who has a pecuniary conflict of interest in the disposal of the settlement's real property from participating in, or voting at, a special general meeting called to approve the disposal of that property. It would also prohibit from participating in or voting at any such meeting any member who is a close relative or close associate of a person with a pecuniary interest in the disposal of the settlement's real property. The bill further requires that the settlement's real property cannot be disposed of unless agreed to by 75 per cent of members who attend and who are entitled to vote at a special general meeting of the settlement called for that purpose.

The Greens believe that it is critical that this bill be passed as expeditiously as possible in the hope that it will then pass through the Legislative Assembly and be gazetted at the earliest opportunity. Urgent action is needed. I understand that the management committee of the settlement, having advertised the hall for sale, intends to exchange contracts with the purchaser on Thursday 9 June, that is, tomorrow. One can only hope that the green ban currently in place on the property, plus the odium that would surround the sale, coupled with the publicity created by the passage of this bill, will persuade all concerned that the sale should not proceed unless and until the requirements outlined in this bill have been complied with.

After all, there can be no doubt that members of the current management committee of the settlement, who have to date supported the decision to sell the hall and adjoining terrace houses, had a direct conflict of interest when they so voted. Eight members of the committee own houses in Edward Street, Darlington. The value of those houses stands to appreciate considerably if only the black kids and all trace of the Koori community who use the settlement or rent the settlement's low-cost houses in Edward Street can be made to disappear. And they appear to be succeeding. All tenants have been issued with eviction notices, and two have already left. The chairperson of the management committee persists in claiming that the cost of repairing and refurbishing the settlement hall is prohibitive. Yet the committee has spurned those who offered to undertake the work on a pro bono basis.

The committee has entered into a contract of sale to purchase a hall in Cope Street, Redfern, despite knowing that the Department of Community Services will not continue to fund services at the new location. The committee is continuing to refuse to process new applications for membership of the settlement or to renew the memberships of those who inadvertently let their membership slip. It is determined that its hold on power will not be challenged. What will be the outcome of the management committee's actions? An email to me from Liz Crosby, a member of the settlement and of the group Friends of the Settlement, outlines what will happen if the management committee gets its way and the sale of the hall proceeds. The email of 7 June states:

> The MC have been formally advised by DOCS that they will cease to fund Settlement programs if it moves to the new hall in Cope Street, as that area is over serviced and Darlington area is underserviced. This means that if it moves, the Settlement will not only cease to provide low cost housing, it will also cease to provide youth programs. Current programs running at the Settlement include:
>
> After school and vacation care programs
> Youth work
> Maralappi Program for men on Probation and Parole
> Links to Learning Program for young people
> Community Development and Advocacy
>
> All tenants have been served with eviction notices and two have left. Settlement staff face unemployment.
>
> After the meeting with DOCS, an email forwarded to us by the MC stated that, "Naturally if the current Management Committee were re-elected we would be keen to forge ahead with the Cope Street property, regardless of DoCS concerns and the loss of low cost housing." That the MC plan to sell or the housing, buy a hall they can't afford, and lose DoCS funding, is based on a determination to remove the Settlement from our street at any cost; that they do not care if they destroy the Settlement, so long as it is removed.

The Greens contend that there is no motivation behind the moves of the management committee other than greed and racism. Already the indigenous community in Redfern feels under threat from the gazetting of the declaration of the Redfern area to be a State-significant site and handing control of the area to the Minister responsible for the Redfern-Waterloo Authority. When we couple that action with this action, which is obviously designed to remove the black community from the Darlington area, it is no wonder that the indigenous community feels under threat. It is no wonder that it feels that the entire intention of the white community, the non-indigenous community, is to dispossess and remove them on the basis that out of sight will be out of mind.

I cannot see how any right-minded person could remotely support what is happening at the settlement. I believe it is urgent that this bill be passed, and the Greens certainly believe that it should be passed as quickly as possible in order that at least the feelings of the Parliament on this matter are made well and truly known not only to the members of the management committee of the settlement but also to the community at large.

The Hon. CATHERINE CUSACK [2.45 p.m.]: The Opposition does not oppose this bill. The background to this matter is complex yet alarming. I do not propose to canvass it, except to say that it appears that the entire organisation will be destroyed by those who have been entrusted and empowered with the means to preserve it. I am a former resident of the Women's College, which was responsible for establishing the settlement, and I am extremely unhappy and worried about many aspects of what has happened. The key issue for the Coalition relates to governance and whether the settlement has been operated in the interests of the people it was established to serve and in a way that is consistent with its objectives. There is considerable doubt that this has happened. However, this is a legal question, and I understand that the matter will be resolved in the courts.

It is not the role of the Parliament to intervene directly in the operations of any association, and I do not believe that the Hon. Dr Arthur Chesterfield-Evans has suggested that. In addition, no matter how unhappy we feel about an issue we cannot support any form of retrospective legislation. However, we must take steps to

ensure that a modern system of governance is in place, and that is why we support the bill and the Government's proposed amendments to the bill. As I said, I am concerned about what is taking place. I realise there is a long way to go on this issue. Sadly, a successful outcome for the settlement seems most unlikely at this stage.

Reverend the Hon. FRED NILE [2.46 p.m.]: The Christian Democratic Party supports the Sydney University Settlement Incorporation Amendment Bill, which amends the Sydney University Settlement Incorporation Act 1959. With all good intentions, the original Act had some omissions in terms of the operations of the settlement. We support the aims and objectives of the settlement as it was originally intended, but the actual functioning of the organisation seems to have broken down. This legislation is a simple way of ensuring that decisions made in the future are in line with the constitution and the objects as set out in the bill, which include:

> (d) to prevent the Settlement's real property being disposed of unless the disposal has the approval of at least 75 per cent of members attending, and entitled to vote at, a special general meeting called to approve that disposal, and
>
> (e) to prevent a member participating in, and voting at, any such meeting if the member, or a close relative or close associate of the member, may gain a financial or other benefit from the disposal, and
>
> (f) to prevent the Registrar-General from registering a transfer of land held by or on behalf of the Settlement, unless a certificate under the common seal of the corporation is lodged with the Registrar-General certifying that the transfer has been approved in accordance with paragraph (d).

The bill's objects are important. Although we are running up against dates chosen by the body that runs the settlement, we hope that the management committee will respect the will of Parliament as expressed in this legislation and abide by these provisions, even if there is a technical reason that it could try to avoid doing so. We hope that it will show its good faith by respecting this legislation and the will of the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.49 p.m.], in reply: I thank all honourable members who contributed to the debate. I introduced this bill because I think this is an organisation in peril. There have been a lot of rumours, most of which I have heard and some of which I believe. It would seem that management put a deposit on a property in Cope Street, which it is purchasing for $2.8 million. It has an obligation in regard to at least part of that deposit—I am not sure whether it is 5 per cent or 10 per cent. The rumour is that the hall and the adjacent terrace in Edward Street have been sold for $815,000. That would leave a gap of almost $2 million to be made up from the sale of the other terraces, which are used for low-income housing and some flats which I understand have caveats with the Department of Housing.

It is hard to see how that can add up to enough money to purchase the Cope Street property. The Department of Community Services said it will not continue to fund programs if the settlement moves to that location because of a need to rationalise the number of service providers on the Waterloo side of Botany Road. There are not many service providers close to the block on the university side of Botany Road. There is a concern in regard to governance. This bill attempts to fix the governance but does not attempt to change what is happening. The Government has indicated that it will support the bill but that it will move four amendments. One of the Government's amendments is to insert a sunset clause to provide that the provisions of the bill will lapse one year after the date of assent unless the Governor specifies a later day by proclamation. That will overcome the acute problem that currently exists, and the decision as to whether the settlement should continue under its own Act or under other legislation such as the Associations Incorporation Act can be made in an environment that is less pressured. The Government would like the sale of real property to be approved by two-thirds of the membership rather than the 75 per cent provided for in the bill, and I understand that two-thirds is more common in cases such as this.

There are some winding-up provisions that I understand are standard in regard to organisations. One would like to think these will not be necessary. The final amendment will ensure that the bill is not retrospective. That may have implications. I believe there is a great reluctance to interfere with the security of title under the Real Property Act, and there are policy considerations with regard to that, and the Government does not want to disturb that security. As I said, the Government will support the bill with the amendments. It is not quite as I would wish, but it is certainly a step in the right direction. I thank the Government, the Opposition and others for their support for the bill. I have tried to make it a bill about governance and doing the right thing. As I said in my second reading speech, the bill is basically about good governance and it incorporates the aims and objectives of the constitution of the settlement itself. I thank honourable members for their contributions and commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.55 p.m.], by leave: I move Government amendments Nos 1 to 4 in globo:

No. 1 Page 2. Insert after line 10:

4 Repeal of amendments

(1) Sections 2A, 2B, 3A and 11-18 of, and schedule 1 to, the *Sydney University Settlement Incorporation Act 1959* are repealed:

(a) one year after the date of assent to this Act, or

(b) on a day specified by the Governor by proclamation,

whichever is later.

(2) The Governor may make more than one proclamation under this section.

No. 2 Page 5, schedule 1 [2], proposed section 3A (3), line 6. Omit "75 per cent". Insert instead "two-thirds".

No. 3 Page 6, schedule 1 [3]. Insert after line 12:

11 Voluntary winding up

(1) The corporation may be voluntarily wound up under this section if:

(a) a notice of the proposed voluntary winding up is published in a newspaper circulating in the Sydney area, and

(b) at least one month after that notice is published at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of voluntary winding up, and

(c) the Minister has issued a certificate:

(i) approving the voluntary winding up of the corporation, and

(ii) certifying that the requirements of this subsection have been satisfied.

(2) Except with the leave of the Supreme Court, the members of the corporation cannot resolve that it be wound up voluntarily if proceedings for the corporation to be wound up by the Court under section 12 have been commenced and have not been finally determined.

(3) The corporation is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the corporation continue until it is wound up under this section.

(4) If the Minister has certified that all of the requirements of subsection (1) have been satisfied, the corporation must be wound up.

(5) The Minister must ensure that notice of the winding up of the corporation under the *Corporations Act 2001* of the Commonwealth is published in a newspaper circulating in the Sydney area.

(6) Subsection (3) ceases to apply if the Minister decides not to approve a voluntary winding up.

12 Winding up by the Court

(1) The Supreme Court may order the winding up of the corporation if:

(a) at least 75 per cent of the members (within the meaning of section 3A) have passed a resolution in favour of winding up by the Court, or

(b) the Minister has issued a certificate certifying that he or she is of the opinion that the corporation is unable to properly carry out its functions, or

(c) the corporation is unable to meet its liabilities, or

(d) the Court is otherwise of the opinion that it is just and equitable that the Corporation be wound up.

(2) An application to the Court for the winding up of the Corporation may be made by:

(a) the Corporation (but only if a resolution is passed by at least 75 per cent of the members in favour of making the application), or

(b) the Minister.

13 Procedure for winding up

(1) The winding up of the corporation is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (***the applied provisions***), subject to the following modifications:

(a) the applied provisions have effect subject to the provisions of sections 11 and 12 of this Act,

(b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to the corporation,

(c) a past or present member of the executive committee or the Settlement is not liable to pay the corporation's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,

(d) the distribution of surplus property after the corporation is wound up is to be dealt with in accordance with section 14 despite anything to the contrary in the applied provisions,

(e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:

(a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and

(b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

(3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

14 Distribution of surplus property

(1) Despite the provisions of any other Act or law, if there is property of the corporation after the corporation is wound up, the liquidator must transfer the property to another person or body that is approved in writing by the Minister.

(2) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.

(3) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.

15 Vesting of assets after winding up of corporation

(1) To the extent to which any assets:

(a) are given to the corporation, or to a person for the benefit of the corporation, or

(b) are payable to, or recoverable by, the corporation or any person on behalf of the corporation, by or under an instrument that takes effect on or after the date on which the corporation is wound up, a reference in the instrument to the corporation is to be treated as a reference to the Minister.

(2) Assets referred to in subsection (1) are to be transferred by the Minister to another person or body and section 14 (2) and (3) apply to the transfer as if it were a transfer of property under section 14.

(3) In this section:

instrument means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.

16 Application to Court

The Minister, or any other interested person who has leave of the Supreme Court, may apply to the Court:

(a) to determine any question arising in the winding up of the corporation under this Act, or in the application by section 13 of provisions of the *Corporations Act 2001* of the Commonwealth to the winding up, or

(b) to exercise all or any of the powers that the Court might exercise if the corporation were being wound up by the Court.

17 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

No. 4 Page 7, schedule 1 [3], proposed clause 2 of schedule 1. Insert after line 4:

(2) Despite subclause (1), section 3A (5) does not apply to a registrable dealing for the transfer of land, if the contract for the sale of the land was entered into before the date of assent.

Amendment No. 1 will insert a sunset clause to provide that the provisions of the bill will lapse 12 months after the date of assent unless a later day is specified by proclamation published in the *Government Gazette*. The ensuing 12 months are expected to provide sufficient time for current issues to be resolved and for proper consideration to be given to bringing the settlement within the jurisdiction of the Associations Incorporation Act, as opposed to it remaining subject to its own legislation. However, the amendment will enable the Government to ensure that the statutory framework established by the amendments continues in place longer, should it remain necessary after 12 months.

The bill prevents the settlement's real property from being disposed of unless the disposal has the approval of at least 75 per cent of the members attending and entitled to vote at a special general meeting called to approve that disposal. Legislation incorporating organisations often requires two-thirds approval for the disposal of real property. The figure of 75 per cent may be unnecessarily high and may prevent the settlement from disposing of real property when there is a pressing need to do so. The Government believes that two-thirds is a more appropriate requirement, and still requires a reasonable proportion of members to support the disposal. Therefore, this amendment reduces the requirement for the approval of members from 75 per cent to two-thirds.

The constitution of the settlement provides for its winding up by a special resolution of members at a general meeting. This requires the approval of 75 per cent of members. Any property or funds remaining after the payment of all debts and liabilities are to be transferred to another body with similar objects, or sharing a similar community, which is also approved by a special resolution of the members. However, the Government is concerned that there is no provision to allow an application to be made for the winding up of the settlement should this prove necessary. These amendments set out the process for a voluntary winding up approved by 75 per cent of members. They also allow the responsible Minister to make application to the court for the winding up of the settlement where, for example, the settlement is unable to carry out its functions or is unable to meet its liabilities. The winding up provisions of the Corporations Act will apply with appropriate modifications, and any surplus property is to be distributed to a body nominated by the responsible Minister.

The Government believes amendments should not operate retrospectively as this could adversely affect the interests of third parties and lead to legal disputes and expensive and lengthy litigation. This amendment will ensure that the Registrar-General will be able to register a dealing with a certificate that the required proportion of members have approved the disposal, if a binding contract for the disposal of the property was entered into prior to the date of assent of the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.59 p.m.]: I accept the amendments, as I stated in my speech in reply.

The Hon. CATHERINE CUSACK [3.00 p.m.]: The Coalition supports the amendments.

Amendments agreed to.

Schedule 1 as amended agreed to.

Bill reported from Committee with amendments and passed through remaining stages.

COURTS LEGISLATION AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.03 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Courts Legislation Amendment Bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales.

Administrative Decisions Tribunal
Schedule 1 amends the Administrative Decisions Tribunal Act 1997 by clarifying the qualifications of members who are entitled to determine proceedings in the Retail Leases Division of the Tribunal. Only a member who is a retired judge of the Supreme Court or Federal Court or who has equivalent experience or qualifications is qualified to deal with these proceedings. The Supreme Court recently considered this provision and restricted the capacity of a number of members to continue to deal with cases in this division.

The amendment will extend the class of members entitled to determine these cases to include any current, retired or acting judge, or a Deputy President who has substantial experience or qualifications in commercial law. The amendment is designed to ensure that those members who previously determined these cases can continue to do so. The amendments will also validate previous decisions made by these members.

Anti-Discrimination Act 1977
Schedule 2 amends the Anti-Discrimination Act 1977. Section 88B is inserted to make it clear that where a complaint is lodged in more than one jurisdiction, then the Anti-Discrimination Tribunal is to have regard to any decision made in other proceedings relating to the complaint.

Supreme Court Masters
Schedules 3, 13 and 14 relate to a change in title of Masters of the Supreme Court to Associate Judges. This change has the support of the Chief Justice. The title of Associate Judge is more easily understood by the public and reflects the position that Masters hold within the hierarchy of judicial officers of the Supreme Court. The use of the term "Master" is inconsistent with the use of non-gender specific titles.

The change in title involves a minor amendment to section 52 of the Constitution Act 1902 by inserting "Associate Judge" in the definition of judicial office. The Parliamentary Counsel's Office has advised that a minor amendment of this nature does not require a referendum. Consequential amendments have been made to a number of other Acts including the Supreme Court Act 1970 and the Judicial Officers Act 1986.

The amendments will not adversely impact on current Masters of the Supreme Court. Masters will automatically be appointed as Associate Judges and their conditions of appointment will continue to apply. Savings provisions will ensure that the change of title will not affect any proceedings before the Supreme Court

Schedules 4 and 13 amend the Supreme Court Act 1970 and the Criminal Appeal Act 1912 to reflect the fact that Supreme Court officers are appointed under the Public Sector Employment and Management Act 2002. The amendment also clarifies the powers of Registrars and officers of the Court.

The amendments will also allow the Chief Justice to authorise Registrars of the Local Court and other officers to exercise functions of Deputy Registrars of the Supreme Court. The purpose of this amendment is to ensure that Registrars of the Local Court in regional and border areas can exercise the powers of a Deputy Registrar in relation to matters, for example, the making of applications by interstate legal practitioners to become admitted to practice in this State under the Mutual Recognition legislation.

Judges Pensions
Schedules 5 and 6 amend the Director of Public Prosecutions Act 1986 and the Judges' Pension Act 1953. Under the Judges' Pensions Act 1953 a widow or widower of a judge is generally entitled to a "reversionary" pension to the value of thirty per cent of the judges' salary at the time of the judge's retirement or death (if in office at the time). A widow or widower is entitled to this pension from the date of the death of the judge or retired judge until the widow or widower's own death.

Section 16 of the Judges' Pensions Act 1953 gives a de facto partner of a deceased judge a degree of legal recognition where the judge is also survived by a widow or widower, and the de facto partner has foreshadowed that he or she may institute proceedings under the Family Provision Act 1982 in relation to the deceased judge's estate. However, section 16 does not apply where a judge is survived only by a de facto partner.

The Judges' Pensions Act will be amended to enable the de facto partner of a deceased judge or a deceased retired judge to receive a reversionary pension. A de facto partner is defined as a person in a de facto relationship within the meaning of the Property (Relationships) Act 1984. These amendments will bring the NSW Judges' Pension Scheme into line with all other NSW State superannuation and pension schemes.

The Director of Public Prosecutions and his or her spouse are also entitled to a pension under the Judges' Pensions Act 1953. Consequential amendments are being made to the Director of Public Prosecutions Act 1986 to reflect the changes being made in relation to judges.

Jury Act 1977
Schedule 7 contains amendments to the Jury Act 1977 relating to the form and manner in which a jury takes an oath or affirmation. Section 45 will be amended to remove the necessity for a juror to take an oath while holding a religious text. This is consistent with provisions relating to witnesses taking oaths under the Evidence Act 1995.

Section 72A of the Jury Act 1977 is to be amended to include a standard form of wording for the oath or affirmation to be administered to a juror. The standard form of oath or affirmation is intended to give guidance to judicial officers on the appropriate manner of administering an oath or affirmation. The standard form of oath or affirmation does not replace other variations of oaths and affirmations that may currently be used.

Justice of the Peace Act 2002
A justice of the peace is required to take an oath of office when they are newly appointed. Justices of the peace are now required to periodically renew their appointment. Schedule 8 amends the Justice of the Peace Act 2002 to ensure that a justice of the peace is not required to take the oath of office again at the time of re-appointment, if the former appointment has not lapsed.

Land and Environment Court Act 1979
The Chief Judge of the Land and Environment Court, the Hon. Justice McClellan, has asked for a number of minor amendments to the Land and Environment Court Act 1979 to further the package of non-legislative reforms recently undertaken by the Court. These are included in Schedule 8 of the bill.

The amendments will extend the power of the Court to direct the mediation of proceedings, to appoint a person to execute an instrument and to order costs against a defaulting solicitor. The amendments will replicate the Supreme Court's existing statutory powers.

Legal Profession Act 2004
The Chief Judge of the District Court has requested that section 338A of the Legal Profession Act 2004 be amended to increase the maximum costs payable for certain personal injury claims in the District Court. The amendment will allow a respondent to proceedings that are reheard after arbitration or a respondent to an appeal to claim an additional amount of costs of up to 15% of the amount recovered, or $7,500, whichever is the greater. The District Court has experienced a significant decrease in the number of cases being referred to arbitration. The amendment is intended to ease the legislative restriction on the maximum costs payable to encourage the continued use of alternative dispute resolution options. It will also ensure that a respondent may recover additional costs that may be incurred through no fault of the respondent at a rehearing after arbitration or on an appeal.

Local Courts Act 1982
The Chief Magistrate of the Local Court has requested that section 19A of the *Local Courts Act 1982* be repealed to allow Magistrates to robe in court. The Chief Magistrate is of the view that the wearing of a judicial robe will enhance the security of the Magistracy and the dignity of the court. To moderate against an undue level of formality in the court, Magistrates would be confined to wearing a plain black robe and the choice to robe would not extend to members of the legal profession.

It is proposed that the wearing of robes by Magistrates would be a matter of individual choice with the cost to be borne by the judicial officer.

Oaths Act 1900
Under the Oaths Act 1900, the oath of office for a justice of the peace may be administered by a range of judicial officers or by a specially authorised justice of the peace. To reduce the burden currently being placed on Magistrates Schedule 11 will amend the Oaths Act 1900 to allow a Registrar of the Local Court to administer the oaths of office for a justice of the peace.

Public Defenders Act 1995
The Public Defenders Act 1995 provides for the appointment of Senior and Deputy Senior Public Defenders for fixed terms. Schedule 12 will amend the Public Defenders Act 1995 to provide that a Senior or Deputy Senior Public Defender who immediately before his or her appointment was a Crown Prosecutor, will also be appointed as a Public Defender and, subject to the Public Defenders Act 1995, will remain a Public Defender after ceasing to hold that office.

The Bar Association has noted that Crown Prosecutors have security of tenure but must relinquish that security if appointed as a Senior or a Deputy Senior Public Defender. These amendments ensure that Crown Prosecutors are not discouraged from seeking appointment as a Senior and Deputy Senior Public Defender.

These amendments improve the efficiency of the courts, and provide an improved and more accessible service for legal practitioners and the public.

I commend the bill to the House.

The Hon. DAVID CLARKE [3.04 p.m.]: The Courts Legislation Amendment Bill, which comprises a series of amendments to existing legislation that deal with the operation of courts in New South Wales, is not opposed by the Opposition. The purpose of the amendments, which are largely procedural in nature, is to improve the efficiency of the courts and provide an improved and more accessible service for legal practitioners and the public. Pursuant to this bill the Administrative Decisions Tribunal Act 1997 will be amended so as to extend those entitled to determine proceedings in the Retail Leases Division of the Tribunal to include any current retiring or acting judge of any court of New South Wales, the Commonwealth or other State or Territory

or a Deputy President. The current situation is restricted to a retired judge of the Supreme Court or Federal Court or someone who has equivalent experience or qualification.

The Anti-Discrimination Act 1997 is amended to make clear that when the Administrative Decisions Tribunal is dealing with a complaint under the Act, it is to have regard to proceedings relating to the complaint in another jurisdiction and the outcome of any such proceedings. The Criminal Appeal Act 1912 is amended so that a registrar of the Court of Criminal Appeal or other court officers will be appointed under the Public Sector Management Act 2002, rather than the current position in which such appointments are made by the Governor. Pursuant to schedule 5 the Judges' Pension Act 1953 is amended so that a de facto partner of a judge has the same entitlements as a married partner of a judge in respect of a pension or benefit provided under the Act. The Jury Act 1977 will be amended to include a standard form of wording for an oath or affirmation to be administered to a person who will serve as a juror. Amendment is made to the Justice of the Peace Act 2002 to ensure that the oath taken by a justice of the peace on appointment remains valid on reappointment.

The power of the Land and Environment Court is extended to allow the court to refer matters for mediation or neutral evaluation without requiring the consent of the parties; to order costs against a solicitor who, through serious neglect, incompetence or misconduct, delays proceedings; and to order that an instrument be executed by a nominated person if a person fails to comply with a court order directing the execution of any conveyance contract or other document. Schedule 10 amends the Local Courts Act 1982 to remove the prohibition on magistrates wearing court dress. Schedule 11 amends the Oaths Act 1900 to permit a justice of the peace to take an oath of allegiance or judicial oath before a registrar of a Local Court. Schedule 12 amends the Public Defenders Act 1935 so that a senior officer who immediately before appointment held office as a Crown Prosecutor is taken to have been appointed also as a public defender while holding office as a senior officer and after ceasing to hold that office. The effect will be to ensure security of tenure for Crown Prosecutors who are appointed as senior officers.

Amendment is made to the Legal Profession Act 2004 to increase the current cap on costs for legal services in personal injury claims where the amount received does not exceed $100,000. This applies only in circumstances where the court refers the matter to arbitration and it is then subject to a rehearing or where the court decision is appealed. The increased cap applies only in respect of legal services provided to the respondent to the rehearing application or appeal. The bill deals with a diverse and miscellaneous series of matters, each of which should facilitate the smooth and efficient operation of the courts and court officers. There has been considerable input into this bill from various officers and judges of our courts. The Bar Association and the Law Society of New South Wales have also been consulted. In all the circumstances, the Opposition does not oppose the legislation.

Reverend the Hon. FRED NILE [3.09 p.m.]: The Christian Democratic Party supports the Courts Legislation Amendment Bill, which deals with a number of minor administrative issues to allow for the more efficient operation of New South Wales courts. Some of the matters seem to be trifling, but they do have an important impact on our society. I note that one of the sections of the bill will amend the Jury Act 1977 to provide a suggested form of words for administering the jury oath and to remove the need for a religious text to be used by a person taking an oath. The *Bible* has traditionally been used by people taking an oath, and we in Parliament use it when we take our oath of membership. I know that in recent times the courts have accepted the use of the *Koran* by Muslims and I accept that as being the correct procedure.

It would seem strange to have a text that is not religious, because the whole point of being religious is believing in a higher power. You swear an oath that you will keep your word as part of your religious belief. If you have no religious belief it would seem to be unworkable. In other words, if you do not use a religious text do you use a dictionary, or a copy of Shakespeare, or a newspaper? On what you take the oath? This takes away from the whole concept of an oath. I appreciate that there may have been submissions from non-religious persons, and a secular humanist who is an atheist could probably take an oath on the humanist manifesto or Karl Marx. The Minister might elaborate on what will replace a religious text and whether there is any definition that might be included in the regulations?

The other seemingly trifling matter relates to the removal of the restriction on magistrates wearing a robe in court. It was my understanding that magistrates in the Local Court do not wear robes. I also understand that there has been a move to restrict the wearing of robes and wigs in courts, so it would seem to be a backward step. But at least the bill will allow magistrates to make a choice. I would prefer magistrates to robe in court. The purpose of Supreme Court judges wearing a robe and wig is to separate the judge's personality from the decisions he makes in court. Judges have to make decisions without fear or favour and should not be focused on

as a person. The wearing of a robe and wig is not merely an old-fashioned idea; it is part of the process of permitting judges to exercise their role in a completely independent fashion—independent even of their own personalities. We support the bill and trust it will assist our courts to operate more efficiently.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.13 p.m.], in reply: I thank honourable members for their contributions to the debate. In response to the comments made by Reverend the Hon. Fred Nile, the proposed amendment to the Jury Act removes the provision in section 45 of the Act that the time for challenging a juror is after the juror has been "called to the book to be sworn and before the juror is sworn". The amendment will not prevent the taking of an oath on a religious text, but it will not be necessary. The amendment will result in greater consistency with the Evidence Act, which provides that it is not necessary for an oath to be taken by a witness on a religious text. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SURVEYING AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.15 p.m.]: I move:

That this bill be now read a second time.

The Surveying Act was brought into force in 2003 as a result of the recommendations of the national competition policy review of the Surveyors Act 1929 and consultation with key stakeholders. The main objects of the new Act are: to regulate the conduct of surveys carried out by the Surveyor-General and other public authorities; to provide for the establishment and maintenance of a register of public surveys; to provide for the registration of land surveyors and mining surveyors; to confer powers of entry on the Surveyor-General and registered surveyors; to create offences with respect to the conduct of surveying and the protection of survey marks; and to provide for the constitution and functions of the Board of Surveying and Spatial Information.

Whilst the Act is a great improvement on the earlier legislation, this bill contains a number of further reforms. The first proposed change includes a definition of "spatial information" in section 3A of the Surveying Act, to give legal certainty to the use of that term in the legislation:

(1) For the purposes of the Act, spatial information is defined as "any information about a location in space and time including, but not limited to, information about the following (if relevant):

- (a) natural resources at the location;
- (b) the environment and climate at the location;
- (c) land ownership and other ownership rights at the location;
- (d) the use of land at the location;
- (e) any infrastructure at the location; and
- (f) the demography of the location.

(2) A location to which spatial information relates may be:

- (a) a point or a two or three dimensional area, and
- (b) a location that is:
  - (i) above the Earth's surface;
  - (ii) below the Earth's surface;
  - (iii) on the Earth's surface, or
  - (iv) any combination of the above.

The second proposed amendment provides for the correction of survey errors. Under proposed section 9A the Surveyor-General or Registrar-General will be able to require a registered surveyor to correct errors in his or her survey; and if the surveyor does not do so, the Surveyor-General or Registrar-General will be able to appoint another surveyor to correct the error. Likewise, the Chief Inspector of Mines and Chief Inspector of Coal Mines will be able to direct a registered surveyor to correct an error in a mining survey. On a default in this duty, another surveyor may be appointed to correct the error.

It should be noted that a failure to comply with a requirement to amend a survey under section 9A will amount to professional misconduct, rendering a surveyor liable to the disciplinary action specified in section 13 of the Surveying Act. A third amendment will include new section 9B in the Act. This section will allow the Surveyor-General to appoint another surveyor to satisfy requisitions on a plan, lodged in the office of the Registrar-General, where the original surveyor has died, is absent or infirm, cannot be found, or is no longer a registered surveyor. I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

A further amendment will alter section 10 of the Surveying Act, to require the payment of the annual registration fee for surveyors to be made on 31 August rather than 31 October. This will result in increased efficiencies in the registration procedure.

A new section 16A is also being included in the Act. This provision will allow disciplinary action to be taken against a surveyor who has removed his or her name from the register of surveyors to avoid investigation of a complaint.

A sixth amendment will alter section 27 (2) (e) of the Act and repeal clause 4A (3) of the Surveying Regulation. These changes provide that between one and three members of the Board of Surveying and Spatial Information are to be appointed by the Minister from nominees of the relevant professional associations of persons involved in the spatial information industry. At the moment those members must be nominated by a single prescribed association of persons involved in the spatial information industry.

Section 30 (2) of the Surveying Act provides that committees established by the Board of Surveying and Spatial Information must include at least two (2) Board members, but may include other members who are not Board members, so long as the Board members outnumber the other members. An amendment to section 30 (2) removes the requirement that Board members outnumber other members of such committees.

An eighth amendment will permit the Surveyor-General to delegate his or her functions under the Surveying Act or any other Act to any member of the staff of the Department of Lands or any person authorised by regulation.

A new section 35A is to be included in the Surveying Act to prohibit the unlawful disclosure of information obtained in the administration of the Act.

Section 36 (2) of the Act will be amended to provide that regulations may be made in respect to the manner in which complaints about the conduct of registered surveyors are made to, and dealt with by, the Board of Surveying and Spatial Information.

A new section 36 (3) is also to be inserted in the Act to specify the Ministers who must consult on changes to certain regulations relating to mining surveys.

Schedule 2 of the bill will include a new clause in the Surveying Regulation to permit complaints against surveyors to be dealt with in accordance with the "Policy for the Consideration of Complaints against Surveyors" issued by the Board of Surveying and Spatial Information, and as in force from time to time.

Finally, Schedule 3 of the bill will amend the Defamation Act to provide a defence of absolute privilege for defamation for the publication to or by the Board of Surveying and Spatial Information, a Board member, or a committee or subcommittee of the Board, in the process of investigating and determining complaints against registered surveyors.

As honourable members would be aware, this exoneration from the defamation legislation is necessary to ensure that complaints can be made to, and be fully considered by, the Board of Surveying and Spatial Information. I commend the bill to the House.

The Hon. RICK COLLESS [3.19 p.m.]: The Coalition is concerned about the way in which the Surveying Amendment Bill has been handled, and particularly about the bill being forced through the other place before the shadow Minister had an opportunity to discuss its provisions with the surveying industry. The shadow Minister had no alternative but to oppose the bill, because he had no idea of the industry's attitude to it. It was not necessary to rush the bill through; it could have been dealt with this week.

The bill amends the Surveying Act 2002, principally with regard to operational issues that have emerged since the introduction of the Act. As I understand it, all the provisions in the bill are supported by the industry. For that reason, the Coalition supports the bill, with one minor amendment to which I will refer in a moment. Schedule 1 [3] inserts new a section 3A, which provides a definition of "spatial information". While I understand the vast majority of the bill's provisions and the reasoning behind that definition, I am at a loss to understand subsection (2) of section 3A, which provides:

A location to which spatial information relates may be:

(a) a point or a two or three dimensional area, and

(b) a location that is:

(i) above the Earth's surface, or

(ii) below the Earth's surface, or

(iii) on the Earth's surface, or

(iv) any combination of the above.

I ask the Minister to clarify what is meant by, for example, "a location that is above the Earth's surface". Are we talking about survey points on the top of fence posts or skyscrapers, or about satellite locations? The bill does not explain the meaning of such terms, and I ask the Minister to clarify that definition. Schedule 1 [4] inserts new section 9A, which provides that a survey regulator may require a registered surveyor to correct any error in a survey made by that surveyor. If the surveyor does not comply with a notice under the section, the surveyor may be charged with professional misconduct. In that case, the regulator may engage another registered surveyor to correct the anomaly. Costs incurred may be recovered, regardless of whether the regional surveyor is found to be guilty of professional misconduct.

New section 9B provides for the situation in which a survey needs to be altered but the original surveyor has died, or is absent or ill, or cannot be located. The Surveyor-General may then issue a certificate to that effect and another registered surveyor may be contracted to make the necessary alterations. In the situation where the original surveyor can be located but has sold his practice, or is unable for whatever reason to make the necessary corrections, the surveyor may authorise another registered surveyor to make the corrections on his behalf.

Schedule 1 [8] inserts new section 27 (2) (e), which alters the constitution of the Board of Surveying and Spatial Information from having representation from only one professional association, as at present, to a maximum of three professional associations having one representative each. The Coalition believes that to be a logical amendment to the Act. The only concern the Coalition has about the bill is in relation to item [10] in schedule 1, which inserts new section 33A, which provides:

The Surveyor-General may delegate the exercise of any function of the Surveyor-General under this or any other Act (other than this power of delegation) to:

(a) any member of staff of the Department, or

(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

The Coalition believes there is a problem with that provision in relation to the Parliamentary Electorates and Elections Act. Given that the Surveyor-General is one of the electoral commissioners, he should retain that position and should not be able to delegate the role to anyone else. The Coalition will move an amendment to new section 33A to that effect. I understand that the Minister has indicated he will support the amendment. As I said, the Surveying Act was gazetted some three years ago, and in the last three years of its operation a number of minor operational alterations have been identified as necessary for the Act to achieve what it was intended to do. The bill will streamline the operational aspects of the Act, and for that reason the Coalition will support it.

Ms SYLVIA HALE [3.24 p.m.]: The Greens support the Surveying Amendment Bill. We have consulted with key professional organisations in the surveying sector, including the Institute of Surveyors New South Wales and the Association of Consulting Surveyors, and it appears that the bill has widespread support within the industry. The bill makes a number of amendments to update the Surveying Act 2002. The majority of the provisions appear to be commonsense measures to implement clearer regulation, streamline the operation of the industry, and provide better protection for consumers. The Greens support the establishment of a public register of surveyors, and improved transparency in the registration of surveyors. The increased flexibility that will allow a second or third surveyor to be appointed by the Surveyor-General to complete incomplete surveys and/or correct survey errors seems to be an eminently sensible move.

The Greens also support provisions that will allow the Board of Surveyors to appoint committees made up, in part, of non-committee members. This will enable the board to better access expertise and specialised skills for specific committee tasks. We also support schedule 3 to the bill, which allows absolute privilege in cases where individuals wish to lodge a grievance or complaint. This brings the Surveying Act into line with

other Acts, including the Health Services Act, the Medical Practice Act, and the Policing Act. Members of the public must be free to lodge the full and frank details of any grievance as they see it, without the threat of defamation hanging over their heads.

The bill allows the Minister to appoint up to three members to the Board of Surveyors. The Greens would not normally support the ministerial appointment of such a large proportion of a board, but we acknowledge that on this occasion recent structural changes within surveying professional bodies would make it impractical to nominate specific organisations at this time. The Greens hope that, as structural changes in the industry settle down, over time the Government will reduce its appointment of board members from three to one. The Greens would welcome the Minister giving such an undertaking.

In summary, it appears that the bill will bring greater transparency and consumer protection to the surveying industry. It has the broad support of industry associations, and the Greens are happy to support it. I understand that the Coalition proposes to move an amendment to proposed section 33A, and I indicate that the Greens will support that amendment.

Reverend the Hon. FRED NILE [3.27 p.m.]: The Christian Democratic Party supports the Surveying Amendment Bill, which makes a number of miscellaneous amendments to the Surveying Act 2002 to provide greater flexibility in the administration of surveys and the surveying profession, provide stronger disciplinary measures, and ensure the efficient operation of surveyors. The bill will assist the administration of the surveying industry, which is under the authority of the Board of Surveying and Spatial Information, as well as the Surveyor-General. It will strengthen the board's complaints procedures by permitting complaints against surveyors to be dealt with in accordance with the policy for the consideration of complaints against surveyors issued by the board.

The bill retains disciplinary rights against a surveyor who removes his or her name from the register of surveyors to avoid investigation, and protects the board's investigatory and disciplinary procedures from defamation action. We do not often hear about the Surveyor-General. The early history of the Legislative Council records that in 1923 it had seven members who were appointed on the basis of their position or title. The Surveyor-General was one of those seven members, together with other senior administrators of the colony of New South Wales.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.29 p.m.], in reply: I thank honourable members for their contributions to this debate. I take this opportunity to make some further remarks about the consultation process that the Department of Lands has engaged in during the process of putting together this legislation. The Board of Surveying and Spatial Information [BOSSI] holds regular meetings with key industry and professional bodies to discuss relevant issues, including legislative reform.

Discussions regarding the limitations and constraints in the current Surveying Act 2002 commenced in September 2003 with the Institution of Surveyors, New South Wales Division. Since then the Association of Consulting Surveyors and the Australian Institute of Mine Surveyors have been consulted on, and have agreed to, the principles contained in the Surveying Amendment Bill. The Board of Surveying and Spatial Information—through its member representatives from the Institution of Surveyors, New South Wales Division, the Australian Institute of Mine Surveyors, and the spatial information industry—has been active in promoting the proposed legislative amendments across the wider industry.

Recent contact with the Vice President of the Institution of Surveyors, New South Wales Division, and BOSSI member Mark Gordon indicates the institution's full support for the proposed changes. Similarly, recent contact with the Chairman of the Association of Consulting Surveyors NSW indicates support for the proposed legislative amendments. So it can be seen that there has been extensive consultation and that the industry is supportive of the bill, and I am therefore pleased to commend it to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. DON HARWIN [3.32 p.m.]: I move:

Page 7, schedule 1 [10], proposed section 33. Insert after line 9:

(2) This section does not apply to any function of the Surveyor-General as an Electoral Districts Commissioner under Part 2 of the *Parliamentary Electorates and Elections Act 1912*.

Subsection (2) of proposed section 33 gives the Surveyor-General the capacity to delegate the exercise of any of his functions to one of his staff or any person or any class of persons, as authorised by regulation. This will apply not only to the Surveyor-General's functions under the Surveying Act but also to any other Act.

Under section 6 of the Parliamentary Electorates and Elections Act the person who for the time being holds the office of Surveyor-General is an Electoral Districts Commissioner. Along with the electoral commissioner and either a retired or currently serving Supreme Court judge as Chair, the Surveyor-General has the periodic responsibility of redistributing the boundaries of the Legislative Assembly's electoral districts. The Opposition believes that it is inappropriate for a Surveyor-General to have the capacity to effectively delegate this function to any person. While the Act requires this to be authorised by regulation, making such a move disallowable by the Parliament, we believe that the capacity to delegate this function should be specifically excluded.

Why is this important? Partisan gerrymandering is one of the most distasteful features of American political life. The capacity for American legislators to effectively draw the boundaries of their own congregational districts has served to unacceptably entrench incumbents, and this has had all sorts of implications for the electoral dynamic and policy outcomes. Slowly some American State legislators have looked at alternatives, including our own Australian approach based on independent commissioners, as enshrined in statute.

Since at least the late nineteenth century the approach has been to have independent commissioners draw our boundaries for the Legislative Assembly. Throughout most of the twentieth century the commissioners have been the elected commissioner and the chair, who has been either a serving or retired judge of the District Court and, I think, the Industrial Commission and the Supreme Court. So there was fairly wide scope. The third commissioner was any registered surveyor. While the third commissioner was traditionally and usually the Surveyor-General, the Act was wide open in allowing it to be any registered surveyor.

The Opposition has always thought that that provision was inappropriate and in October 1997 when the Carr Government amended the Constitution Amendment Bill to reduce the number of seats to 93 and made various other amendments to the Parliamentary Electorates and Elections Act, the Opposition, supported by the crossbench—including Reverend the Hon. Fred Nile, the Hon. Elisabeth Kirby, and the Hon Richard Jones—moved amendments that are basically embodied in the current section 6. As I have outlined, that section includes the provision that one of the Electoral Districts Commissioners must be the person who for the time being holds the office of Surveyor-General.

The Hon. Michael Egan, leading for the Government, specifically supported that provision as well. So I am pleased to say that at least in the past 10 years this has been a bipartisan matter and the House believes that the Surveyor-General should be the commissioner. I am sure that in introducing this bill the Government did not intend in any way to derogate from that position and that, at worst, the matter that the Opposition has identified this afternoon is merely an unintended consequence.

I am sure in that respect that the Government would like to maintain the status quo. When deciding whether the Opposition would move this amendment we had to consider whether it was legally necessary. After taking advice, including discussions with the Parliamentary Counsel, we decided that, on balance, it was better not to leave the question open but, by way of amendment, to specifically exclude the operation of new section 33A from the Surveyor-General's functions under the Parliamentary Electorates and Elections Act.

We are grateful to the Leader of the House for his very expeditious consideration of the Opposition's amendment and his indication of support. I also note that, on behalf of the Greens, my colleague Ms Sylvia Hale said in the second reading debate that the amendment would have her support. I commend the amendment to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.39 p.m.]: The Government accepts the Opposition's amendment. I had been advised of legal opinion that it is not necessary, but there seems to be a bit of a grey area and certainly, as the Hon. Don Harwin said, we have absolutely no intention of changing this position in any way. We see it as one that it was always intended the Surveyor-General would undertake and not be able to delegate. So, we are very happy to accept the amendment, just to make it absolutely clear that that is our intention.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and passed through remaining stages.

RURAL WORKERS ACCOMMODATION AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [3.42 p.m.]: I move:

That this bill be now read a second time.

This bill arises out of the recent review of the Rural Workers Accommodation Act 1969 conducted by WorkCover as part of the Government's national competition policy obligations. The purpose of the review was to examine any restrictions on competition imposed by the Act, and to determine whether they were outweighed by a net public benefit. The review concluded that the occupational health and safety benefit of providing rural workers with accommodation in particular circumstances outweighed any restrictive effect of the requirement to provide it. Stakeholders who were consulted in the course of the review supported retaining the requirement on occupational health and safety grounds. Accordingly, the review recommended that the requirement in the 1969 Act to provide accommodation remain, but that significant structural amendments be made to the legislation.

The bill gives effect to this recommendation. It significantly amends the 1969 Act while retaining the principal requirement that employees who, because of the nature of their work, are required to live on rural premises for more than 24 consecutive hours must be provided with accommodation. The bill has been developed after lengthy consultation with key rural industry stakeholders, including the Australian Workers Union, Unions New South Wales, the New South Wales Farmers Association, Employers First, and the Shearing Contractors Association of Australia. The Australian Workers Union and Unions New South Wales support the bill.

Legislation to ensure that rural workers are provided with reasonable accommodation has been in place in New South Wales since 1901, when concern about the poor working conditions endured by shearers and other rural workers led to the introduction of the Shearers Accommodation Act. That Act formed the basis of the Rural Workers Accommodation Act 1969, which is still in force. However, the existing regime is highly prescriptive, and allows no flexibility for landholders. The 1969 Act is written in arcane language and will benefit from being updated in line with the Government's commitment to plain English legislation. It also has a number of provisions that have been made obsolete by other legislation.

The amending legislation will protect all rural workers, whether they are directly employed or are contractors. Shearers in New South Wales, a group of workers whose work regularly requires them to stay overnight at the rural premises where they are working, are particularly affected by this legislation. I understand that shearers are often engaged as contractors and not as direct employees, and technically may not be covered by the terms of the existing regime. The broad application of the bill will ensure protection for all rural workers, regardless of the employment practices in the industry they work in.

I turn to the specific provisions. The bill retains the existing requirement of persons controlling rural premises to provide suitable accommodation to rural workers who are required to stay on the premises for more than 24 hours. Instead of the old-fashioned, prescriptive requirements in the current Act, a code of practice—which is now being prepared in consultation with industry stakeholders—will provide guidance about what kind of accommodation is suitable. The responsibility to provide accommodation rests on the controller of the rural premises. This simply updates the concept in the existing legislation, which applies to landholders. Employers will be required to provide accommodation only when they are also the controllers of the premises on which the rural workers work. I ask that the remainder of the second reading speech be incorporated in *Hansard*.

Leave granted.

> The bill harnesses the provisions of the occupational health and safety legislation that relate to inspectors and enforcement. To ensure a more flexible and efficient compliance regime, people appointed as WorkCover inspectors under the occupational health and safety legislation will also be inspectors under the rural workers accommodation legislation.
>
> Inspectors will be able to exercise the full range of their powers in respect of the rural workers accommodation legislation. This includes issuing investigation, improvement and prohibition notices. Practical guidance about what kinds of accommodation it is suitable to provide in different circumstances will be given in a code of practice made under the new Act. The code of practice is being developed in close consultation with industry stakeholders.
>
> The bill will not be commenced until the consultation is complete and the code is in place; the bill and code will be implemented and operate in tandem. The current regime will stay in place until the bill commences. In summary, this bill recognises the particular situation of rural workers and puts measures in place to protect them so as to ensure that all New South Wales workers are on a level footing. The bill ensures that people working on remote rural premises are not disadvantaged just because of the location of their workplace. The bill also ensures that the legislation governing the requirements to provide accommodation to rural workers is in line with modern regulatory standards. I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.48 p.m.]: The Rural Workers Accommodation Amendment Bill is a vexed bill for the Opposition. In general terms we do not oppose it, but we have serious concerns about it. In an attempt to address these concerns I will move an amendment in Committee, and the Opposition's concerns are such that if the amendment is unsuccessful we will oppose the bill.

The bill is the result of a national competition policy review of the Rural Workers Accommodation Act 1969 conducted by WorkCover. The review found that the occupational health and safety benefits of providing rural workers with accommodation in particular circumstances outweighed any restrictive effect of the requirement to provide it. The review also recommended that the requirement in the Act to provide accommodation remain but that significant structural amendments to the legislation should be made. The bill implements that recommendation.

While the proposed amendments intend to make significant changes to the Act, the legislation retains the principal requirement that employees who, because of the nature of their work, are required to live on rural premises for more than 24 consecutive hours must be provided with accommodation. These rural workers may include jackaroos, jillaroos, shearing contractors, cooks, nannies and housekeepers. The bill also repeals outdated, highly prescriptive requirements, for example, provisions prescribing exact measurements for windows and doors and the materials that must be used for flooring and ceilings. The bill also provides that a code of practice be established. This provides controllers with flexibility and provides some guidance as to the kind of accommodation that is suitable. We support these sensible aspirations. This is consistent with the structure of the Occupational Health and Safety Act 2000. A draft code of practice is still the subject of consultation and the bill will not be commenced until the code is finalised.

The final function of the bill is that it applies the enforcement mechanisms under the Occupational Health and Safety Act. This includes the application of the Occupational Health and Safety Act relating to investigations, the power of inspectors to issue notices, and proceedings for offences under the Act. Under the 1969 Act, inspectors had to be appointed separately to enforce the rural workers accommodation requirements. The Opposition has concerns about this legislation because the Government is attempting to introduce occupational health and safety principles into the bill, and that is inappropriate. This frustrates the central purpose of the Rural Workers Accommodation Act, which is a simple statutory framework under which workers have been accommodated when they are employed on an agricultural property for a certain number of hours.

Honourable members, landowners, rural workers and the general community would recognise that, because of the distances involved and the nature of agricultural work generally, accommodation should be provided when a person is required to work on a farming property for more than a certain number of hours. The provision of rural accommodation is the central premise of the bill, yet the Government is seeking to erode that premise by making WorkCover the governing authority and inserting occupational health and safety principles. This view is shared by a number of parties with which the Opposition has consulted on this legislation. After analysing the bill Employers First made the following points:

> The Bill is drafted to incorporate the criminal proceedings, absolute liability, deemed guilty and inadequate defences of the Occupational Health and Safety Act 2000.
>
> The effect of the Bill is to construe the same impossibly onerous OH&S obligations to the provision of accommodation as those applying to the place of work.

> This is unacceptable and it is inappropriate to import notions of perfect safety and absolute liability into any legislation, let alone legislation dealing with the standard of rural accommodation.

The Occupational Health and Safety Act deals with workplaces. The Rural Workers Accommodation Act deals with accommodation places. These two jurisdictions should remain mutually exclusive. However, the Government, through this legislation, is trying to merge those jurisdictions. Once again the Government is blurring the lines and guidelines and is trying to follow its secretive agenda in various areas. Employers First stated further:

> The Rural Workers Accommodation Act should simply be amended to retain the requirement to provide accommodation to rural workers who, due to the nature of their work, live for more than 24 hours on the premises on which they work, with a minimal code of practice to up-date and simple and practical guidance material for compliance.

The provision of accommodation for rural workers should be determined as a contractual issue or condition of employment and not tied to occupational health and safety legislation. Regulating accommodation on "safety grounds" clearly illustrates this State Labor Government's use of occupational health and safety legislation to achieve industrial relations objectives. The fundamental problem with both the Occupational Health and Safety (Workplace Fatalities) Bill and this bill is that the Government, under the guise of something that on the surface no-one could disagree with, is clearly pursuing a secret industrial relations agenda. It is not following workplace safety or a rural accommodation agenda. In relation to part 5 of the bill Employers First stated:

> The Occupational Health and Safety Act enforcement provisions should not apply to the Rural Workers Accommodation Act, which should retain inspectors appointed under the Rural Workers Act as regulated by the Office of Industrial Relations.
>
> Nor should non-compliance be subject to criminal prosecution.
>
> The existing prosecuting regime for the serving of notices and proceedings before magistrates in local courts should be retained.

The Government should not sneak in "guilty until you prove yourself innocent" provisions. Let us stick with the Westminster onus of "innocence until guilt is proven". Providing inspectors with the power to impose fines seems terrific up front, but the reality is that the onus of proof will be reversed. The bill seeks to impose a penalty of up to $27,000 for a violation relating to the simple matter of the provision of accommodation. Such a penalty is unfair and onerous for landholders and the providers of accommodation for rural workers. The responsibility for enforcing these penalties has also been handed over to WorkCover. Employers First has deemed the proposed penalties excessive, particularly given the demanding and unrealistic provisions in the draft code of practice relating to the standard required to provide "suitable" accommodation.

The Opposition's main objection to this legislation can be found in proposed section 22, in schedule 1 to the bill. This view is also shared by Employers First. Proposed section 22 imports one of the most offensive provisions of the Occupational Health and Safety Act, a provision that is contrary to the basic principles of our legal system: the deeming of guilt. Prosecutions under the Occupational Health and Safety Act clearly indicate that the available defences offer no real protection against a conviction.

On 3 March this year the *Land* reported that Culcairn-based shearing contractors Wayne and Wendy Goode are paying back a mortgage-size workers compensation bill, largely for what they claim to be the result of a fishing accident. In 2000 the Goodes took a shearing team to Nyngan, where the shed was declared wet following rain. For those not involved in the pastoral industry, when sheep have a certain level of water in their wool they are declared wet. It is inappropriate to expect people in the industry, particularly shearers, to work with sheep in that condition. In addition, it is inappropriate to bale wool that is wet.

The workers are on pay—or they used to be in my day—until the situation is resolved. So, the shearers remain in the shed, as it were. Mr Goode claimed that some shearers, instead of going home, opted to stay in the shed huts—accommodation associated with the shed. Honourable members should remember that this occurred at Nyngan. The shearers then went fishing, during which time one suffered an eye injury and had to be taken to Dubbo hospital. The shearer not only kept his sight, according to Mr Goode, but also $174,000 that WorkCover awarded him in damages, apparently based on the fact that he was still camping at the worksite. In the feature article, Mr Goode expressed his frustrations that WorkCover failed to speak directly to either him or his wife regarding this claim. The result was that two years later, in addition to having to pay a genuine back injury claim, Mr Goode received a $220,000 workers' compensation bill, which he was given seven days to pay. WorkCover's request of this employer in this case was pretty tough. Mr and Mrs Goode sold some of their assets to enable them to make repayments of $2,500 per month. I am sure honourable members can appreciate Mr Goode's frustration with this unjust system.

During consultation on this bill the Opposition spoke at length with the New South Wales Farmers Association. Although the association has indicated that its concerns about the bill have to some degree been

appeased by amendments to the original draft bill, nevertheless I wish to place those concerns on the record. The New South Wales Farmers Association opposed the initial draft of the bill because it required controllers of rural premises to assess the risks of travel undertaken by rural workers outside the course of their duties. Such a risk assessment would need to include contractor travel arrangements, road conditions, weather, time of day, distance, traffic conditions, the driving ability of rural workers and the vehicle in which travel would be undertaken.

The New South Wales Farmers Association sent us a note stating that "based on the consultation undertaken, the Rural Workers Accommodation Bill removes the need for duty holders to undertake a risk assessment of worker and contractor travel when determining whether they were required to provide accommodation". Instead, the bill requires that suitable accommodation be provided when rural workers are required to stay on premises for more than 24 hours. The removal of the requirement for controllers of rural premises to undertake a risk assessment of travel undertaken by rural workers outside their duties of employment or contract of service is welcomed by the New South Wales Farmers Association.

The bill is to be accompanied by a code of practice that will provide guidance with regard to the Act's requirement for a suitable standard of accommodation. While the current draft code should not be regarded as prescriptive, it should be noted that failure to observe the relevant approved industry code of practice is admissible in evidence in legal proceedings concerning an offence under the legislation. The association's note sets out in the following terms what the association is seeking in this regard:

1. Further clarification that the duty to provide suitable accommodation under section 5 of the Bill is owed only when the rural worker is required by the duty holder to live on the premises for more than 24 hours to be provided to the Minister in his comments to Parliament.
2. That WorkCover NSW continue to consult with the Association in the formation of a Code of Practice that will be acceptable to the agricultural industry of NSW.

My colleague the honourable member for Gosford summed it up in his contribution to the second reading of the bill in the other place—and it is probably an appropriate way for me to conclude my contribution here—as follows:

> Accordingly, the Coalition objects to the legislation and its underlying premise, which is to ensure symmetry between accommodation and places of work. We object to the application of occupational health and safety principles to accommodation. As I said earlier, a hotel, a hostel, a boarding house and a residence are not workplaces and they are not, and have never been, subject to the same regime as workplaces. Yet this bill would merge places of accommodation with places of work and apply occupational health and safety principles to rural workers accommodation. It will ensure that the WorkCover Authority oversees rural workers accommodation. WorkCover has enormous power and is a prosecutorial regime. It deems guilt unfairly, onerously and harshly, denies trial by jury and imposes massive penalties—up to $27,000—for any breach under this amending bill. WorkCover will not allow for an independent prosecutor and makes provision for ministerial discretion in prosecution—which no-one doubts will be exercised in favour of left-wing trade unions. These are the principles that the Government seeks to insert into what should be a simple statutory framework for the accommodation of workers in the rural New South Wales. Accordingly, the Opposition will move the appropriate amendment in Committee.

Certainly the Opposition in this House will move an appropriate amendment in Committee to differentiate between the workplace and accommodation and to remove the occupational health and safety provisions that the Government is trying to sneak into every bill.

Ms SYLVIA HALE [4.07 p.m.]: The Greens support this bill, which removes the somewhat archaic requirements pertaining to building construction, washing facilities, eating facilities, and so forth, that are in the current Act and replaces them with new requirements contained in a code of practice. As anyone who has picked fruit or done other farm work knows, after a long day of performing often very physically demanding labour, rural workers should have a comfortable and well-built dwelling in which they can eat, relax, sleep, wash and cook. Yesterday, members of the Legislative Assembly who grew up in or worked in rural areas and industries related their experiences of extremely varying standards of accommodation. The honourable member for Canterbury contrasted the generous travel allowances given to members of Parliament with the situation of itinerant workers following crops and moving with the season, who may find great variations in the standard of accommodation provided.

It is difficult to track from the Government precise details of much of its legislation. My office initially experienced difficulty getting the full details of what was proposed by the bill. We received a phone call from a staff member in the Minister's office who asked us whether we would be supporting the bill. We commented that we probably would but we would like to see the details of what the Government was proposing to replace the current provisions of the Act.

Their response was to meet with us and discuss the proposed changes. Although the code of practice had been drafted, there seemed to be an impediment to providing us with a copy. Eventually a copy was faxed to my office. The Australian Workers Union [AWU] has endorsed the bill. Mick Madden of the AWU office in Orange informed my office that he also had not seen the draft code of practice, but the union had been consulted and it supported the bill.

The new provisions in the draft code are not dissimilar to the old provisions. In some cases—for example, with regard to fire safety—they are better than the current provisions in the Act. The Opposition has stated it will seek to amend the bill, in particular, the occupational health and safety provisions. The Greens do not support the Opposition's suggested deletion of the clause that provides for the application of the Occupational Health and Safety Act. We agree with the Government that this provision will potentially improve rural workers' safety. The Opposition has argued in the other place that a work place is not a dwelling and a dwelling is not a workplace and, therefore, occupational health and safety requirements should not apply to dwellings for rural workers. The Greens consider such reasoning faulty.

Unlike other workers who commute to and from work, rural workers on a farm are often far removed from their normal place of abode or they are itinerants and do not have the option of returning to their homes each day. Even if a rural worker lives in the area, it may be more convenient for the worker to stay on the farm rather than drive miles to go home, especially after a long day of physically demanding labour. It is desirable that the Occupational Health and Safety Act requirements are applied to accommodation for rural workers.

The Hon. Catherine Cusack: Do you not understand how this works?

The Hon. Duncan Gay: How would you like to be responsible for the occupational health and safety of your employees in their homes?

Ms SYLVIA HALE: We are talking about the special circumstances of rural workers as opposed to metropolitan and urban workers. The Opposition seems to think that those whose labour provides the food, wool and other agricultural produce that we eat and wear are not deserving of decent and safe accommodation, or that it will cost farmers or controllers too much to provide such accommodation. The Greens believe that those who do physically demanding work have a right to a safe environment in which to work and live. I would like to refer to the operation of the proposed legislation and code. Although the provisions of the draft code are guidelines, some of the guidelines are requirements. The original provisions of the Act are prescriptive, if somewhat archaic. The code of conduct is not as prescriptive, but maintains similar and, in some cases, better standards. However, we do not want to see agricultural employers use the leeway provided in this bill to their advantage in order to cut corners on accommodation standards.

The Hon. Catherine Cusack: Do you want to see struggling farmers put out of business?

Ms SYLVIA HALE: The Greens are satisfied that the bill provides enforceable legal sanctions for non-compliance.

The Hon. Duncan Gay: No-one has a problem with the standards part of the bill.

The Hon. Catherine Cusack: You have no idea how it works.

Ms SYLVIA HALE: Although the draft code of conduct seems to be comprehensive, it does not provide the same level of certainty as the protections in the current Act. At present, accommodation standards are prescribed in the Act. This bill will put the requirements outside the Act, with the result that this or any future government could instruct WorkCover to change the provisions of the code. The bill does require that the provisions of the Occupational Health and Safety Act apply to this sector. Although the Government has consulted with unions and others about the draft code, future governments may not do so. It is essential, therefore, that the Australian Workers Union and Unions New South Wales remain vigilant.

Although WorkCover inspectors will be able to inspect and issue compliance notices according to the code of conduct, the success of these provisions is dependent upon WorkCover having an adequate number of inspectors with sufficient resources to enforce the code. An earlier draft of the bill required controllers of rural properties to assess the risks of travel undertaken by rural workers outside the course of their duties. This requirement was dropped after representations from the New South Wales Farmers Industrial Association. It is a pity this provision was deleted. There may be a need for risk assessment of, for example, workers who drive to

remote locations on poor or flood-prone roads and backpackers on working visas picking fruit in rural areas who may not be familiar with the Australian landscape. Those people may be at greater risk than others. Although roads in major agricultural areas are much better than they once were, it would have been desirable to include some form of risk assessment in the bill to deal with unusual conditions. The Greens support this legislation as it ensures a higher level of health and safety and similar or better standards of accommodation for rural workers than currently apply.

I would like to address the interjections by Opposition members. As a person who has had experience as an employer, I believe it is absolutely incumbent upon employers to provide safe working conditions. The Greens have never had a problem in that regard. The provision of safe working conditions should not be dependent upon whether one is a rural worker or an urban worker. When it comes to the crunch, the health and welfare of one's employees should be the major consideration.

Reverend the Hon. Dr GORDON MOYES [4.16 p.m.]: On behalf of the Christian Democratic Party I speak to the Rural Workers Accommodation Amendment Bill. The Rural Workers Accommodation Act 1969 deals with the provision of accommodation for rural workers and related purposes. The object of the bill is to amend the principal Act to provide for a rural workers accommodation regulatory regime that is consistent with the regulatory regime of the Occupational Health and Safety Act 2000. This issue has been the main cause of dispute between previous speakers. We agree entirely with the provision of good occupational health and safety regulations for all employees, including employees on rural properties.

The Christian Democratic Party recognises that on most rural properties farmers are not able to build fine accommodation facilities, as has been mentioned in the explanatory notes, because it could cost upwards of $200,000 per property to do so. We recognise the supreme importance of providing good facilities for all employees working in rural areas. This bill proposes to reinstate the principal requirements of the 1969 Act in plain language. Because of the nature of their work, rural employees are required to live on rural properties for more than 24 consecutive hours. Therefore, they must be provided with accommodation, and it is important that the accommodation meets all the normal occupational health and safety requirements. The Christian Democratic Party is pleased that the New South Wales Farmers support the bill. We have had discussions with the Government on issues relating to the Occupational Health and Safety Act. The Government has informed us that through the introduction of this bill it sought to apply all relevant occupational health and safety requirements to the Rural Workers Accommodation Act.

In other words, there is no specific difficulty in this for rural people, apart from what is normally applied to all other forms of employment and the association of the relevant occupational health and safety Acts. We accept the Government's assurance on that aspect and would ask that the Parliamentary Secretary, in his reply on behalf of the Government, affirm that fact. The Christian Democratic Party is otherwise happy to support the bill.

The Hon. CATHERINE CUSACK [4.20 p.m.]: It was not my intention to speak in debate on this bill, but it is impossible for me to allow the outrageous contribution by Ms Sylvia Hale to pass without comment. I was raised on a property. We had four houses on our farm and at one point more than 20 children lived on the property. We all rode motor bikes and horses. Farms are not just workplaces; they are people's homes. If you were to try to extend occupational health and safety standards to all of the houses on that property there would be the enormous question: Where does it begin and where does it end? Who does it apply to? I can only assume that every family would then have the ability or the right to sue their employers under occupational health and safety legislation for every little incident that occurred.

I want to make it very clear that, as my colleague the Deputy Leader of the Opposition said, the Coalition has no problem whatever with having appropriate standards of accommodation on people's properties. We do not think workers should have to live in a swag, or something of that nature. Farm workers across this country have been accommodated in quality and appropriate accommodation on properties, and in affordable housing for them, for the entire history of this country. To suddenly try to extend an industrial agenda to that, and to apply occupational health and safety regulations, will do a massive disservice to farmers and workers who live in what might be described as sub-communities on those properties.

I find it an extraordinary disconnect from the culture of the country—the way in which children and families live, co-operate and grow up—to attempt to come from outside, as the trade union movement is notorious for always trying to do, get involved in people's properties and in their lives, and dictate what should happen. As if farmers do not have enough problems already, as if life is not difficult enough already, as if

unemployment in the regions is not high enough already, now we have this ridiculous suggestion that we should apply occupational health and safety standards to what is often low-cost accommodation on people's properties. By way of example, we had one family with eight children living on the property. They built themselves a pigsty, they had a chook house, and everyone seemed to have a dog or cat or pets to look after. There was even a ferret, which I was not too fond of!

Who knows what was going on inside their house. That was their private space. They lived in the house and it is not the employer's responsibility, nor does he have the right, to go into the home checking on occupational health and safety standards. It is not the employer's responsibility to look after their homes. Everyone looks after their homes beautifully because that is where they live. It would be like extending occupational health and safety regulations to other forms of housing, such as public housing. It is not something anyone would even contemplate doing because it concerns people's lives and their privacy. It is about people being accountable and responsible for what goes on inside their own homes.

I found ludicrous the comments about travel and the suggestion that some workers might not be used to the landscape. I presume that makes the employer responsible for the quality of vehicles the workers drive, what they can afford to drive, the condition of the roads and the weather. It is just a complete disconnect from the reality of how country New South Wales and country Australia works. This is an absolutely typical proposal by the Greens, coming out of the socialist heart of the trade union movement. It is something to be opposed at every step. As I said, it was not my intention to speak on this bill, but I find fanciful these ideas being put forward at a completely inopportune time, when most of country New South Wales is battling so many problems.

This type of comment makes people in the bush feel that they are totally unrepresented in Parliament. They feel nothing but contempt for that ideology that has no knowledge or understanding of how they are trying to live their lives. To home in on one of the most successful aspects of country living and try to destroy it in this way, in a bid for union power and to gain access to all aspects of the poor farmer's life, is a disgrace! I totally support the comments of my colleague the Deputy Leader of the Opposition on this bill and the sinister agenda that underpins it. It is mean spirited, it is unfortunate and I urge the House to reject any attempts by the Greens or socialist Labor members to intrude on people's lives in this disgraceful way.

The Hon. HENRY TSANG (Parliamentary Secretary) [4.25 p.m.], in reply: I thank honourable members for their contributions to the debate. The bill acknowledges that rural workers accommodation is an occupational health and safety issue, and accordingly provides for a regulatory regime that is consistent with occupational health and safety legislation. It provides protection for rural workers, and consistency and clarity for employers and controllers of premises. The bill also continues the pre-existing relationship with the Occupational Health and Safety Act and clarifies the way in which the obligations under each Act will apply. Importantly, it protects people from exposure to double jeopardy for conduct that amounts to an offence under both Acts.

The bill requires accommodation to be provided where rural workers are required to live at or near rural premises for more than 24 hours, due to the nature of the work. This restates, in clearer language, the existing requirements set out in the 1969 Act. There are number of circumstances where the nature of the work might require workers to live on rural premises for more than 24 hours. For instance, some properties are so remote or so large that daily commuting is not practicable. Sometimes the terms of the worker's engagement will specify the need for the worker to stay on the premises overnight.

Industry stakeholders are also involved in the preparation of a code of practice, which will be made under the amended Act. Stakeholders involved in the consultation process include representatives of peak employer groups and specific industry bodies, as well as unions. Consultation on the code will provide an opportunity for people who are directly involved in the industry to discuss the kinds of accommodation arrangements that are suitable for rural workers. I can advise the House that the New South Wales Farmers Association and the Australian Workers Union support the bill. Employers and workers recognise that this legislation protects the interests of both.

I will now briefly refer to the question asked by the Deputy Leader of the Opposition: Why does the bill refer to the Occupational Health and Safety Act at all? Rural workers accommodation is an occupational health and safety issue. Statistics show that the rate of workplace fatalities is more than three times greater in the agricultural sector than in other industries combined—

The Hon. Duncan Gay: Most accidents happen in the home.

The Hon. HENRY TSANG: Just wait—and that the rates of workplace and non-workplace injuries are nearly twice as great. Providing accommodation and some associated facilities to workers who need to stay on rural premises for more than 24 hours clearly benefits workers' health, safety and welfare. The national competition policy review of the Rural Workers Accommodation Act 1969 conducted by WorkCover in 2003-04 concluded that the occupational health and safety benefits of retaining a requirement to provide accommodation outweighed any anticompetitive effects. The bill amends the Rural Workers Accommodation Act 1969 to provide for a rural workers accommodation and regulatory regime that is consistent with the regulatory regime of the Occupational Health and Safety Act. The Hon. Catherine Cusack also asked what the connection is between the workplace and other parts of a homestead.

The Rural Workers Accommodation Amendment Bill does not extend occupational health and safety obligations beyond the places of work defined in the Occupational Health and Safety Act 2000. The Act applies to places of work, which are defined as "premises where persons work". Premises are broadly defined, and can include places such as land, vehicles, installations on land or waters, and movable structures.

The Rural Workers Accommodation Amendment Bill contains a much narrower definition. It only applies to rural premises, which are defined as a farm, an orchard, a pastoral holding, or other agricultural or rural holding. These are the only places where the requirement to provide accommodation will apply. All these rural premises will also be places of work for the purposes of the much broader definition of the occupational health and safety legislation. The Government confirms that the bill continues in force the existing requirement to provide accommodation to rural workers. The bill is not intended to extend the requirement; it just restates it in simple language. The occupational health and safety requirements are not extended beyond what has always existed in rural workers accommodation legislation. Once again I thank honourable members for their contributions, and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.32 p.m.]: I move:

Pages 6 and 7, schedule 1 [6], line 29 on page 6 to line 24 on page 7. Omit all words on those lines.

As I said in the second reading debate, the Coalition believes there should be delineation between the workplace and accommodation, but the bill blurs that aspect. We believe certain standards of accommodation should be set, and we do not question that the bill does that. Frankly, I am aware that on occasions in the past some of my colleagues in the rural industry have not provided proper facilities. Indeed, I know that on occasions in the past the facilities on the properties of my friends and relations, and probably on my own property, were of an inadequate standard. No-one backs away from the fact that the bill should require a certain standard of accommodation.

The Opposition has no problem with the provisions of the bill that detail that accommodation must be provided for people involved in rural activities after working hours. However, we are concerned about the extension of occupational health and safety requirements to such accommodation. I used the throwaway line that most accidents happen in the home. My colleague the Hon. Catherine Cusack recounted that during her youth three families other than hers lived on her family's property. On my property, my grandfather lived in the old homestead, my parents and I lived in the next house, and two other families who worked on the property also lived in accommodation on the property. We never went into their homes. They were their homes, they looked after them and were very proud of them, and we had a great relationship. But neither my grandfather, my father, nor I should have been held responsible for accidents that may have happened in those homes at night. It takes the whole issue to a farcical level.

People who think they can protect workers in that way will simply guarantee that there will be less employment in regional New South Wales. As I said in the second reading debate, if an inspector gives a property owner a ticket, the property owner has to either pay on the spot or prove himself innocent. At present, if an inspector thinks a property owner has done something wrong, the inspector has to take the owner to court and prove that fact. That is the way the Westminster system works. Will we be responsible for this situation?

I have a history of working in this area. Before I studied accountancy I obtained a wool-classing certificate, I worked in shearing sheds across the State and I stayed in the shearers quarters in those sheds. At night in those sheds the behaviour of the large groups of men, who were basically itinerant workers, was pretty rowdy. I have to say that the standard and behaviour of shearers these days is much better than that of the people in the shearing teams I worked with. In those days there was a lot of alcohol drunk at night, and quite often there would be disagreements and boisterous behaviour. Are we extending occupational health and safety into this area? We must think about what we are doing.

The Nationals amendment removes occupational health and safety provisions from the residential aspect. We do not seek to remove occupational health and safety requirements from the workplace; indeed, they are valid in the workplace. The Parliamentary Secretary the Hon. Henry Tsang indicated in his speech, which was written by the Minister's advisers, that the pastoral industry is one of the industries that has a high incidence of accidents. We do not disagree with that; it is absolutely spot-on. But why are we giving these people the added responsibility of occupational health and safety regulations covering the place where people sleep at night, the place where they have their private time and engage in private activities?

The Hon. Henry Tsang: Only the workers.

The Hon. DUNCAN GAY: The Parliamentary Secretary says, "Only the workers." It is a pity he does not listen, and it is a pity he does not understand. The provision that the Coalition seeks to delete applies to no other part of the State. I am unaware that the Government is responsible for public housing tenants. I am also unaware that the Federal Government is responsible for occupational health and safety standards in servicemen's housing after hours, but I am sure that members of this House who are former servicemen will tell me if I am wrong. The Government is putting in place a new set of occupational health and safety standards with respect to farmers. Frankly, it is moving the goal posts too far. The Government has sneaked the provision into a bill that addresses workplace accommodation and is directed at putting in place proper standards. I say: Hear! Hear! We should put in place proper standards, and employers who do not have proper standards in place should be held responsible. But employers should not be held responsible for accidents that happen in that accommodation at night after working hours.

The Hon. HENRY TSANG (Parliamentary Secretary) [4.39 p.m.]: Occupational health and safety principles have always been part of the rural workers accommodation legislation. The amending bill does not disturb this relationship and it does not impose new obligations on employers or controllers of premises. Indeed, the Government opposes Opposition amendment No. 1. Rural workers accommodation legislation deals with the health, safety and welfare of workers at work. It is an occupational health and safety matter. As I pointed out earlier, the Opposition's amendment would omit part 4 of the bill, which simply clarifies the existing relationship between the bill and the Occupational Health and Safety Act 2000. That part sets out the relationship between duties under each Act and, importantly, protects people from being prosecuted twice for conduct that is an offence under both Acts.

The Opposition's amendment would result in an Act that deals with occupational health and safety matters and even harnesses some provisions of the occupational health and safety legislation, but without any clarity about the hierarchy of the two pieces of legislation. There would be no certainty for employers and others about their duties under both Acts. The amendment would expose people to the risk of double jeopardy—being prosecuted twice—if their conduct constituted an offence under both Acts. The Opposition's amendment is not in the interests of workers, employers or controllers of premises. The Government does not support the amendment.

Reverend the Hon. FRED NILE [4.41 p.m.]: There seems to be some contradiction in the way in which the Opposition has moved this amendment. The paper we received from the National Farmers Federation made no reference to this problem with the bill. The National Farmers Federation said it supported the bill and I thought it would have supported this Opposition amendment. It is a puzzle as to how the amendments have now become such a major issue for the Opposition. The section of the original briefing papers on the bill dealing with the background states that a review of the Rural Workers Accommodation Act was conducted by WorkCover, which initiated the bill. Therefore, this bill is intimately related back to WorkCover's role in occupational health and safety. In his second reading speech the Minister for Regional Development stated:

> The review concluded that the occupational health and safety benefits of providing rural workers with accommodation in particular circumstances outweighed any restrictive effect of the requirement to provide it. Stakeholders who were consulted in the course of the review supported retaining the requirement on occupational health and safety grounds.

The Legislation Review Committee stated:

> The Committee is of the view that, given the subject matter of the Bill, the most relevant reference point is the *OH&S Act*, with which it is identical. Further, the Committee is of the view that reliance on a due diligence standard (and the non-inclusion of a 'knowledge' standard) in the Bill is consistent with the policy objective that underlies the *OH&S Act* …

So it seems it is just a normal part of the way in which we observe occupational health and safety. I do not believe it has changed anything. As I understand it, it is not dealing with family homes.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.43 p.m.]: In the second reading debate and in Committee we indicated that this legislation was about accommodation, which included things like shearers' huts, single men's quarters and family houses on farms. At no stage has the Government indicated to us, nor has my reading of the bill indicated, that these premises are not included. The fact is they are quite clearly included. If they are not included, let the Government tell us so.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 15

Mr Clarke	Mr Jenkins	Mr Ryan
Ms Cusack	Mr Lynn	
Mrs Forsythe	Mr Oldfield	*Tellers,*
Mr Gallacher	Ms Parker	Mr Colless
Miss Gardiner	Mrs Pavey	Mr Harwin
Mr Gay	Mr Pearce	

Noes, 26

Mr Breen	Ms Griffin	Ms Robertson
Dr Burgmann	Ms Hale	Mr Roozendaal
Ms Burnswoods	Mr Hatzistergos	Ms Tebbutt
Mr Catanzariti	Mr Kelly	Mr Tingle
Dr Chesterfield-Evans	Mr Macdonald	Mr Tsang
Mr Cohen	Reverend Dr Moyes	Dr Wong
Mr Costa	Reverend Nile	*Tellers,*
Mr Della Bosca	Mr Obeid	Mr Primrose
Mr Donnelly	Ms Rhiannon	Mr West

Question resolved in the negative.

Amendment negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment and report adopted.

Third Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.53 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 27

Mr Breen	Ms Hale	Mr Roozendaal
Ms Burnswoods	Mr Hatzistergos	Ms Tebbutt
Mr Catanzariti	Mr Jenkins	Mr Tingle
Dr Chesterfield-Evans	Mr Kelly	Mr Tsang
Mr Cohen	Mr Macdonald	Dr Wong
Mr Costa	Reverend Dr Moyes	
Mr Della Bosca	Reverend Nile	*Tellers,*
Mr Donnelly	Mr Obeid	Mr Primrose
Ms Fazio	Ms Rhiannon	Mr West
Ms Griffin	Ms Robertson	

Noes, 14

Mr Clarke	Mr Gay	Mr Pearce
Ms Cusack	Mr Lynn	Mr Ryan
Mrs Forsythe	Mr Oldfield	*Tellers,*
Mr Gallacher	Ms Parker	Mr Colless
Miss Gardiner	Mrs Pavey	Mr Harwin

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (INFRASTRUCTURE AND OTHER PLANNING REFORM) BILL

Bill received, read a first time and ordered to be printed.

Motion by the Hon. Tony Kelly agreed to:

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

Second reading ordered to stand as an order of the day.

FIRE BRIGADES AMENDMENT (COMMUNITY FIRE UNITS) BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [4.57 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

One of the most successful and growing bushfire protection initiatives over the past four to five years has been the Community Fire Unit program.

Under this program, groups of residents living close to the urban/bushland interface are trained and equipped by the NSW Fire Brigades to assist with the defensive protection of their homes from bushfire.

The CFU program was first established after the disastrous 1994 Sydney bushfires.

At that time, community feedback to the Fire Brigades included comments that people felt helpless when fire fighting resources were not immediately available in a bushfire emergency. They wanted to help protect their homes but lacked the necessary knowledge and equipment.

The real growth in CFUs occurred in the aftermath of the severe bushfires this State experienced over the Christmas/New Year periods in 2000 and 2001, particularly in and around Sydney.

Today, we have 280 CFUs in various locations, made up of 4700 volunteer members, including 1,640 women.

By October this year, the Fire Brigades anticipates that another 32 units will be established, taking the number of units around the State to 300, with a total of more than 5,000 members. New units are to be established around the Sydney basin and in regional areas, including Albury, Singleton, Goulburn, Nowra and Tweed Heads.

The Units are trained by the Fire Brigades and receive a CFU trailer or box which is equipped with basic fire fighting equipment including a pump, hoses and protective clothing such as overalls, helmets, boots and gloves for each of the members, at a cost of $15,000 to $20,000 per unit.

Typically, a Community Fire Unit will comprise residents who live in a street adjacent to bushland of National Parks and other reserves who want to help the Fire Services protect their homes and those of their neighbours from bushfires.

They do this by:

- undertaking fire prevention work particularly the preparation of properties in the lead up to the bushfire season and assisting with hazard reduction work.

- assisting firefighters during a bushfire with the defensive protection of homes from spot fires and ember attacks.

- assisting with the recovery operations after a bushfire such as bushland regeneration, and

- educating members of the community in relation to fire safety and the prevention of fires.

It is important to emphasise that the role of members of CFUs is to help and support the Fire Services.

They are not intended to replace the specialised, highly trained and equipped fire fighters from the Fire Brigades and the Rural Fire Service.

The Government is committed to supporting the CFU program.

$1.2 million is being provided to the Fire Brigades over the four years of this Government's term to establish further CFUs.

This funding has been supplemented over 2 years by $580,000 from the Natural Disaster Mitigation Program, which is jointly funded by the Commonwealth and State Governments.

Members of CFUs are also covered for workers' compensation in case they are injured and for public liability by the Treasury Managed Fund.

It is the view of the Government that the number of CFUs and the growing community involvement has now reached a level that warrants formal recognition of a Unit's role and a legislative framework for their establishment, training and operation.

The amendments to the *Fire Brigades Act 1989* proposed in the *Fire Brigades Amendment (Community Fire Units) Bill* fulfils these objectives.

Among other things, the Bill creates a new Division within the *Fire Brigades Act* referring specifically to Community Fire Units.

The Commissioner of the NSW Fire Brigades will be authorised to establish CFUs within a fire district and to determine their areas of operation.

Clearly, the establishment of a CFU will be dependent upon the level of interest by local residents and an assessment of the bushfire risks, which would be conducted by the Fire Brigades.

A new provision (Section 74C) clearly sets out the objects and functions of CFUs, to which I have already referred.

The Commissioner will be authorised to appoint persons as members of a CFU.

And a new Section 74E will also require the Commissioner to provide the necessary training and equipment to CFUs.

A number of other existing provisions of the Fire Brigades Act will be amended to confirm:

- firstly, that any damage caused by a CFU member in the exercise of the Unit's function to assist fire fighters during a bushfire or undertake fire prevention work is to be considered as damage by fire for the purpose of any insurance policy against fire damage (Section 38), and

- secondly, that members of CFUs will be protected from liability when they have performed their functions in good faith (Section 78).

Finally, the Bill contains savings and transitional provisions to effectively acknowledge the existence of the 280 CFUs which have already been established and their members.

The Community Fire Unit program has, by any measure, been an outstanding success, and it is a credit to the NSW Fire Brigades.

Word is spreading fast about the program—so much so that the Fire Brigades have received 160 applications to establish new units.

The Government is committed to providing the necessary resources for CFUs to flourish but more than that it wants their role and functions formally recognised in legislation.

I would also like to take the opportunity to make some additional comments.

Following a meeting between members of my staff, a representative of the NSW Fire Brigades and representatives of the Greens, an undertaking was given that I would clarify some matters about the important roles of Community Fire Units—or CFUs—in relation to hazard reduction and bushland regeneration.

I am happy to do that now.

As described in the Bill in proposed section 74 (c) (2) (c), one of the very important roles of a CFU is to undertake fire prevention work by encouraging their neighbours to prepare their homes before the start of the bush fire danger period—generally on October 1 each year—and to assist with hazard reduction work such as clearing and pile burning.

I want to assure the House that any clearing undertaken by CFU members for the purpose of hazard reduction will not be indiscriminate.

This work has been and will continue to be carried out under the supervision of the Fire Brigades and in accordance with the Bush Fire Environmental Assessment Code.

This Code, in most cases, governs the environmental considerations to be taken into account when conducting hazard reduction works.

In essence, this means that CFU members can and do assist in controlled burning to reduce potential bushfire hazards but when burning is not appropriate for environmental reasons, then the clearing will be undertaken by manual means, in other words by hand, raking or slashing.

Members of CFUs also have a role to play in bushland regeneration and this is reflected in the Bill at Section 34 (2) (c).

Many of us would know that bushland is most vulnerable to infestation by weeds, such as lantana, in the aftermath of a bushfire, before the native plants have had an opportunity to re-establish.

CFU members are encouraged to monitor bushland areas near their homes following bushfires to ensure that weed growth does not prevent the regeneration of native flora.

In this regard, members often work closely with local bush care groups whose members, as we know, are well trained in bushland regeneration techniques, the identification of noxious weeds and the appropriate means of their removal.

I look forward to the support of the House for this important amendment to the *Fire Brigades Act*, which recognises the important role that Community Fire Units fulfil within our community and provides a legislative framework for their establishment, training and operations.

I commend the Bill to the House.

The Hon. CHARLIE LYNN [4.58 p.m.]: The Fire Brigades Amendment (Community Fire Units) Bill amends the Fire Brigades Act to establish a legislative framework for the establishment of community fire units, which are made up of volunteer residents living close to bushland who are trained by NSW Fire Brigades to assist them should a fire break out, thus enabling them to protect their homes. They are given fire protection clothes, basic firefighting equipment, and valuable training. The purpose of the units is not to replace NSW Fire Brigades or the Rural Fire Service but to help them to protect their homes.

In some instances community fire units will be the first on the scene, providing critical work in stopping the spread of the fire and critical intelligence on it. In the non-fire season they help prepare properties and surrounds to avoid potential fire disasters, through hazard reduction and raising community awareness on fire safety issues. As I said, community fire units are made up of volunteers and they do a fantastic job. Currently there are 268 units with 4,700 volunteers. I understand that more units will come on line in the near future. The bill formally recognises the existence and role of community fire units as a division of the New South Wales Fire Service, and it authorises the commissioner to establish them in various fire districts.

Importantly, new section 78 specifically provides that damage caused by a member of a community fire unit, in the exercise of their functions in good faith, is to be considered damage by fire for the purpose of any insurance policy against fire damage, and as such will be protected from liability, as is the case with the Rural Fire Service and the State Emergency Service. The Coalition has always encouraged and supported community participation in emergency service organisations, and this is a sensible bill that protects our hardworking volunteers undertaking a very valuable task for the community, particularly in times of emergency. I congratulate the Government on introducing the bill, and I am pleased to support it.

Mr IAN COHEN [5.00 p.m.]: On behalf of the Greens I welcome the Fire Brigades Amendment (Community Fire Units) Bill. The volunteer work done by people living in bushfire-prone areas is to be highly commended. The bill provides for the New South Wales Fire Brigades commissioner to establish community fire units [CFUs] and appoint members. The objects of such units are to assist with the defensive protection of homes during bushfires and to carry out other protection work under the direction of the commissioner. It is pleasing to see that the work done by volunteers in the protection of homes during the course of bushfires will be recognised in legislation. Under the bill, one function of a community fire unit is to:

> … undertake fire prevention work by encouraging the preparation of properties in advance of the bush fire danger period and assisting with hazard reduction work such as clearing and pile burning.

The preparation of properties, such as clearing gutters, plays an important preventative role in limiting damage caused by bushfires. Hazard reduction can also be important in this respect, but it must be done in a responsible manner. Clearing debris, noxious weeds and dry undergrowth by hand from bushland, and then pile burning, can be a very effective preventative measure as it has a low impact on bushland. I had some concerns about community fire units being given a mandate to clear vegetation. Concerns had been raised about such clearing being done overzealously, with negative environmental impacts. However, I have been assured by the New South Wales Fire Brigades that activities such as clearing and hazard reduction burning would not be undertaken by community fire units without supervision and the presence of the New South Wales Fire Brigades.

As such, these activities would need to be undertaken in accordance with the codes of practice and environmental policies of the New South Wales Fire Brigades. Members of community fire units are to be subject to the operational guidelines of the commissioner. Any hazard reduction must be done in a responsible manner, and community fire units must be given adequate education and training in regard to conservation issues. There is a need to correct the common misconception that responsible fire management always involves burning to reduce moderate and high fuel loads generally throughout the landscape, irrespective of where they occur. Rather, such activities should be strategically planned, in proximity to vulnerable assets. Many vegetation communities and plants cannot survive frequent fire, and for this reason frequent fire has been listed as a key threatening process by the New South Wales Scientific Committee under the Threatened Species Conservation Act.

Another function of community fire units is to assist firefighters during a bushfire, especially in the defensive protection of houses and while waiting for firefighters to arrive. This is a sensible function which recognises the valuable contribution of members of the community in fire areas in minimising damage and working hand in hand with fire crews. At the same time, this function implicitly recognises that properly trained firefighters have the core function of fighting fires at the main fronts. However, on many occasions I have indicated that floating embers before and after the main front passes can cause significant damage. If window glass is broken before the main front passes through, embers may float through the broken window and enter a house, setting the curtains ablaze. Often that is the main reason a house goes up in flames.

Community fire units can assist with post-fire recovery operations, including bush regeneration and the removal of debris. This could be a very valuable function of the units. Contribution to bush regeneration by community fire units would be welcomed by the Greens. Adequate clear-up and regeneration is often lacking after a bushfire. Everyone is so relieved that the fire is over that they often do not take the next step of recovery operations. This can be a great opportunity to plant appropriate native vegetation, rather than letting noxious weeds reclaim the burnt land. However, I seek an assurance that adequate education and training will be provided in this regard. Certainly, many species, particularly rainforest species, can be planted around houses. While they will not necessarily survive a fire, they can act as a fire retardant during a fire.

Education is to be another function of the community fire units. The Greens support this function. The role of the units within their communities should include an educative function about fire prevention and safeguarding homes against fire damage. Once again, however, I stress that they would have to be properly trained to carry out this role. Education and community awareness material needs to focus especially on the threat to the environment and property of the inappropriate use of fire, particularly burning that is too frequent, extensive in area, of excessive intensity, badly timed or carelessly implemented.

Under this legislation, any person can be appointed as a member of a community fire unit, noting that members are generally volunteers who live in the bushland area for which the unit is established. Units generally comprise six to 12 members. While I am sure that the majority of volunteers are sensible and well intentioned, there has been some evidence of volunteer firefighters starting fires themselves. A publication by

the Australian Institute of Criminology, "Bushfire Arson: A Review of the Literature" by Matthew Willis in 2004, states:

> Most studies of arson identify a small proportion of cases where fires are lit by the very people charged with preventing and suppressing them—firefighters. Despite the phenomenon not occurring in great numbers, and especially considering the very many volunteer firefighters who provide valuable and committed service to the community, firefighter arson is considered sufficiently serious to warrant special consideration. A small number of studies have examined very closely the motives behind firefighter arson and the types of firefighters who light malicious fires.
>
> These studies suggest that firefighters are most likely to start fires to generate excitement and thereby relieve inactivity, or gain recognition or be treated as a hero for putting out the fire.

One recommendation of the report is to "examine and analyse the application of psychological screening tools for the selection of paid and volunteer firefighters". I understand that a risk assessment has been done and that screening will not occur prior to entry to community fire units. I also understand that these units are community based and that the people involved would be protecting their own properties, so presumably they would not wish to start a fire that could endanger their home. However, I urge the Government to consider background checks for CFU members nonetheless, such as those are carried out for entry to the Rural Fire Service. The bill provides for the training and equipping of community fire units by the commissioner "as the Commissioner considers necessary".

Since 1980 at least 16 volunteer firefighters have lost their lives while protecting the community from bushfires. Firefighters work in life and death situations. St John Ambulance volunteers need to attain a Senior First Aid certificate, as well as further training requirements and skills maintenance programs. I am told that members of community fire units attend two training sessions per year, run by the New South Wales Fire Brigades, with presentations from the Rural Fire Service, St John Ambulance, and the National Parks and Wildlife Service. Such a training session held recently at St Ives attracted more than 500 people. This is encouraging, and I hope that the training provided continues to be developed and that there is adequate follow-up. The Greens would seek to ensure that community fire units are provided with adequate and appropriate protective clothing, equipment, machinery, and communications systems.

The bill will protect members of community fire units from liability, in line with the protection afforded to fire brigade members. If CFU members cause damage to property fighting a fire, they should not be liable. It is interesting to note that the community fire units are set up under the Fire Brigades Act and not the Rural Fires Act, which is the principal legislation in New South Wales covering the prevention, mitigation, control and management of bushfires. The Greens support the formation of a single fire service under a single Act of Parliament amalgamating the New South Wales Fire Brigades and the Rural Fire Service, to remove overlaps and inconsistencies. This single service would comprise permanent and volunteer brigades. The Greens are keen to commend the bill to the House.

Reverend the Hon. FRED NILE [5.10 p.m.]: The Christian Democratic Party supports the Fire Brigades Amendment (Community Fire Units) Bill. It is one of the more pleasant bills to support, and I am sure there will be no opposition to it in this House. I commend the Government and the current Minister for the support they have given to these community fire units. It was an imaginative idea to set them up, and they were first established after the disastrous 1994 bushfires and expanded after the severe bushfires in 2000-01. Although they have been operating, this legislation gives their role as community fire units [CFUs] legislative recognition.

The bill provides for the New South Wales Fire Brigades commissioner to establish CFUs and appoint members. The New South Wales Fire Brigades functions in metropolitan areas, and I note that CFUs are being formed not only in Sydney, Newcastle and Wollongong but also in Albury, Goulburn, Nowra, Tweed Heads and Singleton. The question that arose in my mind is how does this relate to the Rural Fire Service, especially in country areas and particularly in country towns? Would a CFU operate in the town and the Rural Fire Service operate outside the town?

Again, will the Rural Fire Service be given the same powers as the Fire Brigades to establish CFUs in country centres? Obviously, CFUs have a lower level of training and experience than members of either the Fire Brigades or the Rural Fire Service. The Fire Brigades has full-time employees, and even though members of the Rural Fire Service are volunteers they usually have a great deal of experience and training and become almost the equivalent of Fire Brigades employees. In a sense, the CFUs are amateurs but they have been given a very important role. Should the Rural Fire Service have some role in setting up these CFUs as well?

I note that the bill provides that if damage is caused by a member of a CFU in the line of duty, it is covered by insurance. It also provides protection for liability. What happens if a CFU member is injured fighting a fire? A fire could flare up or could be more serious than first anticipated and there could be some casualties. Are CFU members covered in the same way as members of the Rural Fire Service and the Fire Brigades?

This is another cause for praise of the volunteer spirit in Australian society, which is almost unique. Many other countries envy Australia because, as was shown during the Olympic Games, Australians volunteer. Apparently there are not many countries in which people volunteer to do things without being paid. Australia is out in front, even compared with the United States of America.

The Hon. Charlie Lynn: Remember the Cooee March?

Reverend the Hon. FRED NILE: That is right, and volunteering for service in the military too. There are 268 CFUs with 4,700 volunteer members already. We congratulate them on their willingness to protect our society from the harmful impact of bushfires. I support the bill.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [5.14 p.m.], in reply: I thank honourable members for their contributions to this debate and for their support not only for members of the CFUs but also for members of the Fire Brigades and the Rural Fire Service. There has been no call to set up CFUs by the Rural Fire Service because they are normally part-time anyway and they are already at a higher level. The CFUs are an interface to assist the Fire Brigades or to mop up after it. They are not front-line troops. Again, I thank members for their contributions to the debate and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SUPERANNUATION LEGISLATION AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.17 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.

The *Superannuation Legislation Amendment Bill 2004* introduces miscellaneous amendments to public sector superannuation Acts to address a variety of issues. The Acts being amended are the *First State Superannuation Act 1992*, the *Police Association Employees (Superannuation) Act 1978*, the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, the *Superannuation Act 1916* and the *Superannuation Administration Act 1996*. Overall the amendments are cost-neutral to Government.

Some of the amendments will directly benefit some members of the public sector superannuation schemes; others are relatively minor affecting the administration of public sector superannuation arrangements.

I will first list the amendments that directly benefit members. These amendments enable acceptance of Federal Government co-contributions, allow certain former public sector employees to make contributions and roll-ins into First State Super, enable the SAS Trustee Corporation to ensure certain death benefits are not subject to contributions tax, allow certain invalidity pensions paid from the State Superannuation Scheme to be paid as complying pensions for tax purposes, and clarify the definition of "nominated" salary for senior executive officers.

The amendments that relate to administrative matters will improve the operation of the legislative provisions applying to hurt on duty claims under the Police Superannuation Scheme, rationalise the legislative provisions applying to the transfer of superannuation entitlements when an employee ceases public sector scheme membership, confirm the power of the FSS and SAS Trustee Corporations to delegate their function of determining disputes to their internal Disputes Committees, and enable the SAS Trustee Corporation to pool insurance experience across employers.

I will now describe the amendments in more detail.

The first set of amendments affecting public sector scheme members will enable Federal Government co-contributions to be accepted in the State Authorities Non-contributory Superannuation Scheme (SANCS) for employees who are members of the State Superannuation Scheme, the State Authorities Superannuation Scheme and the Police Superannuation Scheme. Around

40% (or 40,000) of these members will qualify for the co-contributions because they are already required to make after-tax superannuation contributions to these schemes. These members are also automatically covered by SANCS (also known as the Basic Benefit or 3% scheme).

The bill enables the SAS Trustee Corporation, which is the trustee for the defined benefit schemes, to accept co-contributions into SANCS on behalf of members of the defined benefit schemes. The bill provides for the creation of a separate accumulation account for each affected member for this purpose.

Another amendment affects employees covered by First State Super when they stop working in the public sector. Currently they cannot continue to make contributions or roll-in benefits from other superannuation funds even though they retain a First State Super account. This has been a source of complaint from current and former public sector employees who would prefer to consolidate their superannuation accounts in First State Super, especially employees such as teachers and nurses, who may regularly move between public and private sector employment. The bill will allow former public sector employees with First State Super accounts to continue to make personal contributions and roll-in other superannuation benefits into those accounts.

The bill contains amendments that relate to the treatment of lump sum death benefits payable from the schemes governed by the *Police Regulation (Superannuation) 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, and the *Superannuation Act 1916*. Under these Acts the trustees must reduce various benefits to offset the employer cost of the fifteen percent contributions tax payable to the Federal Government. However, a benefit payable to dependants on the death of a former member is exempt from contributions tax. In some cases the benefit may already have been reduced prior to payment. For example, a person may cease scheme membership on resignation from employment but elect to preserve a benefit in the scheme. At that point the value of the value of the benefit is reduced to offset contributions tax, and crystallised. If the person subsequently dies before being paid the benefit, and the benefit becomes payable as a lump sum to a dependant, then the earlier benefit reduction becomes inappropriate. The bill allows the trustees to augment the benefit to the pre-reduced value. The augmentation does not result in a cost to the Government because of tax deductions available to the trustees for the purpose of carrying out such augmentation.

Other amendments would affect a small number of people receiving invalidity pensions from the State Superannuation Scheme, which is governed by the *Superannuation Act 1916*. Under the Act invalidity pensioners may be recalled to service if their health is restored. This provision makes invalidity pensions 'non-complying' pensions for tax purposes because technically they are not payable for life. The non-complying status of these pensions can result in adverse tax implications for some invalidity pensioners. The bill allows invalidity pensioners who are at least fifty five years of age to elect to have their pension paid in a complying form to reduce the potential for adverse tax outcomes.

The last set of amendments affecting members relates to the definition of nominated l salary as it applies to Senior Executive Officers who are members of the State Superannuation Scheme or the State Authorities Superannuation Scheme. The purpose of the amendment is to put beyond doubt that optional member contributions made by these Officers to another superannuation fund do not reduce the nominated salary which forms the basis of determining their superannuation entitlements. This will ensure that the effect of optional superannuation contributions on nominated salary is no different from the effect of any other item that an Officer may include as part of a Total Remuneration Package.

I now turn to the amendments that affect relatively minor aspects of the administration of public sector superannuation arrangements.

The bill contains amendments that will improve the operation of legislative provisions affecting the Police Superannuation Scheme, which covers Police Officers who were recruited prior to 1 April 1988. Payments in respect of death or injury arising as a consequence of their employment are paid from the Scheme in accordance with the *Police Regulation (Superannuation) Act 1906*. The Act requires the Commissioner of Police, in most instances, to determine whether a death or injury has resulted from being hurt on duty. However, there is currently a lack of clarity about whether the Commissioner is empowered to make a hurt on duty determination in respect of certain types of claims for payment of a gratuity. Judges of the former Compensation Court found that some of the legislative provisions currently preclude the Commissioner of Police from making a hurt on duty decision in some circumstances. The bill amends the legislative provisions to make it clear that the Police Commissioner is to make the hurt on duty determination in these circumstances. The provisions were developed following extensive discussions between the SAS Trustee Corporation and NSW Police, and are supported by the Minister for Police and the Police Association of NSW.

Also in relation to the Police Superannuation Scheme, the bill validates hurt on duty determinations that were made in the past by the Commissioner of Police without first being requested to do by the SAS Trustee Corporation. In addition the amendments will allow the Commissioner of Police to make these determinations in future without first being requested to do so by the trustees.

A further aspect of the bill relevant to the Police Superannuation Scheme concerns appeal rights where a Police Officer is not satisfied with a determination made by the SAS Trustee Corporation about a claim for a hurt on duty benefit. Currently there are conflicting legislative provisions in the *Police Regulation (Superannuation) Act 1906* and the *Superannuation Administration Act 1996* prescribing the avenues for appeals. The latter Act gives Police Officers a right of appeal to the Industrial Relations Commission in Court Session, while the former Act gives the right of appeal to the District Court. The bill makes it clear that rights of appeal will only be to the District Court. These amendments are supported by the Minister for Police, NSW Police and the Police Association of NSW.

The bill deals with amendments to rationalise certain provisions in the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, and the *Superannuation Act 1916*. The Acts have different ways of dealing with the superannuation entitlements of employees whose employment is transferred to the non-Government sector, depending on whether the transfer is a result of a 'Government privatisation initiative' or of a 'Government initiative'. In effect the provisions have the same outcome. The amendments in the bill amalgamate and streamline the provisions to facilitate administration and do not represent any changes in policy. The amendments also enable regulations to be made to prescribe an employer's liabilities in respect of benefits or contributions that may be payable in any period in which an employee may elect to transfer employment or superannuation entitlements before the election takes effect.

The *Superannuation Administration Act 1996* specifies that one of the principal functions of the SAS and FSS Trustee Corporations is to determine members' disputes about decisions made by the trustees. The bill makes it clear that the Trustee Corporations may delegate this function to their internal disputes committees.

Finally, the bill amends the *State Authorities Superannuation Act 1987*, the *State Authorities Non-contributory Superannuation Act 1987*, and the *Superannuation Act 1987* to enable the SAS Trustee Corporation to equitably pool insurance experience among scheme employers, on the basis of actuarial advice.

I commend the bill to the House.

The Hon. GREG PEARCE [5.17 p.m.]: This is an omnibus bill that amends six superannuation Acts: the Police Association Employees (Superannuation) Act, the Police Regulation (Superannuation) Act, the Superannuation Act, the State Authorities Superannuation Act, the State Authorities Non-Contributory Superannuation Act, and the Superannuation Administration Act. By and large the amendments are of a technical nature and do not introduce policy changes. Some of the amendments will be a direct benefit to members of public sector superannuation schemes, while, as I say, other amendments are relatively minor, affecting the administration of public sector superannuation arrangements.

Among other things, the bill clarifies entitlements to hurt-on-duty claims by police. It also requires that appeals relating to hurt-on-duty claims be determined by the District Court. The bill enables State superannuation authorities to accept co-contributions by the Commonwealth and allows former public employees such as teachers and nurses to continue to belong to First State Super if they leave the public sector. The bill also enables the superannuation authorities to ensure that the superannuation contributions tax does not affect death benefits. It makes a number of other minor amendments.

The bill has been around a long time. The second reading speech was delivered in the other place in November last year and I am surprised and disappointed that the Government provided us with its proposed amendments to the bill only an hour ago. The amendments seem to have been prepared in March. I do not know to what extent the Government has consulted with the superannuation industry and the beneficiary representatives about these further amendments, which seem to be technical in nature. I ask the Minister or the Parliamentary Secretary, when moving the amendments in Committee, to address consultation and explain why the amendments were not made available in a more timely manner.

Reverend the Hon. FRED NILE [5.20 p.m.]: The Christian Democratic Party is pleased to support the Superannuation Legislation Amendment Bill, which makes a number of amendments to superannuation legislation. We are particularly pleased the bill resolves some of the concerns of the New South Wales Police Association relating to the police superannuation scheme, in particular, the operation of "hurt on duty" provisions. It also clarifies a decision by the State Authorities Superannuation Trustee Corporation [STC] about "hurt on duty" claims under the Police Superannuation Scheme which gives rise to a right of appeal to the District Court only. The New South Wales Police and the New South Wales Police Association support these amendments.

The bill removes the conflicting requirements for appeals under the two Acts. One Act requires appeals to be made to the District Court and the other to the Industrial Relations Commission. This legislation clarifies that situation. A number of other amendments deal with Federal Government co-contributions in First State Super [FSS], the STC and so on. The amendments will not have any effect on government expenditure or revenue. That is very clever of the Government to introduce so many amendments at no cost—so they say. We are pleased to support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.22 p.m.], in reply: I thank all honourable members who contributed to the debate. The bill addresses a variety of issues affecting the superannuation of public sector employees. The Government will be moving four amendments in Committee to clarify the calculation of shift loadings in the Superannuation Act 1916. The method of calculation as currently worded has the unintended consequence that shifts for superannuation purposes are not counted while a shift worker is on leave, even though an allowance is payable under an award. The disadvantage arises because shift workers who take a period of extended leave or sick leave immediately before retirement could suffer an immediate reduction in superannuation salary. The amendments will make clear that shifts for superannuation purposes may be counted while a shift worker is on leave. As to consultation on the amendments, which was raised by the Opposition, the Government has consulted with the superannuation trustees and representatives of public sector unions. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedules 1 to 3 agreed to.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.25 p.m.], by leave: I move Government amendments Nos 1 to 4 in globo:

No. 1 Page 13, schedule 4. Insert after line 11:

7 Validation in respect of shift allowance

The regulations may contain a validation provision substantially to the same effect as clause 42 of schedule 25 to the *Superannuation Act 1916* in respect of the loading (if any) to be treated as part of an employee's salary for the purposes of this Act.

No. 2 Page 18, schedule 5. Insert after line 17:

10 Validation in respect of shift allowance

The regulations may contain a validation provision substantially to the same effect as clause 42 of schedule 25 to the *Superannuation Act 1916* in respect of the loading (if any) to be treated as part of a contributor's salary for the purposes of this Act.

No. 3 Page 24, schedule 6. Insert after line 6:

[18] Schedule 24 Loading in respect of shift allowance

Omit the definition of ***S*** in clause 2 (5). Insert instead:

S is the sum of:

(a) the number of such shifts the contributor actually worked during the relevant period, and

(b) the number of such shifts the contributor would have actually worked during the relevant period but for the contributor being on leave, being leave for which a shift allowance or an equivalent allowance or loading (including that part of annualised salary that replaces shift allowance in respect of the contributor) is paid.

No. 4 Page 24, schedule 6 [19], proposed Part 11 of schedule 25. Insert after line 21:

42 Validation

Anything done or omitted to be done, on or after 1 March 1999, that would have been validly done or omitted had the amendment made to clause 2 (5) of schedule 24 by schedule 6 [18] to the *Superannuation Legislation Amendment Act 2005* been in force at the time that the thing was done or omitted, is validated.

These amendments clarify the calculation of shift loading in the Superannuation Act 1916. The method of calculation was previously amended in 1998 to address an issue relating to how shifts were counted. An unintended consequence of that amendment was that the shifts for superannuation purposes are not counted while a shift worker is on leave, even though an allowance is payable under an award. The disadvantage arises because shift workers who take a period of extended leave or sick leave immediately before retirement will suffer an immediate reduction in superannuation salary. As salary on retirement affects the level of superannuation entitlement, the sudden reduction in salary leads to a corresponding reduction in benefits. This is unfair to shift workers because it is common for employees to take periods of leave immediately before retirement. The amendments make clear that the calculation of a shift loading that counts for superannuation purposes applies to leave during a relevant period during which a shift allowance or equivalent is paid, in addition to the shift actually worked by a shift worker. I commend the amendments.

The Hon. GREG PEARCE [5.27 p.m.]: As I said in the second reading debate, the Opposition has only just been handed these highly technical amendments, which we have not had the opportunity to examine. It is not our job to get the legislation correct; it is the responsibility of the Government. Obviously the Government is in a shambles today. One can only speculate that its members are holding meetings behind closed doors in an attempt to work out what to do about their State Council and the no-confidence motions to be moved against Minister Costa and others. It is the Government's duty to make sure the technical aspects of the bill are correct. Accordingly, we will not oppose the amendments.

Ms LEE RHIANNON [5.28 p.m.]: The Greens will not oppose these amendments. We understand that often a bill needs finetuning at the last minute. In the context of an ageing Australian population, properly managed and adequate superannuation systems are more important than ever. Unfortunately, "proper" and "adequate" are not adjectives that can be used to describe the superannuation schemes for public servants and politicians in New South Wales. This bill seeks, amongst other things, to amend First State Super [FSS], yet none of the proposed amendments address or even acknowledge the ongoing problems in FSS and the State Authorities Superannuation Scheme [SASS].

The Auditor-General has identified for more than a decade that FSS and SASS in particular are plagued by problems of reconciliation, late payments and the calculation of superable salary. The 2003 Auditor-General's Report noted that unreconciled superannuation balances continue to be an issue. Money is being taken directly from the pay of individual employees with no guarantee that it will ever find its way into their accounts. When SASS deductions are not reconciled, deductions overpaid by employees are not refunded. The employers keep the overpayment and the employees get reimbursed if they find out and complain about their overpayment.

In the two years prior to the financial year ending on 30 June 2003 the SASS Clearing Account contained an unreconciled and unsubstantiated combined total of almost $1 million, and that was an improvement on previous years. There is also the issue of the continuation of late payments. Late payment not only breaches the First State Superannuation Act 1992, it also ensures that members of First State Super [FSS] are unable to accrue interest on their accounts. Under the Act the employer contributions for FSS are to be paid within one month of the end of the contribution, but that is not happening. Finally, the superable salary of public servants is not being calculated correctly. The calculation of superable salary directly affects the benefits that SASS members receive when they retire, either as a lump sum or as regular payments that are made long into retirement.

Despite a series of reports from the Auditor-General identifying these serious problems with the State's superannuation schemes, various Ministers have either refuted claims or have pleaded ignorance. I quote former Treasurer Mr Michael Egan, "I am not sure whether anyone is losing out … But I can assure you that nobody will miss out." Such statements are symptomatic of a tired and arrogant government. The former Treasurer's comment is in direct contravention of the findings of the 2003 Auditor-General's Report, which states on page 7 of volume 3:

> There are still some problems with employees' and employers' contributions. Some agencies are not paying in line with the administrators invoice, paying on time, holding authorisations for optional deductions, supplying the administrator with necessary information, treating the impact of leave without pay correctly, or timing the annual adjustments correctly.

So while proper and adequate superannuation for public servants remains under threat from this Government's failure to act, New South Wales State politicians continue to receive contributions from one of the most generous superannuation schemes in the country. The Federal Government decided to support Federal Labor and replace the overgenerous and overprotective Federal superannuation scheme for politicians, but the New South Wales Government continues to flounder on the issue. Despite promising in February this year to follow Canberra's lead and reduce superannuation contributions to 9 per cent of income, the Premier has done nothing. When Reverend the Hon. Fred Nile came back into Parliament last year, he also came back into a superannuation scheme that pays contributions of up to 80 per cent of income.

Reverend the Hon. Fred Nile: I do not have any deductions from my salary for superannuation. I am ineligible.

Ms LEE RHIANNON: I acknowledge the interjection from the honourable member. I may have made a mistake, but I think he would certainly agree with me about the very generous payments overall. What is correct, however, is that when a former member of this Parliament, Tony Burke, left us after only 15 months he became eligible for a payout of $16,000. This Government's failure to act to secure the superannuation of public servants while simultaneously ensuring a ridiculously overgenerous superannuation scheme for politicians is a travesty. I call on the Carr Government to act now so that tireless public servants can enjoy their retirement comfortable in the knowledge that they are receiving their full entitlements. I think it is also time that the Premier followed the lead of Federal Labor and reformed the Macquarie Street very, very generous fund.

The Hon. Michael Gallacher: Did you not once say, though, that members of the Greens should not do any more than eight years; that they should only do one term?

Ms LEE RHIANNON: I have said that I agree with limited terms. It is how you define limited terms.

[*Interruption*]

I am happy to acknowledge Mr Primrose having a laugh about the matter. Yes, I do not think people should be here forever.

The Hon. Michael Gallacher: Will you be standing at the next election when your time comes around again?

Ms LEE RHIANNON: Yes, I will be.

The Hon. Duncan Gay: Why am I not surprised? They have broken every promise they have ever made.

Ms LEE RHIANNON: I did not make a promise about that. My commitment is—

The Hon. Duncan Gay: Of course you made a promise. You broke it—like everything else!

Ms LEE RHIANNON: I do not make promises to you, Mr Gay, but what I have said is that I do not think people should be here forever.

The CHAIR: Order! I remind members that when they are given the call they should address only the amendments under consideration and not engage in an amplified conversation with other members across the Chamber. Members, particularly those on the Opposition side of the Chamber, should not interject on the member with the call.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.34 p.m.]: If I may respond to some of the comments made by Ms Lee Rhiannon about the reform of superannuation entitlements of New South Wales parliamentarians. The Premier stated on 12 February 2004 that it was inevitable that New South Wales and the other States would follow the lead of the Federal Parliament in closing down existing superannuation entitlements. He further stated that New South Wales would institute a new 9 per cent government contribution scheme for those who enter Parliament at the next election. The federal parliamentary superannuation scheme was closed with effect from the election held on 9 October 2004.

All new Federal members of Parliament are eligible for a 9 per cent government contribution to be paid into a fund of their choice. The new Federal arrangements also apply to former members of Parliament who are re-elected after a break in parliamentary service. Cabinet has approved the 9 per cent arrangement for parliamentarians entering New South Wales Parliament on or after the next State election in 2007 and a bill for that purpose is currently being drafted. It is envisaged that the New South Wales arrangements will mirror the recent changes to Federal parliamentary superannuation. I presume that will satisfy Ms Lee Rhiannon?

Ms LEE RHIANNON [5.35 p.m.]: I thank the Hon. Henry Tsang for informing members of those developments. They will be welcomed. Once again, I would be interested in the comments of the Leader of the Opposition as I noticed that, whenever we talk about superannuation for members of Parliament, he gets stung.

The Hon. Michael Gallacher: You said you thought Ian Cohen should not have stood for re-election.

Ms LEE RHIANNON: No, I did not. I acknowledge the interjection. Once again the Leader of the Opposition has been stung and now he has had time to deflect the matter. What I have said is that members of Parliament should not be around forever. Poor Mr Gallacher gets stung when he gets worried about his future superannuation.

Reverend the Hon. FRED NILE [5.36 p.m.]: The Christian Democratic Party supports the amendments moved by the Government relating to shift allowance. As I interjected earlier, the parliamentary superannuation body ruled that I was not eligible for superannuation after having been re-elected and, in fact, it cancelled a small pension I was receiving. I was no longer permitted to receive that pension. So it cost me about $30,000. I did not realise that when I resigned.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.36 p.m.]: With regard to the timeliness of the payment of superannuation contributions, Pillar Administration has been working with employer organisations, including the Department of Education and Training, to improve the timeliness and completeness of information

and contributions. Most employers now provide contribution information in electronic format, allowing straight-through processing. For example, Pillar now receives 90 per cent of contributions in electronic format from First State Super employers. Pillar advises that member and employer contributions are now coming in on time. Pillar also advises that the Department of Education and Training provides full file information on each member, making it easier to allocate contributions correctly.

I note that volume 6 of the Auditor-General's 2003 report to Parliament, deals at page 179 with the Department of Education and Training and refers to whether the department correctly deducted and accounted for employee and employer superannuation contributions. The report stated that the department substantively complied with the legislation. As to the problem with superable salary, I am not aware of any instance of incorrect superable salary affecting employees' superannuation benefits. I understand that incorrect salaries may be reported from time to time and that employers will send amended advices. Such advice could be in respect of overstated or understated salary. These situations are generally fixed before they have an effect on employees' superannuation entitlements. Pillar Administration advises that over the past 20 months it has not had a single complaint about superable salary. I commend the amendments to the Committee.

Amendments agreed to.

Schedule 4 as amended agreed to.

Schedules 5 as amended agreed to.

Schedule 6 as amended agreed to.

Schedule 7 agreed to.

Title agreed to.

Bill reported from Committee with amendments and passed through remaining stages.

TRANSPORT LEGISLATION AMENDMENT (WATERFALL RAIL INQUIRY RECOMMENDATIONS) BILL

Bill received, read a first time and printed.

Motion by the Hon. Henry Tsang agreed to:

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

Second reading ordered to stand as an order of the day.

PETROLEUM (SUBMERGED LANDS) AMENDMENT (PERMITS AND LEASES) BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.44 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the reading speech incorporated in *Hansard*.

Leave granted.

The New South Wales *Petroleum (Submerged Lands) Act 1982* is part of a set of complementary legislation governing offshore petroleum exploration and development shared by the Commonwealth, all States and the Northern Territory.

The NSW legislation applies to petroleum resources in submerged lands adjacent to the State up to a limit of 3 nautical miles.

The objects of this bill are to amend the *Petroleum (Submerged Lands) Act 1982*, to implement recommendations arising from a National Competition Policy review.

The amendments proposed are minor and mirror those already made to the *Commonwealth Petroleum Submerged Lands Act 1967*.

The National Competition Policy review undertaken in 2000 concluded that the nation's offshore petroleum legislation was free of significant anti-competitive elements.

Some restrictions on competition were identified, for example in relation to safety, the environment or the manner in which petroleum resources are managed.

These restrictions were considered appropriate given the net benefits they provide to the community as a whole.

The review identified one element of the legislation where scope existed to enhance competition. This relates to the total period for which the holder of a petroleum exploration permit can retain the permit.

The holder of an exploration permit that is awarded in NSW, as of now, can hold the permit for anywhere between six years (if there is no renewal) and a theoretical maximum of 46 years, or longer if extension provisions are applied.

The review concluded that, in the interests of making exploration acreage available to subsequent explorers more quickly, a limit should be placed on the number of times an exploration permittee can renew the title.

This bill proposes that, in the future, exploration permits be able to be renewed no more than twice. This will establish a maximum period of 16 years, ignoring the possibility of extensions in some circumstances.

The National Competition Policy review also concluded there was scope to reduce potential compliance costs for industry in relation to retention leases.

A retention lease is a holding right available if a petroleum discovery is currently uneconomic for exploitation, but is likely to become economic within 15 years.

Currently the holder of a retention lease can be asked to review the commerciality of a discovery twice within the five year term. This was considered excessive.

Accordingly, the bill proposes a maximum of one review per five year term.

New South Wales has no current offshore petroleum production, and historically, there has been little offshore exploration - only one exploration permit is currently in force.

This means the impact of the bill is negligible, however it ensures legislation applying to the state and adjoining Commonwealth jurisdiction is consistent and enables NSW to meet it's National Competition Policy obligations.

I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.44 p.m.]: On behalf of the next government of New South Wales I indicate that the Opposition does not oppose the Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill, which is mainly an administrative bill that amends the New South Wales Petroleum (Submerged Lands) Act 1982 to implement the recommendations of a national competition policy review. The Opposition considers the bill to be relatively uncontroversial, unlike some legislation that has come about as a result of national competition policy.

By way of background, the Petroleum (Submerged Lands) Act 1982 is part of mirror legislation governing offshore petroleum exploration and development. The Commonwealth, all States and the Northern Territory share this legislation. The New South Wales Act relates to the exploration for, and the exploration of, petroleum resources adjacent to the coast of New South Wales up to three nautical miles. This includes regulating the granting of exploration permits, retention leases, production licences for petroleum, and pipeline licences. The exploration of, and for, petroleum outside three nautical miles falls under the Commonwealth's jurisdiction. New South Wales has no current offshore petroleum production, and historically there has been little offshore exploration within New South Wales offshore territories. There is currently only one offshore petroleum exploration permit in force in New South Wales, and that is held by Bounty Oil and Gas Exploration off the coast of Newcastle.

In November 1999 the Australian and New Zealand Minerals and Energy Council commissioned a national review of the petroleum submerged lands legislation against competition policy principles. The review's main findings were that the legislation is free of significant anticompetitive elements that would impose net costs on the community. While some restrictions on competition were identified—for example in relation to safety, the environment or the manner in which petroleum resources are managed—they were found to be appropriate given the net benefits they provide to the community as a whole. The review also concluded that scope existed to enhance competition in relation to permits and their renewal. Presently, the holder of an exploration permit that is awarded in New South Wales can hold that permit for anywhere between 6 years and 46 years, or longer if extension provisions are applied.

The national competition policy review found that in the interests of increasing the future availability of exploration acreage, a limit should be placed on the number of times an exploration holder can renew the title.

The Opposition supports the two changes the bill makes to the Act in light of the findings of the national competition policy review. First, the bill provides that permits may be reviewed no more than twice to enable exploration acreage to be turned over to a subsequent petroleum explorer more rapidly. Second, the bill reduces to one the number of viability reviews of leases. The Minister's office has advised me that the holder of a retention lease can currently be requested by the Minister to review the commerciality of the discovery held under that retention lease twice within the five-year lease term. The national competition policy review considered this to be excessive and a maximum of one review per five-year term has been recommended.

The Opposition does not oppose the Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill, which will be prospective and seeks to include transitional provisions so the rights of the existing permit holder will not be detrimentally affected. Given the small amount of offshore exploration in New South Wales, the Opposition believes the impacts of this bill will be minimal. Having said that, I wish to place on record concerns brought to my attention by the commercial fishing industry with regard to gas exploration and seismic testing by Bounty Oil and Gas NL.

Bounty Oil is the only company that holds an offshore petroleum exploration permit in New South Wales. The commercial fishing industry, which is one of my other shadow portfolios, has brought to my attention, and also to the attention of the Hon. Ian Cohen, its concerns that Bounty Oil does not have to provide a comprehensive environmental impact statement, but only an environmental plan, to drill for gas exploration off Catherine Hill Bay in the Newcastle area. I am sure honourable members can imagine the frustrations of the commercial fishing industry, which is subject to the scrutiny of a full environmental impact statement in its operations.

Whilst I certainly do not dispute the importance of gas exploration and the gas industry in New South Wales, the Government must ensure that exploration is carried out subject to strict environmental protocols that give a clear indication of the effects of gas exploration on the environment and other industries, particularly other primary industries. The bill seeks to ensure that New South Wales legislation is consistent with that of other States and the Commonwealth jurisdiction, and enables New South Wales to meet its national competition policy obligations. The Opposition does not oppose the bill.

Reverend the Hon. FRED NILE [5.50 p.m.]: The Christian Democratic Party supports the Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill. The object of the bill is to amend the Petroleum (Submerged Lands) Act 1982 in relation to the renewal of petroleum exploration permits, the imposition of conditions on petroleum retention leases, and to confirm the area to which the principal Act applies. This is another piece of legislation that has arisen from the activities of the National Competition Council after it conducted a policy review concerning the nation's offshore petroleum legislation to ensure that it was free of significant anti-competitive elements.

There was very little wrong with the New South Wales legislation. The National Competition Council recommended that there should be a minor change concerning the actual exploration permits. So this bill, in line with the council's recommendations, proposes that in the future exploration permits will be able to be renewed no more than twice. This will establish a maximum period of 16 years, ignoring the possibility of extensions in some circumstances. The bill also proposes a maximum of one review per five-year term. As other speakers have said, New South Wales has no current offshore petroleum production and there has been very little offshore exploration, which is surprising. Only one exploration permit is currently in force—the Bounty Oil and Gas Company, which I believe is mainly concerned with trying to find a supply of gas.

This raises the issue of whether the Government should be doing more to encourage petroleum exploration. It seems that oil has been discovered in other parts of Australia—in the south and in the north—and it would be hard to imagine that there is no possibility of oil being discovered off the coast of New South Wales. I would urge the Government to consider encouraging that exploration because it would be excellent if we could help Australia become self-sufficient with regard to petroleum products and not be affected by what happens in the Middle East. The Christian Democratic Party supports the bill.

Ms LEE RHIANNON [5.53 p.m.]: The Greens oppose the Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill. Meeting New South Wales national competition policy obligations is not our only obligation to the people of New South Wales. We have other pressing obligations, such as protecting the environment, reducing our dependency on fossil fuels, and tackling global warming. This bill is designed to speed up the exploration of petroleum off our precious coast at a time of record oil prices that have done nothing to spur the Government on to tackle our deathly dependency on oil and other fossil fuels.

It is indicative of this Government that it has so uncritically bowed to advice that it should loosen up regulation of this industry. The bill is further proof of the Government's cosy relationship with the fossil fuel industry, which we saw only recently when the Carr Government announced an expansion of the coal-fired power industry. It is no excuse to say, as the Minister did in his second reading speech, that there is no current offshore petroleum production or, historically, little offshore exploration. The Government also assures us that there is currently only one offshore petroleum permit in force. But there is no guarantee there will not be applications in the future. This is a greedy industry that puts profit above all else, and what that can mean is oil spills and all sorts of accidents. It is an industry that we do not need off our coast.

Exploration off our coast carries major environmental consequences. It could have an enormous impact on vital industries such as tourism and fishing. An oil spill could be devastating, and even day-to-day operations could cause damage and pollution capable of reducing fish catches and repelling tourists. The Greens believe that before any exploration permits are granted to petroleum explorers there should be a truly independent assessment process that involves widespread community participation. Too much is at stake to leave this job in the hands of consulting firms that are so often hand-picked by fossil fuel exploiting companies. Experts have been predicting an oil supply crunch for 20 years, yet in all this time the Government has failed to propose long-term remedies to this looming crisis.

Reverend the Hon. Fred Nile: Mr Carr did propose nuclear power.

Ms LEE RHIANNON: I acknowledge the interjection of Reverend the Hon. Fred Nile regarding comments by the Premier about nuclear energy. It is certainly not a solution because when it comes to climate chaos caused by greenhouse gas emissions, the nuclear energy cycle actually produces greenhouse gas emissions at every stage. So it is far from global-warming friendly. Long ago the Government should have read the writing on the wall and invested in clean, sustainable energy industries that will provide sustainable jobs and protect the environment for future generations. But this Government has ignored what is called the peak oil crisis that we are about to experience. Peak oil is when extraction of oil from the earth reaches its highest point and then begins to decline.

We will not be able to say with certainty when we have reached peak oil until after the fact. Many experts—many of them mainstream—say we have already reached the peak; others say we have not reached it yet, but will within the next few years. Peak oil heralds the end of cheap fossil fuel energy. The multinational company BP estimates that we have only 40 years of oil reserves left worldwide. This is a concern the Greens have been raising for many years. Now that there are more mainstream voices with a similar message, we would hope that the major parties would also come to their senses and wean themselves off their dependency. Once the peak is reached, production will decline and the costs of production will increase as more energy is needed to extract the oil. With peak oil in our sights, we must look to other clean, green energy sources.

Abundant energy from fossil fuels was a one-time gift that has almost been taken away. The Greens support a fundamental overhaul of our transport and energy infrastructure. The Government has a responsibility to help us break our addiction to car travel and road freight by investing in public transport infrastructure. But despite the repeated use of the word "infrastructure" in the Treasurer's budget speech, the initiative and money are just not there to provide it. We must abandon fossil fuel for a future underpinned by an efficient and cost-effective freight and passenger rail network that will also boost exports and create sustainable jobs. Fossil fuels are last century's technology. This bill confirms that the Premier is looking more and more like last century's man.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.00 p.m.], in reply: I thank honourable members for their contributions to the debate. The national legislation governing exploration and development of offshore petroleum resources has been reviewed in accordance with competition policy principles and found to be substantially free of significant anti-competitive elements. However, the review did recommend some minor amendments to the existing legislation. This bill reflects those recommendations and mirrors changes already made to the Commonwealth Petroleum Submerged Lands Act 1967.

Although the changes proposed in the bill are relatively minor, they nevertheless have the potential to improve competition in the offshore petroleum exploration industry. The bill limits an exploration permit granted on or after 1 January 2006 from being renewed more than twice. This aims to turn over exploration acreage more rapidly, providing an opportunity for other exploration companies, but it will not affect the rights of the current permit holder. Further, the bill will reduce the compliance burden upon retention leaseholders. With these amendments the regulator will be limited to requesting a maximum of one re-evaluation of the

commercial viability of the discovery within the five-year lease. All honourable members should support the bill. I point out that this relates only to licence holders for exploration in New South Wales, not for petroleum but for natural gas. I therefore encourage honourable members to disregard Ms Lee Rhiannon's comments. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMINAL ASSETS RECOVERY AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [6.02 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Criminal Assets Recovery Amendment Bill 2005. The Criminal Assets Recovery Act 1990 [CARA] provides the framework for a system of civil forfeiture. Under the Act, the New South Wales Crime Commission or the Police Integrity Commission is able to set in train confiscation proceedings against any person the Supreme Court finds has been, more probably than not, engaged in serious criminal activity. Proceedings under the Act are separate from the criminal process and are not dependent on a conviction being obtained.

For many offenders the risk of prosecution and imprisonment is part of the cost they are prepared to pay for eventually enjoying the proceeds of often extremely lucrative criminal activity. Asset confiscation is therefore a highly effective tool because it strips away those ill-gotten gains, either in addition to or instead of a gaol sentence. With these amendments, the impact on criminals and their associates will be even greater. Taking the proceeds of crime also reduces the chance of a gang re-offending by removing the tools of the criminal trade—the money and fast cars which criminals rely on—making the future commission of crimes more difficult.

Confiscating criminally acquired assets also sends an important message to our community. It assists in dispelling the notion that after a period of incarceration a person will be free to enjoy the proceeds of their crime. It re-enforces that crime really does not pay. CARA was originally enacted as the Drug Trafficking (Civil Proceedings) Act 1990 and was limited to serious drug-related activity. In 1997 an amending bill was introduced which broadened the operation of the Act to include serious criminal activity, namely, indictable offences or offences that are punishable by imprisonment for five years or more and involving, for example, fraud, theft, extortion, violence or corruption. To reflect this broader application the Act was renamed the Criminal Assets Recovery Act. I seek leave to incorporate the remainder of the second reading speech in *Hansard*.

Leave granted.

A Working Party co-chaired by the Ministry for Police and the Attorney General's Department produced the report "Review of NSW Asset Confiscation Legislation" outlining a series of recommendations.

As a result of the work undertaken by all members of the Working Party, I am now able to bring forward this Bill to amend the Criminal Assets Recovery Act 1990. The amendments will substantially increase the scope and effectiveness of the Act.

The asset confiscation regime under CARA has been extremely effective, with approximately $98 million confiscated over the last fourteen years since its introduction. This includes approximately $17 million in the 2003/04 financial year, comprising of cash, bank accounts, real estate and even jewellery, cars and boats.

These funds are used to support victims of crime as well as community crime prevention and drug education programmes. Confiscated proceeds are also being used to fund the highly successful Taskforce Gain and the Recovered Assets Pool.

Taskforce Gain was established in 2003 to target gang and gun crime in south-west Sydney. Its rolling operations, raids and arrests have met with regular success. Over 1,200 arrests have been made with over 2,800 charges since the commencement of Taskforce Gain.

The Recovered Assets Pool provides funding to assist police with investigations and operations. In the first six months of the 2004/05 financial year successful applications have been allocated $746,300 under ReAP. ReAP funding is being used for operations and investigations targeting activities such as the manufacture and distribution of drugs, large scale motor vehicle theft and even murder.

Improving the operation of CARA will not only result in a greater impact on the lifestyles of criminals, but will also result in even more available funds for these worthwhile programmes.

I would now like to discuss in more detail the amendments to CARA.

Firstly, we are increasing the scope of the Act by expanding the definition of serious crime related activity for the purpose of the Act. In particular, child pornography, sexual servitude and specific firearms offences will now come within the remit of CARA. Dishonest damage to property in situations where the damage incurred in greater than $500 and the possession of precursors with intent as defined under the Drug Misuse and Trafficking Act 1985 will also form part of the definition of serious crime related activity.

Targeting these offences is consistent with the strong stance the NSW Government has taken on matters threatening the safety and security of our community. Those engaged in these offences will not only be faced with the full force of the law, but with the prospect of loosing any criminally acquired assets too.

The Act was groundbreaking when it was introduced, and we want to ensure we stay at the forefront of impacting criminals through asset confiscation. A number of amendments are designed to do exactly that—target areas where criminals thought they could evade asset confiscation.

The Carr Government made an election commitment that assets held under a fraudulently acquired false identity would be forfeit unless the holder can prove they were not obtained through illegal activity. I am pleased to announce this Bill fulfils this election commitment and demonstrates our desire to better target the growing crime of identity fraud. Organised criminals often use fraudulent identities to assist in staging other crimes such as major fraud, money laundering, tax evasion and even terrorist activities or simply to evade identification.

To support this new provision, the NSW Crime Commission will be able to seek monitoring orders where there is a reasonable suspicion that an account is opened in a fraudulently acquired false identity. A monitoring order requires a financial institution to provide information to the NSW Crime Commission with respect to the transactions of the account.

It is accepted that there may be instances where assets are held under false identities for reasonably legitimate reasons. For example, a victim of domestic violence may hold assets under a fraudulently acquired identity to avoid detection by a violent spouse. In such cases, one only needs to provide evidence that the assets were not acquired through illegal activities and confiscation will not occur. A number of additional safeguards have also been incorporated into the provision to ensure innocent parties are not unduly impacted.

We are also closing a significant loophole in our asset confiscation regime. Criminals using criminally acquired money to pay for legitimate activities or services for their friends and families can now be subject to confiscation proceedings.

No longer can the friends or families of criminals enjoy an all expenses paid skiing trip to Aspen or have their university degree paid for with criminally acquired funds. We will be able to initiate confiscation proceedings to force repayment of criminal funds that these friends or families having knowingly spent.

Experience has shown that major criminals and their families often live a lavish and expensive lifestyle whilst their legitimate income is very low. Now we have the ability to impact the lifestyles of not only criminals but also their families and friends if criminally acquired funds are being used to bankroll these opulent lifestyles.

As the House would be aware, crime can easily transcend state and national boundaries and has no regard for different jurisdictions. Cooperation and coordination between all law enforcement agencies is essential to effectively target crime and to recover the proceeds of criminal activities.

To ensure criminals cannot use state borders to evade confiscation proceedings, CARA will extend to appropriate offences outside NSW. Persons living in NSW but who possess assets that are the proceeds of crimes committed in other states or territories will be liable for confiscation proceedings. Should the jurisdiction in which the crime was committed choose not to pursue confiscation proceedings, we will now be able to do so.

We are also introducing a number of other measures to promote coordination and cooperation. For example, evidence of a criminal offence for the purpose of the Act will include offences against the law of other jurisdictions. The Act will also provide recognition of interstate forfeiture orders.

The NSW Crime Commission will continue to actively pursue serious criminals. The links the Commission has forged with other agencies such as NSW Police, the Australian Crime Commission, and the Australian Federal Police will contribute not only to the apprehension of criminals but the stripping of their criminally acquired assets.

We also rely on the cooperation of the private sector, and in particular financial institutions. Without this cooperation, our job would be all the more difficult. In recognition of this, financial institutions that comply with a written voluntary request from NSW Crime Commission to provide a report on a specific customer will be granted indemnity as defined under the Act.

A number of other amendments have been made to provide us with an even more effective regime which I would now like to discuss.

For example, the Bill will allow us to target mortgage and loan repayments made with criminally acquired funds. Even if the deposit for a property is made with legitimate funds, NSW Crime Commission will be able to seize any repayments on a mortgage made with illegal funds.

The Bill will give the NSW Crime Commission the power not only to request relevant existing documents, but also to require the generating of a document. For instance, financial institutions may be required to generate a report from their database on a

particular customer or NSW Crime Commission may request the manipulation of data or the entering of passwords to access information. This will make it more difficult for persons to hinder investigations or to hide relevant information.

The NSW Crime Commission is currently able to settle matters prior to court proceedings. Settlement is based on a statement provided by the defendant outlining their assets. It has been found that these lists are often inaccurate as criminals are understandably reluctant to specify all their assets. To address this, any assets that are not declared under warranty will be forfeit.

A copy of an indictment where there is a guilty plea is now admissible in civil confiscation proceedings and evidence that has been introduced in failed or abandoned criminal cases is now admissible for civil actions. This recognises that CARA actions are civil, not criminal, so there should be no barrier to "reusing" the evidence.

We are also amending the Act so that statements, documents or things produced by a person before the Court are inadmissible in later proceedings only when production is objected to at that time.

In addition to the above provisions of the Bill a few procedural amendments are included which will increase the effectiveness and efficiency of matters conducted under the Act.

For example, restraining orders can now be sought via telephone in urgent circumstances to prevent monies being transferred in the time it currently takes for a restraining order to be granted. This should stem the flow of untraceable monies that are rapidly transferred from one account to another, often ending up overseas and out of the reach of law enforcement agencies.

In addition, restraining order will now remain in force for two working days rather than 48 hours to reduce unnecessary complications for operations conducted over public holidays or weekends.

The procedure for obtaining assets forfeiture orders has been streamlined. Now, where assets are already lawfully held by the NSW Crime Commission, it will be possible to apply directly to the Supreme Court for an assets forfeiture order. In other cases, the NSW Crime Commission will be able to apply to the Supreme Court for a restraining order and an assets forfeiture order simultaneously.

The Criminal Assets Recovery Act is important legislation in the ongoing fight against serious organised crime.

We are determined to send a strong message to the community that crime will not pay.

The additional amendments which I have outlined above will provide us with the means to ensure this is the case in NSW.

As I have already mentioned, CARA has established an effective system of asset confiscation, resulting in numerous offenders being deprived of the proceeds of their serious criminal activities.

By passing this Bill the Parliament will not only extend the current scope and operation of CARA, but will ensure a more effective and efficient regime. We are sending a clear message to those who commit serious criminal activity—don't.

I commend this Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [6.05 p.m.]: The Opposition does not oppose the Criminal Assets Recovery Amendment Bill. In fact, I wholeheartedly congratulate the former Greiner Government of 1990 on introducing the legislation in the first place. If it were not for the former Liberal-National Government of 1990 this legislation may never have hit the decks, because I have little confidence that a Carr Labor Government would introduce such legislation. It was introduced in 1990 at a time when there was real concern in the community that not enough was being done to target drug barons and serious criminals in our community, which sent a clear message that something had to be done. Less than two years after coming to office Premier Nick Greiner ensured that the legislation was passed. History shows that, along with this legislation and other similar changes, Nick Greiner also put in place the Independent Commission Against Corruption [ICAC], significant measures that changed forever the ability of criminals to avoid detection and enjoy the proceeds of their criminal activity.

This is an important bill. I suspect that there will be very little debate, apart from one or two members of this Chamber, but it is important to acknowledge the value of the bill. However, that does not mean there is no room for improvement. Over the coming months as we continue to debate the future of New South Wales beyond 2007, the bill will provide an opportunity for members in this Chamber and in the other place to express their views on what action should be taken to further target criminals who are very well resourced, and not only through cash. They have access to the brightest minds in the law, taxation and business to help them elude detection by ensuring that their assets are widely dispersed and difficult to detect. They will do everything they can to keep the proceeds of their criminal activity.

This amending bill broadens the areas of criminal activity in which people can be targeted beyond what is currently recognised. The New South Wales Crime Commission focuses on seizing the assets and funds from drug traffickers, people involved in the illegal gun trade, serious fraud offenders, people involved in car rebirthing and so on. This bill will extend those powers to allow asset confiscation for those involved in the

trafficking of firearms, child pornography and property damage. I asked the Minister in reply to provide the reason for including in the bill the term "property damage". In particular, new section 6 (2) (h) states:

> an offence under section 197 of the *Crimes Act 1900*, being an offence involving the destruction of or damage to property having a value of more than $500.

To put it simply, $500 is an insignificant amount in terms of property damage. It would be worthwhile if, before this debates concludes, the Parliamentary Secretary could clarify exactly what is meant to be targeted by the $500 property damage limit. The legislation goes further. It will target for confiscation moneys spent by associates of criminals. Indeed, friends, relatives and those who have money or assets passed to them as a means of avoiding detection will also be targeted. The legislation will also enable New South Wales authorities to target criminals who have broken similar laws in other States.

Obviously, this legislation has come from the coalface; it has come from people involved in targeting criminals involved in this level of crime. Therefore, I suspect that the recommendations from the New South Wales Crime Commission and the Police Integrity Commission would have been on the books for some time. These offences are not new. For example, it would never be suggested that firearms trafficking is a new offence. It would be interesting to know how long the Government and the Attorney General have been considering these amendments. I would hate to think that the Attorney General has been dragging his feet on these important amendments. Be that as it may, passage of this amending legislation should not be delayed any further.

The bill provides for the indemnity of banks or other financial institutions that provide police or the Crime Commission with reports on customers. That is important. The bill also provides for the immediate seizure of assets held under false identities unless a person can prove that they were not illegally acquired. Again, those much-needed changes are sensible. But as I said at the outset, it is not the end of the changes. I suspect that more changes will be necessary. It will be a question of whether the House, or indeed the respective political parties in the State, are up to the challenge. As I said, the changes will evolve over the next few months as people consider the exact role of the Crime Commission in targeting this level of crime and what we must do to make the provisions more effective. The Opposition does not oppose the bill.

The Hon. Dr PETER WONG [6.12 p.m.]: I support the Criminal Assets Recovery Amendment Bill, which is a response to recommendations of the Drug Summit. It also arises from the recommendations of a working party co-chaired by the Attorney General's Department and the New South Wales police service. I hope that this improved bill will become the basis for a considerably enhanced deterrent against crime. I urge the New South Wales Crime Commission to undertake increased activity in the area of white collar crime and corruption in our community. I say this because, while our goals are ever expanding with petty criminals, and a great deal of the justice system's effort is targeted towards children and young people, the reality is that white collar crime makes up the greatest portion of the criminal costs to our society.

For too long this area of criminal enterprise has been allowed to flourish in our community with very little effort to control it from either the State or the victims of that type of crime—big businesses. For too long big business has been more than happy to simply flush out such criminals and quietly send them on their way. It did this because it did not want knowledge of the true extent of corporate criminality to negatively affect their trade, either through disgruntled customers or, more importantly, because of disgruntled shareholders. I note that the Minister spoke about the legislation raising $98 million over the past 14 years. That is only a drop in the bucket, representing a mere $7 million per annum. If the New South Wales Crime Commission were to target white collar criminal activities, I am sure that this figure could easily be increased tenfold and would lead to massive improvements in our State's economy. Having said that, however, this is still good legislation. I congratulate the Government on introducing this bill.

Reverend the Hon. FRED NILE [6.14 p.m.]: The Christian Democratic party is pleased to support the Criminal Assets Recovery Amendment Bill, which will amend the Criminal Assets Recovery Act 1990 to increase the capacity of the New South Wales Crime Commission to seize the proceeds of crime. I am pleased that the bill has been introduced into the Parliament, but I am concerned about the long delay between the Drug Summit recommendations in 1999 and debate on this bill in 2005. The Government and the Premier should ensure that the Attorney General provides leadership and makes sure that the legislation is proceeded with. This bill came from the Minister for Police. I imagine that bills can drop through the cracks when there is a change in portfolios, but the Premier's Department must ensure that it gives priority to acting on the recommendations promptly.

This bill will extend the powers to confiscate assets and funds from drug traffickers, gun runners, fraudsters, car rebirthers and a range of other offenders. I am particularly pleased that more action will be taken

against drug traffickers. In some ways it has become a joke that people involved in drug trafficking seem to have massive homes and luxury assets without ever being arrested or affected in any way, whether it is the Australian National Crime Commission or State crime commissions. The bill provides another means to hurt these people, not only by finally convicting them of drug trafficking offences but also removing their assets, which they have probably already passed to members of their family in the hope that they can disguise the proceeds of their crime.

As I said, this bill extends the current legislation to provide for the confiscation of assets. It will target people who have spent the money of criminal associates, such as enjoying overseas travel and accommodation, for confiscation purposes. Also, it provides for New South Wales authorities to target criminals who have broken laws in other States and Territories if those jurisdictions have not moved to seize their assets. New South Wales will provide leadership to the other States which may be lax in some areas. Indeed, some other States, particularly Queensland, are very lax. The bill provides for the indemnity of banks and other financial institutions that provide New South Wales Police or the Crime Commission with reports on customers, and it provides for the immediate seizure of assets held under false identities unless the person can prove they were not illegally acquired.

During the past weekend I spent time with Bob Bottom, whose campaign against organised crime is well known. Indeed, he has played a major role over the years in helping governments, particularly the Federal Government, to establish the National Crime Commission and then the Australian Crime Commission. During the weekend he addressed the conference where I was speaking, which was held in Parliament House in Queensland. I was interested in the information he provided which I do not believe was confidential. He spoke about how serious organised crime is in Australia, particularly crime associated with drugs. He mentioned that the serious developments of organised crime has been assessed, and that he had participated in the Victorian police organised crime strategy group.

As we know, there have been 27 gangland murders in Melbourne in recent years, and the Victorian Government set up a crime strategy group to devise a five-year strategy to combat organised crime. One of its roles, in association with the Australian Crimes Commission, is to gather intelligence on organised crime groups in Australia. It conducted an assessment, and Mr Bottom stated that as against just 13 crime syndicates in Australia identified by the National Crime Authority 20 years ago there are now 97 organised crime groups. The number has not decreased, it has dramatically increased. The Australian Crime Commission says that 32 of these crime groups are deemed to be of high risk.

By comparison, on 26 April there was a major organised crime crackdown in Chicago, and as a result there are now only four crime syndicates in Chicago. Australia has 97. According to the Australian Crime Commission there are 10 organised crime groups in Sydney—2½ times as many as in Chicago. There are eight organised crime groups in Melbourne, four in Adelaide, one less in Brisbane, three in Perth, and half as many in Darwin; and in Canberra there are two operating in the shadows of our Commonwealth Parliament House. I am sure all honourable members will agree that that is disturbing information that was released only last weekend. It highlights how important this bill is in removing assets from organised crime gangs and putting their members behind bars.

Ms LEE RHIANNON [6.22 p.m.]: This bill should address the power of the New South Wales Crime Commission but, again, the opportunity has been missed. The New South Wales Crime Commission is an enormously powerful and secretive organisation, one that has really minimal—a more correct word would be "token"—accountability. The bill should include mechanisms to make the New South Wales Crime Commission more accountable. Two ways to do that would be more effective reporting to Parliament and public review mechanisms, but the bill provides for nothing like that.

I would like to go through one case that clearly reveals the enormous power of the New South Wales Crime Commission. Some of this information comes from an investigation undertaken by *Sydney Morning Herald* reporter Neil Mercer. It deals with an extraordinary case before Justice Spigelman and concerns Irene Plizga. She was convicted of shoplifting about five sweaters from David Jones. One would not think that was a major crime but, as Justice Spigelman detailed, the New South Wales Crime Commission has the power to seize assets deemed to be proceeds of crime, and it moved in on this hapless shoplifter. In his judgment, Justice Spigelman appears to be quite unimpressed with the action of the Crime Commission. One has to come to the conclusion that this came about because the New South Wales Crime Commission operates in almost total secrecy and is unaccountable.

Reverend the Hon. Fred Nile: It was still the result of crime.

Ms LEE RHIANNON: I put it to Reverend Nile that stealing five jumpers is quite different from taking the Mercedes and other property she owned.

Reverend the Hon. Fred Nile: But it was still a crime.

Ms LEE RHIANNON: Okay, I accept the interjection and apologise. The Premier announced that the New South Wales Crime Commission would be given a role in terrorism. I find that extraordinary. An entire floor of the commission's Kent Street office has been set up to handle this new reference into terrorism. The commission was set up in 1985 to investigate drugs but has quietly grown into an agency that can secretly inquire into almost anything, as is shown in the case I am referring to. Anyone called before the commission is sworn to secrecy. Apart from a lawyer you cannot tell anyone, and you cannot necessarily have the lawyer of your choice. The commission has the power to veto a particular solicitor or barrister.

Detailing the background of the case I have just referred to of the stolen jumpers, Justice Spigelman said that the commission had frozen Ms Plizga's assets on 9 December 1997 under the Criminal Assets Recovery Act. Although she was convicted of larceny and given three months periodic detention, the sentence was quashed on appeal and replaced with a $500 good behaviour bond. I suggest to members that this shows there is not enough monitoring of these bodies and that Parliament must have a greater role to ensure such terrible things do not occur. Ms Plizga did not lose all her property. I understand the forfeiture order was vacated in 1998 and she agreed to pay $87,500 to Treasury. Although she did not lose everything, to my mind she lost a lot.

People often think it is only the Greens and the Council for Civil Liberties who complain about these bodies, but that is no longer the case. A number of senior detectives are angry with some of the activities of the commission. This is the body that obtained a listening device warrant in December 2000, just after the Olympics. It named more than 100 police, many of them detectives with unblemished records. The device was one of many worn by a corrupt police officer codenamed M5 who had turned informer. Asked about the warrant, former Commissioner of Police Peter Ryan explained that more than 100 names were on the warrant because M5 was going to a social function attended by a large number of people and the law requires that everyone who might be recorded has to be named, even if they have done nothing wrong. That is just out of control. As I said, this bill is a missed opportunity.

The State Crime Commission needs to come under more scrutiny. People not engaged in serious crime have no place being investigated by the commission. The Crime Commission remains unaccountable—and, again, accountability is critical. The Greens advocate that accountability should be achieved by more effective reporting to Parliament and by public review mechanisms. At the moment the commission is a highly secretive body, and therefore a very dangerous body, and the recovery of assets from criminals is supported by a government committed to a law and order agenda. People are having their assets taken away from them and are then being found not guilty of the crime that supposedly resulted in the acquisition of those assets. That is a ridiculous contradiction that again shows how inadequate the bill is.

The DEPUTY-PRESIDENT (The Hon. Christine Robertson): Order! I welcome to the gallery professional soccer players from the Central Coast Mariners.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.28 p.m.], in reply: I thank honourable members for their contributions. I have raised with the Minister the question asked by the Leader of the Opposition, and the Minister will contact the honourable member within the next 24 hours to give him a detailed answer. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[*The Deputy-President (The Hon. Christine Robertson) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.*]

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (WORKPLACE DEATHS) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.00 p.m.]: A patient was transferred to a medical ward rather than the intensive care unit, and was found dead the next morning. The question is: Who was responsible? Was it the consultant in charge of the case, who was informed of the admission by telephone? Was it the casualty doctor who saw the patient very sick with fluid on the lung and treated him with surprisingly good results? Was it the staff member whose job it was to clear casualty and efficiently move patients into the wards? Was it the sister in charge who did the paperwork? Was it the ambulance officers who transferred the patient? Was it the receiving staff?

The doctor's notes stated that the patient was to be sent to the intensive care ward. The nurses did not read the doctor's notes. The instruction had not been written on the patient's chart. The patient, who at the time was conscious, was not informed he was to go to intensive care. No-one asked whether it was the fault of the administrator, who was not at the hospital late at night. At that stage a set procedure or protocol for the transfer of patients within the hospital had not been put in place. It was a system failure and the question of blame should be spread across the system.

Industrial deaths are similar. In a submission I made to the Walker inquiry into Campbelltown hospital I suggested it look at system failures in industry. When an accident occurs in the aviation and oil industries blame is not sheeted home to one person. It is investigated as an overall system failure. The punitive approach is not taken. The aviation industry has a great commitment to safety because of the number of passengers on planes, and a disaster on an oil refinery or oil rig could cost many lives. The Piper Alpha oil rig disaster in the North Sea has been extensively studied and a great deal of literature has been written about it and other oil fires.

The investigators of oil rig fires calculate the probability of events. They calculate the probability of a valve leaking after a certain period and the probability of vapour from the leak exploding. They take into account matters such as the wind, whether the vapour pools and whether there are any sources of fire. They do not blame an individual for not closing a valve; they say the system has to be improved. An excellent experiment for calculating probability is to rotate a number of discs of Swiss cheese parallel to each other and note how frequently the holes in the Swiss cheese discs line up.

In the example I cited, if a nurse had read the doctor's notes, if the staff had not been so busy, or if a doctor had reconsidered the diagnosis before sending the patient to the ward, the patient may not have died. There are a lot of "if onlys" when we take all the factors into account. Like the holes in the revolving discs of Swiss cheese, if two parts connect, the system will not fail. A lot of adverse events have to take place for a death to occur.

I believe that the most common cause of industrial death is when a company director says he wants a job done cheaply and efficiently. He instructs his staff to subcontract the job out if they cannot do it. On the surface, that is a reasonable instruction and it is carried down the line. The subcontractor with the cheapest tender is hired and he takes responsibility for the job. The subcontractor would not get the job if he had to buy safety harnesses and train workers. He cannot afford to do that. He gets extra workers when he needs them. He cannot afford to have permanent staff if he wants to be price competitive. As honourable members know, the catalyst for this bill was the industrial death of a young worker who fell off a roof on his third day at work.

I have received a great deal of emails from employers who are anxious about being charged with manslaughter because the bill reverses the onus of proof. The Minister's staff have assured me that the concept of "reckless disregard" is an important part of the bill. If there is no reckless disregard, employers will not be in danger of being charged or sued. The terms "reckless disregard" and "reasonable excuse", as defined in the law, protect employers. But employers are frightened.

A country real estate agent wrote to me that his stock and station agents travel around the countryside inspecting farms. He asked whether, if one of his agents were bitten by a snake, he would be held to have not provided a safe system of work. It is unreasonable to expect an employer in a country town to guarantee that his staff will not be attacked by a snake. But the Act has engendered that fear by placing the obligation on the employer to provide a workplace free of hazard. The assumption is that if an employee is injured, the employer has not provided a safe workplace.

I wrote to Walker to suggest that he look at the different models and at the model that the legal system invariably uses, which is: This person was shot. Which gun was it? Was it this wound that caused the death? Who had the gun? Then prove all the elements. But the cause and effect between the death and the gun and a person pulling the trigger is fairly clear. It is a question of who and why—mens rea and actis reus. The legal system, to once again take the model of a murder, even one committed in the course of a robbery, has to apportion blame among the people involved in a joint conspiracy: someone is driving the car, someone is acting as lookout, a couple are getting the money, and someone else is carrying the gun. In that instance the legal system has to apportion blame, but it has never really had to look at a system failure, where the system was without malice.

Indeed, as my medical example shows, it was quite well intentioned. There were a number of elements of miscommunication, or objectives that clashed. Certainly the use of subcontractors and minimal expenditure make up the elements of that. It is not clear to me, having looked at this bill, what would happen if a managing director were to ask for the cheapest quote, and all the middle managers in between were to relay that request, and the manager who finally chose the subcontractor was acting within that framework and accepted the cheapest quote.

What would happen if, for some reason, he was not able to supervise or, indeed, had written an appropriate provision into the contract? It may well be that risk managers, doing things the way they do, would say that the subcontractor accepted all risks. A risk manager would say, "Look, I passed the risks to the subcontractor. It is the subcontractor's risk. If the subcontractor or his employee was not doing the right thing, that is not my fault."

That could happen all the way up the chain. I would like the Minister to tell me who would be responsible in that situation, which I think is probably the most common situation, and whether this bill will make any difference? I must confess that employers are very worried about the prospect of prosecutions, and they believe that prosecutions under the Occupational Health and Safety Act are somewhat capricious. My view as someone with experience in occupational health and safety is that there has not been enough education, and that the number of unsafe practices and the lack of prosecutions are a problem. In my view WorkCover is not sufficiently diligent in this regard. I think Australia's so poor record for a developed country is testament to that, particularly in a relatively unionised workforce where the workers are not so lacking in power as those in some other countries that have a better record in regard to industrial deaths than we have.

There has to be a rethink with regard to the entire legal system about the concept of risk, safety, system failure and blame, as opposed to the question of improved practices to reduce the number of deaths in the workplace. I believe that Walker, having read the material that was referred to him—to his credit I believe he read it very thoroughly—now has a different approach to blame than occurs under the tort system, which finds the person in charge and nails him.

It is often the case that the plaintiff will not receive any money if someone is not found to have been at fault. The plaintiff basically targets the richest person or the best insured person, because if they are found to have been at fault you get money; if they are not found to have been at fault you get none. If the victim is in a bad situation the court will try to do what is best for that person. There is a sympathy angle, if you like, which is understandable.

We have a legal system with a model that I consider to be primitive, and we propose to graft the bill onto that model. I believe that that is quite wrong and that the Government has to go back to the drawing board. On the other hand, of course, part of me believes that we are not helping if we do not start to make employers responsible and allow them to say, "Yes, people were killed at my workplace, but there was nothing I could have done about it. I just went for the cheapest quote."

It is interesting to look at the number of prosecutions that have taken place. Some employers who have been found negligently responsible for allowing unsafe work practices that have resulted in the deaths of employees are yet to pay their fines. For example, documents from WorkCover dated 17 April 2003 show that employers who have had fines imposed on them after a prosecution are not paying up. For example, Burns Civil Engineering Constructions Pty Ltd was fined $125,000 on 26 October 2001 for breaches of the Occupational Health and Safety Act. As at April 2003 the fine still had not been paid and the debt had been transferred to the State Debt Recovery Office for the institution of recovery proceedings. Ace Protective Coatings Pty Ltd was fined $40,000 on 2 November 1999. The company went into liquidation and the debt was transferred to the State Debt Recovery Office for the institution of recovery proceedings.

The current occupational health and safety legislation and the criminal law have to be modernised to protect employees, as well as innocent citizens who are victims of the negligent conduct of a corporation. As I am sure most members of this House would be aware, I introduced the Democrats' Crimes Amendment (Corporate Manslaughter) Bill in May 2003 and I delivered the second reading speech a fortnight ago. That bill is based on the model criminal code for corporate criminal responsibility as developed by the Standing Committee of Attorneys-General. It would amend the New South Wales Crimes Act to create the offence of corporate manslaughter, under which a corporation may be convicted and rendered liable to a maximum penalty of $5 million.

The proposed Democrats bill creates a further offence in respect of a senior officer who participates in the corporation's commission of the offence of corporate manslaughter, and it imposes a penalty on that individual as well. My bill is very well considered. It is modelled on the national model criminal code and I believe it has been thoroughly researched. I have stuck with the code developed by the Standing Committee of Attorneys-General, to give it legitimacy. A similar bill has already passed through the Australian Capital Territory Legislative Assembly. As I said, my bill also creates an additional offence in respect of a senior officer who participates in the offence of corporate manslaughter, for which the maximum penalty is five years imprisonment or a fine of $180,000, or both.

The code applies to corporate bodies in the same way it does to individuals. The test the prosecution must satisfy is that the accused's criminal negligence resulted in a death. The best legal minds in the country have drafted a template on which the bill is based. The Bracks Labor Government in Victoria attempted to pass a similar bill while the Coalition had a majority in the upper House. However, after the election, when Bracks had a majority in the upper House, the bill mysteriously disappeared. Far be it from me to call that political cowardice! I have called it the corporate manslaughter bill rather than the industrial manslaughter bill, because members of the general public, as well as employees, need the protection of this legislation.

My nephew was electrocuted at the age of 18 years on the family's sailing boat when the mast touched an overhead power line. The line was poorly signposted, it was not on the estuary pamphlet map handed out by the local authorities, it was not marked by large balls to make it visible against the setting sun—although many similar power lines crossing waterways were so marked. In addition to that, there had been a similar accident 19 months before, when a barge with a mast sticking up sank the pylons of a wharf and drilled them in, and the mast hit the overhead power line. Despite receiving an electric shock, the captain of the barge was not killed. There was no safety wire along the power line. The records kept by Western Power at that time were extremely poor, and the opinion I formed at the coronial inquest was that the supervisor at the time was both illiterate and had an alcohol problem.

One can say that there are now safe power lines crossing all waterways in Western Australia, so something positive did come out of that. I am disappointed that the New South Wales union movement has not endorsed my bill. I believe it was the preferred model at the Labor Council meeting when the debate on industrial manslaughter began. Regrettably, however, the union movement is still tied to the Australian Labor Party.

The Carr Government sold out workers rights to fair and equitable compensation in 2001 with the Workers Compensation Amendment Bill. At that time we witnessed the Premier and Labor members of this House cross the union picket lines that surrounded the Parliament. The Government is managing workers compensation very poorly. It has gone for the insurance company solution, which is to solve the problem by paying out less and keeping premiums high. We now have the unseemly spectacle of the former head of the Labor Council boasting about how the reserves at WorkCover have gone up, yet people with significant injuries can get no relief.

One of my staff members found it fascinating to watch the Minister for Industrial Relations hold a press conference on 5 May, with John Robertson, the Secretary of the Labor Council, wedged between two representatives of Employers First announcing the revised workplace deaths bill. The Construction, Forestry, Mining and Energy Union and the Australian Manufacturing Workers Union stood nearby, trying to get details about the new legislation. Interestingly, they did not know anything about the content of the new legislation because they were not consulted on it and found out about the press conference second-hand. This bill is a worry.

For me the question is whether the bill is better than nothing. It addresses only some of the problems, but at least it demands that employers take responsibility for workplace deaths. I have suggested previously—

and unfortunately I do not have amendments drafted in this regard—that at the time of a workplace death the employer must meet and speak with the family of the deceased worker. I think that should be the case with significant workplace injury as well. I believe that, rather than rely on the dry statistics to which I referred at the commencement of my contribution and those that I have seen trotted out at the numerous management meetings I have attended throughout my career, if you can put a human face to the situation and come to the realisation that it can happen to anyone, including yourself, the commitment to a systemic investigation of workplace deaths and their causes would be greater. The bill does not do that.

The Greens will move amendments to the bill that are basically sound, and I will therefore support them. However, I have not yet decided whether I will support the bill if the Greens amendments are defeated. As I have said, for the legislation to be taken seriously it is necessary to put pressure on employers, and to some extent the bill does that. I do not believe there will be many prosecutions as the Government is about looking good for the union movement. Indeed, its record of educating and prosecuting under the Occupational Health and Safety Act is not good. I will support the amendments and see what happens.

The Hon. JON JENKINS [8.23 p.m.]: I support the Occupational Health and Safety Amendment (Workplace Deaths) Bill in principle. The case of the young boy who died in the workplace some time ago certainly highlights the failures in the current legislative framework. There was no effective outcome in that case, and there appeared to be no real sanction by way of financial or physical penalty imposed upon the person who appeared, on the surface, to be responsible for the young boy's death. I understand that many workplace deaths occur every year. It has always caused me concern that directors and others can hide behind the corporate facade to evade all sorts of misdeeds, both financial and physical. I am not sure that the legislation addresses those issues.

I acknowledge the issues raised by the Hon. Dr Arthur Chesterfield-Evans. I agree with him that the legislation could have been better drafted. I also agree with him that there is certainly need for change. I believe that the bill will not necessarily achieve the desired result. In any event, the Government must accept that the operation of the legislation may need to be reviewed and that at some point it will probably need to be amended significantly. The legislation will be tested fairly quickly.

As I understand the process, the legislation is only applicable when someone is killed in the workplace. I understand also that it does not affect existing legislation relating to injury. Under the legislation, after a workplace death a coroner's investigation will take place and then a workplace inspector will inspect the relevant workplace. Alternatively, that inspection may be concurrent with the coroner's investigation. The workplace inspector, having inspected the workplace, may then recommend that charges be brought in the Industrial Relations Commission against the responsible person or persons. In this case, the Industrial Relations Commission will act as a Full Court, with the equivalent of Supreme Court judges on its panel. All the normal laws relating to evidence, jurisprudence and standard legal proceedings must be adhered to. In other words, the Industrial Relations Commission will act as a normal court. However, it is acknowledged that it may require special expertise in technical or other industrial matters. In that sense, the Industrial Relations Commission is not much different from the Land and Environment Court or other specialised courts.

As I understand the process, generally a coronial inquest would be held. Based upon that inquest, and upon the inspector's evidence and other evidence before the inquest, a charge may be brought and a case heard before a single judge of the Industry Relations Commission. If a conviction is recorded, an appeal may be lodged with the Full Bench of the Industry Relations Commission, which may constitute between three and five judges. If the conviction is confirmed, and it involves a prison sentence, a standard appeal to the Court of Criminal Appeal, and thence to the High Court, is open to all. In that sense, I do not agree with members who believe that the court system is being usurped. I believe that in many cases the court system, and particularly the jury system, is abused by barristers and lawyers. In fact, I again place on record that I do not agree with the adversarial-based legal system, in which justice is often determined by how many Queens Counsel one can afford to put on one's side of the bench.

The Minister's second reading speech defines "recklessness", and the definition is derived from the common law. So far this legislation sounds reasonable, but that is because it is intended to apply to the highly regimented and highly structured workplaces of highly industrialised cities—that is, where there are safety barriers everywhere, yellow lines on the ground determining where people can and cannot walk and where vehicles can and cannot be parked, and where there are inspectors regularly visiting the premises to aid the business proprietor to provide a safe workplace. But a real problem arises with workplaces at the other extreme. For example, in the Outback, for people working in a paddock with large bulls there are no yellow lines on the

ground and no safety barriers. Even if there were, the bulls would just ignore them. This is dangerous work, and the slightest slip or lack of attention could result in serious injury or death.

A rock just under the surface of the ground can cause a tractor that is used for ploughing to be pulled over backwards. I have seen that happen. A post-hole digger can catch on a hidden root or rock in the soil. A cantankerous horse can throw its rider. A thousand totally unpredictable things can happen in the less structured workplaces. Some activities are simply dangerous, and that is accepted by all involved in the industry, including employees and employers. I ask the Minister to clearly acknowledge that employees and employers in carrying out work should be aware of the risks involved and must accept those risks.

I ask the Minister to acknowledge also that in unpredictable situations "reckless conduct" does not apply, and that it is intended that the legislation provide a defence to such an accusation. Of course, in saying that, I realise that the judges who will almost certainly have to decide on this issue in the not too distant future must consider the elements of possible coercion, which will remove the defence of normalness, accepted risk or reckless conduct.

I perceive this legislation to be potentially quite dangerous. I stress to the Minister that my vote to support or to not support the bill is dependent upon his response to allowing the Industrial Relations Commission to take a simple, pragmatic, practical and flexible approach to the assessment of risks in highly variable workplaces found both in industrialised cities and in the shearing sheds of the Outback. I suspect very strongly that the Minister's comments will be referred to in the courts within the very near future when the first death occurs on a farm.

The Hon. CATHERINE CUSACK [8.30 p.m.]: The Occupational Health and Safety Amendment (Workplace Deaths) Bill creates a new offence of reckless conduct causing death in the workplace and creates a right of appeal to the Court of Criminal Appeal where a person has been convicted and sentenced to imprisonment by the Industrial Relations Commission in Court Session for the proposed new offence. The State Opposition has no truck with rogue employers whose sharp and reckless practices result in injury or death to their employees. In addition to the personal havoc they create, such despicable people, who fail to comply with the safety laws and fail to act responsibly towards their employees, are usually cutting corners in terms of costs and also destroying the viability of responsible businesses. For example, there can be no fair competition in tendering if one business is cutting corners at the expense of employee safety, and we deplore such practices.

However, this bill is the wrong answer to the wrong question. It will not save lives; it will not make workplaces safer. All it will do is further burden good businesses and lead to a reduction in employment across the State. Rogue employers are subject to the same laws that govern everyone else. If you act with recklessness or indifference causing death, you are liable to be charged by police with a criminal offence, and if found guilty you will go to gaol. This is the law of the land. It applies everywhere: in the home, in the streets and in the workplace. There are legitimate questions as to why there has never been a successful conviction relating to recklessness causing death in the workplace. However, it is clear to me that the problems relate not to the law but rather to the Carr Government's administration of the law. I am fundamentally and implacably opposed to this legislation because it is an evasive, lazy, blame-shifting bill based on a dishonest premise that helps nobody but hurts many.

I thank my colleague the Hon. Greg Pearce for his contribution and I endorse his remarks on behalf of the Opposition. I want to deal firstly with the way in which this Government, while wriggling through the minefield of industrial manslaughter laws, has sought to misrepresent the Opposition. On 23 March the Hon. John Della Bosca told the House:

> Honourable members will recall that back when this debate started the clowns on the Opposition side of politics were drawing galahs on every biscuit tin, saying we need stricter laws.

On many occasions the Minister has implied that because the Opposition participated in an all-party inquiry into workplace fatalities we supported, and are therefore bound by, the recommendation of that inquiry, which was to introduce industrial manslaughter laws. I was a member of that committee, which did some great work, but the industrial manslaughter recommendation was wrong, and it was not supported by us, and has never been supported by us.

The Greens and Labor lefties the Hon. Jan Burnswoods and the Hon. Peter Primrose, led the charge for industrial manslaughter laws. The Coalition did not support this anti-employer recommendation then and it does not support it today. So it is wrong to blame the Coalition for raising expectations of victims in a most

inappropriate way. The Minister is quite wrong to seek to misrepresent the Coalition on this matter. We have always supported strong measures against the small group of rogue employers whose negligence places employees' lives at risk, but we do not want to destroy the rights of every employer in order to crack down on the few. That is the difference between the Coalition and the Government.

During the inquiry into serious injuries and deaths in the workplace, which was conducted by a committee of this House, all committee members were moved by evidence given by family members of people killed in workplaces. The frustration felt by victims was that the existing system did not appear to be working. The committee found evidence that this was true, however, not because of inadequacies in the law. Rather the fault lies in the manner in which this Government investigates accidents, gathers evidence and launches prosecutions. This applies to all deaths in the workplace. There were two distinct types of cases: the first is an employee death, which is covered by this bill; the second is the death of a non-employee in a workplace, and I shall say more about that type in a moment.

The upper House committee inquiry in which I participated was flawed in one respect: it was unbalanced in terms of the evidence that the committee received. It was driven by the Construction, Forestry, Mining and Energy Union and it was all about an agenda to get vindictive, anti-employer amendments into this legislation. This flaw is a key reason that we now have such an unbalanced bill before the House. It might be said that the Opposition could have called more witnesses to try to balance the evidence and head off the type of stupidity that we now have in this legislation. I place on record the fact that we tried. We requested that more submissions be sought from employers and more witnesses be called. But the response of employer representatives was extremely poor.

For example, the submission of the New South Wales Chamber of Commerce comprised a two-page letter restating the terms of reference and offering no direct input into the terms of reference. The chamber did not seem to comprehend the gravity and sophistication of the campaign against business or the need for our committee to have specific and detailed advice on how to deal with rogue employers. I telephoned Margy Osmond, the chief executive of the State Chamber of Commerce, to request a more substantial submission. My phone call was not returned. I telephoned again and left a detailed message, but again my call was not returned, and in fact never has been returned. The chamber did not appear at any hearing, and given its public positioning as a key voice for employers, I was astonished and disappointed by such complacency.

When employers complain about politicians who do not understand bad legislation and overregulation they need to be given an insight into what goes on behind the scenes. The Liberals well and truly understood and made a valiant effort to obtain information from employer advocates, and we did so at a crucial stage in the development of this issue. We delivered a clear warning of the Labor conspiracy against business, and it fell on deaf ears. Would it have changed the legislation before the House? Perhaps a more balanced input would have influenced Reverend the Hon. Fred Nile, who has also played a crucial and, in my view, naive role in facilitating this bill. We will never know. But certainly it was an eye-opener for me, and a major disappointment. The employer campaign on this issue was too late and, really, there is no excuse for such complacency when we are dealing with a notorious alliance between Labor, unions and the Greens against business.

I note and acknowledge that many chambers of commerce have been horrified by this bill and have campaigned hard against an earlier version of it. They should perhaps direct questions as to how things got to this stage to the State chamber. I also recommend they vote for the Coalition at the next election. Our position on this issue shows that we are the only reliable friends of small business and commonsense. We are not constrained by the vested interests of Labor, and we are not caught up in the wooing of the union movement by socialist Greens. The gravity of this issue has finally galvanised employer groups to take a stand. The terrible legislation introduced by Labor last year has, thankfully, been forced out of the House.

But as the Hon. Greg Pearce has shown, this is still bad legislation. There were a couple of exceptions. I give credit to the employees who have participated effectively in this debate, and I particularly note two groups of employers whose representatives appeared as witnesses before the upper House committee. Firstly, and in particular, I acknowledge Mr Garry Brack of Employers First, who gave passionate evidence on behalf of small business, which is going to be crushed by these amendments to the occupational health and safety legislation. The committee heard Mr Brack's evidence on 2 March 2004. Mr Brack advised us of several decisions made by the Industrial Relations Commission in relation to occupational health and safety.

I already have a low expectation of the quality and fairness of the Industrial Relations Commission, and I have often heard it referred to as a "Mickey Mouse court", stacked full of Labor Party mates. But even with

this low opinion, I was shocked by the evidence given by Mr Brack, parts of which I will read now in order that the House can understand how, in real life, these lofty ideals are being applied by the Industrial Relations Commission. I read from the transcript in relation to rulings given by the commission. Mr Brack said in evidence:

> The court has stated that a failure to provide a safe workplace is not the same as a failure of a duty to take care at common law where the standard of the duty is that of the reasonable and prudent man. Here the standard is absolute: if there is a failure subject to section 53 of the prior Act, now section 28 of the Act, however understandable the failure might be, liability is absolute. Subject to the defences, liability is absolute.
>
> Another decision stated that if the risk is both present and capable of being known to be present then liability is absolute subject to the defences provided by section 53, now section 28. If it is present—a question of fact determined by the judge—and capable of being known to be present—again determined by the judge—it is irrelevant whether the employer knew. If it was capable of being known the employer is in trouble. The court also stated that the concept of reasonable foreseeability—part of the common law test—is not apt to be applied in relation to the duties owed under the Occupational Health and Safety Act. It is not the accident itself that constitutes the offence but, rather, the failure of the employer to ensure—meaning guarantee—that employees are not exposed to risks while at work. That is clear.

Mr Brack gave this example:

> Partridge Plumbing, a husband and wife firm, was engaged by a retirement village for what was described as "reactive plumbing", that is, repair and maintenance.
>
> Justice Cavanaugh took Mr Partridge to be to some extent in control of the maintenance of plans and responsible for ensuring its proper maintenance and safety. The particular piece of plant was a thermostatic mixing valve [TMV], which is attached to a bath tap to control the temperature of the water going into the bath to ensure it does not exceed a certain predefined temperature.
>
> Mr Partridge carried out the maintenance to the manufacturer's specifications, which he consulted. He also consulted and followed the code of practice. He relied on the code for installation, maintenance and servicing of TMVs. He had also done the TMV training course to ensure that he did the job correctly. Numerous parts had been replaced as required. No specification was given requiring periodic replacement of an internal element of the TMV called a thermoscopic element, which is part of the mixing valve. At one point the TMV failed suddenly when an elderly comatose patient had been placed in a shallow tray bath.
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> In evidence the nurse said that she noticed the patient was turning pink. The patient could not talk. As a result of the failure of the TMV scalding water flowed into the bath and the patient was badly scalded and subsequently died.
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> During the WorkCover investigation the defect in the element was not detected by the mechanical engineer engaged by WorkCover to investigate. It was discovered later by a WorkCover appointed expert metallurgical engineer who discovered pinprick holes in the thermoscopic element that were invisible to the naked eye. The Plummer was charged with failing to monitor the TMV when performing his maintenance, failing to apprise himself of information regarding the expected lifespan of a TMV and failing to advise the village of the need to replace it is appropriate. There was no information in the code of practice about replacing or changing the element. There was also no information in the code of practice about replacing or changing element. There was also no information, as I understand it, in the manufacturer's literature or in the code of practice provided by WorkCover. However, the judge said that Mr Partridge had an obligation to discover that information, to work out what the serviceable life was and to advise his client accordingly …
>
> This person was expected to know what was ordinarily not in print. Is it then reasonable in those circumstances to say that that employer failed? The judge acknowledged that it was a small business and that any significant find it would be difficult to pay. However, she said that it was a serious matter and Mr Partridge should have established that information and, accordingly, find him $40,000 discounted to $30,000. The retirement village was also fined.
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> As a result of those things I asked the rhetorical question: Is it easy? They are probably doing it already and I say that it is not I have quoted that decision to employers across the State and their mouths hanging open. They cannot believe that that is the nature of the liability.

This anecdote from Mr Brack sent chills down my spine. How can we tolerate such a travesty, not merely of commonsense but of justice? This is the same Industrial Relations Commission that under this bill will be given powers of incarceration. This is not just a case of locking up the plumber—if the plumber were employed by a company, this Government would lock up all the directors of the company as well! If WorkCover decided not to prosecute, under this bill it would have to give reasons to a union for not mounting a prosecution. The Government must be joking. Are the Carr Government and its cronies at the Industrial Relations Commission even on the same planet as everyone else? I thank Mr Brack for his evidence and I condemn the Minister for obviously not bothering to read it or take note of it, otherwise how could he suggest that such draconian powers be given to such a "Mickey Mouse" court.

This reminds me of a game my children sometimes play called "Opposite day". Those playing the game must say "Bad night" instead of "Good morning". I have to be frank and say that after about 10 minutes of play the game becomes rather mind-numbing. But that is what will happen at the Industrial Relations Commission—there will be a reversal of the onus of proof. Under the Act one is assumed to be guilty until proven innocent. Under the Act anyone who did not know, but might have known, has no defence—as poor Mr and Mrs Partridge

found out. This bill is "Opposite day" without end. We should not fool ourselves: this is a game. It is a game being played by unions on business, and there is no fairness in the Labor Government's shameless cave-in to such a powerful minority interest.

The Australian Industry Group, which put in a thoughtful and well-researched submission and gave evidence to a hearing, dealt directly with the terms of reference. Of course, the Labor Party and the Greens ignored all of this. The problem with this group, as with some other employers, is that it is intimidated by the unholy alliance between the Greens and the Government with their numbers in the upper House, and some have obligingly signed off on this bill on the grounds that the earlier version was worse. These employer representatives have let employers down by reaching a poor compromise on behalf of their members. This is a bad bill; it cannot be amended or saved. It is simply a bad bill that should not be given any veneer of credibility.

I am disappointed by the tactics of the unions, the Carr Government and the Greens. The fact that some peak groups have been forced to bow to pressure says it all about the balance of power in industrial relations today. This legislation is a shocking result for our State's economy. It comes on top of chronic roll-overs by the Carr Government to union demands. It comes on top of a bloated wages bill for the public sector, in relation to which pay increases over 10 years have been double that of the private sector, resulting in a $20 billion increase in government spending. It comes on top of the most anti-business tax regime in Australia and news from the Reserve Bank that employment growth in New South Wales for the year ended March 2005 was just 1.3 per cent—less than half that of every other Australian State. This is amazing and distressing news for the whole nation, given New South Wales is supposed to be the engine room for this country.

In order to balance the final report of the Legislative Council's inquiry into serious death and injury in the workplace, I wrote a dissenting report on the industrial manslaughter recommendation. That view was published as part of this report, and I stand by that view in my remarks today. It is totally incorrect for the Minister to try to spread blame onto the Coalition for the stupidity that is driving this legislation. The Minister should look to his own side of the House, to the committee members who would not listen. The Coalition's position has been clear, principled and consistent from day one, right through to our opposition today.

I place this background on the record because the hundreds of thousands of good business people—many of them mums and dads—as well as medium and large businesses, are going to be hurt by this bill because of the changed and more costly environment it will create. And those people deserve to know why. Other issues relating to workplace deaths were highlighted by the committee's report, including problems with investigation protocols between WorkCover and police, problems in data collection—for example, for accidents in the trucking industry—and another matter that has been totally ignored by this Government: the deaths of non-employees as a clear result of negligence in the workplace. At the moment nobody investigates and nobody wants to take responsibility for these tragedies.

I refer again to these cases because these victims—people killed in the workplace who are not employees—are ignored by this bill. That needs to be recorded, because it shows the lack of sincerity of the Government in addressing these problems. The first workplace death ignored by the Government was that of David Selinger, a young boy killed at Fox Studios on 15 July 2001 when temporary chain mesh fencing that had been stacked for the Sydney Fringe Festival blew over on to him during a severe windstorm. It seems nobody is responsible for not preventing this accident—there is no accountability for this boy's death and, as a result, it seems there is nothing to be learned from this dreadful tragedy because this boy was a visitor to Fox Studios, not an employee.

On 30 June 2001 Mrs Lola Welch was killed when she was struck by the trailer of a truck at a construction site at Mona Vale Road, St Ives. Mrs Welch was just an ordinary pedestrian, walking on a public footpath when the accident occurred. WorkCover decided to leave it to the police and the police decided to leave it to WorkCover to investigate the accident. That decision was taken because part of the truck was physically on the construction site when the trailer inflicted fatal injuries on Mrs Welch, who was standing on a public street. The investigation of this matter was delayed and a total mess up, much to the distress of Mrs Welch's husband. On 19 April 2000 Ms Chun Lin was killed as a result of being crushed by a truck at the University of New South Wales. The driver had turned the truck off and failed to activate the brake. The vehicle silently gathered speed and hit and killed Ms Lin. This was another case where there was a major failure by the system to investigate and take action against negligence in a timely and effective way.

As might be expected, through the committee I asked a large number of questions about cases where nothing was being done. The answer came back that there is an intergovernmental committee on public safety,

which was established in 2003 in response to the November 2002 findings of the Coroner in relation to the death of Jessica Micahlik at the Big Day Out in January 2001. So we have a death in 2001, in 2002 the Coroner recommends that the Government get its act together and in 2003 the Premier establishes a committee. Our committee attempted to look into the Selinger, Welch and Lin cases but hit a brick wall because of this intergovernmental committee. In May 2004 on page 101 of our report we found that:

> The Committee believes that this issue is a matter of considerable public importance, however the working party appears to have made little progress to date. This is unacceptable and the Committee believes that this matter should be finalised as soon as possible.
>
> Recommendation 20: *That the Premier's Department make public the report of the Intergovernmental Working Party on Public Safety when completed, and take urgent steps to finalise, through the working party, the responsibilities of government agencies, including WorkCover in relation to public safety*.
>
> Recommendation 21: *That the CEOs of each government agency be responsible for the development and implementation of guidelines outlining responsibility for public safety…*"

In June, to follow up the matter, I put the following questions on notice to the Minister for Industrial Relations, the Hon. John Della Bosca: What progress has the committee made? What is the Minister's expectation of the committee? What value does the Minister place on its work? How urgent does the Minister think the matter is? I was given a flick-off reply by the Minister saying the committee would meet on 20 August 2004 "to consider the results of the consultations and a draft working paper". That answer did not inspire any confidence! So I tried again. In October I asked the Premier: What is the membership of this committee? Did it meet in August and, if so, who was there, who was missing and what was the outcome? I asked whether further meetings have been held, what progress is being made, when is it going to meet again and what does the committee hope to achieve. I asked whether the committee has a work plan and a timetable to reach a point where recommendations can be put to government. On 7 December I received another flick-off reply from the Premier:

> The working party met on 20 August 2004 and all agencies were represented. I am advised that the working party will meet again in the near future with a view to finalising a response to the Coroner's findings.

This is a pathetic *Yes Minister* committee, a *Yes Minister* Premier and a *Yes Minister* response to an important issue. Chun Lin was just walking to a lecture when she was hit by a driverless truck in 2000; in 2001 Jessica Micahlik was crushed to death while enjoying a concert; David Selinger was crushed while standing next to temporary fencing at Fox Studios; and Lola Welsh was just walking on a public footpath when she was run over by a trailer from a construction site. These people were ordinary folk going about ordinary lives and now they are dead and their families deserve answers. But the Carr Government cannot answer them because it cannot decide if it was a traffic accident for the police, an occupational health and safety matter for WorkCover, who should do the guidelines and how to ensure that somebody turns up at the site of an accident to investigate. This issue is unresolved.

This intergovernmental committee established by the Premier appears to have been meeting for more than two years, without result. There has been no response to our recommendation that the intergovernmental committee should finish and publicly release its report and guidelines. So do not tell me that this Government cares about the deaths, because it does not. Its response to this serious problem of ineptitude is a total joke. There are two significant matters that go to the heart and the content of this bill. The first is that the intergovernmental committee shows that the system is choked on red tape and official blunders. Therefore, we cannot believe the Government when it says that this bill is the only way to go.

Given that the Government has failed, in the four years since Jessica Micahilik's death, to produce an investigation protocol, how can we honestly accept that it has made every genuine effort to get its own house in order before resorting to the draconian provisions of this bill? Indeed, the purpose of the bill is to allow the Government and its trade union friends to escape their own accountability for accidents and deaths in the workplace. The simple solution for Labor and the unions is, at the first whiff of grapeshot, to reverse the onus of proof, the onus of responsibility and the onus of accountability back onto employers. This is a lazy and immoral approach to the problem, and it is one of the most insidious characteristics of New South Wales Labor and the labour movement.

This bill is not about justice for victims of negligence in the workplace. It will do nothing to prevent such deaths. It will simply cover up the inaction of the Carr Government on matters on which it could have made a difference. It is not about justice for victims; rather, it is about injustice for employers. It is about a fire-engine red union—the Construction, Forestry, Mining and Engineering Union—manipulating the Labor Council, the Greens and now the Carr Government into this vindictive new legislation. The Coalition strongly opposes this bill.

The Hon. Dr PETER WONG [8.55 p.m.]: I support the Occupational Health and Safety Amendment (Workplace Deaths) Bill. I believe that what it proposes is long overdue. I am of the opinion that employers have had a long lead-in time to get used to the idea that they have specific and fundamental responsibilities to their employees. Indeed, this has been a central tenet of both the Labor Party and the unions in this State. Further, occupational health and safety legislation has been in existence for a long time now, and it is time that this legislation was given teeth. I note that the Minister for Industrial Relations made a ministerial statement on 5 May in which he said that the powers conferred under this bill will be used only in cases of "complete disregard for basic occupational health and safety". I have seen arguments from some farmers and other groups opposing this bill. I do not agree with those arguments seeking dispensation.

It is one thing to talk about lightning, flash floods and rampaging large animals being beyond the control of the employer, and this is fundamentally true. It is another thing to ignore the fact that some such employers employ people to operate heavy machinery that often is quite unserviceable, and when serviceable it is unsafe. I also support the interesting precedent that this bill envisions—that is, it will finally give prosecution and enforcement powers to a commission, in this case the Industrial Relations Commission. I believe that this is an important step forward; and while it is moving into uncharted territory, if it proves successful, as I suspect it will, future legislators should consider duly empowering other commissions, such as the ICAC and the Police Integrity Commission. It is a bold step. However, far from eroding the legal rights of an offender, it actually gives another level of appeal. I believe that this will come to be seen as a very useful safeguard over bad decisions by the Industrial Relations Commission in Court Session because it will ensure that not only will its original sentence be oversighted and reviewed by higher courts, but so too will the commission's review process.

I look forward to watching the law develop in this area, and I suspect that some very interesting case law will ensue. Although I support the majority of the powers conferred by this bill, I shall look favourably upon amendments to section 32B (2). Recently I watched a union misusing the New South Wales statutes for its own strange purposes. I share the concerns of the Hon. John Ryan and the Coalition that a Minister under a Labor administration could enter into strange and unusual relationships with unions in bringing about prosecutions against employers. For this reason I believe that the commission should be able to refer such prosecutions to itself, or upon advice that the commission seeks through an independent avenue, such as the Director of Public Prosecutions or the Crown Solicitor. With such reservations recognised and rectified, I commend the bill to the House.

Ms LEE RHIANNON [8.58 p.m.]: The Greens express their sympathy to the families of workers who have been killed on the job as a direct consequence of reckless employers who disregard occupational health and safety regulations or who ignore plain commonsense. The Occupational Health and Safety Amendment (Workplace Deaths) Bill is being considered and has been developed because of the long campaign waged by the families and friends of workers who have died on the job, as well as unions, communities and the Greens. For years the Minister for Industrial Relations, who introduced the bill, has been telling us that New South Wales has the toughest laws for industrial deaths. He made similar comments on 19 August 2002, 25 June 2003 and 26 October 2003. That was at a time when he was arguing against the need for legislation similar to the legislation that is before us tonight. I am pleased that he has come on board.

All workers have the right to return home safely to their families and loved ones at the end of the working day. They have the right to earn a living without the fear of losing their lives. At the moment this is a worldwide problem: too many workers lose their lives. Each year 1.3 million workers are killed on the job. That is 3,300 per day, almost double the number of deaths caused by war. That is a crime in itself. Australian Bureau of Statistics data shows that almost half a million people experience a work-related injury or illness every year and that more than 15 serious injuries occur every hour. More than 2,000 Australians lose their lives in workplace accidents or through work-related disease each year. That is more than the road toll of 1,700 a year. Those figures are a stark reminder of why we need this legislation.

Some people refer to this legislation as Joel's bill. A young man, Joel Exner, was killed at work on 15 October 2003 when he fell 10 to 12 metres from a storage shed at Eastern Creek. He was only 16 years of age. The accident occurred only three days after he started work on the site. Serious allegations have been made against the contractors, including that basic safety measures were not taken despite repeated requests. His family and friends were part of the 10,000-strong protest that blocked traffic on Macquarie Street. That was one of the major protests that were critical in bringing about this bill. The Australian Capital Territory already has industrial manslaughter legislation. Italy, a number of other European countries and the United States of America have similar legislation, which is sometimes known as corporate killing laws. It is worth reflecting on what we are about to leave behind. Significant prosecutions have not occurred under current New South Wales

law. Prosecutions aimed at fining companies were directed largely at corporations, not primarily at senior executives. The Greens have always said that until prosecutions with possible gaol terms were directed at those people, precious little was likely to occur.

Fines against corporations solve very little. Time again we have seen small corporations go into liquidation, but to large corporations the fines are meaningless. In one notorious case in Victoria a corporation was fined $2 million. That sounds like a lot of money but to a corporation with an annual profit of $14 billion it would be nothing more than petty cash. This underlines why the fine system was not enough. A significant change in corporate culture is needed so that the lives of individual workers are valued. That can happen only when senior level corporate executives face the possibility of gaol for causing the death of a worker.

The Hon. Rick Colless: You don't want people to go to gaol for taking drugs, though, do you?

Ms LEE RHIANNON: I acknowledge the ridiculous comment from Mr Colless. That is totally untrue. Again he is distorting a policy. I am very proud of our drugs policy. It is about saving lives. But big dealers go to gaol. He should get his facts right! We need to change the present culture. I acknowledge several members of the Labor Party who have worked very strongly over the years to get the Government to the stage where it is willing to pass industrial manslaughter legislation.

At an annual conference of the New South Wales Labor Party, Paul Bastion, secretary of the Australian Manufacturing Workers Union [AMWU], moved a motion, which was passed, proposing a maximum sentence of 15 years for these sorts of offences, and a ban on holding directorships of corporations for those who have been convicted. That is a good proposal and again underlines the need for a lengthy sentence for those who are found guilty. This bill provides for a maximum sentence of only five years. The Greens have also introduced private members' bills on this matter. My colleague Michael Organ, the former Federal member for Cunningham, introduced an industrial manslaughter bill into Federal Parliament. That bill called for tough penalties of up to 25 years gaol, with fines of up to $50 million for negligent employers. When that bill came before the Federal Parliament we were very disappointed that nobody on the Labor side of politics would give us a second voice, so it was introduced by Senator Kerry Nettle, another colleague of mine.

The Greens support the intent of this bill but acknowledge that it has significant defects which the Government does not have the will to address. The problems relate to a lack of consistency in the way accused people will be treated under this bill when compared to the way they would be treated under the Crimes Act for the crime of manslaughter. These defects are a result of the poor foundation on which the bill is constructed. The new crime of industrial manslaughter is placed in the occupational health and safety regime rather than in the Crimes Act, where it belongs.

The Greens believe that many workplace deaths are easily preventable and that more deaths would be prevented if the bill contained a regime equal to that for manslaughter prosecuted under the Crimes Act. We also believe that the possibility of unsafe prosecutions and convictions would be reduced if the bill were substantially amended. The Greens are concerned that this bill will have fewer successful prosecutions than it could have, that there are likely to be more unsafe prosecutions than there should be, and that those prosecutions will result in softer penalties than they should have. Although it is not vigorous in pursuing employers who should be punished for operating unsafe workplaces that result in workers dying, this legislation is much needed.

There is plenty of carnage in the Australian workplace. In 1997-98, 48 construction workers were killed; in 1998-99, 58 were killed; in 1999-2000, 48 were killed; in 2000-2001, 44 were killed; in 2001-02, 39 were killed, and in that same year 37 manufacturing workers were killed and 50 transport and storage workers were killed. I notice—and I am sure other members have the same experience—that when we walk past building sites and factories we see unsafe practices occurring. On any day of the week across the State people are toiling away in sneakers, without gloves, goggles or hard hats. We need this bill to send a message to employers to take responsibility for the safety of their workers.

The Greens hope this bill will increase awareness of occupational health and safety law compliance because of the threat of imprisonment that comes with it. Currently in New South Wales employers have a practical immunity from imprisonment when they negligently kill workers at work, while a person who negligently drives a car and causes the death of another person faces gaol. That will change with this bill, but not as thoroughly as it should. At present, employers have a workplace immunity when they recklessly kill but face the full wrath of the law if they negligently kill a person at home or on the street. The Greens believe this is a glaring injustice that is repugnant to the ideals of fairness.

As inadequate as this bill is, we believe it will decrease the likelihood of people dying at work because the word will get out that employers will face imprisonment if, because of their recklessness, an employee is killed. It is important to change the culture in the way our work is conducted. The Greens believe the threat of imprisonment will provide a realistic deterrent to reckless employers so that workplace safety is given a higher priority, and that will, in turn, save lives.

However, as I have said, this bill has problems, and they are significant. The Director of Public Prosecutions [DPP] does not have primary responsibility for prosecuting this offence, but he does for other serious crimes. If the DPP were involved it would remove any real or potential political interference from the prosecution process. In additional, it would mean that prosecutions would be conducted by impartial experts in criminal law. People accused of the offence of occupational health and safety manslaughter will not have the right to trial by jury. That means that a person who owes a duty of care under the Occupational Health and Safety Act—which includes, but is not limited to, a person who employs persons under contracts of employment or apprenticeship—could face gaol terms of up to five years without a trial by jury. That means small business operators, middle managers and employers throughout this State will not have the right to trial by jury. Everyone should have the right to a trial by jury when they are charged with a crime as serious as manslaughter.

Jury trials are a consistent barrier against unreasonable and unsafe prosecutions. The Greens believe that there is no good reason why trial by jury should not be allowed for this offence. Further, we have said from the beginning that the offence should be tried in the Supreme Court and not in the Industrial Relations Commission. The Supreme Court is the most appropriate court to hear this offence. Unlike the Industrial Relations Commission, it routinely decides on cases where imprisonment is a possible sentence. Having this offence heard in the Supreme Court also indicates that Parliament takes a serious attitude to this type of crime. Perhaps most importantly, the punishment of persons found guilty of occupational health and safety manslaughter should be consistent with that for manslaughter under the Crimes Act. In that way people could be sentenced to a maximum of 25 years imprisonment.

Under this bill employers who kill at work will face a maximum of five years gaol. If they kill on the street or in the home they could be imprisoned for 25 years. It is manifestly inappropriate for some people to face higher sentences of imprisonment than others, purely based on their position in the labour market or whether they kill at work or on the street. The bill is inadequate. It does not allow for prosecution with impartiality, it does not provide legal protections that other accused people take for granted, and it does not have a consistent sentencing regime. We acknowledge that the bill is a step towards bringing greater safety to workplaces in New South Wales. At present, it is a small, and in some respects flawed, step. But we are on our way to increasing pressure on employers to make workplaces safer.

The creation of an offence of industrial manslaughter with penalties of terms of imprisonment is long overdue in New South Wales. That is why, on balance, and despite our significant reservations, the Greens will support the bill. Our reservations arise from the erosion of civil liberties and the promotion of inequality in the law. The Government could and should have done much more for working people in New South Wales with the introduction of this bill. But you cannot run with the foxes and hunt with the hounds. The Government finds the hounds very attractive these days. This bill has been compromised because of the competing allegiances the Government works to accommodate. I acknowledge that tonight is an historical occasion. We are taking an important step in this Parliament by bringing in the first industrial manslaughter law. We believe it is a positive step. Because we do not know fully how it will work, we believe it needs to be reviewed and assessed in the future. That is why I will move an amendment in Committee for the Law Reform Commission to undertake a review of the bill.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [9.13 p.m.], in reply: In a ministerial statement on 5 May 2005 I announced the release of the Occupational Health and Safety Amendment (Workplace Deaths) Bill. This bill is the result of a great deal of consultation with unions and employer groups. This consultation process has resulted in a bill that will ensure that the full force of the law will apply to rogues in the workplace who are indifferent to and disregard basic safety obligations that result in the death of a vulnerable worker. The bill has the general support of both employers and unions. This support reflects the thorough and comprehensive nature of the consultation process undertaken by the Government.

The bill represents the most effective means of targeting those who are most culpable and deserving of greater degrees of punishment. It provides a court with the full scope of penalty to deal with the various degrees

of culpable behaviour. The community can be assured that reckless behaviour in the workplace leading to death will be punished appropriately. The bill balances the community's concern for justice and appropriate penalties with the interests of the defendant liable to substantial penalties. It protects the interests of the defendant by providing certain new avenues of appeal and an additional defence of reasonable excuse. Those elements of the bill will ensure that the workplace death offence will operate only for those most deserving of punishment.

I reiterate that right-minded employers and others who demonstrate a concern for occupational health and safety will have nothing to fear from this bill. To be found guilty of the new workplace offence requires a high degree of criminal culpability. Anyone found guilty, given the high burden of proof under the new offence, will certainly deserve any sentence the court hands down. The Opposition has suggested that the provision for proceedings to be instituted with the written consent of the Minister was somehow secretly included in the provisions of this bill. I make it clear to the Hon. Catherine Cusack that the written consent of the Minister is currently provided for under section 106 of the Occupational Health and Safety Act 2000. In fact, the ability to commence proceedings with the consent of the Minister has been provided for in the equivalent New South Wales legislation since section 45 of the Factories and Shops Act was enacted in 1896.

Despite the fact that this provision has been in occupational health and safety legislation in this State for more than 100 years, the Minister's consent to commence proceedings is necessary so that proceedings can be commenced against WorkCover and the Department of Mineral Resources in respect of their own work forces. The provision has been used sparingly and responsibly in those 100 years. The views of all stakeholders, including almost all employer organisations and a very wide number of employers, have been canvassed and well considered. This bill is the most appropriate and effective form of achieving the goal of safe workplaces by punishing those few who are indifferent to the health and safety of people at the workplace.

The Government would once again like to thank the unions, employer groups, employers and individual workers, as well as members of the House who have contributed so constructively to the development of this bill. The community has the right to expect that appropriate penalties and deterrents are put in place to ensure that people who leave for work can return home safely to their families and friends. This bill will make all workplaces in New South Wales safer for workers, and indeed for all of us. The Hon. Jon Jenkins asked me to clarify how the bill would apply to an occupation that had inherent or known dangers, such as various types of stock and farm work.

The occupational health and safety framework recognises that all work cannot be risk free. It has always been a defence to occupational health and safety laws, including the provisions of the 2000 Act, that it is impracticable to remove a risk. This defence applies to the new offence created by the bill before the House. The legislation recognises that employers cannot remove every risk from the workplace and that some jobs are risky. For example, policing work can be dangerous and there is no capacity for the Commissioner of Police to eliminate the various dangers of that occupation. Similarly, various categories of rural work, mining work, construction sites and transport are inherently hazardous. The commitment and obligation required of employers is to reduce hazards, respond to dangerous situations and minimise any so-called inherent risks.

Under the new offence an employer will not be automatically responsible for any death that occurs in a workplace. This has been a common misunderstanding in the debate on this bill and, indeed, about the preceding bill, which could be appropriately described as the October draft. The new offence will apply only to a person whose conduct causes a death in a workplace where the person who is culpable is reckless as to the risk of serious injury or death. This means that the person has to be aware of the risk and have knowledge that serious injury or death is a probable result of his or her actions. To give a hypothetical example of the kind of reckless conduct covered by the bill, it would be reckless conduct to force a stockman to cross a flooded river or direct a stockman to ride into a bushfire.

An employer has the additional defence of "reasonable excuse" under the new provision. For example, continuing the agricultural theme, if stockmen are not honest about their skills and experience, disobey instructions, or perform tasks they were specifically instructed by their employer not to perform, the employer will have a reasonable excuse for his or her conduct. In the case of farm work, for example, the weather might change unexpectedly and potentially lead to a person drowning in a flood. Honourable members should also be aware that the conduct of a deceased person will be relevant to the new offence. For example, if a worker disregards specific instructions to wear a safety harness and falls from a roof, that will affect the question of whether the employer caused the death, because the employee's actions may have been a substantial cause of the death. It will, of course, always be relevant to look at the steps that an employer can take to reasonably minimise the risk of serious injury or death.

For example, a farmer should consider the skills and experience of the workers or stockmen he uses for mustering or other dangerous farming activities. They should have the right equipment for their work and the employer should consider factors such as terrain and any unusual weather or climate conditions when organising the work. I can assure honourable members that the bill will not lead to honest, hard-working employees, regardless of what sector of the economy they work in, being prosecuted for deaths over which they had no control. The bill is directed at a very small minority of employers who deliberately behave recklessly and whose behaviour causes the death of a vulnerable worker—not employers who take reasonable precautions and reasonable steps in relation to the safety of their employees.

I will deal with a couple of issues that were raised during the second reading debate. A number of speakers implied that the Government's legislative regulatory contribution to safety has been inferior or diminished. I think the Hon. Catherine Cusack implied it was nonexistent. Honourable members may recall a statement I made on 21 March in relation to the latest WorkCover statistical bulletin for 2002-03, which detailed some key statistics. I will refer to just a couple of them. Forty-five workplace fatalities occurred during that calendar year, 22 fewer than in the previous year. Almost every year the new framework has been in place there has been a downward trend in the number of deaths.

There were 31 fatalities from diseases sustained or aggravated by employment, nine fewer than in the previous year, once again emphasising that during the period of the new safety framework, of which this bill is only a small part, there has been a consistent downward trend in both serious injuries and deaths, diseases aggravated by employment, other fatalities that are ancillary to employment, and the minor injury and incident rates that are so debilitating for individuals and are such a charge on the economy. That has been reflected in part in the improved performance of the workers compensation scheme, as well as in whole variety of ways and improved efficiencies.

I will briefly refer to some of the issues raised by the Hon. Catherine Cusack in relation to unions and employers. I have to say that no strings have been pulled with me or with anyone in the Government by any specific industrial organisation or any particular union. I am proud and happy to say that I have consulted extensively with just about every union I can think of that operates in New South Wales, and extensively with the Labor Council of New South Wales. I have also spent an enormous amount of time liaising with the various employer organisations and getting their feedback.

The Hon. Catherine Cusack made some very intemperate and inappropriate remarks about the Chief Executive of the New South Wales Chamber of Commerce, Marg Osmond. I have never had any trouble getting her on the telephone or at any other time. I will quote the reason why I think a lot of employer organisations are prepared to support this sensible compromise. The State Chamber of Commerce conducted a pretty substantial poll of its members. The results of the poll are on the public record because they were released in April of this year. The poll involved 245 businesses in Sydney and across regional New South Wales, a balanced sample of the chamber's membership, and 89.7 per cent of the businesses surveyed believed that employers who "deliberately and recklessly put their employees lives at risk" should be gaoled, and 95.9 per cent supported the right of individual safety training and general safety practice to be considered as part of their defence if prosecuted.

I have had nothing but co-operation from employer organisations across the various sectors and the peak employer groups I have had discussions with, even, I might say, when the original draft that was proposed caused a great deal of angst and concern among the employer community. That is an aspect I have discussed at some length in the House and elsewhere. I do not propose to take time during the second reading debate discussing those matters, other than to say that this is a very sensible compromise. It enhances our safety framework, which is delivering safer workplaces for the people of New South Wales.

In response to the Hon. Catherine Cusack's suggestion that the WorkCover inspectorate is some kind of crypto-Gestapo that continually harasses people in the workplace, employers or otherwise, I can only say that employers are 40 times more likely to be warned by the WorkCover inspector if he visits their place of employment than they are to be prosecuted or have any action taken against them. Honourable members will appreciate that if that were the case with the highway patrol, the police traffic patrol, or any other area of compliance it would be a major problem. I very strongly support that approach. My view is that the best way to achieve safety, the best way to save lives, is to get employers to buy into the safety framework, and most sensible employers agree with that. This Government is absolutely committed to that approach and it is working.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. GREG PEARCE [9.28 p.m.]: The foreshadowed Greens amendments would have prevented me from seeking leave to move my amendments, but I understand they do not intend to move them. Therefore, by leave, I move Opposition amendments Nos 1 and 4 in globo:

No. 1 Page 2, clause 4, lines 10 and 11. Omit all words on those lines.

No. 4 Page 6, schedule 2, lines 1–27. Omit all words on those lines.

I think the starting point here is really where the Minister ended his speech in reply, when he said that the bill is a sensible compromise. The Opposition asks: A sensible compromise about what, with whom and why? That is our principal complaint about the bill. Not only is it not necessary but it is dangerous, because it introduces a lack of fairness and it endangers fundamental legal rights. The Government has not made out a case for introducing it or for the changes that will occur if it is passed. Indeed, the Minister has comprehensively made out a case against it. I draw the Minister's attention to his answer to a question without notice on 23 March this year, when he spoke about the first draft of the bill, which was truly draconian.

At the time the Minister made the point that the first draft was released to the community "on the basis that the Government had decided to rule out completely so-called industrial manslaughter legislation". That has been the Minister's consistent position when this matter has been raised over several years, and it is the position we now put. There is no need for this legislation. The Occupational Health and Safety Act and the Crimes Act cover manslaughter more than adequately, and the Minister has said that himself. Indeed, I remember him saying it at a seminar he hosted in Bathurst. If I had more time I would refer to further comments by the Minister.

I think it is fair for the Opposition to conclude that this is either a stunt or some sort of payback to the union movement. The Opposition agrees that there has been a significant improvement with workplace fatalities. Like any sensible business organisation, we agree that rogue employers should be held accountable if they place vulnerable employees at risk of death or injury. We are all in agreement on that. So we ask: Why has the Government gone down this route, first introducing legislation that was truly extraordinary and draconian and now pushing forward with this legislation?

Opposition amendment No. 1 essentially restores the right to appeal to the Supreme Court in relation to fines imposed under this legislation. As honourable members know, the bill provides for heavy penalties—in a case of a corporation, a fine of up to $1.65 million, and in a case of an individual, a fine of up to $165,000. The bill provides for an appeal if a penalty of imprisonment is imposed, but it does not allow for an appeal if a massive fine is imposed. Why would the Government have such a level of differentiation in relation to these penalties? It is simply unsupportable. A person who is found guilty of a speeding offence and is fined a couple of hundred dollars has an appeal right to a higher court.

We do not see the justification for this legislation, but if it has to be passed we believe it should not deprive individuals and corporations of a fundamental right available throughout our criminal law system: the right to appeal extremely significant fines. We cannot understand the Government's intransigence on this, and I will be interested to hear the Minister's explanation. Through this bill the Government is introducing fundamental unfairness and is depriving people of crucial rights in our legal system. I ask the Government to reconsider the bill and to support the Opposition amendments.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [9.36 p.m.]: The Hon. Greg Pearce is leading for the Opposition on this bill, though he is not the shadow Minister. Perhaps the Hon. John Ryan is not available tonight. Section 179 of the Industrial Relations Act provides a prohibitive clause that basically prevents Industrial Relations Commission matters from being appealed.

If the provisions were removed in the way the honourable member proposes, all appeal rights would be removed from potential defendants. If these provisions were removed from the bill, the prohibitive clause would cover all appeals, and that would mean that no appeals could be made. I do not think that the effect of these amendments is really what the Opposition wants. I think the Opposition's intent is to broaden appeals, but

because of the way the Opposition amendments are drafted and because of the prohibitive clause in the Industrial Relations Act the amendments would remove the right to appeal at all. Therefore I believe that the Opposition should reconsider the amendments.

With regard to Opposition amendment No. 1, which deals with fines, the difficulty in terms of the framework of the Act is that there are substantial fines for a variety of offences under the Act and at the moment there is no right of appeal in relation to those fines. The prohibitive clause, or similar clauses, has protected the Industrial Relations Commission from appeal for nearly 100 years. The Industrial Relations Commission has rarely exercised its capacity to incarcerate persons for any reason. It would seem a logical compromise that if the Industrial Relations Commission were to do so, obviously, because the person's liberty is at stake, that person should have a right of appeal to the Court of Criminal Appeal. I believe that is a reasonable compromise. Extending the right of appeal to fines would defeat the purpose of the legislation. Why should fines for this offence be appealable when there is no right of appeal for fines levied in relation to other offences unrelated to fatalities?

[*Interruption*]

The Industrial Relations Act is 100 years old. It is a very old part of our system, and it has worked very well for all those years. The Hon. Catherine Cusack obviously does not understand that Act.

The Hon. GREG PEARCE [9.38 p.m.]: I appreciate what the Minister has said, and I appreciate the long history of the exclusion of appeals with regard to certain Industrial Relations Commission matters. The bill provides for a new category of offence. It is the sort of offence that, in the general law, would be afforded the right to appeal, and we believe that that should be the case. The amendments were drafted by Parliamentary Counsel, and we understood that they are appropriate. In those circumstances, it is a new offence and it is a dangerous precedent to set.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 13

Mr Clarke	Mr Lynn	Mr Ryan
Mrs Forsythe	Mr Oldfield	
Mr Gallacher	Ms Parker	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin

Noes, 25

Mr Breen	Ms Griffin	Mr Roozendaal
Dr Burgmann	Ms Hale	Ms Tebbutt
Ms Burnswoods	Mr Jenkins	Mr Tingle
Mr Catanzariti	Mr Kelly	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Dr Wong
Mr Cohen	Reverend Nile	
Mr Costa	Mr Obeid	*Tellers,*
Mr Della Bosca	Ms Rhiannon	Mr Primrose
Mr Donnelly	Ms Robertson	Mr West

Pair

Ms Cusack	Mr Hatzistergos

Question resolved in the negative.

Amendments negatived.

Clause 4 agreed to.

Clause 5 agreed to.

Ms LEE RHIANNON [9.47 p.m.]: I move Greens amendment No. 3:

No. 3 Page 3, schedule 1 [1], proposed section 32A (2), line 22. Omit "5 years". Insert instead "25 years".

This amendment omits "5 years" and inserts "25 years", thus giving effect to the point I made a number of times in my contribution to the second reading debate. While the Greens very much welcome this historic piece of legislation, there are a number of problems with it. One is that occupational health and safety manslaughter has a different regime from criminal manslaughter. For criminal manslaughter a person can go to gaol for a maximum of 25 years; for occupational health and safety manslaughter a person can go to gaol for a maximum of five years.

A person receives a discounted sentence if because of their reckless action someone is killed in the workplace rather than in the street, in the home, or in a motor vehicle accident, and that sends a very wrong message. We can easily rectify that by making their sentence 25 years instead of five years. We strongly urge members to support the amendment and thus make the bill stronger and achieve greater safety in the workplace. I emphasise the point I made earlier, and have made a number of times in debating this matter, that the Greens very much hope that nobody will have to go to gaol because of this legislation. However, the amendment would change the workplace culture so that workplace safety becomes much more paramount.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [9.47 p.m.]: The Government does not support the Greens' amendment, for a number of reasons. Ms Lee Rhiannon's point was flawed when she said that in my second reading speech I did not pursue some aspects of the Hon. Catherine Cusack's arguments about the Opposition's general belief about there already being a manslaughter law. The very point here is that of course there is already a manslaughter law that applies in the workplace and on our roads. It is not exclusive. But this is a specific law in relation to recklessness within the occupational health and safety framework, and specifically in relation to reckless action that results in a death in the workplace.

I repeat that this is not intended to be, nor is it in reality, a manslaughter proposition. The criminal law still covers the crime of manslaughter. Due process is to be followed in relation to criminal law with respect to a workplace death or any other death. The very example that Ms Lee Rhiannon gave emphasises the point that the community over a long period of time—a couple of generations—has applied a different statutory framework to crimes of recklessness and negligence committed on the road. That is why a range of negligence or criminal-type proceedings or charges against people for various driving offences that cause death or grievous bodily harm can be discerned from the general manslaughter framework in the Crimes Act. The very point of using the traffic offences she described emphasises the need for a separate range of offences for occupational health and safety matters that cause a death recklessly.

The Hon. GREG PEARCE [9.50 p.m.]: For the reasons I have already indicated, the Opposition believes that the bill is unnecessary. We certainly believe that such a large penalty is undesirable and, therefore, we will not support the amendment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.51 p.m.]: I am somewhat surprised by the amendment because, generally, the Greens seek to lower penalties. In this case, perversely, they have sought to increase the penalty for very serious industrial crimes—such as being responsible for removing labels from drums containing hazardous chemicals or asbestos and compelling illiterate people to work with this material, as happened in the United States of America. I assume that a criminal penalty would apply in such cases, rather than a penalty under this Act. It may be that if under this Act the penalty were 25 years, one would try to prosecute under this Act. We should allow the present penalty of five years to remain and continue to monitor the situation. I am more concerned that the Government will not prosecute at all than I am about the inadequacy of the penalties.

Reverend the Hon. FRED NILE [9.52 p.m.]: The Christian Democratic Party does not support the amendment to increase the penalty to 25 years. We do not agree with the Greens policy of "lock them up for 25 years and throw away the key"!

Amendment negatived.

The Hon. GREG PEARCE [9.53 p.m.]: I move Opposition amendment No. 2:

No. 2 Page 4, schedule 1 [1], proposed section 32B (1), lines 21 and 22. Omit "summarily before the Industrial Relations Commission in Court Session". Insert instead "on indictment before the District Court or the Supreme Court".

The effect of the amendment is to give people against whom a gaol sentence can be imposed the right to trial by jury. Under this bill a judge can impose on a person convicted of an offence a sentence of up to five years imprisonment. That is, the Industrial Relations Commission in Court Session, which operates as a judicial body with a judge or judges, would impose that sentence of imprisonment. It does not sit with a jury, whereas in the District Court and the Supreme Court juries hear all defended indictable matters. This is a fundamental safeguard in our legal system and the Government has not provided one compelling argument for its abandonment.

We do not move the amendment in any way to be critical of the Industrial Relations Commission. I note that the shadow Minister in the other place made some comments about the Industrial Relations Commission and its proud history as one of the oldest courts in New South Wales. An extraordinary feature of the legislation is that it can apply to the death of a person who is not an employee. In addition, it does not catch only employers; it could catch potentially any person who owes a duty of care to ensure the safety of other persons in the workplace. As I have previously stated, the Opposition regards the legislation as unnecessary. Indeed, it is dangerous because of its potential to deprive people of their fundamental safeguards and rights, which is the basis of our legal system.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [9.54 p.m.]: The Industrial Relations Commission in Court Session is a superior court with status equal to that of the Supreme Court. Its judges have expertise and a long history of dealing with occupational health and safety offences and prosecutions. The judges of the Commission in Court Session already deal with criminal matters. It should be made clear that occupational health and safety offences are serious criminal offences and give rise to criminal proceedings, with terms of imprisonment available to the sentencing judges, not withstanding this amendment. In other words, the current Act already has provisions that allow judges to impose prison sentences.

Judges of the commission are very experienced in these types of criminal proceedings. They are also familiar with conditions operating in the workplace, in addition to the specialist concepts and principles associated with occupational health and safety jurisprudence. It would be inconsistent with the existing regime for prosecution of occupational health and safety offences if the new offence were determined in courts of general jurisdiction. Moving fault-based offence matters from the commission to the District Court, as proposed by the Opposition, would be inappropriate because the Commission in Court Session is a superior court to the District Court. Although the new workplace death offence would be the most serious under the occupational health and safety legislation, the removal of it to the lower status of the Local Court or District Court may cause it to appear less serious.

The Opposition's amendment is primarily centred on the perceived requirement for there to be trial by jury for a person charged with the new workplace death offence. That perception is misplaced. Existing occupational health and safety offences are dealt with summarily, without the need for a jury, as are many other criminal offences. This bill creates a new offence under the Occupational Health and Safety Act 2000 and it would be inconsistent with the rest of the Act to require proceedings for this offence to be dealt with and determined by a jury.

Since most occupational health and safety prosecutions involve charges under several provisions of the Act, an amendment that requires a jury trial for the new workplace death offence would mean that all occupational health and safety offences could, theoretically, be required to be heard by a jury. This would substantially increase the cost to employers of both conducting and defending such prosecutions. The Occupational Health and Safety Act 2000 already provides for imprisonment for certain offences. These are tried, without a jury, by the Industrial Relations Commission in Court Session, which provides a just and less expensive system than would be the case with a jury trial.

Offences under occupational health and safety legislation often involve technical issues, such as the application of codes of practice that are the subject of expert advice—issues that are best determined by an experienced superior court judge, sitting alone. Most criminal prosecutions are finalised without a jury trial in the Local Court. For indictable offences where the accused has the option of selecting a jury trial or a summary trial, the overwhelming majority of accused persons choose a summary trial.

The bill provides additional rights and defences for defendants to ensure the just operation of this new defence. The bill also contains a further defence—in addition to existing defences as set out in section 28 of the Occupational Health and Safety Act 2000—that it is not reasonably practicable for an employer to comply, or that the offence was due to causes over which the employer or other person had no control. The bill includes a defence of reasonable excuse for the conduct giving rise to the offence. The bill also provides a right of appeal

to the Court of Criminal Appeal against conviction or sentence for the new offence. It also prevents a prosecutor appealing against an acquittal. These rights provide additional safeguards to persons charged with the new offence.

Ms LEE RHIANNON [9.58 p.m.]: In the second reading debate I said the Greens support serious cases going before a jury. We regard that as a fundamental right. Honourable members may be aware that I had drafted amendments to that effect. I have not moved those amendments, despite the Greens strong commitment to the need to involve juries in industrial manslaughter cases. I made the decision not to proceed with those amendments because of the Minister's statement that if the amendments were successful, he would not allow the bill to go forward. As I said previously, the Greens regard this as an important bill. It may be a small step—and in many ways it is inadequate—but it is a necessary step towards bringing greater safety to the workplace. We agree with the need for juries. Without juries, people—from middle managers to top corporate executives—will be charged with the serious crime of manslaughter and not have the opportunity to go before a jury.

In criticising the Coalition for moving this amendment, the Minister spoke about inconsistency in terms of cases being moved from the District Court or the Supreme Court. I would argue that the inconsistency is that under this regime people charged with industrial manslaughter will not have an opportunity to have their case heard by a jury whereas those charged with criminal manslaughter will have that right. That is the real inconsistency. Having said that, I reiterate that it is important that this bill be passed tonight.

Question—That the amendment be agreed to—put.

The Committee divided.

[*In division*]

The CHAIR: Order! I call the Minister for Roads to order for the first time.

Ayes, 13

Mr Clarke	Mr Lynn	Mr Ryan
Ms Cusack	Mr Oldfield	
Mrs Forsythe	Ms Parker	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin

Noes, 25

Mr Breen	Ms Griffin	Mr Roozendaal
Dr Burgmann	Ms Hale	Ms Tebbutt
Ms Burnswoods	Mr Jenkins	Mr Tingle
Mr Catanzariti	Mr Kelly	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Dr Wong
Mr Cohen	Reverend Nile	
Mr Costa	Mr Obeid	*Tellers,*
Mr Della Bosca	Ms Rhiannon	Mr Primrose
Mr Donnelly	Ms Robertson	Mr West

Pair

Mr Gallacher Mr Hatzistergos

Question resolved in the negative.

Amendment negatived.

Ms LEE RHIANNON [10.08 p.m.]: I move:

Page 5, schedule 1. Insert after line 4:

[3] Schedule 3, Part 5

Insert after Part 4 of schedule 3:

Part 5 Provision relating to Occupational Health and Safety Amendment (Workplace Deaths) Act 2005

22 Law Reform Commission review of Occupational Health and Safety Amendment (Workplace Deaths) Act 2005

(1) The Law Reform Commission is to inquire into, and report on, the effectiveness of the provisions inserted into the *Occupational Health and Safety Act 2000* and the *Criminal Appeal Act 1912* by the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005* (***the relevant provisions***).

(2) The Law Reform Commission in carrying out that inquiry, and making that report, is to have particular regard to:

(a) whether the relevant provisions are achieving their aims and objectives, and

(b) whether the relevant provisions are appropriate to achieve those aims and objectives, and

(c) the incidence and circumstances of workplace deaths in New South Wales since the enactment of the relevant provisions and whether the relevant provisions have contributed to a reduction in workplace deaths in New South Wales, and

(d) any deficiencies with the relevant provisions that have become apparent since their enactment, and

(e) provisions relating to workplace deaths in other Australian jurisdictions and their operation and effectiveness.

(3) The Law Reform Commission in carrying out that inquiry, and making that report, is to:

(a) consult with unions, employees, employers and other interested stakeholders, and

(b) conduct public hearings.

(4) The inquiry and report is to be undertaken under and in accordance with the *Law Reform Commission Act 1967*.

(5) The inquiry is to commence before the expiration of the period of 3 years after the commencement of the relevant provisions.

(6) The Attorney General is required to table or cause to be tabled in Parliament the report, and a detailed written response of the Government, within 3 months after the report is made by the Law Reform Commission.

This amendment provides for a review of the legislation by the Law Reform Commission. Effectively, within three years of commencement of the Act, the Law Reform Commission would be required to review the effectiveness of the occupational health and safety legislation. Such a review would pay particular regard to whether the Act is achieving its aims and objectives, whether the Act is appropriate to achieve these objectives, whether the Act has contributed to a reduction in workplace deaths in New South Wales, and whether any deficiencies in the Act have become apparent since its operation.

In carrying out the review, the commission will consider the incidents and circumstances of workplace fatalities in New South Wales since the Act was enacted; consider the success of prosecutions for workplace fatalities in New South Wales; consult with unions, employees, employers and other interested stakeholders and conduct public hearings. The commission would automatically undertake this review and its report would come back to Parliament for consideration. Then, in accordance with the amendment, the Government would be required to give a response to that report. I hope members will support this amendment, which will provide a mechanism to assess the effectiveness of the bill.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [10.10 p.m.]: The Government supports Greens amendment No. 1.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.10 p.m.]: It is interesting that the Government is supporting this amendment. There has already been quite thorough discussion on this issue by the Standing Committee of Attorneys-General, which came up with the corporate manslaughter bill. It is interesting that the Government, having come up with something completely different, now wants the Law Reform Commission to tread that well-worn path. All I can say to that is the models for the legal system are not correct and I can only hope that the commission will come up with something more akin to what I suggested to the Walker commission. I would be happy to revamp that submission if necessary. I support this somewhat belated attempt to address the situation.

Amendment agreed to.

The Hon. GREG PEARCE [10.11 p.m.], by leave: I move amendments Nos 3 and 5 in globo:

No. 3 Page 4, schedule 1 [1], proposed section 32B (2), lines 24 and 25. Omit "a Minister of the Crown or by an inspector". Insert instead "WorkCover".

No. 5 Page 7, schedule 3, lines 4-6. Omit all words on those lines. Insert instead:

Clause 358 Application of Act to mines: references to WorkCover

Insert after section 358 (4):

(5) In accordance with section 133 of the Act, a reference in section 32B (2) or (3) of the Act to WorkCover, in connection with the application of the provision to a mine, is taken to be a reference to the Chief Inspector of Mines.

As I previously indicated, the Opposition does not believe that the bill is necessary and does not believe that the Government has made its case for this bill. However, if it is to be passed, the Opposition is concerned to preserve safeguards and rights that are fundamental to our legal system. They include the right to an independent prosecutor and the presumption of innocence until proven guilty. The intention of these amendments is to leave the decision to undertake a prosecution to the Director of Public Prosecutions.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [10.12 p.m.]: The Government opposes Opposition amendment No. 3. It will remove the power of the Minister to consent to the bringing of a prosecution in relation to this new workplace deaths offence. The Opposition amendment confines the ability to commence prosecutions to WorkCover or to a mines inspector.

In the other place the Opposition suggested that the provision for proceedings to be instituted with the written consent of the Minister was somehow secretly included in the provisions of this bill. I make it clear that the ability to institute proceedings with the written consent of the Minister is currently provided for in section 106 of the Act. If the Opposition had looked more closely at the current Act or, indeed, at over 100 years of workplace safety legislation in this State, it would have found that the ability to commence proceedings with the consent of the Minister has been provided for in New South Wales legislation since section 45 of the Factories, Shops and Industries Act was enacted in 1896.

Apart from the fact that this provision has been in occupational health and safety legislation in the State for more than 100 years, the Minister's consent to commence proceedings is necessary in order that proceedings can be commenced against WorkCover or the Department of Mineral Resources in respect of their workforces. If the Opposition's amendment were agreed to, WorkCover would be instituting proceedings against WorkCover and the Department of Primary Industries would be instituting proceedings against itself. Clearly this would be ridiculous and untenable situation. The provision for ministerial consent to institute proceedings must be retained to avoid these circumstances.

The Government opposes amendment No. 5 also. The words that are proposed to be deleted from the bill make it clear that the necessary references in the bill to WorkCover extend to include the Department of Primary Industries as the agency responsible for mines. The Opposition's amendment is proposed as a consequential change to support its amendment to confine the right to WorkCover and the Department of Primary Industries to prosecute the new offence.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 12

Mr Clarke	Mr Oldfield	
Mrs Forsythe	Ms Parker	
Miss Gardiner	Mrs Pavey	*Tellers,*
Mr Gay	Mr Pearce	Mr Colless
Mr Lynn	Mr Ryan	Mr Harwin

Noes, 23

Mr Breen	Ms Griffin	Mr Roozendaal
Ms Burnswoods	Ms Hale	Ms Tebbutt
Mr Catanzariti	Mr Jenkins	Mr Tingle
Dr Chesterfield-Evans	Mr Macdonald	Mr Tsang
Mr Cohen	Reverend Nile	Dr Wong
Mr Costa	Mr Obeid	*Tellers,*
Mr Della Bosca	Ms Rhiannon	Mr Primrose
Mr Donnelly	Ms Robertson	Mr West

Pairs

Ms Cusack	Mr Hatzistergos
Mr Gallacher	Mr Kelly

Question resolved in the negative.

Amendments negatived.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Schedule 3 agreed to.

Title agreed to.

Bill reported from Committee with an amendment and report adopted.

Third Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [10.29 p.m.]: I move:

That this bill be now read a third time.

The House divided.

Ayes, 24

Mr Breen	Ms Griffin	Ms Tebbutt
Ms Burnswoods	Ms Hale	Mr Tingle
Mr Catanzariti	Mr Jenkins	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Dr Wong
Mr Cohen	Reverend Nile	
Mr Costa	Mr Obeid	*Tellers,*
Mr Della Bosca	Ms Rhiannon	Mr Primrose
Mr Donnelly	Ms Robertson	Mr West
Ms Fazio	Mr Roozendaal	

Noes, 12

Mr Clarke	Mr Oldfield	*Tellers,*
Mrs Forsythe	Ms Parker	
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin
Mr Lynn	Mr Ryan	

Pairs

Mr Hatzistergos	Ms Cusack
Mr Kelly	Mr Gallacher

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time.

SYDNEY 2009 WORLD MASTERS GAMES ORGANISING COMMITTEE BILL

GAMBLING (TWO-UP) AMENDMENT BILL

PASSENGER TRANSPORT AMENDMENT (MAINTENANCE OF BUS SERVICES) BILL

Bills received.

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

Motion by the Hon. John Della Bosca agreed to:

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

Bills read a first time and ordered to be printed.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [10.25 p.m.]: I move:

That this House do now adjourn.

BISHOP KEVIN MANNING ARTICLE

The Hon. PETER PRIMROSE [10.25 p.m.]: I wish to draw the attention of the House to a letter that appeared in *Catholic Outlook* written by Bishop Kevin Manning, the Bishop of Parramatta, earlier this month. The letter appears in a journal that I subscribe to called *Online Catholics*. I urge any honourable member who is interested to have a look at that publication. In this interesting letter the bishop stated:

My Dear People,

The words "rich" and "poor" frequently fell from the pens of commentators on this year's Federal Budget, and rarely has the comparison been more pronounced.

I was left wondering if the words of the nursery rhyme "Rich man, poor man, beggar man, thief" were not a sliding scale for the future of the poor.

My wonderment was further fuelled by a few indictors of the Federal Industrial Relations Legislation, proposed for debate in July/August and which promises little joy for the poor:

The bishop made a number of points:

- A continuing imbalance in the employment relationship;
- No clear guarantee of a proper minimum wage to protect the poor;
- Lack of support for the poor in their search for just wages;
- Exemption for small business employers from unfair dismissal claims and redundancy payments. The musical *Oliver*, the novels of Dickens and Zola, bring home to us the exploitation of the poor by the wealthy, propertied classes.

The bishop's letter continued:

Exploitation

In the 19th Century, the time of the Industrial Revolution, for example, labourers were exploited and made to work long hours so that the rich became richer, and the workers had no redress.

As a result of their abject working conditions and miserable wages, trade unions were born to protect the rights of workers, while opposing those who advantaged themselves by exploiting the poor.

Emphasis on personal wealth is a legacy of a way of understanding the world that we have inherited from Enlightenment Europe, an understanding in which the individual is the centre.

It is not the understanding of indigenous Australians, nor of the people of the continents of Africa, nor South America, nor Asia.

When the Federal Budget came down, analysis was based on the individual: What's in it for me? Will I have to change my investment strategy?

This is the talk of the rich and those with the means to enrich themselves. Their investment and superannuation horizons are not the horizons of the poor and the working poor whose concerns are more immediate: this month's rent, and food on the table for the week.

Sharing resources

If the prophets Amos and Micah were alive today they would be sharing the stage with Bono and Bob Geldof in calling for an equitable share in the world's resources for all the inhabitants of the world.

How can it be equitable that a European cow gets subsidies worth 157 times what the EU give to each person in Africa?

How can it be right that companies enrich their shareholders by the production and export of arms, whose sole aim is to kill?

Micah prophesied: "Disaster for those who plot evil … seizing the fields that they covet, they take over houses as well, owner and house they seize alike, the man himself as well as his inheritance".

Jesus' explicit identification with the poor, "As long as you did it to one of these, the least of my brethren, you did it to me", personalises the issue and acts as a counter to the tendency to dehumanise work.

The Catholic Church, by her God-given mandate, recognises the rights and dignity of the worker and the importance of work itself, for she sees work as part of God's plan for the building up of creation, and labourers as co-workers with Christ.

The bishop's letter continued on for another page. I urge honourable members to avail themselves of the letter and read it. I found it most interesting reading.

RECREATIONAL DRUG USE

The Hon. DAVID OLDFIELD [10.30 p.m.]: All decent members of the community understand we face many ongoing issues related to drug use and, in particular, recreational drug use. It is suggested a large proportion of people under 40 use drugs such as ecstasy, speed and cocaine regularly. Indeed, there are many who typically engage in the use of such drugs every weekend. On entering certain venues and activities, such as dance parties or raves, one may even get the impression that nearly all patrons are under the influence of recreational drugs. For the record, I have not ever taken illegal drugs—not primarily because of the illegality involved, but rather because I have never felt the need to seek kicks through self-induced delusion. I grew up on the drug-prolific northern beaches and spent three years touring with rock bands, so I have not exactly been sheltered from drugs—quite the opposite is the case—but I have always chosen to say "no".

Saying "no" to drugs should be the message we pass to everyone, and I congratulate the Federal Government on the powerful approach of its current anti-drug campaign. This campaign was recently discussed in a public forum held by the *Insight* program on SBS. The producers would no doubt present the program as having been a forum for public debate, but in many respects it was a have-your-say program for those who advocate drug use as a completely harmless form of recreation. The SBS forum had the appearance of being made up of young and youngish-types professing drug use was fun, appropriate and an activity that could be pursued responsibly and safely. How anyone could link responsibility and safety with drug use is beyond rational thought—drug-taking is akin to purposely injuring yourself in the belief that you will suffer no negative effects.

The rest of the SBS audience seemed to be parents and others who would have been considered by youth to be old fogeys down on drugs. These parents and others who appeared on the program for the purpose of opposing drugs are sensible and responsible adults who in some cases had lost their children to drugs. There was, of course, a token intellectual or two, and certainly the now widely held view that marijuana is harmful was highlighted. Let us not forget that until recently marijuana was considered a soft drug and essentially harmless—past experts on marijuana have certainly been proved wrong. The drugs are safe if you're careful crowd merely wished to dismiss and trivialise the dangers as isolated and the result of the victim's lack of knowledge. Comments included, "More people get killed in road accidents each year." The number of drug deaths should not be the measure, as such misses the salient point of the non-fatal damage done by the taking of drugs.

One recreational drug user suggested the Federal Government's campaign was like "trying to scare someone off swimming by telling them they are going to get eaten by a shark". Such comments are clearly those of a person in denial of the danger of drugs. There may be only the occasional drug death, but there are many

who suffer mental and physical health problems. The danger of drugs is real and I repeat that the number who die should not be the measure of that danger. The SBS program also featured representatives of a so-called peer educator group who profess to pre-test the quality of street drugs for users. These so-called peer educators are virtually in the employ of drug peddlers—an offshoot testing facility with apparent credibility that informs kids which ecstasy tablets are safe. No ecstasy tablets are safe. The whole matter is one of a series of circumstances in which luck plays a huge part. The police should be tracking down these so-called peer educators and raiding their testing facilities. Illegal drugs, recreational or otherwise, are not safe. I reiterate: it is nonsense to suggest drug taking is an activity that can be undertaken safely or responsibly. At my next opportunity I will continue this theme by speaking on the failed policy of harm minimisation.

BREAST CANCER SCREENING

The Hon. ROBYN PARKER: [10.35 p.m.]: It was not until the early 1970s that biological research into cancer began, but breast cancer was still an area in which research and knowledge were limited. This meant that the impact of breast cancer on women's lives was even more devastating that it is today. What we know today is that about 11,500 Australian women are diagnosed with breast cancer each year. One in 11 women will be diagnosed with breast cancer before the age of 75. Breast cancer is the most common cause of cancer-related death in women in Australia, and a total of 2,594 women died from breast cancer in Australia in 2001—the latest statistics that I have researched. Yesterday we saw the Cancer Institute report, which showed that along with melanoma, bowel and prostate cancer, breast cancer is expected to lead a 24 per cent surge in the number of malignancies reported in New South Wales over the next six years. They expect breast cancer to rise to more than 5,000 cases, or 27 per cent, of all cancers in women.

We know that early detection is best. Finding breast cancer early means that you have more treatment options and your chances of survival are better. Survival is lower if the cancer has already spread outside the breast when it is diagnosed. As an example, about 9 out of 10 women whose cancer is diagnosed before it has spread outside the breast will be alive five years later. However, if the cancer has spread to other parts of the body at diagnosis, only about 2 out of 10 women will be alive five years later. Despite all this knowledge, last year the Carr Government played politics with women's health by threatening to withdraw funding for breast screening in New South Wales. It played politics with women's health by saying that a funding reduction in the Public Health Outcomes Agreement by the Federal Government meant it had to cut funding to breast screening by $4 million.

Under the Public Health Outcomes Agreement the Federal Government provided additional funding to New South Wales for various public health programs, and it is the State Government that solely determines the programs that receive funding. Yet, it used women's health as a bargaining tool to play chicken with the Federal Government. This proposed funding cut would have seen a 40,000 reduction in the number of breast screenings across New South Wales. This year, by deciding to restrict access to breast screening for women under 50, the Government is blatantly ignoring a mountain of medical research that shows that women in their 40s account for 18 per cent of breast cancer cases.

The BreastScreen program was established for all women aged between 40 and 79 but because of Carr Government funding constraints the program is now targeting only the so-called target group of women aged between 50 and 69. This reduction in access has seen some 340,000 women miss out on free scans. Every effort should be made to increase participation in breast screening because statistics show that only 49 per cent of women aged 59 to 60 are having regular mammograms, which is down by 4 per cent. This may not seem like much, but even a 2 per cent fall in participation over a year represents about 14,000 women. Yet the Carr Government, in its infinite wisdom, has decided that it will once again put women's health at risk. Of course it denies that that is what it is doing.

I would think that women coming forward stating that they have been unable to gain appointments with BreastScreen NSW are hard to deny, as are similar comments by the head of the NSW Breast Cancer Institute, Professor John Boyages. It was Professor Boyages who advocated regular breast screening for women at 40 years of age instead of 50 years after a study published in Britain in 2003, where more than 200,000 breast cancer patients aged 20 to 69 were studied and the death rate was halved for women in their 40s who were screened. Those lives were saved due to early detection through screening and improvements in treatments.

I recently met Kathryn Skelding, a student from Newcastle University who is studying for her PhD. Kathryn's research deals with the viral oncolysis of human breast cancer. This project involves the development of an effective procedure to stop the spread of human breast cancers at an advanced stage of disease. It involves

the use of a common-cold producing virus, called coxsackievirus type A, being injected into the tumour or intravenously so as to target both a primary tumour and metastases both in cells and in a mouse model. If this project is successful, a new treatment for breast cancer will have been discovered. I take my hat off to Kathryn and wish her all the best with this remarkable and important project. This study recognises that breast cancer is currently one of the biggest killers of women in Australia. If only the Carr Government recognised this.

COUNCIL FOR CIVIL LIBERTIES

The Hon. JAN BURNSWOODS [10.40 p.m.]: I wish to share with House excerpts and comments from an article in the latest issue of *The Hummer*, the quarterly publication of the Sydney branch of the Australian Society for the Study of Labour History. As usual, the publication contains a large number of interesting articles. The article I wish to speak about is written by Ken Buckley, a former Associate Professor of Economic History at the University of Sydney. In March this year Ken Buckley delivered an address to the Sydney branch of the Australian Society for the Study of Labour History. He spoke at length about his early life in Britain, his period as a student, his decision to join the Communist Party, his several years in the army, and his life in Australia from the time of his arrival in this country in 1952.

In particular, I want to draw attention to Ken Buckley's comments about his role in helping to found the Council for Civil Liberties in New South Wales, and some of the interesting work and achievements of that body. The Council for Civil Liberties was established in 1963 following an incident involving three police officers, one of whom turned out to be the head of the Vice Squad at Kings Cross. The emphasis that was given to the Council for Civil Liberties, no doubt by deliberate decision, was to make it as broad and representative as possible, and to ensure that its membership comprised a large number of lawyers, including quite conservative lawyers. Its early emphasis was concerned with the censorship of literature, plays and films, along with abuse of power by police, prison warders, and public service bureaucrats, particularly in relation to marginalised people such as Aborigines.

It is interesting to look at some of the detail that Ken Buckley provides on the history of the Council for Civil Liberties. While the organisation is now perhaps only a shadow of its former powerful self, given some of the debates in this House and elsewhere over recent weeks and months it is an organisation that I believe is very much needed. Ken Buckley was the first secretary of the Council for Civil Liberties, an honorary position that occupied a lot of his time. He spoke about the aims of the organisation, and particularly its aim to protect and extend a broad range of traditional civil liberties, such as freedom of speech, publication, assembly and organisation.

He referred also to the organisation's aim to extend civil liberties that we would probably refer to as human rights, taking those earlier attitudes about personal freedoms somewhat further. He gave some interesting examples of cases in magistrates courts and referred to some of the well-known arguments. He referred, for example, to charges such as offensive language or behaviour and resisting arrest, and the fact that the defendants generally came from areas such as Redfern. He said they also included a sprinkling of people involved in protest demonstrations. Areas such as Vaucluse did not come into the picture.

Over the years since 1963 the Council for Civil Liberties has had a number of victories, and I think it is important to place them on the record. One of its well-known victories was its effort in dealing with the customs department censorship of books, mostly imported books listed as obscene, and the way in which the council got around it and finally overturned much of the censorship of literature by its backing of the publication in Sydney of the Penguin book *Trial of Lady Chatterley*. As honourable members may remember, that was a very important step in ensuring that the customs department backed down so Australians could become far more free to read and view what they wanted, in the theatre and elsewhere. Ken Buckley referred in detail to more recent events, for example, in relation to the Vietnam and Iraq wars, which I do not have time to go into. However, I recommend the article because it provides a very interesting history. [*Time expired.*]

TRIBUTE TO MRS JOAN BRASSIL

The Hon. PETER BREEN [10.45 p.m.]: Tonight I wish to pay tribute to the life of artist Joan Brassil, who died six weeks ago aged 85 years. Joan's work has been exhibited across the country and across the world, but I first encountered it in the form of a light box leaning up against a garage wall in Hilltop Crescent, Campbelltown. Peter Brassil, Joan's son, and I were playing cricket in the paddock next door to Joan's house, and I hit a loose delivery over the fence and straight through the light box. The year was 1958 and the cricket shot was an unworthy introduction to the work of Joan Brassil. Forty years later I had the privilege to

accompany Joan on an inspection of her work at the Museum of Contemporary Art at Circular Quay. There were a number of installations, and one in particular took my attention. It was a pile of gravel with concrete pavers on top. Joan explained that walking on the pavers caused the gravel to move, and I recall that the title of the work was "Instability". We moved on from the gravel and the pavers to a series of light boxes on the wall, and I asked Joan if she remembered me hitting the cricket ball through a light box. She looked at me in her quizzical way and said, "Were you playing cricket?"

Peter Brassil and I played cricket from daylight to dusk in the spare paddock on Hilltop Crescent. Peter's father, who had died three years earlier—50 years before Joan—once played cricket for New South Wales. As young boys and aspiring cricketers, Peter Brassil and I worshipped the memory of his father, and we had very little regard for light boxes. Somewhere along the track I became more interested in Joan's art than in cricket. I think it was because of Joan's irresistible passion for her work and the way she identified so personally with her creations. I could not love Joan without also loving her work.

Apart from the light boxes, I also have vivid recollections of Joan's sculptures in the art studio at Wedderburn: fruit in fired clay, welded metal, carved wooden flowers and tree bark set in concrete. Her mediums were as diverse as her art. She educated two generations of art students at Campbelltown, and anybody who knew Joan also knew her work. Perhaps the best-known work is her sound sculpture "Tether of Time", which sits proudly in the sculpture gardens of Campbelltown Art Gallery. It is one of the gallery's major commissioned works and a worthy monument to the artist. On 10 May Jill Sykes wrote a piece for the *Sydney Morning Herald* commemorating the life of Joan Brassil. Jill Sykes said:

> Perhaps the most extraordinary thing about Brassil's career as an artist is that she didn't take it up as a full-time occupation until she was 55. As a young widow, she had brought up her two young sons by teaching art, mostly at Campbelltown High School.

The *Sydney Morning Herald* article reminded me that Joan's art was always at the cutting edge of technology and science. In an interview for the *Sydney Morning Herald* in 1995, Joan said:

> If you are working holistically, you must consult a wide range of people in varying disciplines. All you have to say is, "What are you doing?", and they always tell me, and I like to continue the song. We all leave our voices in the minds of others.

Peter Brassil married, and then tragically died in a motor vehicle accident on Pyrmont Bridge in Sydney, leaving two sons who were the same age as Peter and his brother, Greg, when their father died in 1955. Twice Joan Brassil lived through a wife and mother's worst nightmare. Joan is survived by her son, Greg Brassil, and his sons, Liam and Owen. A memorial service to Joan was held at her beloved Campbelltown Art Gallery. Greg spoke at the service, as did the gallery's patron, John Marsden, John Peard from the Wedderburn arts community, and many others who were her friends and colleagues.

It was said at the memorial service that Joan never lost her sense of wonder. One of her characteristic remarks was, "Why not?" She made the remark whether she spoke about the possibilities in the universe or a request for a cup of coffee. Like her art, Joan Brassil was an iconic human being, and she was held in the highest esteem by the arts community. She received an honorary doctorate from the College of Fine Arts of the University of New South Wales and an Order of Australia Award for her contribution to the arts. On a personal note, I will miss Joan's handwritten Christmas cards, her poetry, and her wise words of critical and perceptive thought. Joan Brassil seems to have been a part of my life forever. She lives on, somehow inhabiting that cosmos reflected in her art. Her sculptures continue to breathe in the bush, the sky and the desert she loved so much. The Wedderburn Arts Studio is stamped indelibly in my psyche, so much so that Joan's work lurks at the end of every bush track and behind every stand of grevillea. It can truly be said of Joan Brassil that she has added to the work of creation.

REGIONAL CONSERVATORIUMS OF MUSIC

The Hon. CATHERINE CUSACK [10.50 p.m.]: Our regional conservatoriums do a brilliant job. The Department of Education and Training [DET] administers $3.2 million funding for 15 regional conservatoriums with 15,000 students. About $200 per pupil subsidises their instruments, tuition, furniture, books, facilities, visiting artists, and performance and administration costs. Yesterday, the Minister for Education advised the Parliament of this program and claimed credit for resourcing and expanding our regional conservatoriums. But if, as the Minister told us yesterday, the Government is doing such a great job, why does the front page of today's *Illawarra Mercury* read:

> Con's Cash Crisis: Cutting courses, axing staff, selling pianos. That's how our conservatorium of music plans to keep its doors open.

If the Government is doing such a great job, why is my local Northern Rivers conservatorium falling apart as a result of building negligence on the part of TAFE and experiencing a drop in student numbers as a result? If the funding is so generous, why has it been frozen since 2001 without even consumer price indexation, let alone additional funds to meet the cost of a 30 per cent increase in student enrolments? Is it really wise for the Minister to brag, given the parlous financial position our conservatoriums are in?

I appeal to the Minister about timing for the grants. The cheques for the current financial year, which began on 1 July 2004, were not distributed until November 2004, five months after the start of the financial year. The same was true for the 2003 financial year, although there was one notable exception: the Tamworth conservatorium received its cheque on 5 July 2003. This cheque appears to have arrived early because it was hand-delivered by Bob Carr on the occasion of his 2003 visit to Tamworth. This is why Tamworth, and only Tamworth, was able to get access to its 2003 grant five days into the financial year instead of having to wait the usual five months.

A further problem is the amount of red tape attached to the grants. Fifteen conservatoriums are sharing $3.2 million. How hard can it be? Very hard for DET, it seems. The letter to the conservatoriums, signed by former education Minister Andrew Refshauge, advising them of funding was dated 1 November 2004. This was only the advice; there was no cheque attached. It was only an offer of "core" funding with numerous sub-allocations and conditions attached. Halfway through the financial year, when "core" funding was finally approved, a 25-page contract written in 10 parts with four attachments was forwarded for signature. It is ridiculous red tape, considering the total cap on the grants is $175,000.

In 2003 hundreds of children from regional conservatoriums around the State came to Sydney to perform at a gala concert. It was a huge effort and a great thrill for the students and their families. The DET subsidy was $30,000, or about $40 per child. The subsidy paid for some of the staging costs in Sydney, and it was greatly appreciated. The costs of organisation and year-long preparation, travel, and accommodation were met by students, teachers and local communities. It was well worth the effort, and a decision was taken to make it an annual event. So in the lead-up to the concert on 2 May 2004 nearly a thousand talented country children were very excited. Accommodation was booked and the 12-month preparation was undertaken in earnest.

I emphasise this is a very professional undertaking requiring a huge and disciplined commitment from students and their teachers and it is an expensive undertaking for their families. So you can imagine how stunned and dismayed the regional conservatoriums were when, on Thursday 8 April—the last day of school term, the day before Good Friday, and just three weeks before the concert—DET telephoned the conservatoriums to tell them the concert would have to be cancelled. Why? Because DET was undergoing a restructure and could not guarantee that the $30,000 would be available.

DET had to make 15 phone calls to break this shattering news to 15 conservatoriums, but devastated staff at the conservatoriums had to make a thousand calls over Easter to break the news to children and their families, who had booked accommodation and arranged for friends and relatives to attend the concert in Sydney, and the teachers whose efforts counted for nothing in the DET decision to can the concert. Ultimately, five conservatoriums dug in and decided to go it alone, without DET. The Sydney conservatorium came to their rescue. Mr Mark Walton and Mr Peter McCallum made the famous Verbrugghen Hall at the conservatorium available at no cost. Did anybody from DET bother to attend the re-organised concert at the conservatorium? Did DET take the opportunity to hear and marvel at the work and achievements of these young music students? No, of course not. An advertisement for the re-organised concert was placed in the *Sydney Morning Herald*, and members of the public attended, as did the families and friends of these young students. The sad epilogue to this story is that there is no more funding for a Sydney concert for our regional conservatoriums. In spite of the obvious enthusiasm in the face of adversity, in spite of the focus and joy it gives the children and their teachers, DET just does not seem to get it.

Shame on those individuals whose mean spiritedness allowed such a shambles to happen. Shame on them for abusing their power over the children in this way. I caution the Minister not to brag about the Government's support for regional conservatoriums. I assume she is poorly advised and I hope she shares in my dismay at what has been allowed to happen. Instead, I urge the Minister to investigate the conduct of this program and to consult with the conservatoriums about how to progress them. The current situation is unsustainable, and our conservatoriums deserve far better than what is happening at present.

DEATH OF MR IAN DORIC GLACHAN, A FORMER MEMBER OF THE LEGISLATIVE ASSEMBLY

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [10.55 p.m.], by leave: Might I start by thanking the House for giving members of the Liberal Party the opportunity to put on the record our thanks

for the contribution, in both a professional and a personal sense, that Ian Glachan made not only to the Liberal Party but to the people of New South Wales. There has been a lot said in the Legislative Assembly this evening as the condolence motion has been wholeheartedly supported by both sides of politics in that Chamber. In this Chamber tonight I recognise that a number of members will want to say a few words and put on to the record their thoughts about their relationship with Ian. I too will take this opportunity to make a brief contribution.

For members who are not fully aware, Ian Glachan, the former member for Albury, passed away on 20 April. Of course, Ian left the State parliamentary team at the last State election. But he most certainly did not walk away from the role and responsibilities that he had for many years in public office. After leaving the State Parliament he was wholeheartedly elected to the local council in Albury. Up until the time of his death he contributed even further to his local community—something that is most certainly not lost on the people of Albury and is not lost on people on this side of politics who continued to work with Ian, as, indeed, did the people of Albury, on issues of importance to them.

Much is said about people in the Liberal Party being stalwarts. I think it is fair to say that because of the contribution Ian Glachan made over the years, both in the Parliament and in an organisational sense in the party before becoming a member of Parliament, he is one person who most certainly qualifies for that description. Ian Glachan is a stalwart of Albury, having moved off the land in country New South Wales and gone to Albury to open up a newsagency.

After becoming a member of Parliament in 1996 and travelling down to Albury as a backbencher to get an understanding of country issues in a part of the State in which I had spent very little time prior to entering Parliament, I was amazed at the depth of the fondness shown towards Ian Glachan by the local people. It was very difficult to walk through the shopping centre with Ian because you would only get a very short distance before someone would stop Ian and start talking to him about topical issues, both professional and personal. The relationship he had with the people in Albury certainly went beyond that of normal politicians; he worked with the people on a very personal level.

Ian Glachan was without any doubt a good man. He was a committed Christian, a committed family man, and a committed representative for the people of Albury. It is often said that behind every great man there is an even greater woman. In the case of the Glachan family, Ian and his wonderful wife, Helen, were most certainly a team. We will always remember them as a team, and the Liberal Party will always remember them working together for the best interests of the people of Albury.

Even though Ian is no longer with us, the contribution the Glachan team made to Albury will continue for many years to come, with both Helen and their daughter getting involved in the political hurly-burly of Albury. Indeed, Helen is now taking a very well-respected and well-earned place on the State executive of the Liberal Party. It is fantastic to have you here, Helen, in the Liberal Party, ensuring that the work you have done for Albury and the contribution that you and Ian made as a team are continued in the Liberal Party and in Albury, the area so loved by both of you.

It is great to have Helen in the Parliament this evening. I got to know the Glachans at the time of my preselection in 1995-96. All members who visited Albury were welcomed into the family as if we had known them for many years. Indeed, it was an insult to stay anywhere other than at their home. During some of my visits to Albury I had the opportunity to move through the town centre with Ian and what I witnessed will remain forever in my heart. He demonstrated just what it means to be a local member and to be a living entity within the community. It has been honour to work with Ian, as it will be an honour to work with Helen in the future.

The Hon. JOHN RYAN [11.00 p.m.], by leave: The sudden passing of our former colleague Ian Glachan on 20 April was a tremendous shock. I had been speaking to him here in this Parliament not two weeks before. On that occasion I had the chance for a quick chat with Ian and he surprised me by telling me that he had been recently elected mayor of the newly created Greater Hume Shire Council. It was obvious that he was full of enthusiasm and vision for his new position. Ian Glachan lived to serve, and service to his family, his community and his country were constant themes in his life. He was kind and selfless; he was humble and honest. I am proud to say that I drew inspiration from the manner in which he conducted himself while he was a member of Parliament. Most of all, I admired the manner in which he expressed his obvious and strong Christian faith, which influenced so much of what he did.

In addition, I much admired the manner in which he expressed his love for his family, particularly towards his wife, Helen, his daughters, Jane, Alice, Ann, and his grandchildren. He spoke about them to many

of us frequently and fondly. He met Helen when she was only 14 years and he was only 16 years. Their marriage was a wonderful romance and a close partnership. While Ian served in the New South Wales Parliament they worked as a team. Helen is as well known to us as Ian was because, despite the distance they lived from Sydney, she was frequently in Sydney, by his side, joining him in his duties and carving out an involvement in the Liberal Party family for herself. I cannot imagine how Helen has endured his loss and she, in particular, has been frequently in the thoughts and prayers of my wife, Alexandra, and me in the last few weeks.

Ian was also the sort of grandfather that any child would want to have, and this could not have been better expressed than by his grandson Fergus Little at his funeral when Fergus said that his Grandpa always listened to what he had to say and that "he was the best friend a boy could ever have". Ian loved the simple things of life. He lived such a full and interesting life. He was a member of the Air Force, a marine engineer, an officer in the Merchant Navy, a farmer and a newsagent, before being elected to Parliament. He was always full of good stories. I can remember him reliving memories of his childhood as we ate meals with colleagues together in the Strangers Dining Room. They included his adventures of scaling the fence at the Sydney Cricket Ground to get a free look at the cricket. He said his mother would give him some lunch and he would hang around the gate with his friends until the old fellows on the turnstiles let them sneak in. He had fond memories of seeing the cricketing prowess of Don Bradman and Keith Miller.

Ian had plenty of personal achievements during his parliamentary career, including the new Albury Base Hospital; a new police station; a new school at Jindera; a hall for the school at Lavington; a new bridge over the railway line at Borella Road that replaced an old, single-lane wooden bridge; and, of course, his service as Chairman of the Public Accounts Committee. But none was as great as his achievement of conducting himself with dignity, humility and grace during the 15 years of his parliamentary service. In a profession noted for being rough and tumultuous, no-one can recall him ever making a personal attack on anyone. Like all of us in this place, he always had an opinion but he never slaughtered anyone with it. He was as capable of listening as he was of speaking. I always appreciated the manner in which he encouraged younger members of Parliament to strive and succeed.

One of the many memories I have of Ian was a conversation he had with some of us in the dining room about his garden. On this occasion he told some of us that over the weekend he had apparently selected his final resting place on his property in Albury. While some may think this was an odd topic of conversation for lunch, it demonstrated his fundamental practicality, his confidence about life, and the inevitability of our own passing. Ian had a strong Christian faith and I was privileged to share that with him as we participated from time to time in the Parliamentary Christian Fellowship.

In his final speech to the Parliament he expressed his gratitude for the grace he had received from God, through no merit of his own, and for the great gift of faith that allowed him to believe in the Lord Jesus Christ. On behalf of my wife, Alexandra, I express my profound sympathies to Helen, his daughters, their families and his grandchildren. I cannot imagine the extent of their pain in so suddenly losing him. However, I am confident, as I am sure Ian was confident, that he is currently abiding in a better place with his Lord. I can only offer to the family the comfort we can receive from the Word of God when we read chapter 8 of the Book of Romans, which, edited for brevity, states:

> Our present sufferings are not worth comparing with the glory that will be revealed in us... And we know that all in things God works for the good of those who love Him … Who shall separate us from the love of Christ... No, in all these things we are more than conquerors through him who loved us. For I am convinced that neither death nor life, neither angels nor demons, neither the present nor the future, nor any powers, neither height nor depth, nor anything else in all creation, will be able to separate us from the love of God that is in Christ Jesus our Lord.

I hope that Helen and her family experience that love of Christ as they proudly remember the memory of our former colleague Ian.

The Hon. PATRICIA FORSYTHE [11.06 p.m.], by leave: When Ian Glachan made his first speech in the other place on 3 June 1988 he remarked that the strength of the United States of America lay not in its big cities but in its rural areas. He said that what was needed in New South Wales was cities of 100,000, 200,000 or 300,000 across the State. His vision for Albury was for a strong, vibrant city. He showed his pride in Albury and its designation as a growth centre. Ian was a great ambassador for Albury and a great ambassador for what we, as members of Parliament, do in our day-to-day interaction with the community.

Ian was a caring and compassionate person whose strong Christian faith and values underpinned his approach to his work and to life in general. He was outstanding in his pastoral role as a member of Parliament.

Frequently I advised new Liberal parliamentarians to spend a day with Ian in his electorate and watch how he worked. Ian seemingly knew everyone in Albury and they knew him. When Ian walked along the streets he engaged in conversation with everyone he passed. I recall on one visit that, as we alighted from his car in front of his electorate office, a car pulled alongside us and Ian, not knowing the driver, immediately introduced himself. He regarded it as his role to know everyone and to be known. Therefore, his community knew that at all times he was approachable.

Ian Glachan sought election to Parliament in the 1984 State election and, although unsuccessful, stood out as a candidate to retain. As Ian was a newsagent in the city of Albury who worked with his wife, Helen, he was therefore well placed to maintain the community profile that is essential to win a seat such as Albury. Nick Greiner sought and gained the support of the State executive of the Liberal Party for an early selection and endorsement. The campaign that Ian commenced with Helen before the 1984 election became a seamless process to the 1988 election.

Ian was elected in 1988 and re-elected in 1991, 1995 and 1999. In 2003 he chose not to stand. It would be wrong to say that he chose to retire, because, firstly, he remained active in the Liberal Party and, most recently, he successfully stood for the newly constituted Great Hume Shire Council. Despite, or perhaps because of, not having previously been a councillor, unlike the other candidates, he gained the second highest vote, and just weeks prior to his death he was elected the shire's first mayor.

Ian was committed to his local community in all that he did. Beyond politics and his beloved family of Helen and his daughters Jane, Alice, Ann and their families, and his mother, Gladwyn, he was an active member of the Anglican Church, particularly in Jindera, where he was involved in the restoration of the church. Ian was a Paul Harris Fellow in Rotary, secretary of a committee for the establishment of Trinity Anglican College, and Chairman of the Mercy Hospital building appeal, to name but some of his activities in Albury. However, his family was always the centre of his universe. I well remember the many discussions we had about his daughters and his grandchildren.

Ian's grandson Fergus showed something of Ian's love for his grandchildren during his wonderful tribute at the funeral for his beloved grandfather. Ian and Helen were a strong team, in business, in politics and, of course, as parents and grandparents. Ian Glachan was a person of the highest integrity, a true gentleman whose style and personality was the antithesis of the media portrayal of members of Parliament. Ian Glachan was listened to when he stood up in our party room. He commanded respect for his no-nonsense, commonsense approach. His voice was soft but his message was always compelling. His sudden death leaves an enormous void in his family and the Albury community. To Helen, Jane, Alice, Ann, Gladwyn, and his whole family, thank you for lending him to us from 1988 to 2003. My deepest sympathy to each of you. Vale, Ian Glachan.

The Hon. CHARLIE LYNN [11.12 p.m.], by leave: I shall speak about my colleague and very good friend Ian Glachan. I offer my condolences and sympathies to his wife, Helen, and his family. Indeed, it was probably because of Ian and Helen's two votes about eight years ago that I am here tonight. So I will be eternally grateful to them. Ian Glachan was an absolutely impeccable role model for young conservative people joining the Liberal Party. From humble beginnings, Ian represented everything that this great party stands for. He started his life from humble working-class beginnings as an apprentice fitter and turner. Then over the years he became a marine engineer, a sailor, a farmer, a small businessman, a shire councillor and a member of Parliament.

Ian was a proud servant of his community and he received Rotary's highest award, the Paul Harris Fellowship. He was a justice of the peace. He was an active member of the Anglican Church. If he were here with us today he would be labelled with the new term that is used for people like Ian: the religious right. Ian would have worn that badge proudly. He was active in the Mercy Hospital. The thing I really liked about Ian was that people never had any doubt about what he stood for: those enduring Christian values. His family was his world, and he would do anything he could to support the family unit. He was a champion for a safe community, for people having the same opportunities he had, and for encouraging them, through his work in the community, to make the most of those opportunities.

In the Liberal Party room Ian Glachan stood out as a man of high integrity. Everybody knew his views. He felt strongly about them, and he also felt strongly about what many see as the social progression issues of the time. He argued strongly against many of them in the party room. No-one in our party room ever had any doubt about where Ian was coming from or what he stood for. However, Ian was so honest and forthright that, having made his contribution to the discussion, he always had the respect of those who supported his argument and those who did not. When he came out of the party room, that was it for Ian. There was no further comment because he saw himself as a loyal servant of our great party and he always put the interests of the party ahead of his own personal view. Indeed, when he came out of the party room he supported the views of the leader and the team.

Others have spoken about Ian in his community. I also had the great pleasure of enjoying the hospitality of Ian and Helen during a couple of visits to Albury. Walking around that community, I saw the high regard that people had for him. It was the same regard that we had for him in the party room. Ian was taken from us too early; I think he deserved a little more time with his family, particularly his grandchildren. He loved everybody and everybody loved him. He is a great loss.

I was in Papua New Guinea when Ian passed away, and when I returned I had an email saying he had gone. I could not believe it. It was a great shock. I can only express my profound sympathy to Helen and his family because it will take them a long time to come to terms with their loss. But within the Liberal Party and his community he will be long remembered as a great man. As I said, he will be a role model for young people: when they commit to doing something in Australia they can do it. If they work hard, have good values, are honest, keep their integrity intact, and have strong Christian beliefs they can achieve greatness, as Ian Glachan did. I express my profound sympathy to Helen and his family.

The Hon. DAVID CLARKE [11.18 p.m.], by leave: The passing of Ian Glachan, formerly the member for Albury, is a loss deeply felt by members of the Liberal Party, as well as many, many others. He was a convinced believer and he was a true believer in the good and noble values and ideals that our great party epitomises. He upheld our party in good times and not so good times, and always loyally and with steadfastness. It is providential that he came to represent the seat of Albury in this Parliament because it was in the city of Albury that the Liberal Party was founded some 60 years ago by Robert Gordon Menzies. And like the founder of our party, Ian represented it with integrity and distinction. A visit to Albury will surely demonstrate to anyone the affection and regard with which he was held.

Ian Glachan was a committed Christian and he demonstrated genuine Christian charity and goodness in the conduct of his life and in his dealings with all who came in contact with him. He never sought aggrandisement; to the contrary, he was known for his humility and likewise for his trustworthiness. Ian had deeply held convictions and expressed them in a forthright and direct manner, but always with good grace. He loved Australia and was committed to its constitutional heritage and wanted good things for its people. In his married life with his dear wife, Helen, he exemplified what a joyful and wonderful institution marriage was meant to be.

He was succeeded as member for the State seat of Albury by Greg Aplin, who, in his own life, mirrors the good and decent Christian and family values held by Ian. Ian would be well content that service to the people of Albury is so admirably carried on by Greg. Likewise, his legacy continues through his devoted wife, Helen, who now serves as a member of the Liberal Party's State Executive—the highest administrative forum of the party. He would be looking down and taking great pride in that. So many in our community are grateful for the life lived by Ian Glachan. His life of goodness and his many achievements will always have a special place in the annals of the Liberal Party. He is now in the loving and compassionate care of our heavenly Father.

The Hon. DON HARWIN [11.22 p.m.], by leave: It has been a long night for the Glachan family, so I will be brief. We are certainly privileged to have members of the Glachan family seated in the gallery as we speak. It was my honour to represent my colleagues at Ian's funeral in Albury recently. The depth of his contribution to Albury and to the State was clear to everyone who was there that day at the celebration of his life. I thank you, Madam Deputy-President, the officers of the House, Hansard and Government and crossbench colleagues. As honourable members are aware, we do not have in our standing orders provision for condolence motions, so we speak by leave on such matters in the adjournment debate. Ian was a man of great faith, and the *Bible* talks about the fruits of faith and of the spirit. In conclusion I reflect on a passage, as my colleague the Hon. John Ryan reminds me, from Galatians 5:22:

> … the fruit of the Spirit is love, joy, peace, patience, kindness …

In his parliamentary life, probably more than any other colleague I have served with, Ian was evidence of the truth of that passage, and that is how I will remember him.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.23 p.m.], by leave: On behalf of the Government I join with other members in expressing sympathy to the family of Ian Glachan on his passing. Anyone who has served country New South Wales as well as Ian Glachan did should receive the respect of the Opposition and the Government.

Motion agreed to.

The House adjourned at 11.24 p.m. until Thursday 9 June 2005 at 10.00 a.m.