

LEGISLATIVE COUNCIL

Tuesday 29 November 2005

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

The Clerk of the Parliaments offered the Prayers.

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

ASSENT TO BILLS

Assent to the following bills reported:

Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill
 Health Legislation Amendment Bill
 National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill
 National Park Estate (Reservations) Bill
 Public Sector Employment and Management Amendment (Extended Leave) Bill
 Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill
 Royal Blind Society (Merger) Bill
 State Emergency Service Amendment Bill
 Infrastructure Implementation Corporation Bill
 Retail Leases Amendment Bill
 First State Superannuation Legislation Amendment (Conversion) Bill
 Shops and Industries Amendment (Special Shop Closures) Bill
 Children and Young Persons (Care and Protection) Amendment Bill
 Crimes Amendment (Animal Cruelty) Bill
 Farm Debt Mediation Amendment (Water Access Licences) Bill
 Protection of the Environment Operations Amendment Bill
 Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Bill
 Statute Law (Miscellaneous Provisions) Bill (No. 2) Bill
 Technical and Further Education Commission Amendment (Staff) Bill
 Vocational Education and Training Bill
 Companion Animals Amendment Bill

DEATH OF THE HONOURABLE JOHN PATRICK DUCKER, AO, A FORMER MEMBER OF THE LEGISLATIVE COUNCIL

The PRESIDENT: I announce the death on 25 November 2005 of Mr John Patrick Ducker, AO, aged 73 years, a former member of the Legislative Council. On behalf of the House I have extended to his family the deep sympathy of the Legislative Council in the loss sustained. I ask members and officers to kindly stand as a mark of respect.

Members and officers of the House stood in their places.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Penny Sharpe, on behalf of the Chair, tabled the report entitled "Legislation Review Digest No. 15 of 2005", dated 29 November 2005, together with extracts of minutes for Digest No. 14.

Report ordered to be printed.

TABLING OF PAPERS

The Hon. Eric Roozendaal tabled the following papers:

1. Annual Reports (Departments) Act 1985—Reports for the year ended 30 June 2005:
 Cabinet Office
 Community Relations Commission

Department of Gaming and Racing
 Department of Housing
 Department of Infrastructure, Planning and Natural Resources
 Heritage Council of NSW and Heritage Office
 Liquor Administration Board
 Ministry for Science and Medical Research
 New South Wales Treasury—Crown Entity
 New South Wales Treasury—Office of Financial Management
 New South Wales Treasury—Office of State Revenue
 Parliamentary Counsel's Office
 State Electoral Office

2. Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2005:

Australian Inland Energy Water Infrastructure (trading as Australian Inland)
 Building and Construction Industry Long Service Payments Corporation
 Chiropractors Registration Board
 Coal Compensation Board
 Commissioners of Inquiry for Environment and Planning
 Cooks Cove Development Corporation
 Country Energy
 Delta Electricity
 Dental Technicians Registration Board
 Election Funding Authority
 Environmental Trust
 Eraring Energy
 Health Care Complaints Commission
 Hunter Water Corporation—Volumes 1 and 2
 Integral Energy
 Jenolan Caves Reserve Trust
 Landcom
 Lord Howe Island Board
 Macquarie Generation
 Motor Accidents Authority of New South Wales
 Murrumbidgee Catchment Management Authority
 Namoi Catchment Management Authority
 Natural Resources Commission
 Nurses and Midwives Board
 Optical Dispensers Licensing Board
 Optometrists Registration Board
 Osteopaths Registration Board
 Physiotherapists Registration Board
 Podiatrists Registration Board
 Psychologists Registration Board
 Royal Botanic Gardens and Domain Trust
 Sydney Ferries Corporation
 Sydney Harbour Foreshore Authority
 Sydney Water Corporation
 Waste Recycling and Processing Corporation (trading as WSN Environmental Solutions)
 Zoological Parks Board of New South Wales

3. Community Justice Centres Act 1983—Report of the Community Justice Centres Council for the year ended 30 June 2005.

4. Law and Justice Foundation Act 2000—Report of the Law and Justice Foundation for the year ended 30 June 2005.

5. State Owned Corporations Act 1989—Statements of corporate intent for the year ending 30 June 2006:

Country Energy
 Delta Electricity
 Eraring Energy
 Integral Energy
 Macquarie Generation
 TransGrid

Ordered to be printed.

VARIATIONS OF PAYMENTS ESTIMATES AND APPROPRIATIONS 2005-06

The Hon. Eric Roozendaal tabled, pursuant to the Public Finance and Audit Act 1983, variations of the payments estimates and appropriations for 2005-06 relating to various agencies.

AUDIT OFFICE**Report**

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Auditor-General entitled "Purchasing Hospital Supplies: Follow-up of 2002 Performance Audit", dated November 2005.

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

STANDING COMMITTEE ON LAW AND JUSTICE**Government Response to Report**

The Clerk announced the receipt, pursuant to standing orders, of the Government's response to report No. 27, entitled "Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council—Sixth Report".

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

SWANSEA BRIDGES**Production of Documents: Return to Order**

The Clerk tabled, pursuant to the resolution of 9 November 2005, documents relating to Swansea bridges received on 23 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

TALLOWA DAM**Production of Documents: Return to Order**

The Clerk tabled, pursuant to the resolution of 9 November 2005, documents relating to Tallowa Dam received on 23 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

DESALINATION PLANT PROPOSAL**Production of Documents: Return to Order**

The Clerk tabled, pursuant to the resolution of 9 November 2005, documents relating to the desalination plant received on 23 November 2005 and 24 November 2005 from the Director General of the Premier's Department, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

PETITIONS

Casino to Murwillumbah Rail Services

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

Desalination Plant Proposal

Petition opposing construction of a desalination plant in Sydney, and supporting a sustainable water system through harvesting, recycling, reclaiming and treating water, received from **Reverend the Hon. Dr Gordon Moyes**.

Mental Health Services

Petition requesting upgrading of Rozelle Hospital at Callan Park, provision of the proposed Concord facility, and restoration of all community services that have been closed since the publication of the Richmond report, received from **Ms Sylvia Hale**.

Anti-Discrimination Legislation

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

BUSINESS OF THE HOUSE

Postponement of Business

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

SELECT COMMITTEE ON THE CROSS-CITY TUNNEL

Membership

The PRESIDENT: I inform the House that the Clerk has received the following nominations for membership of the Select Committee on the Cross-City Tunnel:

The Hon. Amanda Fazio	Government
The Hon. Greg Pearce	Opposition
Ms Lee Rhiannon	Crossbench

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Reference

The Hon. AMANDA FAZIO: I inform the House that on Wednesday 23 November 2005 General Purpose Standing Committee No. 3 resolved to adopt the following terms of reference:

That General Purpose Standing Committee No. 3 inquire into and report on issues relating to the following areas of the operations and management of the Department of Corrective Services and other relevant agencies:

1. The operations and management of Corrective Services Industries [CSI] with regard to:
 - (a) the observance of the Charter to avoid unfair competition through the use of prisoner labour to compete with existing businesses,
 - (b) claims that curtain manufacture by CSI is replicating work previously done by other NSW businesses and costing jobs, and
 - (c) other businesses that may be unfairly disadvantaged by CSI.
2. The management of high-risk prisoners by the Department of Corrective Services with regard to:
 - (a) access and contact by non-correctional persons including their security screening,

- (b) the effectiveness of the High Risk Management Unit (HRMU) at Goulburn gaol,
 - (c) the objectivity of the prisoner classification system, and
 - (d) staffing levels and overcrowding.
3. The interstate transfer of offenders and parolees with regard to:
- (a) communication and agreement between authorities, and
 - (b) ministerial sign-off under the Acts and informal arrangements made between jurisdictions.

SELECT COMMITTEE ON THE CROSS-CITY TUNNEL

Meeting Date

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.51 p.m.]: I move:

That this House agrees to the time and place for the first meeting of the Joint Select Committee on the Cross-City Tunnel contained in the Legislative Assembly's message of 16 November 2005.

The Hon. GREG PEARCE [2.51 p.m.]: I am a little confused by the motion. According to *Minutes of Proceedings* of 17 November 2005, Minister Kelly moved that consideration of the Legislative Assembly's message in relation to the Joint Select Committee on the Cross-City Tunnel stand as an order of the day for a later hour of the sitting. Today the motion moved by the Minister relates only to the first meeting of that committee. I would have thought that in order to comply with the resolution the House must consider the entire motion, not just the time and date for that committee to first meet.

Notwithstanding that, if it is the case that the motion moved by the Minister is all that is required—and of course the Coalition agrees with the motion contained in the message from the Legislative Assembly—I would be very concerned to ensure that the procedure is entirely correct. I say that because other machinations in relation to this committee have been anything but correct. I refer to the actions of the proposed Chair of that committee, Reverend the Hon. Fred Nile, who, without consulting other members of the committee, but presumably following consultation with the Government, has organised the first hearings of the committee in a way that is unprecedented.

Late this morning I received a letter from the committee secretariat indicating that Reverend the Hon. Fred Nile has organised a whole day of hearings for this Friday, and further hearings for next Tuesday. He has done that without consulting committee members and without the committee receiving any submissions.

[Interruption]

I note that the non-honourable Jan Burnswoods is interjecting; and she is a stickler for the forms and procedures of committees. When General Purpose Standing Committee No. 3 resolved to establish an inquiry into the cross-city tunnel, the Hon. Jan Burnswoods insisted that no witnesses be called before submissions were obtained by the committee. She insisted also that committee members decide on the dates for hearings and on the people to be called as witnesses. The Leader of the Opposition has nominated me as the Legislative Council's Opposition representative on that committee. In that capacity I made contact with Reverend the Hon. Fred Nile in the last week that the House sat. In this Chamber I asked him to tell me the proposed dates for sittings of the committee. He could not tell me; but as he sat in this Chamber he promised that he would let me know the dates.

Twice last week I went to his office to speak with him about this matter, but he was not there. I asked his staff to pass on to him my message that I wanted to talk to him about the proposed hearing dates. Because I was frustrated that I did not get a response to any of those three attempts to contact Reverend the Hon. Fred Nile, last Tuesday I wrote a letter to him asking him to consult with me on the dates. But what did he do? He did not have the courtesy to contact me to tell me the proposed dates. I do not mind that, because that shows us all that Reverend the Hon. Fred Nile has no intention of making this inquiry the full and open inquiry that he promised it would be.

The PRESIDENT: Order! I call the Hon. Peter Primrose to order for the first time.

The Hon. GREG PEARCE: I am absolutely disgusted with Reverend the Hon. Fred Nile on this occasion. He has been a disgrace.

The Hon. Amanda Fazio: Point of order: My point of order is simple, and one that is often raised in this House. If a member wishes to attack another member in this place, the member must do so by way of substantive motion, not by getting up and doing a full spray on someone who does not have the right to respond. I ask you to call the Hon. Greg Pearce to order and remind him of the standing orders of this House and that he should abide by them.

The PRESIDENT: Order! I remind the member that he must not make imputations against members of this Chamber.

The Hon. GREG PEARCE: Thank you, and a fine ruling, Madam President. The Opposition supports the House agreeing to the motion of the other place, and supports the inquiry getting under way as quickly as possible. The meeting on Thursday 1 December 2005 at 1.00 p.m. is entirely appropriate. However, this is a very controversial issue. Members of this House are concerned about whether there will be a proper and independent inquiry. In an unprecedented way General Purpose Standing Committee No. 3 had resolved to hold an inquiry into the cross-city tunnel and the House quashed that inquiry in quite extraordinary circumstances. It did so on the expressed and explicit promises of Reverend the Hon. Fred Nile that he would conduct the inquiry in a proper way.

The Hon. John Della Bosca: Point of order: Madam President, you have already enjoined the member not to make personal imputations against a member of the House without moving a substantive motion. I ask you to call him to order again.

The Hon. Don Harwin: To the point of order: I draw to your attention that part of the message from the Legislative Assembly stating that Reverend the Hon. Fred Nile be Chair of the committee. In fact, it is part of the substantive motion. I put to you that every one of the comments of the Hon. Greg Pearce is in order.

The Hon. John Della Bosca: Further to the point of order: That is a nonsense proposition. The standing order refers to making imputations against a member. Clearly the substantive motion makes no imputations against Reverend the Hon. Fred Nile and I ask you to call the member to order.

The Hon. Don Harwin: Further to the point of order: The message says quite clearly that a particular member be the Chair of the committee. The fitness of that person to be the Chair of the committee is quite clearly within the terms of the substantive motion.

The Hon. Tony Kelly: To the point of order: I moved this motion in an attempt to obtain the agreement of this House to the time and date of the committee hearing set by the Legislative Assembly. I was going to make these points when the Hon. Greg Pearce had finished his contribution. The motion that was moved earlier relating to the appointment of members, which does not have to be agreed to in the Legislative Council, has been sent to the Legislative Assembly requesting its concurrence. It is the practice of this House to agree to the time and date set by the Legislative Assembly for the first meeting of the committee—a committee that the Legislative Council requested the Legislative Assembly to appoint. My motion refers only to the time and place of that meeting.

The Hon. Duncan Gay: To the point of order: The Hon. Greg Pearce is within his rights. This procedural motion relates only to the establishment of the committee.

The Hon. Amanda Fazio: It does not.

The Hon. Duncan Gay: The Hon. Greg Pearce said that procedure had been grossly breached. A pro tem chairman, who has not yet been appointed by this House, decided on the dates and times of meetings and the calling of witnesses. The first item of business should be a meeting to decide those issues. Those issues should not be dealt with by a chairman who has not yet been appointed and who has not yet consulted anyone on that committee.

The Hon. Peter Primrose: To the point of order: Madam President, earlier you called me to order because I was distressed about a breach of Standing Order 91 (1), which states:

A member may not reflect on any resolution or vote of the House, unless moving for its rescission.

Quite clearly, the Hon. Greg Pearce continually has brought into question an earlier decision of this House. He has sought to bring this House into disrepute, as he was not moving for the rescission of the motion. I became concerned about the fact that he was in breach of Standing Order 91 (1).

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: There are two separate points of order. The first is whether the Hon. Greg Pearce is speaking against Reverend the Hon. Fred Nile and not by way of a substantive motion. The second point of order, which was raised by the Hon. Peter Primrose, is whether the Hon. Greg Pearce is cavilling with a previous decision of the House. A further question is whether the substance of this motion relates to the nature of the committee and what it is doing. I believe that the Hon. Greg Pearce is referring to the procedure followed by the committee chair, given that three members of the committee were appointed only this morning. The honourable member has a right to speak to those points that need to be clarified.

The Hon. Greg Pearce: Further to the point of order: Madam President, before you rule on the point of order I would like to say that I agree with the Hon. Dr Arthur Chesterfield-Evans, even though I do not normally do so. There are two points of order. The first is the proposition that I was in some way impugning Reverend the Hon. Fred Nile. Honourable members might recall that all I did was to refer to comments he made in his speech relating to the formation of this committee and to reflect on matters that have occurred since. The second point involves cavilling with a decision, which is complete nonsense. On two occasions during my speech I said unequivocally that the Opposition supports the motion.

The Hon. John Ryan: To the point of order: This motion relates to the setting of a date for the committee to meet. This House is discussing the date on which the committee is set to meet in order to facilitate a series of meetings that have already been scheduled and circulated to members of the committee. It would be ridiculous if we were not able to debate the scheduling of those meetings and the fact that they were scheduled. This motion is all about ensuring that scheduled meetings can go ahead.

The Hon. Jan Burnswoods: How can that be relevant?

The Hon. John Ryan: Just stop!

The PRESIDENT: Order! I call the Hon. Jan Burnswoods to order.

The Hon. John Ryan: It would be scandalous if the Government were to prevent honourable members from canvassing background information when debating a motion relating to the setting of times and dates, as that is clearly germane to this decision. If a decision has been made to support a particular date those meetings can go ahead. If it has not the meetings are not able to go ahead. I believe all the comments made by the Hon. Greg Pearce relating to scheduled hearings are germane to the date that has been chosen. He should be able to make such comments and to bring these issues to the attention of the House.

The Hon. John Della Bosca: Further to the point of order: I agree with the contribution of the Hon. Dr Arthur Chesterfield-Evans and one aspect of the contribution of the Hon. Greg Pearce. There are two points of order. Madam President, I ask you to rule that the Hon. Greg Pearce is out of order on both counts. The first is conditional on the point of order taken earlier by the Hon. Peter Primrose. Unless the Hon. Greg Pearce is moving a rescission motion in respect to the motion he is out of order. His own statement in the last part of his contribution indicated he was not and that he was supporting the motion, so clearly he is out of order on that ground. In respect to the point of order of the Hon. Don Harwin, the protection provided for members that is envisaged by standing orders would be lost if you ruled in favour of the Hon. Don Harwin and I am sure he knows it.

The PRESIDENT: Order! Standing Order 91 (3) states:

A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

Clearly by convention it is accepted that a member may, by way of substantive motion, make imputations of improper motives against another member. However, it is clear also that such a motion must relate specifically to that other member's character or actions. The motion before the House does not refer to the character or actions of Reverend the Hon. Fred Nile; it simply refers to a time and date for a committee to meet. Pursuant to

Standing Order 91 (3) the member is out of order. Further, I warn the member not to reflect on a resolution or vote of the House.

The Hon. GREG PEARCE: I agree that the motion does not refer to the character of Reverend the Hon. Fred Nile. As I indicated earlier, I am speaking in support of the motion. I am sure that the Leader of the House and the Leader of the Government would agree that debate includes speaking in favour of motions as well as speaking against motions. When I first commenced my contribution I expressed concern about whether the normal forms and procedures of this House have been carried out in relation to the scheduled meeting—if this motion is passed—for Thursday 1 December 2005 at 1.00 p.m., or whether the procedures have not been carried out and something else has been happening. For example, as some of my colleagues said, these procedures have been trashed. This morning I received notice of this meeting prior to the House passing this motion.

The Hon. Patricia Forsythe: Are you allowed to say who sent it?

The Hon. GREG PEARCE: It came from Reverend the Hon. Fred Nile. I seek the advice of the Clerk as to whether such notice can be given before the House has accepted and approved this motion. As I indicated earlier, the notice showed that the procedures of the committee had been pre-empted by the punitive chair selecting dates for hearings, selecting witnesses and otherwise arranging a program that does not suit the committee, as it has not yet met.

[Interruption]

The Hon. Dr Arthur Chesterfield-Evans: It has not been appointed.

The Hon. GREG PEARCE: I gather from the comments of the Leader of the Government that there is some doubt as to whether the committee exists. Not only that, I think I am entitled to reflect upon the gross discourtesy that Reverend the Hon. Fred Nile has shown me as a member of the House in failing to respond to my telephone calls, my visits to his office and my letter to him asking about this matter. I do not resile from that statement. I do not see how this committee will proceed well if Reverend the Hon. Fred Nile intends to show such discourtesy to members of the House. I am concerned as to whether the forms and procedures of the House have been followed properly. I am concerned as to whether committee members have been appointed properly. Paragraph 3 of the motion states:

That the members be nominated in writing to the Clerk of the Parliaments and the Clerk of the Legislative Assembly by the relevant party leaders and the independent and crossbench members respectively within seven days of this resolution being agreed to by both Houses.

I do not see how both Houses could agree to the motion before we agree to it today. How could the motion be agreed to before today when it includes paragraph 10, which is the subject of this discussion? I doubt whether the committee will be constituted properly unless nominations are received after today. I have seen some of the nominations and I wonder whether Government members have been appointed properly to the committee—if they have been appointed. I believe the Hon. Amanda Fazio received a so-called appointment to the committee via a letter from the Whip, who is not a party leader.

If the House is to be respected in the community and if our decisions and deliberations are to receive the respect they deserve, it is not acceptable for the forms, precedents and proper procedures of this place to be trampled by a committee chair, whose motives must be questioned. It is not appropriate for the committee to meet in a manner that is so inconsistent with normal committee procedures and that deprives committee members of their entitlement to participate in the management and conduct of the inquiry. I note also that today's *Notice Paper* contains a notice of motion to gag committee members and prevent them from speaking to the media. According to the notice of motion, only the chair will be allowed to speak to the media. The chair is setting his own inquiry procedures, which are totally inconsistent with normal parliamentary committee procedures and which could contradict resolutions of the House and the Legislative Assembly, and attempting to gag committee members. All I can say is that committee members will not be gagged. If this is the way the Chair wants to run the committee, we will see what happens.

Reverend the Hon. FRED NILE [3.13 p.m.]: I obviously support the motion moved by the Hon. Tony Kelly, which states:

That this House agrees to the time and place for the first meeting of the Joint Select Committee on the Cross City Tunnel contained in the Legislative Assembly's Message of 16 November 2005.

The only change from the motion that the House passed regarding the procedures of the joint committee is that the Legislative Assembly has set the time and place of the first meeting. The Legislative Assembly added paragraph 10 to the motion passed by the House. It states:

That the time and place for the first meeting be Thursday 1 December 2005 at 1.00 p.m. in room 1153.

I have been in this place for 24 years and have chaired many committee inquiries so I am well aware of committee procedures. I made it quite clear that any arrangements were tentative, subject to the committee passing motions when it met on Thursday. We issued a warning to respective witnesses. Each witness was told the same thing: Because of the urgency of this matter and the fact that Opposition members are so impatient about getting the inquiry under way—

The Hon. Jennifer Gardiner: We already had an inquiry under way.

Reverend the Hon. FRED NILE: I know. That is my point.

The PRESIDENT: Order! I call the Hon. John Ryan to order.

Reverend the Hon. FRED NILE: Opposition members have made my point for me: They were prepared to hold another inquiry—which this committee inquiry is taking the place of—yet they are now acting as if they were not aware that there was to be an inquiry and suggesting that they are not prepared. They are upset and their feelings have been hurt. All I have done is talk to potential witnesses, asking them to be ready for the inquiry, subject to the committee meeting on Thursday at which members may vote not to hold a hearing on Friday. If that occurs the witnesses will not be called. Each witness—

The Hon. John Ryan: Who believes this? You've got all the numbers.

The PRESIDENT: Order! I call the Hon. John Ryan to order for the second time.

Reverend the Hon. FRED NILE: Is the Hon. John Ryan questioning whether I am telling the truth? Each witness was told that the arrangements were tentative and that no witness could be called unless the committee agreed to that on Thursday.

The Hon. John Ryan: And it's not going to agree?

Reverend the Hon. FRED NILE: I am telling the House what the witnesses were told. The Hon. John Ryan says it is not true, but it is.

The Hon. Catherine Cusack: Why didn't you tell the Hon. Greg Pearce?

The PRESIDENT: Order! I remind honourable members that interjections are disorderly at all times.

Reverend the Hon. FRED NILE: Each committee member was told as soon as a tentative schedule was prepared. I knew that, because of the Christmas season, members would be under a great deal of pressure and could find attending committee meetings difficult. So as soon as the tentative schedule was ready I informed them of it. I believe they have had sufficient time to prepare for and to attend a hearing on Friday. If the committee votes on Thursday not to sit, it will not sit. The witnesses will be advised that they are not required to attend on Friday and the hearing will be rescheduled. I have no heartburn about that particular day. However, I was anxious to ensure that witnesses from the Roads and Traffic Authority appear before the committee before we speak to the former Premier and the former Treasurer, who have other plans that will affect their availability. Judging from the comments of Opposition members, I decided it was important that those people be able to appear before the committee. That was my top priority: to meet the demands and concerns of the Opposition and to ensure that the former Premier and former Treasurer appear as witnesses before the committee prior to the onset of the Christmas season, when they are not available. We made it very clear in all our communications that the arrangements were tentative.

As for the chairman being the committee spokesman, I was advised by the secretariat that a number of pro forma motions needed to be passed. I asked the secretariat to prepare them, and it has done so. Those motions will be put to the committee on Thursday. I did not prepare them. I have no particular agenda with regard to being the only spokesman for the committee. I gather that that is a normal procedure and the

secretariat prepared the relevant motion. That is all that has happened. There was no hidden agenda or great drama. There is no conspiracy; the whole process is transparent. I object to the tone of the remarks by the Hon. Greg Pearce and to some of the interjections from other honourable members. I have not discussed this committee hearing with any Opposition or Government members of the committee.

The Hon. Greg Pearce: How did you get Ministers lined up as witnesses?

Reverend the Hon. FRED NILE: They are not "lined up". The secretariat contacted those individuals.

The PRESIDENT: Order!

Reverend the Hon. FRED NILE: There was no contact with any Government members of the committee. Opposition and Government members have had the same opportunities.

The Hon. JOHN RYAN [3.18 p.m.]: I have rarely seen more sham in this House than I just witnessed in the performance by Reverend the Hon. Fred Nile. He told the House that committee members can call off the hearing on Friday in full knowledge that that cannot happen. The hearing can be called off only if Reverend the Hon. Fred Nile votes against holding it. He knows that Government members want the hearing to go ahead. They want to rush through the hearings as quickly as possible so they will not vote against holding the hearing on Friday—only Reverend the Hon. Fred Nile can do that. He has tried to kid us that there will be some sort of objective discussion at the meeting on Thursday. That is rubbish. It will not happen. It is a fix.

Apparently, a member of the Opposition—a shadow Minister no less and a member of the committee—made several attempts to contact Reverend the Hon. Fred Nile. However, Reverend the Hon. Fred Nile has had time to discuss this issue with several members of the Labor Party—Mr Scully has apparently had this discussion. The guilty person in the dock has already had a discussion with Reverend the Hon. Fred Nile.

Reverend the Hon. Fred Nile: I have had no discussion with any Minister.

The Hon. JOHN RYAN: Mr Scully is a Minister. Apparently, he has been consulted and told to be ready for this meeting. What absolute rubbish! Reverend the Hon. Fred Nile said that he would chair this committee without fear or favour. We have now discovered that several Government members have been stitched up by him, or instruments of him, to fix the committee. It is a sham! Only he—

The PRESIDENT: Order! I remind members of my previous rulings.

The Hon. JOHN RYAN: I would be happy to be sent from this House for this sham. It would demonstrate what a sham it is. Madam President, if you are ready to make a precedent, go right ahead because this is a sham. The public will believe it is a sham. It is a fix. The whole thing is a fix. It is a fix of incredible proportions—look at Government members opposite grinning. They know the cat is in the bag. They have the whole thing fixed: it has been sorted. They grin at us. The whole thing has been sorted. They know they have got it all stitched up and they have got a chairman who is prepared to do their will. This is a fix. It needs to be demonstrated that it is a fix.

It is a fact that Opposition members attempted to contact Reverend the Hon. Fred Nile and discuss the committee with him. However, he was able to have a discussion with Mr Scully and with representatives of the Roads and Traffic Authority. We know that he would not do that unless consultation had taken place through the Minister's office. Apparently, in order to accord with the schedules of former Labor luminaries such as Bob Carr and Michael Egan we have to rush them through. What if evidence that comes before the committee after they have appeared needs to be responded to? I have no doubt that Reverend the Hon. Fred Nile will agree with Government members that it is too late to call them.

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

The Hon. JOHN RYAN: This is an extraordinarily scandalous fix by the Government, which has Reverend the Hon. Fred Nile in its hands. It has him doing its bidding. Nothing will convince me that he is not chairing this committee without a view to saving the Government from the embarrassment it richly deserves for the catastrophe that is the cross-city tunnel. All the witnesses that are necessary, who have explanations to make, will have been ushered through the committee already and will not be able to return. I have no doubt that Reverend the Hon. Fred Nile will not agree to them returning because he wants them to get away and he will not

agree to them coming back. This is a fix. When the committee meets on the date on which the House is about to set, Reverend the Hon. Fred Nile will put the motion before the committee. If every member who does not represent the Government disagrees with the motion before the committee, all Reverend the Hon. Fred Nile needs to do is put his hand up and vote for the Government and it is done.

Even though Reverend the Hon. Fred Nile says the committee could vote otherwise, he knows it will not happen and he will not let it happen no matter how good the arguments or how sound the case. It will be ignored because it has been fixed from the start. It is utterly appropriate that this House draws attention to what a disgraceful fix this is. This committee has been rigged from the start; its outcome has been rigged from the start. For some reason, which I cannot understand, Reverend the Hon. Fred Nile wants to save the Government's bacon. He has started it right at the beginning of the process, not half way through the process. This is a sham. This is a disgraceful process. It ought to be condemned for what it is.

The Hon. AMANDA FAZIO [3.23 p.m.]: Like the Hon. Greg Pearce, when I was advised that I would be a Government representative on this committee I emailed Reverend the Hon. Fred Nile asking when he anticipated the committee would conduct meetings and hearings. I wanted to ensure that I had cleared my diary for the appropriate times. Like the Hon. Greg Pearce, I did not receive any information from Reverend the Hon. Fred Nile. I now understand that he was not prepared to pre-empt the decision of this committee. I believe that what Reverend the Hon. Fred Nile has told the House about these matters is accurate. He has treated requests for information on meeting and hearing dates from both members of the Opposition and members of the Government on the committee—

The Hon. Greg Pearce: With equal contempt!

The Hon. AMANDA FAZIO: Not with equal contempt, as the rude Hon. Greg Pearce said, but without giving either side favour. I commend Reverend the Hon. Fred Nile for that. I have a fairly good idea of why the Hon. John Ryan was so upset today. I heard earlier that if Paul Nicolaou had won the Pittwater by-election there would be a vacancy in the Legislative Council ticket and he would have a seat again. That did not come to play so it is no wonder he is upset.

The Hon. Don Harwin: Point of order: The Hon. Amanda Fazio is traversing well away from the motion before the House. My point of order is relevance.

The PRESIDENT: Order! Although it is a convention that members may, when contributing to debate in this House, make general comments, I advise the member that she is contravening standing orders by making imputations against other members of the Chamber.

Ms LEE RHIANNON [3.26 p.m.]: This is the debate we had to have.

The Hon. Amanda Fazio: That is a cliché.

Ms LEE RHIANNON: Many interjections reveal the Government's position. It is a debate we had to have to reveal the con job that this inquiry is.

The Hon. Christine Robertson: The con job was General Purpose Standing Committee No. 4!

Ms LEE RHIANNON: I acknowledge the interjection. The inquiry is a con job for the Government. It closed down the General Purpose Standing Committee No. 4 inquiry that was already under way, an inquiry that worked hard to get to the bottom of the cross-city tunnel disaster. Why did the Government work so hard to take over this inquiry? This is a Clayton's inquiry. We heard the comments of Reverend the Hon. Fred Nile. One would have to say that he protested too much. He revealed his problems. When poor Reverend the Hon. Fred Nile is in trouble, members of the left and the right factions jump up to defend him. Why do they defend him? Because they need him so desperately in this inquiry. They need to protect him. Therefore, they have to go in hard for him. That is the essence of what has happened here. When the heat came on, what did we hear? On Sunday Premier Iemma warned that the result of the Pittwater by-election was a lesson for both major parties. When the Government became desperate it pulled out the Pittwater card. That again shows how little it has going for it on this issue.

[Interruption]

Yes, the Greens support this motion. Clearly, information with respect to establishing the inquiry and the workings of the inquiry are relevant to this motion. I share the concerns of previous speakers, who outlined how normal procedures are not being followed. The normal procedures are most definitely not being followed.

However, we have a suggested resolution that the "arrangements for the calling of witnesses and for visits of inspection be left in the hands of the chair and the secretariat after consultation with the committee". We are consulted—that is very nice—but that just reinforces the message we have heard time and again today: it is all stitched up; it is all worked out. I imagine the report is being written right now.

The Hon. Amanda Fazio: What a slur on the secretariat. You should be ashamed of yourself.

Ms LEE RHIANNON: I am not slurring the secretariat. I acknowledge the interjection because it is insulting. We know how the secretariat staff work. However, we know how the Hon. Amanda Fazio is manipulating this inquiry at every turn and twist.

The PRESIDENT: Order! I call the Hon. Jan Burnswoods to order for the second time.

Ms LEE RHIANNON: I am happy to acknowledge all the interjections, which again shows their desperation to shut down General Purpose Standing Committee No. 4. Let us remember that those opposite never wanted an inquiry, which is why, the inquiry having been set up, they are working so hard to control it. We have an interesting resolution circulated by Reverend the Hon. Fred Nile—who now tells us that it was just presented to him as well—which reads, "Media statements, on behalf of the committee, may be made only by the Chair, if possible after consultation with the committee." This time it is only "if possible". Is there any consultation? Before the inquiry has started we have been well and truly gagged. This is a Clayton's inquiry.

What we have heard from Reverend the Hon. Fred Nile today is, yes, he will listen to us, maybe the witnesses will not be called on those days, and maybe things will change. Let us see how true to his word he is when reasonable requests are put to him about changing the agenda. I am disappointed that Reverend the Hon. Fred Nile did not enlighten us further about how we got to this point. I doubt that will come when the committee starts the inquiry, but the debate is necessary to put on the public record the sham that it is becoming and the degree to which it has been orchestrated by Reverend the Hon. Fred Nile and members of the Government.

The Hon. Dr PETER WONG [3.31 p.m.]: I remember that in a previous debate I warned the House of my grave concerns about the impartiality of Reverend the Hon. Fred Nile. I remember I told the Hon. John Ryan that I am not as nice as he is: I call a spade a spade.

The Hon. John Della Bosca: Is that a racist remark?

The Hon. Dr PETER WONG: Maybe. It should be a white spade. Does the honourable member feel happy now to join Lawrence White? Yes he does. Or is that part of Australian Labor Party policy as well? Keep smiling. If he keeps supporting Lawrence White he will be right. In my seven years in this place I have never seen a chairman who did not consult any committee member on the possible dates of meetings. Furthermore, he dared to inform the witnesses before he informed committee members. What a disgrace he is. He is a disgrace. He should never again call himself a Christian. Let me repeat what the Hon. Dr Arthur Chesterfield-Evans said.

The Hon. Peter Primrose: You should withdraw that, Peter.

The Hon. Dr PETER WONG: I will say that.

The Hon. Peter Primrose: You should withdraw it.

The Hon. Dr PETER WONG: I will not withdraw it. I am happy to walk out, now!

The Hon. Peter Primrose: That's not fair.

The Hon. Dr PETER WONG: That is fair.

The PRESIDENT: Order! I remind the member that interjections are disorderly at all times, and he should ignore them.

The Hon. Dr PETER WONG: Why is it not fair? You are not listening.

The Hon. Peter Primrose: You shouldn't attack his Christianity.

The Hon. Dr PETER WONG: Will you not listen first?

The Hon. Peter Primrose: I have just listened to you.

The Hon. Dr PETER WONG: Do not interrupt then.

The Hon. Peter Primrose: That's not fair, what you said.

The Hon. Dr PETER WONG: It is fair. Listen first. Every day, here, he is calling himself a Christian. If he is not I would not say so.

The Hon. Peter Primrose: That's not fair.

The Hon. John Ryan: Point of order: Even though I might agree with some of the sentiments being expressed by the honourable member, it is not appropriate for members of the House to draw into debate people's religious profession, unless it is particularly germane to the debate. It might be an imputation, which I believe you should rule out of order.

The PRESIDENT: Order! It is out of order for a member to make imputations against another member of the Chamber. The Hon. Dr Peter Wong should not contravene the standing orders.

The Hon. Dr PETER WONG: I will adhere to the advice—

Reverend the Hon. Fred Nile: Point of order: I would ask the honourable member, as he has broken the standing orders in his accusations against me, to withdraw those last words, that I am not a Christian.

The PRESIDENT: Order! I ask the Hon. Dr Peter Wong to withdraw those words that are offensive to Reverend the Hon. Fred Nile.

The Hon. Greg Pearce: You said you would not withdraw them.

The Hon. Dr PETER WONG: I am happy to walk out, Madam President.

[Interruption]

I withdraw the remark. I would like to thank Reverend the Hon. Dr Gordon Moyes for giving me the appropriate advice. I have been here seven years and I have made no deals with any major party. What I say today is from my heart. I think it is shameful for any particular person to bring injustice to the people of New South Wales. Obviously, this committee will be partisan and favour the Government. Again, regardless of the many people for whom I have high respect here, including the Hon. Peter Primrose, the Hon. Tony Kelly and many others, if we allow this committee to carry on without due process, without proper consultation, with wheeling and dealing, it would be shameful and a disgrace for all of us.

There is no need for such a committee. Forget about Reverend the Hon. Fred Nile—I regard myself as a Christian. Often I have been asked, "Why is it that a Christian cannot speak the truth?" Probably it is because power corrupts, and wheeling and dealing can manoeuvre people into powerful positions and one can forget what it is to be a Christian. Every night I remind myself who I am. If I have upset anyone, including the Hon. David Clarke, I apologise. I believe that is the only way to do it. Why do we need a Christian Democratic Party that does not show this House the true Christian spirit? I have nothing else to say except that I do not think the committee will produce a fair outcome for the people of New South Wales.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [3.38 p.m.], in reply: As I said earlier on a point of order, the motion is about the time and date of the meeting. I reiterate that this is normal practice of the House. My understanding of the arrangements that have been put in place in preparation for the committee is that they are normal practice. Obviously something happened between the last occasion we sat and today that has got under the skin of members of the Opposition.

Motion agreed to.

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

Membership

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly relating to the appointment of a Select Committee on the Cross-City Tunnel:

MADAM PRESIDENT

The Legislative Assembly desires to inform the Legislative Council that the following members of the Legislative Assembly have been nominated to serve as members on the Joint Select Committee on the Cross City Tunnel:

Mr Brown
Mr Constance
Mr McLeay and
Mr J H Turner.

Legislative Assembly
29 November 2005.

JOHN AQUILINA
Speaker

PARLIAMENTARY SUPERANNUATION LEGISLATION AMENDMENT 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) [3.40 p.m.]: I move:

That this bill be now read a second time.

As my remarks are lengthy and have been delivered in the other place, I seek leave to have them incorporated into *Hansard*.

Leave granted.

Today the Government introduces a bill that overhauls parliamentary superannuation in line with the former Premier's announcement to establish a 9 per cent scheme for future members of Parliament at the 2007 general election. The Parliamentary Superannuation Legislation Amendment Bill closes the Parliamentary Contributory Superannuation Fund to members first elected at the 2007 general election, together with former members who are re-elected at that time after a break of more than three months from the Parliament. For these members, the Government will pay contributions into First State Super or another complying accumulation superannuation fund of their own choice. I will shortly explain the new arrangements in more detail. In summary, they are similar to those available to the majority of New South Wales public sector employees recruited. They are also similar to recent changes to parliamentary superannuation in the Commonwealth and other jurisdictions.

The new parliamentary superannuation arrangements will be established by amendments to the Parliamentary Contributory Superannuation Act 1971, the Parliamentary Remuneration Act 1989 and the First State Superannuation Act 1992. Honourable members will be aware that, before amendments to the Parliamentary Contributory Superannuation Act 1971 can be passed in the Legislative Assembly, the Parliamentary Remuneration Tribunal must certify that the amendments are warranted. I am pleased to advise that, following his assessment, such certification has been provided by the Parliamentary Remuneration Tribunal, His Honour Judge Boland.

The Parliamentary Contributory Superannuation Fund will continue to provide the current superannuation arrangements for all sitting members who are re-elected at the 2007 general election. The fund will also continue to be available to sitting members who subsequently leave Parliament, but only if they re-enter Parliament within three months of leaving. New members elected at or after the 2007 general election and former members who are re-elected at or after that time will be covered by the new arrangements. As happens now, payment of a former member's parliamentary pension would cease for the duration of the new period of parliamentary service and recommence once that new period of service ends.

The Commonwealth Government closed its scheme for Federal parliamentarians at the October 2004 election and established new arrangements similar to those proposed in this bill. Under the Commonwealth legislation, New South Wales parliamentarians who transfer to the Federal Parliament will no longer be able to join the now closed Commonwealth Parliamentary Superannuation Scheme. This bill replicates the Commonwealth change. That is, this bill will prevent Commonwealth parliamentarians who transfer to this Parliament on or after the 2007 election from joining the Parliamentary Contributory Superannuation Fund. They will instead be covered by the same new arrangements applying to New South Wales parliamentarians who enter Parliament after that election.

The new parliamentary superannuation arrangements will be provided through First State Super, which covers the majority of New South Wales public sector employees. The legislation governing First State Super allows all employees to choose another complying superannuation fund instead of First State Super into which employer contributions are to be paid. This bill provides members of Parliament covered by the new arrangements with the same choice of superannuation fund, with First State Super being the default fund if no choice is made. The Government contributions will be at the rate of 9 per cent in accordance with the community standard. The bill includes a regulation-making power to enable the contribution rate to be changed in the future if that is required.

For members who are not recognised office holders, the Government contributions will be based on current basic salary plus any allowances up to the maximum contribution base, as defined in the Commonwealth's superannuation guarantee legislation. This is the maximum amount of salary under the Commonwealth legislation on which an employer must pay superannuation guarantee contributions. The maximum contribution base is adjusted annually by the Commonwealth. For recognised office holders, the Government contributions will be based on the current basic salary plus any additional salary payable to the member in accordance with the Parliamentary Remuneration Act 1989.

The bill includes a regulation-making power to enable a different salary basis to be used for calculating contributions if that is required in the future. Under the new arrangements, future members of Parliament will not be required to pay any contributions themselves unless they want to. A member will have the same option as public sector employees of paying the voluntary contributions from either their post-tax or pre-tax salary. The Parliamentary Remuneration Act 1989 is amended to allow future members to salary sacrifice up to 50 per cent of their base salary and any additional salary payable to them in accordance with that Act. This maximum percentage currently applies to New South Wales public sector employees but may change in the future. Again, the bill includes a regulation-making power to allow the percentage to be changed in the future if appropriate.

I now turn to other amendments to the Parliamentary Contributory Superannuation Act 1971. These amendments address some anomalies that have become apparent recently. The first anomaly flows from amendments made in 2002 that prevent members of the Parliamentary Contributory Superannuation Fund from accessing their benefits while still in office. Members aged 65 or over are therefore required to continue to pay contributions even though their entitlements may have stopped increasing in value. The bill allows members of the fund to cease paying contributions if they are at least 65 years of age and have at least 20 years of service. For members who choose to cease paying contributions, their entitlements will be deferred and calculated as if they had ceased to receive a parliamentary salary at the time of making that election.

The second anomaly arises from the current legislative requirement for members to make an election to commute a pension entitlement within three months of leaving Parliament. This is inappropriate for members who first entered Parliament after 6 December 1999 because their pension payments cannot commence before the age of 55, even if they leave Parliament many years before that age. The bill will allow these members to make an election to commute all or part of that pension to a lump sum within three months of the pension commencing to be paid. The third anomaly addressed by this bill relates to the reduction of benefits to meet Commonwealth surcharge liabilities accrued prior to 1 July 2005. Currently, the legislation allows the fund trustees to reduce benefits for this purpose except in the case of one type of spouse pension—that is, where the spouse pension is 45 per cent of the basic salary. The amendment in the bill will ensure that the trustees have the power to reduce this benefit in the same way as all the other benefits payable from the fund.

The bill addresses a fourth anomaly by ensuring that a continuing member of the fund who dies on polling day before the polls close is deemed to be a serving member at the time of death for the purposes of the Act. This will occur provided the person was contesting the election at that time, whether for the same or another seat or House of the Parliament. Honourable members will recall that the Parliamentary Electorates and Elections Act was also amended following the sad death of the late Jim Anderson on polling day at the 2003 election. The final anomaly being addressed by the bill ensures that certain pensions are correctly adjusted in the same manner as other pensions payable from the fund. The amendment brings the legislation into line with current practice and will not alter the value of benefits paid. I commend the bill to the House.

The Hon. GREG PEARCE [3.41 p.m.]: The Opposition does not oppose the Parliamentary Superannuation Legislation Amendment Bill. I note that the Commonwealth Government introduced similar legislation to this effect on 1 April 2004. This bill closes the Parliamentary Contributory Superannuation Scheme to new members of Parliament who are elected at the 2007 State general election. It provides for new members of Parliament who are elected on or after that election to receive an accumulation-style superannuation benefit in line with the entitlements of public sector employees under the First State Superannuation Scheme, and it enables those members to make additional superannuation contributions by way of salary sacrifice.

The bill also provides for superannuation contributions for a new member of Parliament to be paid to the First State Superannuation Fund, or paid to another complying superannuation fund in accordance with the Federal Government's policy of allowing choice in investment of superannuation funds. The bill will enable continuing members of the Parliamentary Contributory Superannuation Scheme to cease to contribute after the age of 65 years if they have completed 20 years of service. It will enable former members of Parliament to make an election to convert a deferred pension under the Parliamentary Contributory Superannuation Scheme to a lump sum benefit within three months of the pension being payable, rather than within three months of ceasing to be a member. That provision is designed to enable members to better manage their funds. The bill will make further amendments in relation to benefits payable to de facto partners or spouses and various other consequential, savings and transitional provisions.

Reverend the Hon. FRED NILE [3.43 p.m.]: The Christian Democratic Party supports the Parliamentary Superannuation Legislation Amendment Bill, which deals with a number of practical arrangements to bring New South Wales members of Parliament into line with Commonwealth members of Parliament. The arrangements are consistent with those applying to New South Wales public sector employees who are covered by First State Super. The new arrangements will apply to parliamentarians who are first elected on or after the 2007 elections and to former members who are re-elected at those elections. The current Parliamentary superannuation scheme will be closed to those members of Parliament. The closure of the current Parliamentary scheme will not affect sitting members who are re-elected at the 2007 elections and who are subsequently re-elected within three months.

Parliamentarians who are covered by the new arrangements will be able to choose whether the Government 9 per cent contributions should be paid into First State Super or another similar accumulation scheme that complies with Commonwealth legislation. This choice is available to New South Wales public sector employees. The contributions will be based on the greater of the maximum contribution base or the member's salary, which is the basic salary plus any additional salary that is payable to a recognised office holder under the Parliamentary Remuneration Act 1989. This formula also applies in Victoria. There are some ancillary provisions in this legislation. The bill will allow a member who is over the age of 65 years and who has 20 years service to elect to stop paying contributions and will allow trustees to adjust certain spouse pensions for surcharge purposes.

This bill will also allow a member who was first elected after 6 December 1999 to make a pension commutation at election at the age of 55 years when a pension becomes payable. It will deem a sitting member who dies on polling day to have died in service and clarify transitional provisions for repealed pensions for serving members at the age of 65 years. As all honourable members know, part of the background to this legislation was the controversy in the Federal Parliament which was initiated by the former Labor leader, Mr Mark Latham, in recognition of widespread public uneasiness relating to the perception that members of Parliament were part of a very generous superannuation scheme.

Arguments that have been advanced in favour of the system that this legislation will replace have included that members of Parliament have a degree of uncertainty about their future. When they stand for election, they cannot be certain that they will be elected or re-elected. They are also disadvantaged if they are unable to re-establish their profession at the conclusion of their parliamentary career because their knowledge and competency are not up to date. It was for those reasons that a generous superannuation scheme was created for parliamentarians.

The amended legislation may have a bearing on the decision of those who are considering standing for election. Some candidates may be seriously disadvantaged if they were elected for only one term. That would certainly be the case for members of the Legislative Assembly. This legislation will probably not have the same impact on upper House members, who are elected for an eight-year term, as it will have on members of the Legislative Assembly, who are elected for a four-year term and whose eligibility for a pension is based on serving for seven years. This bill certainly represents the views of the community, but whether in the long run it will prove to be in the best interests of parliamentary democracy will be a matter for observation in the future.

Ms LEE RHIANNON [3.48 p.m.]: The Greens strongly support this bill. I note that the tone of this debate is very different from when this matter was previously raised in this Parliament. When I moved amendments to introduce changes to parliamentary superannuation in line with the legislation that is before the House, the abuse was extreme. I think all honourable members should remember that this bill represents Mark Latham's greatest achievement. I note the laughter of the Special Minister of State. Mark Latham was the first leader of a major party to have the guts to put sound policy ahead of self-interest on this issue. By doing so he embarrassed everyone into following suit. Who was the first person to fall into line? It is a very interesting fact that it was actually the Prime Minister, Mr Howard.

The Hon. Greg Pearce: No, it was Latham.

Ms LEE RHIANNON: But it was the Prime Minister, Mr Howard, who put the suggestion into practice. The Prime Minister quickly read the mood of the public, and what it had been for a long time.

The Hon. John Della Bosca: He's very good at it.

Ms LEE RHIANNON: I again note the comments of Mr Della Bosca.

The Hon. John Della Bosca: I am very happy to make political comments.

Ms LEE RHIANNON: Yes, I am sure, and that is where we would agree. On this one he read the political mood and quickly moved to it. That change came in quite quickly. The reality is that the superannuation scheme was always unjustifiable. It survived only because self-interest dictated that no-one would say so in public. The public always knew that it was a rort but the comfortable major party consensus allowed it to continue. It was one of those issues on which we had agreement between the major parties, and it was just not talked about. But over the years, with the Independents and the Greens highlighting this issue, it has become well known amongst the public. It is rewarding to see, once again, that the Government is adopting policies put forward by the Independents.

The Hon. Michael Costa: Are you handing your super back?

Ms LEE RHIANNON: Yes, I will use it for many of the causes that—

The Hon. Michael Costa: No, no, no.

Ms LEE RHIANNON: I will put Mr Costa's amendments on the record. If he wants to move an amendment we can do that. At the moment it is not possible.

The Hon. Melinda Pavey: You are free to do that, Lee.

Ms LEE RHIANNON: Yes, I know I am free to do it.

The Hon. Michael Costa: Are you donating it to charity?

Ms LEE RHIANNON: Yes, as I do with much of my wages at the moment.

The Hon. Michael Costa: All of it?

Ms LEE RHIANNON: Yes.

The Hon. Michael Costa: Good, that is on the record.

Ms LEE RHIANNON: Absolutely, I would be pleased to; that is how I live my life. I will be interested to know what Mr Costa will do with his.

The Hon. Michael Costa: I will be taking it, because I am entitled to it.

Ms LEE RHIANNON: Yes, along with all the other benefits that he picks up from his mates. The Greens have always been prepared to be honest on this issue. Our position has always been that members of Parliament should be subject to the same superannuation rules as everyone else. I have pushed this issue ever since I was elected in 1999. In this place I have copped torrents of abuse for that position, as I did just a moment ago. I have been abused by the same members—

The Hon. Michael Costa: Not me.

Ms LEE RHIANNON: I acknowledge that interjection. I have to agree, because these Labor boys can be—

The Hon. John Della Bosca: I have never abused you.

Ms LEE RHIANNON: I acknowledge that, and I appreciate that. But the Minister for Finance, certainly has. I have been abused by the same Government members who are now introducing and supporting the bill, and also by some Opposition members. I remember going head to head with the Deputy Leader of the Opposition on this matter. I am sure he would remember some debates we have had on this matter. The Greens have now been vindicated. On this issue the Greens have always reflected the majority position in the community, with both Government and Opposition in a hopelessly compromised position. I pay credit to the Independents, Mr Peter Andren, and Mr Ted Mack, for the work they have done. I acknowledge the groans from some members of this House.

The Hon. Greg Pearce: That is just because Hon. Jon Jenkins came in.

Ms LEE RHIANNON: I acknowledge that interjection. This bill is essential, not only because it is morally right, fair and just but also because it is an important step towards politicians regaining the trust and respect of the community. No wonder the public rates us alongside used-car salesmen, when such greedy rorts are there for all to see. How could we ever expect the public to believe that we were acting in the public interest when politicians were so obviously acting in their own interest?

I will put on the record how this issue has played out in New South Wales. When Mark Latham made his famous statement, and a few weeks later Prime Minister Howard came on board and changed the law, we

saw the law change around the country. But silence was what greeted us from the then Premier, Mr Carr. In February 2004 the then Leader of the Opposition, Mr Brogden, applauded Latham's superannuation cut and called on Mr Carr, as had the Greens, to sign up on this. But, again, silence. In response to letters written by the Greens, Mr Carr said he would do it at the next election. It certainly took a long time for those letters to come, but that was his position. That continued to be the position of the current Premier, Mr Iemma, when I questioned him about this matter at the estimates hearing. But suddenly this bill was introduced. And it is good that it is in place.

I congratulate the Government: it has taken a long time, but it has done it. Some of Mr Peter Andren's comments were that the great disconnect between the people and parliamentarians will continue while the existing benefits are still applicable. Mr Andren worked on this issue for many years. He said also that while Mr Latham could take some credit for putting parliamentarians' superannuation on the agenda, non-major party members had driven debate over many years. Had there not been the committed effort by non-major party members, particularly Ted Mack, we would not be here today. That was a comment Mr Andren, the Independent member for Calare, made in the Federal Parliament.

The Hon. Duncan Gay: Are you going to uphold your promise to serve only one term in Parliament?

Ms LEE RHIANNON: No. Let us get that on the record. I said that I believed that we need to debate limited terms.

[Interruption]

Because there is so much hoo-ha in the House, it will not be in *Hansard*. For the record, we have just heard united cacophony from the Coalition and the Government, once again.

The Hon. Jan Burnswoods: You are definitely avoiding getting it on the record.

Ms LEE RHIANNON: Yes, a united front.

[Interruption]

Yes, I said that I am going for preselection.

[Interruption]

I wonder why they are so excited about getting rid of me. Once again, the major parties are united.

The Hon. Michael Costa: I saw you in the chairman's lounge.

Ms LEE RHIANNON: Last time we had the chairman's lounge was when Michael Egan erupted. He accused me of drinking champagne in the chairman's lounge, but I actually do not partake of that. As we are debating allowances and superannuation, I have not wiped out—

[Interruption]

The Hon. Michael Costa: And Sylvia was in the chairman's lounge on Friday, I hear.

The PRESIDENT: Order! I call the Minister for Finance to order for the first time.

Ms LEE RHIANNON: After the enjoyment everyone had with all of that, I will return to the bill.

The Hon. Melinda Pavey: Tell us about allowances.

Ms LEE RHIANNON: I will put allowances on the record. All I am saying is that allowances are accountable and transparent.

The Hon. Michael Gallacher: So is the chairman's lounge. You were there.

Ms LEE RHIANNON: Of course I use the chairman's lounge. There are facilities so I can continue doing my work. We need our allowances. Does the Leader of the Opposition want to ridicule that? It shows how desperate he is.

The Hon. Michael Costa: Next you will be losing the zoo pass; it is a one-way ticket.

Ms LEE RHIANNON: The member should not worry about that. He is obviously worried about losing his zoo pass, his show pass, his races pass, his football pass and his cricket pass. He is worried he might lose those.

The Hon. Michael Gallacher: Do you get a free pass to the footie? Do you declare that?

Ms LEE RHIANNON: Yes. All that is on the record: they are getting very worried. Let us remember that we have the anti-sport member here.

The Hon. Eric Roozendaal: Do you admit you are anti sport?

Ms LEE RHIANNON: No, I am not anti sport. I am a strong backer of Souths, and the last time that question was thrown up at me was by the Minister for Tourism and Sport and Recreation, Sandra Nori. She became terribly distressed and accused me of being anti sport. Again, I refer members to my blog, where I have written about rugby league and all the developments. We need to get it on the record that the House has erupted because people want to have a little bit of fun at the end of the year. Some members are stressed because today the Greens had a win on superannuation. They might be a little worried that we will get some transparency in relation to allowances. My colleague the Hon. Michael Costa said to me that he would like the Greens to state on their web sites how they use their parliamentary allowances. I said I would do so and I hope that he agrees.

The Hon. Michael Costa: I did not say that. I said I want you to put your House account on your web site.

Ms LEE RHIANNON: The Minister has now changed his mind.

The Hon. Michael Costa: Point of order: The honourable member has misrepresented me. What she just said is absolute nonsense. I never asked her to tell me what she does with her allowances. I asked her to put her House account on her web site and to detail the number of occasions on which she eats in the dining room. She appeared on television and claimed that we all ate subsidised food. I have seen her in the dining room on many occasions. I have seen a number of Greens in the dining room. I said to her that if she was so concerned about transparency she ought to indicate on her web site how many times she ate subsidised food in the dining room.

The PRESIDENT: Order! There is no point of order.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

SWANSEA CHANNEL FUNDING

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs. Is the Minister aware that Lake Macquarie City Council has asked the Government for funding to undertake works on Swansea Channel, including the construction of a break wall at Swan Bay? Is he also aware that community representatives met with local member Milton Orkopoulos four weeks ago to plead for State funding? What action has the Minister taken to ensure funding is provided as a matter of urgency and to ensure works start as soon as possible, in particular given that many vessels are now unable to navigate Swansea Channel, which will result in a dramatic decrease in the number of vessels visiting Lake Macquarie during peak summer months?

The Hon. TONY KELLY: As the question is detailed and requires a detailed answer I undertake to obtain an answer for the honourable member as soon as possible.

JAMES HARDIE AND ASBESTOS-RELATED DISEASES LIABILITY

The Hon. IAN WEST: My question without notice is addressed to the Special Minister of State. Will the Minister inform the House about the status of negotiations with James Hardie to secure compensation for asbestos victims in New South Wales?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for his question and for his ongoing interest in compensation for asbestos victims. Honourable members would be aware that the New South Wales Government has taken a strong lead on this vital issue. The Government's guiding principle has always been to secure the best deal for victims. Over the past few years we have been working hard, along with the Australian Council of Trade Unions [ACTU], Unions NSW and the Asbestos Diseases Foundation of Australia, to secure a good result for the victims of asbestos diseases caused by products manufactured by companies in the James Hardie group.

In February last year the New South Wales Government commissioned David Jackson, QC, to preside over an inquiry into allegations of underfunding by James Hardie of a compensation fund for asbestos victims. In September last year Commissioner Jackson found that the funding set aside was insufficient and there was a moral obligation on James Hardie to provide additional compensation. The ACTU, the Asbestos Diseases Foundation of Australia and Unions NSW were then tasked with the job of negotiating a heads of agreement with James Hardie, which was completed last December.

Today I inform the House that we are on the cusp of an historic deal—a deal that will be legally binding and that secures, in today's dollars, \$1.5 billion in compensation for victims to be paid over at least 40 years. It will be paid out of James Hardie's cash flows through a special purpose fund to protect victims and their families. I understand that deal is acceptable to the negotiating teams and it will be acceptable to unions and victims. We now need James Hardie's board to approve the deal. The company has announced that its board will meet on Wednesday night and release its response on Thursday morning. I urge the board to endorse the deal.

If the board approves the agreement the Government will be able to sign the deal this Thursday and it will introduce legislation to give effect to the deal. That legislation will achieve three main aims: It will implement the special purpose fund and its governance arrangements; extend asbestos compensation to the Baryulgil community; and provide limited releases for James Hardie and its directors—protection from being sued for further compensation which, if not excluded, will be over and above the actuarially-agreed amounts payable under the deal. But it does not provide releases from other civil penalty orders, such as fines or banning orders for directors, and it does not release the company from any criminal charges. If, for some reason, James Hardie's board does not endorse the deal by Thursday morning we remain ready to introduce alternative legislation to reinstate the company's liabilities.

The Hon. Duncan Gay: What about your own responsibilities?

The Hon. JOHN DELLA BOSCA: This is our responsibility and we are dealing with it. The best outcome by far to provide certainty for victims is a negotiated deal. But the Government is resolute. One way or the other we want legislation on the statute books by Christmas. It is now appropriate to give James Hardie's board time to consider the deal and to resolve to endorse it. This Thursday I hope to be able to report to the House that the Government and James Hardie have signed the deal.

COMMERCIAL FISHING INDUSTRY STRUCTURAL ADJUSTMENT PACKAGE

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Primary Industries. Does the Minister recall his comments on ABC's *Country Hour* in September that Labor is currently formulating a buyout scheme for the struggling commercial fishing industry? Is he aware that both the New South Wales Coalition and the Federal Coalition have allocated \$39 million and \$220 million respectively for commercial fisheries restructuring packages? When will he match those packages?

The Hon. IAN MACDONALD: All honourable members would be aware that the Federal Government announced a \$220 million buyout for commercial fishers operating in Commonwealth-managed fisheries. The package includes \$150 million for a voluntary buyback of up to 600 commercial fishers on the Australian east coast and \$70 million for assistance to on-shore businesses affected by the changes. The New South Wales Government welcomes any assistance to our commercial fishing sector, which is facing various issues such as high fuel prices, cheap imports and declining fish stocks in certain instances. In fact, in New South Wales we have already moved to reduce the pressure on fish stocks through a similar voluntary buyout of commercial licences.

Honourable members might recall that that has resulted in an overall reduction in fishing effort of 17 per cent over the past five years. In addition, the State Government is considering further voluntary buyouts

and associated structural adjustment packages. That would be made easier if the New South Wales Coalition, which expressed apparent sympathy for the problems faced by commercial fishers, took some action. In particular, it could stop sitting on its hands and start lobbying its Federal counterparts to help us get a fair share of GST revenue. New South Wales pays \$13 billion a year in GST, which goes to fill the coffers of Canberra, yet it receives only \$10 billion in return.

If the Opposition cared about commercial fishers in New South Wales as much as this Government does it would help us lobby its Federal counterparts so we can get our fair share. All we want is a fair share. If we had our fair share we could announce such generous buyout programs. The Federal Government has \$3 billion from New South Wales so it can announce these programs. I guarantee one thing: If we proceed with our buyouts and structural adjustment programs we will do the maths properly.

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

The Hon. IAN MACDONALD: This is not rocket science; it is a simple calculation. If any honourable members are interested in learning more about the Commonwealth's buyout program I suggest they should not rely on the web site of the Deputy Leader of the Opposition—I have had a good look at that web site—nor should they read any of the waffle he is currently quoted as saying in the media. The Deputy Leader of the Opposition has made a mistake, which is unfortunate. It is not just a little mistake; it is a \$70 million mistake. The Commonwealth Government clearly said that there is \$150 million for buyouts and an additional \$70 million for other assistance, which is a total of \$220 million.

The web site of The Nationals includes quotes from the honourable member that there was a \$220 million commercial fisheries structural adjustment package. The web site also states that the Commonwealth is providing a further \$70 million to mitigate changes in the industry. In all, he is claiming that the Commonwealth Government is offering a package worth \$290 million. Clearly his sums are out by \$70 million. These are the figures that are on his web site. I suggest that in the near future the Deputy Leader of the Opposition should look more carefully at the statements he makes relating to buyouts.

DESALINATION PLANT PROPOSAL

Mr IAN COHEN: My question is directed to the Minister for Ports and Waterways, representing the Minister for Utilities. In light of the Government's public relations campaign to sell the unpopular Kurnell desalination plant to the people of Sydney, which involves radio commercials and the spectacle of trucking desalinated water from Perth for a mock wine tasting style exercise, when and where will the tastings take place, how much money is the Government spending on the radio commercials and other advertising to promote the desalination plant, what are the fuel and other costs associated with trucking desalinated water from Perth and is it appropriate to copy John Howard's tactic of spending millions of dollars of taxpayers' money on advertising unpopular government policies?

The Hon. ERIC ROOZENDAAL: I thank Mr Ian Cohen for his question. I will refer it to the Minister for an appropriate answer.

REGIONAL COMMUNITY OF THE YEAR AWARDS

The Hon. KAYEE GRIFFIN: My question is addressed to the Minister for Rural Affairs. Will the Minister inform the House what the New South Wales Government is doing to recognise and promote rural and regional achievements?

The Hon. TONY KELLY: On Saturday night I attended the Community of the Year awards in Wagga Wagga. It was an outstanding night, with entertainment provided by the Murrumbidgee Magic Chorus and the Fabulous Chandeliers. This year the New South Wales Government sponsored a number of categories through our agencies, the Department of State and Regional Development and the Department of Lands. Those categories were the Business Enterprise Award, the Events and Tourism Award and two categories of the Community of the Year awards.

Through these awards we encourage local economic development. We acknowledge the tremendous work done every day by our country communities. Through these awards we recognise individuals, businesses and organisations that are encouraging our regional communities to grow and prosper. What continues to impress me about these awards is the spirit of co-operation that they inspire. Through these awards community

leaders, business people, families, schools, sporting organisations and individuals unite across differences of background and politics to achieve a common goal: recognising the remarkable achievements of rural and regional communities. Their real prize is the satisfaction of creating and sustaining something of genuine substance for future generations.

That brings me to an important point. It is essential that governments understand what is happening in rural and regional communities not just through the occasional visit by a member of Parliament but also through genuine, ongoing exchange. The Iemma Government recognises this and supports our country communities in creating jobs and local investment through its community economic development programs. We are helping communities to capitalise on opportunities. In the spirit of local endeavour, 310 nominations were received for these awards. That is a terrific response. I am pleased to inform the House that the winner of the Business Enterprise Award was Outback Beds Incorporated from Bourke. The winner of the Events and Tourism Award was Deni-Play on the Plains Festival Incorporated from Deniliquin.

The Department of Lands was the principal sponsor of the Community of the Year Award for the third year in a row. These awards recognise community leaders, business people, families, schools, sporting organisations and individuals who unite across differences of background and politics to achieve a common goal. The Community of the Year Award recognises the many and varied ways that communities have come together to provide solutions to their problems. The award demonstrates just how much communities matter. The winner of the Community of the Year with a population under 15,000 was the community of Manildra. The winner of the Community of the Year with a population over 15,000 was the Creative Riverina Youth Team at Griffith. I thank the other sponsors of the awards, including Prime Television, the Commonwealth Bank and Kleenheat Gas. Most importantly, I congratulate all 310 nominees for these awards. The number of nominees is proof that our rural communities are doing extraordinary things. These awards are recognition of their great work.

YOUNG PEOPLE DISABLED ACCOMMODATION

Ms SYLVIA HALE: My question is directed to the Minister for Disability Services. Given that more than 2,000 young people with a disability are living in nursing homes in New South Wales—the highest number in any State—what provision is the New South Wales Government making to prepare for the release of the Council of Australian Governments report on this issue, which is due out in February next year? Given that many of these people need multiple services, how will the Government assess the level and nature of support services necessary to ensure that these young people are able to move out of nursing homes and back into the community? What is the Government doing currently to assess the level of demand?

The Hon. JOHN DELLA BOSCA: I thank Ms Sylvia Hale for her question but point out that it is not at all surprising that a greater number of younger people live in nursing homes in New South Wales than in other States as we have a larger population. Government acknowledges that there are serious concerns in the community about younger people with a disability living in nursing homes with older residents essentially because they have no choice of support from the system. While this group is relatively small in number, the New South Wales Government continues to work towards improving levels of support and reducing future admissions to nursing homes. We have provided this group with priority access to the Attendant Care Program and we have ensured that government agencies collaboratively explore alternative care arrangements to nursing home placements. We continue to look at ways of helping young people with a disability to maintain links with the community through community access programs.

Plainly, the resolution of this issue is possible only with the development of new and appropriate accommodation and support models, and the New South Wales Government is currently considering this issue. I hosted three roundtable discussions on disability accommodation models in July, August and just this week and continue to move forward the debate about disability accommodation and support. These discussions have informed the development of an action plan for disability accommodation, which I am pleased to indicate is fairly broadly supported in the disability support network.

Further, as honourable members will appreciate, the involvement of the Commonwealth Government in this area is vital—Ms Sylvia Hale referred to the Council of Australian Governments [COAG] process—as responsibility for nursing homes remains in the Commonwealth jurisdiction. The New South Wales and Commonwealth governments have already negotiated a bilateral agreement that outlines how we will work together to develop better support services for this group. This work is significant and an essential step towards finding a long-lasting and effective solution to the issues related to young people with a disability living in nursing home accommodation.

The discussions around jurisdictional responsibility for aged care and disability services that occurred at the recent Council of Australian Governments meeting and the subsequent establishment of a working group of officials is another positive step towards ensuring that progress is made. This group began work in July, examining alternative services outside nursing homes and the financial implications of alternative support services. The group will also consider people who are not receiving services as well as interface more broadly with the aged care and disability sectors. Ms Sylvia Hale referred to the COAG report, and an interim report is due this month. At the Community and Disability Services Ministers Conference in July I raised the issue of older people with a disability living in group homes and other disability accommodation. Many of these people would be supported more appropriately in aged care services, where they could receive care and accommodation more suited to their needs. This would give younger people the opportunity to move into disability accommodation.

YOUNG PEOPLE DISABLED ACCOMMODATION

The Hon. JOHN RYAN: My question is also directed to the Minister for Disability Services and is about a similar matter. Is it a fact that more than 1,350 people with disabilities under the age of 60 are living in aged care facilities in New South Wales? Has the Minister made a submission to the Council of Australian Governments inquiry into this issue and what commitment has he made in that submission to assist young people with disabilities who are living inappropriately in aged care facilities?

The Hon. JOHN DELLA BOSCA: I thank the Hon. John Ryan for his question, which is in very similar terms to that of Ms Sylvia Hale. Yes, I am obviously aware that there are approximately 1,350 young people living in nursing home accommodation in New South Wales. I do not know whether I would describe the process as involving formal submissions. The Hon. John Ryan will understand that the Council of Australian Governments [COAG] process is a high-level process involving the Premiers and the Prime Minister. It was agreed in July to formulate a new approach to both the issue of young people in nursing homes—

The Hon. Catherine Cusack: Blah, blah, blah, blah.

The Hon. JOHN DELLA BOSCA: Someone in a group home said that to me recently.

The Hon. Catherine Cusack: That's not very politically correct.

The Hon. JOHN DELLA BOSCA: No, but it is absolutely true. The fact of the matter is that the COAG process does not involve submissions. However, at the last Ministers conference I had a number of meetings with the Minister for Health, senior officers in the Cabinet Office, the Premier, the former Premier and the relevant Commonwealth Minister as well as representatives of the Young People in Nursing Homes support group and my colleagues in other States. I believe progress will be made as a result of the COAG process.

In New South Wales we have to be careful to understand the ramifications of young people currently supported in nursing homes being moved into other types of accommodation, and the vacancies they create in nursing homes. The issue of people occupying beds in acute care facilities who otherwise could be accommodated properly in nursing homes or other forms of disability accommodation, or other forms of ageing and retirement accommodation, is quite a complicated calculation. To be fair to both the Commonwealth and the State we need to make sure that the distinctions—

[Interruption]

The Hon. John Ryan has to remember growth. He is falling into the very trap that I am trying to warn the House about, that is, the Commonwealth is in charge of a shrinking sector of demand. More and more people are choosing—the demographics are clear on this regardless of the ageing population—to be admitted to nursing homes at the end of their life rather than spend a long time in nursing home accommodation. The reality is that people in disability accommodation are living longer. The Commonwealth is alive to the concern that we do not want this to become a simple cost-shifting exercise by the Commonwealth against the State. We have been successful in persuading Commonwealth officers and the Federal Government that a proper, comprehensive plan is needed to make sure that we match accommodation to the needs of individuals, regardless of their age, and they are properly accommodated, regardless of the jurisdiction in which their care is currently undertaken.

AVIAN INFLUENZA

The Hon. PENNY SHARPE: My question is addressed to the Minister for Primary Industries. Will the Minister update the House about the ongoing preparation to help respond to a case of avian influenza in Australia's poultry population?

The Hon. IAN MACDONALD: As honourable members would be aware, New South Wales already has strong plans in place to help deal with avian influenza in our poultry flocks, should an outbreak ever occur.

The Hon. Duncan Gay: You have misled the House.

The Hon. IAN MACDONALD: Rubbish. Australia already has direct, hands-on experience in this area—having eradicated five previous outbreaks of a less virulent H7 strain over the past two decades. This includes one outbreak that affected three properties in the Tamworth district in 1997. Today, we took another important step in our ongoing efforts to further strengthen our response plans for emergency diseases. This morning, the Minister for Health and I helped kick off day one of a three-day national simulation exercise designed to help us fine-tune our response capabilities. Called Exercise Eleusis, this simulation involves Federal and State governments, their relevant agencies and the poultry industry.

The purpose of the exercise is to help enhance Australia's ability to detect, contain and eradicate emergency animal diseases on a national scale. It is purely a desktop exercise; no field activities are planned. Exercise Eleusis began today at 10.00 a.m. local time. The Minister for Health and I were on hand at one of the key sites to see how the operation was running and to talk with the many hard working staff involved. Over the next three days, hundreds of staff from a range of key agencies will be based at several locations across the State, including the State Emergency Operations Centre in Sydney. At this site, teams will help co-ordinate whole-of-Government approaches and responses. This type of cross-agency co-operation and communication will be absolutely vital in the unlikely event that a case of avian influenza does occur.

Our State disease control headquarters at the New South Wales Department of Primary Industries in Orange will also be at full capacity, as will other key sites. In the scenario developed for Exercise Eleusis, New South Wales will be one of three States affected by outbreaks of avian influenza in poultry flocks.

The Hon. Duncan Gay: Are you going to apologise to the House for misleading it after my press release?

The Hon. IAN MACDONALD: I didn't talk about your press release.

The Hon. Duncan Gay: You did. Look on the web site.

The Hon. IAN MACDONALD: The web site, that's correct. As the mock exercise progresses, participants will likely have to deal with human health implications, particularly issues related to the hypothetical depopulation of affected birds. Over the course of the three-day exercise, teams will be given 400 individual pieces of information—each piece presenting a problem for the teams to solve. It is important that the general public recognise that Exercise Eleusis is just that—an exercise. Australia continues to be free of the H5N1 strain of avian influenza, which has led to the destruction of millions of birds in Asia and some European countries.

There is also no evidence that bird flu can be transmitted between humans. However we can never be too careful. The State Government already has strong plans in place to help us immediately contain and eradicate bird flu should it occur in our poultry industry. The Minister for Health has also ensured a range of measures are in place to help minimise the impact on the health system, should an outbreak ever occur. We hope we never have to use these plans, but we must be prepared. Past experience, along with insights from this week's simulation exercise, will help ensure Australian authorities can act quickly, decisively and with confidence in the face of a possible outbreak. Exercise Eleusis is Australia's second major national emergency disease simulation over the past several years.

Exercise Minotaur was held in 2002, which simulated an outbreak of foot and mouth disease. These exercises are an important part of Australia's ongoing efforts to protect our valuable production industries, as well as the safety and confidence of our consumers. I wish everyone involved in Exercise Eleusis the best of luck over what will surely be a tough and challenging three days.

MANNING MARINE PARK

The Hon. JON JENKINS: My question is addressed to the Minister for Natural Resources. Today it was announced that the Manning Marine Park—300 kilometres between the Hunter River at Stockton and Nambucca Heads—had been given the go ahead. How will that marine park affect such activities as fishing,

diving and boating? What activities will be allowed, and where? What activities will be banned, and where? When will the Minister provide details on zoning? Who will compensate the commercial fishing industry? Who will compensate the recreational fishing industry-based tourist industry for the combined hundreds of millions of dollars those activities bring to the coastal strip?

The Hon. IAN MACDONALD: I think the honourable member has read reports in this morning's press about a statement the Premier will make later today. I suggest that the honourable member await that contribution, the details of which I think he knows. I think all will be revealed in that statement.

The Hon. JON JENKINS: I ask a supplementary question. In view of the huge buyout cost for the prospective Manning Marine Park, how much did each Greens preference vote cost the people of New South Wales?

The Hon. IAN MACDONALD: I think that is an entirely inappropriate question.

DEPARTMENT OF EDUCATION AND TRAINING WORKERS COMPENSATION PREMIUMS

The Hon. CATHERINE CUSACK: My question is directed to the Minister for Industrial Relations. Will the Minister confirm that Government schoolteachers have so far this year accumulated 52,990 days of leave as a result of workers compensation claims and stress leave? Will the Minister also confirm that the Department of Education and Training has so far this year paid out \$128 million in workers compensation premiums? What action has the Minister taken to prevent illegitimate stress claims, and to help reduce the workers compensation claims and premiums of the Department of Education and Training?

The Hon. JOHN DELLA BOSCA: This is probably the best Opposition question I have been asked in quite a while. The Hon. Catherine Cusack is alive to the fact of a number of issues in relation to both occupational health and safety and the consequent workers compensation issues that emerge for the Department of Education and Training. I am pleased to advise, although I could provide her a much more lengthy explanation, that I have been actively working on this matter for some considerable number of months with the current Minister, the Hon. Carmel Tebbutt, and her predecessors going back as far as when Dr Refshauge had the portfolio of education and training.

The Hon. Melinda Pavey: It is taking a while.

The PRESIDENT: Order! There is too much chatter.

The Hon. JOHN DELLA BOSCA: I heard the Hon. Melinda Pavey interject that it is taking a while. One of the difficulties with workers compensation reform—and improvement of practices in order to mitigate issues, such as the frequency of stress claims and claims in relation to slips, trips and falls—is that because of the nature of the education workplace it takes a long time to turn around issues and practices. That includes local work practices in schools. It has taken a while to negotiate with the teaching work force on a one-to-one basis, the principals and the federation, and the teaching work force at large about the education industry and the occupational health and safety hazards and impact on the costs of the Department of Education and Training through workers compensation premiums. I am pleased to report that a number of important actions have taken place that will reduce quite rapidly the impact of stress claims in an educational workplace due to the better way in which principals will be obliged—

The Hon. Michael Gallacher: Is it breaking up your concentration?

The Hon. JOHN DELLA BOSCA: It is impossible to break my concentration, I am pleased to report. The educational work force has been characterised by a large number of claims in relation to workers compensation issues arising from stress. Many of those issues are about local management practices. A considerable number relate to other issues in the school system. The Hon. Carmel Tebbutt, the WorkCover Authority and education officials are working very hard on a series of measures that will be reflected in the next couple of years in reduced workers compensation costs against the Department of Education and Training, and that will enable us to invest in better work practices and better education for children going through the education system. I thank the honourable member for her question. I emphasise that action has been taken in this regard for some time but, as with our important workers compensation reforms in the general arena, a considerable number of them have taken a while to work their way through the system to improve conditions for employees and to produce returns for employers.

BIOFUELS

The Hon. TONY CATANZARITI: My question is directed to the Minister for Rural Affairs. What is the Government doing to support the biofuel industry in New South Wales?

The Hon. TONY KELLY: Yesterday the Premier announced that it would be mandatory for all New South Wales Government vehicles to use biofuel, such as ethanol-blended petrol, where possible throughout the State.

The Hon. Jennifer Gardiner: That is a good policy of The Nationals.

The Hon. TONY KELLY: It is a pity The Nationals did not implement it federally. It is such a shame. They have policies, but they cannot put them into operation. I am sure all honourable members applaud this landmark policy and its practical support for country jobs, investment and the environment. The announcement builds on the Government's commitment in June this year to ensure, for the first time, that the State Government's fuel contract would include biofuel and other alternative fuels. This landmark policy is a huge win for country New South Wales, and represents a practical, positive step forward in promoting the use of home-grown fuel alternatives. Yesterday's announcement is yet another win for Country Labor, which has been pressing the Government on this issue for some time. While The Nationals are completely useless at convincing their Federal counterparts of the merits of biofuel, Country Labor once again has shown that it is the true voice of rural and regional communities.

The use of biofuel makes sense on a number of levels. Firstly, it is a proven plus for the environment with evidence pointing to lower emissions of carbon monoxide, benzene and toluene. Field trials of ethanol-blended fuel also saw overall exhaust emissions reduced by around 22 per cent and carcinogenic risk reduced by 24 per cent. Besides being a win for the environment, the Premier's announcement is a huge win for country jobs and investment. By increasing demand for biofuel the State Government is providing a boost for investment in country New South Wales, with the potential to create thousands of new jobs in the bush. Besides the Manildra plant at Nowra, where the Premier made the announcement, many proposals for the establishment of ethanol plants throughout the State are in various stages of development. As Minister for Lands, recently I ensured that Australian Ethanol Limited would have a two-year option over a strategic parcel of Crown land in the Murrumbidgee region to further explore the establishment of an ethanol plant.

I am sure yesterday's announcement will provide even more impetus for many to take a closer look at investing in the fledgling biofuel industry in New South Wales. Yesterday's announcement was welcomed warmly by New South Wales farmers as a positive policy, and it will be welcomed by rural and regional councils that use the State Government's fuel contract. By promoting a domestic alternative to imported fuel the State Government is doing its bit to reduce the ever-spiralling balance of payments crisis that the Howard Government has let slip out of control. Once again, the State Government is leading the way in the promotion of biofuel, investment and jobs in country New South Wales. Country Labor continues to score important victories for country families and businesses while The Nationals continue to demonstrate that they are unwilling or unable to stand up for rural and regional New South Wales.

[Interruption]

I call on members of The Nationals who are interjecting to urge their Federal counterparts to implement a policy similar to ours. The Nationals, having rolled over on industrial relations and Telstra and having failed to convince the Howard Government to mandate ethanol nationally, once again show that they are willing to sell out the interests of country communities to save their Liberal Party mates. Meanwhile, country New South Wales can be assured that the Iemma Government will continue to pursue policies and strategies that will provide better opportunities for country New South Wales. I call on The Nationals to ask their Federal Government counterparts to do exactly the same.

CROSS-CITY TUNNEL TOLL-FREE PERIOD

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Finance, representing the Minister for Roads, a question without notice. Will the Minister inform the House who is covering the expense of the 38-day toll-free period, given that the Cross City Motorway is not generating any income during that period? Is the Government paying, or has it agreed to pay, any expenses incurred by the Cross City Motorway during the toll-free period?

The Hon. MICHAEL COSTA: I will get a detailed answer from the Minister for Roads, but my understanding is that the expenses are the expenses of the operator. Basic economics tells us that if the marginal cost is zero, it will not cost anything to run the service during the toll-free period. I will get a detailed answer to clarify my understanding.

PACIFIC HIGHWAY FATALITIES

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Finance, Minister for Infrastructure, and Minister for the Hunter. In light of yesterday's multiple fatalities on the stretch of the Pacific Highway leading to the Myall Way intersection, does he stand by his statement in this House on 6 May 2005 that the large protest that local residents held to express their concerns about road safety in that area were "nothing but a stunt"? Does he now agree that local people may be possessed of some expertise in this important matter? Will he update the House on the State Government's latest plans to address the safety issues raised by local communities, including the need for a flyover at the junction of the Pacific Highway and Myall Way?

The Hon. MICHAEL COSTA: Obviously, this is a question for the Minister for Roads, but I will respond because I find it quite disgraceful that the Opposition would ask this question today after a very serious accident that the police are still investigating. It is not only disgraceful; it is also the worst form of political opportunism. For the member to utilise the grief of a community that has lost loved ones to try to make a political point, and in so doing distort the facts, is disgraceful. The honourable member knows, or ought to know, that this accident occurred six kilometres from the location about which the Liberal Party organised its protest. The member is a disgrace. She ought to apologise to the family. What she has done is reprehensible. I would have thought she would understand that people are grieving and suffering because of what occurred. The member is a disgrace, trying to capitalise politically in this House on an accident that occurred six kilometres from the intersection about which she has made a comment. The Nationals are a disgrace.

PITTWATER MARITIME SAFETY

The Hon. PETER PRIMROSE: My question without notice is addressed to the Minister for Ports and Waterways. Will he advise the House of the latest safety initiatives for boaters in Pittwater?

The Hon. ERIC ROOZENDAAL: I thank the Hon. Peter Primrose for his question and commend him for his interest in this matter. The House will be pleased to know that the New South Wales Maritime Authority is introducing new technology to improve the State's network of 3,000 navigation markers and to cut ongoing maintenance costs. The authority will be using more reliable light-emitting diode [LED] lights technology, which will save more than \$215,000 a year.

The New South Wales Maritime Authority spent \$20,000 last year on navigation markers in Pittwater, including \$7,000 on new navigational signage, such as new LED sea lights in Pittwater. Navigational markers are the road traffic signs of the waterways. If only the Liberal Party had seen the signs before it allowed the extremists in the right wing to take over the party. Traditional Liberal voters have woken up to the Leader of the Liberal Party, Peter Debnam, and the Liberal Party.

The Hon. Don Harwin: Point of order: The question related to the Minister's portfolio of ports and, of course, it referred to a maritime issue. The question had a safety element to it, but it had absolutely nothing to do with the line of response that the Minister is now adopting. Under the standing orders that relate to questions—despite the Minister's repeatedly straying from the question asked of him—a Minister is required to do two things, one of which is to make his answer relevant.

The PRESIDENT: Order! I remind the Minister that his answer must be relevant to the question that has been asked.

[Interruption]

The PRESIDENT: Order! I call the Hon. Melinda Pavey to order.

The Hon. ERIC ROOZENDAAL: Navigational lights and signage mark hazards and safe channels in our waterways. Indeed, the good people of Pittwater saw the signs. Some of the signs they saw recently do not need LED technology. The families and businesses on the peninsula saw right through the Liberal Party. They know that the Liberal Party is ruled by a core of extremists.

The Hon. Don Harwin: Point of order: Madam President, this Minister has only just been brought to order by you on the issue of relevance and is now flouting your ruling. Again he is adopting a line of response that is not relevant to the question that has been asked, which was about maritime safety. Madam President, I ask you to bring him back to the point of the matter.

The PRESIDENT: Order! I remind the Minister that his answer must be relevant to the question asked.

The Hon. Melinda Pavey: Remind us what Labor's vote was.

The Hon. ERIC ROOZENDAAL: I acknowledge the interjection by the Hon. Melinda Pavey. What she fails to understand is that the by-election was not about the Labor Party's vote; it was about the appalling vote that her side of politics scored. The Liberal Party could not win a one-horse race!

The Hon. Duncan Gay: What was the Labor vote?

The Hon. ERIC ROOZENDAAL: I understand that the Deputy Leader of the Opposition, the Hon. Duncan Gay, was the strategist for Pittwater because of his brilliant result in Dubbo. That is where the advice came from! I am advised by the New South Wales Maritime Authority that one of the major causes of the failure of the navigational markers—

The Hon. Duncan Gay: What was your vote?

The Hon. ERIC ROOZENDAAL: I acknowledge the brilliant interjection of the Deputy Leader of the Opposition. What he fails to understand is that the by-election result was not about the Labor Party. The Coalition could not win a one-horse race. There was a 26 per cent swing against the Coalition. I do not see the Hon. John Ryan smiling, I do not see the Hon. Don Harwin smiling, and the Hon. Patricia Forsythe has left the Chamber. That is what I see happening on the Opposition side of the House.

The Hon. Don Harwin: Point of order: The Minister is again moving away from the point of the question, and his line of response is not relevant. Madam President, I ask you to call him to order and tell him to stop flouting your ruling.

The PRESIDENT: Order! I remind the Minister not to be diverted by interjections.

The Hon. Greg Pearce: To the point of order: This is the third time that you have had to make a ruling on this matter for the Minister. He is a trainee Minister, as we all know. He is the Minister who had to take on notice how many ministerial staff he had when he was asked the question in the estimates hearings.

The PRESIDENT: Order! The Minister should not be diverted by interjections. However, I remind all members that interjections are disorderly at all times.

LIQUOR TRADING HOURS

Reverend the Hon. FRED NILE: I direct my question without notice to the Minister for Natural Resources, representing the Minister for Gaming and Racing. Is it a fact that the New South Wales Alcohol Summit was held to reduce the harmful impact of alcohol on our society? How can the Government use the summit to justify its new proposals for opening New South Wales hotel bars for alcohol sales on Good Friday and Christmas Day and also for hotels to open on those days from 10.00 a.m. to 10.00 p.m., every Sunday from 5.00 a.m. to midnight, and every day of the week from 5.00 a.m. to midnight? How will the proposal to abolish the Liquor Administration Board be in the public interest to ensure natural justice?

The Hon. IAN MACDONALD: I thank the Reverend the Hon. Fred Nile for his question. I will refer it to the Minister for a speedy reply.

LORD HOWE ISLAND SHIPPING CONTRACTS

The Hon. DON HARWIN: My question without notice is directed to the Special Minister of State. Is the Minister aware that the Government's contracts for shipping services to Lord Howe Island are due for renewal? Does the Minister intend to make it a condition of the tender that bulk fuel oil for the island's power

station must be held in separate tanks on board the vessel, rather than in the ship's cargo hold, to minimise the risk of a major oil spill in the island's World Heritage listed lagoon?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Don Harwin for his question. I will obtain a detailed response and provide him with an appropriate answer.

DISABILITY ACCOMMODATION

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Ageing, and Minister for Disability Services. How does the Government intend to provide accommodation models to people with a disability who have a range of needs?

The Hon. John Ryan: They have no idea.

The Hon. JOHN DELLA BOSCA: I thank the Hon. Christine Robertson for her question and commend her for her ongoing interest in disability policy. I note the interjection of the Hon. John Ryan; it was very uncharitable. The New South Wales Government, through the Department of Ageing, Disability and Home Care, provides a range of services to people with disabilities. The most significant area of investment is in out-of-home care services. In the past nine years the New South Wales Government has more than doubled its disability budget, although the system continues to struggle to meet demand. Almost half the disability budget provides care to just 3 per cent of the department's clients.

There are 200,000 people in New South Wales under 65 who have a severe or profound disability and only 5,300 accommodation support places are available. The majority of out-of-home care is provided in a group home or a large residential centre. These facilities are run by the Department of Ageing, Disability and Home Care or by an organisation that is generally funded by the department. These models have helped many people, but have not been flexible enough for many others. In January 2005 a discussion paper was distributed to provide an opportunity for people with a disability, their families and carers, representative bodies and other interested parties to comment on a range of accommodation models for people with a disability. In response to the paper, 200 submissions were received from the public, and 27 focus groups were held with stakeholders across the State.

In July and August 2005, following the completion of the consultation process, I hosted a roundtable meeting to discuss the ways forward. Those at that meeting included people with a disability, their carers, peak bodies, service providers, academics and senior officers of the Department of Ageing, Disability and Home Care. The discussions were both positive and productive, and an agreement was formed about the principles for reform. A third roundtable meeting was held yesterday to discuss the accommodation support paper that had been developed. It is recognised through the accommodation support paper that one size does not fit all.

There are five key components of the new system that are outlined in the paper. First, there will be fair and more transparent access to the service system. Access to in-home and out-of-home care services will be a staged process involving eligibility and functional assessment, and the assessment of informal supports and relative needs of individuals. Second, services will be linked to need. They will be flexible and responsive to different needs. In recognising that the majority of people with a disability are cared for by family and friends, the third key component of the system will be to assist people to remain at home to complement informal supports that exist.

The fourth component will include more options for people who are unable to stay in their own homes. There will be a wider range of models available. These options may include a village or an apartment style of model. Lastly, a sustainable care system will be developed, recognising that the location of out-of-home care will be dependent on the ongoing demand, affordability and availability of an appropriately trained work force that is properly able to support people with a disability.

Further detailed work will occur. Eligibility criteria for the range of supports that will become available will need to be developed, in-home care services will need to be strengthened, a tiered approach to accommodation support services will be developed, and the role of out-of-home care and how best it will be provided will be further considered. This work and a final accommodation and support policy will form the components of a long-term disability plan that I expect the Government to release early in 2006.

POLITICAL ACTIVISM IN SCHOOLS

The Hon. DAVID OLDFIELD: My question without notice is addressed to the Special Minister of State, representing the Minister for Education and Training. Does the Minister recall, in answering my question

of 15 September 2005 regarding a letter I sent on 29 August 2005, saying that the Hon. Carmel Tebbutt would respond "in due course"? Would the Minister be surprised to know that three months have passed and I have not even received an acknowledgement of my letter let alone an answer? What time frame does the Minister attach to the term "in due course"? Might the Minister for Education and Training explain also why she has not responded to a letter dated 5 July 2005 sent to her by a teacher, Mr Ian Hale, whom she wrongly named in this place on 25 May 2005? Is this inaction a signal of support for teachers such as the Principal of Blacktown Girls High School, Edward George Gavin, who consistently breached departmental protocols by pushing political prejudices on vulnerable students? Does the Minister take the view that departmental protocols may be breached as long as the offending teachers are Labor Party supporters?

The Hon. JOHN DELLA BOSCA: I certainly refute the implication in the last part of the question. I reject any claim that the department or the Minister would exercise political bias in such an important matter. My view of "in due course" may well be different from that of the Hon. David Oldfield and that of the Minister for Education and Training, Carmel Tebbutt. In my view the reasonable time frame of "in due course" has not yet expired. I will ask the Hon. Carmel Tebbutt, who is a very efficient person and is always on top of issues, when she intends to respond—which I am sure she will.

GREATER SOUTHERN AREA HEALTH SERVICE COOK-CHILL MEALS

The Hon. PATRICIA FORSYTHE: My question without notice is addressed to the Minister for Health. How much money is the Greater Southern Area Health Service attempting to save by implementing the new cook-chill menus? In further attempts to save money, have meat orders been halved? Is the health service stopping the purchase of dairy products such as yoghurt? Is fresh fruit also off the menu?

The Hon. JOHN HATZISTERGOS: The cook-chill method that the Hon. Patricia Forsythe has criticised was introduced when the Coalition was in Government. During the Coalition Government of the early 1990s a number of hospitals in the Northern rivers region supplied cook-chill meals to people. I reject the suggestion that somehow an inferior standard of service is being provided through the cook-chill method. Incidentally, a number of establishments other than hospitals supply cook-chill menus, including restaurants.

The Hon. John Ryan: Gaols?

The Hon. JOHN HATZISTERGOS: In the circumstances it is best that I do not say anything about that. On a day-to-day basis I do not become involved in the purchase of fruit and yoghurt, as the Hon. Patricia Forsythe would appreciate. I do not look at menus, or decide what is in and what is out. Dieticians and nutritionists look at the menus and determine what is appropriate. However, for the benefit of the honourable member and the constituents who inquired about this matter, I am advised that yoghurt and fruit will be available on request. There are a number of types of the cook-chill method, and it provides not only an opportunity for greater variety of meals in hospitals but also a safe method of food handling.

AUSTRALIAN COUNCIL ON HEALTHCARE STANDARDS QUALITY IMPROVEMENT AWARDS

The Hon. GREG DONNELLY: My question without notice is addressed to the Minister for Health. Will the Minister acquaint the House with the performance of New South Wales in the Australian Council on Healthcare Standards 2005 Quality Improvement Awards?

The Hon. JOHN HATZISTERGOS: For those who are not aware, the Australian Council on Healthcare Standards [ACHS] is an independent, not-for-profit organisation committed to improving the quality of health care in Australia through regular review of performance, assessment and accreditation. Since it was established in 1974 it has been the leading independent authority on the measurement and implementation of quality improvement systems for Australian health care facilities. The standards for evaluation, assessment and accreditation are agreed upon by a council drawn from peak bodies in health and representatives of the Commonwealth and State governments and consumers. The ACHS Quality Improvement Awards were launched in 1996 and serve to highlight and encourage outstanding achievements in health care strategy.

New South Wales featured strongly in the 2005 awards, winning in two of the three categories and being highly commended on two occasions. New South Wales also won the student award and the gold medal. In the appropriateness of health care category, New South Wales outperformed Queensland, Victoria and Western Australia being both winner and runner-up. Fairfield Hospital conducted the winning project in the category of restrictive blood transfusion practices following joint replacement surgery. Joint replacement

surgery is associated with significant blood loss. However, in the face of a global shortage in supply of donor blood transfusion and the high risk of such intervention, Fairfield Hospital developed a safe way to avoid unnecessary blood transfusions.

The Royal Prince Alfred Hospital was highly commended in the appropriateness of health care category for its Osteoporosis First Fracture Project. Osteoporosis is a major public health issue that is under-recognised in the community and has considerable morbidity and mortality rates. The Institute of Rheumatology at Royal Prince Alfred Hospital sought to optimise appropriate clinical care to low-trauma fracture patients by reducing future osteoporotic fractures. In the building blocks of quality clinical care category, New South Wales was runner-up, with Hawkesbury District Health Service being highly commended for its graded medical response. Its three-tier system of graded medical response has considerably improved patient outcomes by promoting new and appropriate intervention in the care of ill patients.

New South Wales was the joint winner with Queensland in the non-clinical service delivery category, out-performing South Australia, Western Australia and Victoria. Shellharbour Private Hospital's Water Wise Project utilises a water recycling tank to reuse water dumped by the upgraded autoclaves and thus decrease consumption. The winning project for the student awards was entitled, "Evidence-based management of patients presenting to the emergency department with a sore throat at Tamworth Base Hospital". Myriad patients present to emergency departments and general practitioners with the notorious "sore throat". Usually this symptom has a benign cause and requires very little intervention. The most common cause is a viral infection, which cannot be treated by antibiotics. By providing an evidence-based guideline for the management of such presentations at the Tamworth emergency department the students investigated the appropriateness of knee-jerk antibiotic prescription with some enlightening results.

This year the highest honour of the Australian Council on Healthcare Standards, the ACHS Gold Medal, went to Dr Lisa Harvey, a physiotherapist from the Royal Rehabilitation Centre, Sydney. Dr Harvey, a highly respected researcher and an expert clinician in spinal cord injuries, led a team of Sydney physiotherapists on an ambitious four-year quality project, developing a web site underpinned by sophisticated software that enables physiotherapists to find exercises appropriate to the specific needs of patients. The ACHS Gold Medal is presented for an outstanding contribution by an individual to improving quality in health care. I join with all honourable members in commending to the House all the winners of this year's ACHS awards, especially those from New South Wales, who were outstanding.

GREENHOUSE GAS EMISSIONS

Ms LEE RHIANNON: I direct my question without notice to the Minister for Finance, and Minister for Infrastructure. During the 2003 budget estimates when asked about greenhouse gas reduction targets for Sydney transport does the Minister recall saying, "I do not know why you ask me that question. You should know by now that I am a greenhouse sceptic"? As the Minister for Finance, and Minister for Infrastructure is involved in the proposed greenhouse-polluting desalination plant, coal-fired power stations and road projects, will the Minister support his leader's greenhouse package that was announced today? Or does the Minister plan to continue as a self-proclaimed greenhouse sceptic?

The Hon. MICHAEL COSTA: Let me explain how a real political party works. There are three members of the Greens and they have three different positions. The Government has one position. I am obliged, as are all Ministers, to support our leader's position. My views in relation to greenhouse gases are pretty well known. An important debate is being held relating to human-induced greenhouse gas and its effect on the environment and that is a legitimate debate for people to follow. I note today a breakthrough in technology relating to coal that is being trialled in Europe. The process will lead to the gasification of coal under pressure and that could result in a better outcome for the environment.

The Greens, who are being rather narrow-minded, have not looked at available scientific evidence. There are two sides to this equation. I refer, first, to debate in the scientific community about human-induced greenhouse gas. There is evidence to show that factors other than humans are involved in that. The second issue is how we legitimately respond to that situation. Some of that debate is to do with technology. I do not rule out anything. Unlike the Greens, I do not take an ideological view on this. I am not anti-human; I take the view that humans have to live in balance with their environment. One of the ways to do that is through technology. I look forward to technological advancement.

If Greens members are outraged and want to put out another leaflet they might also put out a leaflet that states that I am one of those people who believe we should look also at nuclear power. I would not mind that.

I hope the Greens circulate that leaflet in the latte shops in the inner city and that people are appropriately outraged. It is an appropriate issue to consider. When members of the Greens supported the Soviet Union it was full of polluting nuclear plants and their Cuban comrades still have nuclear energy. It is an issue that we need to examine. I stand by my position, which is not inconsistent with the broad position.

We must look at greenhouse gas solutions that are technologically efficient and environmentally friendly. However, we must also be open minded to evidence that might well show human beings are not contributing to greenhouse gases. It might well be something else, for example, solar activity. It is the view of the Government—and I support the view—that measures should be undertaken to reduce greenhouse gas. However, we must look at the economics of that and find technological solutions.

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

GREATER SOUTHERN AREA HEALTH SERVICE COOK-CHILL MEALS

The Hon. JOHN HATZISTERGOS: Earlier the Hon. Patricia Forsythe asked me about cook-chill meals in the Greater Southern Area Health Service. Apart from the Northern Rivers areas, to which I referred earlier, in 1992 the Coalition Government introduced cook-chill meals to the former Greater Murray Area Health Service. The Greater Murray Area Health Service is now part of the Greater Southern Area Health Service.

COMMERCIAL FISHING INDUSTRY STRUCTURAL ADJUSTMENT PACKAGE

The Hon. IAN MACDONALD: Further to the question asked earlier by the Deputy Leader of the Opposition, the web site that I mentioned as belonging to the Deputy Leader of the Opposition was not his web site.

The Hon. Rick Colless: He said it was mine.

The Hon. IAN MACDONALD: That is correct; it was not his web site. I apologise for that. However, I point out to the House—

The Hon. Rick Colless: Say, "I am sorry, Duncan."

The Hon. IAN MACDONALD: I said I apologise for that. I point out to Opposition members that the information I used is on the web site of The Nationals. That is the web site that has attracted press comment. Yesterday's Grafton *Daily Examiner* carries the headline "Opposition draws a line on fishing". The last paragraph, which mirrors what is on the web site of The Nationals, states:

Last week the Federal Government followed suit announcing a \$220 million commercial fisheries structural adjustment package *Securing our Fishing Future*. The Commonwealth is also providing a further \$70 million to mitigate changes in the industry.

On my reading of that article that represents \$290 million. I apologise to the Deputy Leader of the Opposition for stating in this House that it was his web site when in fact that information, which has been published, came from his party's web site.

DEFERRED ANSWERS

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

WARNERVALE DEVELOPMENT

On 19 October 2005 the Hon. Michael Gallacher asked the Minister for Finance, representing the Minister for Planning, a question without notice regarding the Warnervale development. The Minister for Planning provided the following response:

The Department of Planning is preparing a Regional Strategy for the Central Coast that will provide the policy and direction for managing growth and change in the region over the next 25 years. A key component of the Regional Strategy is the Warnervale land release area identified as a growth area for the Central Coast for the past 30 years. The land release area will include a Town Centre built around the proposed railway station and bus interchange.

Wyong Shire Council and Landcom are undertaking master planning for the Town Centre. A number of government agencies including Department of Planning, Premier's Department, Railcorp and Department of Environment and Conservation are also involved in the process of planning the new town centre and associated transport infrastructure.

WASTEWATER DILUTION

On 19 October 2005 Reverend the Hon. Dr Gordon Moyes asked the Minister for Ports and Waterways, representing the Minister for Utilities, a question without notice regarding wastewater dilution. The Minister for Utilities provided the following response:

This question comes within the Portfolio responsibilities of the Minister for the Environment.

PETROL SNIFFING

On 20 October 2005 Reverend the Hon. Dr Gordon Moyes asked the Minister for Primary Industries, representing the Minister for Aboriginal Affairs, a question without notice regarding petrol sniffing. The Minister for Aboriginal Affairs provided the following response:

As the matters raised primarily concern harm minimisation and treatment issues they are best addressed by the Hon. John Hatzistergos MLC, Minister for Health.

ANTI-TERRORISM LAWS

On 20 October 2005 Reverend the Hon. Fred Nile asked the Special Minister of State, representing the Premier, a question without notice regarding anti-terrorism laws. The Premier provided the following response:

On the 3 November 2005 I wrote to the Prime Minister advising New South Wales' support for the Anti-Terrorism Bill (No. 2) 2005.

ABORIGINAL HOUSING COMPANY MANAGEMENT

On 20 October 2005 the Hon. Dr Peter Wong asked the Minister for Finance, representing the Minister for Redfern Waterloo, a question without notice regarding Aboriginal Housing Company management. The Minister for Redfern Waterloo provided the following response:

A meeting did take place between a representative from the Premier's office, Minister Orkopoulos's Chief of Staff and Ray Jackson. There were no staff from my office present.

I'm advised that many of the other claims made by Mr Jackson are not correct.

Questions without notice concluded.**COMMERCIAL FISHING INDUSTRY STRUCTURAL ADJUSTMENT PACKAGE****Personal Explanation**

The Hon. DUNCAN GAY, by leave: I seek leave to make a personal explanation. During question time the Minister for Natural Resources, referred to my press release and to my web site and said that the Federal Government had allocated \$220 million and \$70 million respectively, a total of \$290 million. My web site and my press release, which contain similar information, show that I did not say that at all. When the Minister attempted to clarify the situation—he failed to apologise to me—he did not correct the record.

The Hon. Ian Macdonald: I did apologise.

The Hon. DUNCAN GAY: I cannot be accountable for what some journalist writes or for what is to be found on another web site. The Minister blackened my name by stating that I issued a press release and made certain statements on my web site, which is incorrect. I have to correct the record. I read from the first four paragraphs of my press release, a document that is available to be tabled, which states:

NSW Shadow Primary Industries Minister, Duncan Gay, welcomed the Federal Coalition Government's \$220 million commercial fisheries structural adjustment package, *Securing our Fishing Future*, calling on NSW Labor to follow suit.

The Minister would not like that. My press release continues:

Mr Gay said the Howard Government's move follows NSW Liberal/Nationals Coalition's recent pledge to invest \$36 million over four years on a voluntary buyout of the State's commercial fishing industry upon winning Government in 2007.

"The Federal Coalition's generous structural adjustment packages to commercial fishers wanting to exit the industry are now on offer, yet the NSW Labor Government has done absolutely nothing", he said.

Now comes the key statement:

The Federal assistance package provides \$150 million for a one-off, capped fishing concession buyout to reduce the risk of over-fishing in Australian waters.

A further \$70 million has been made available to mitigate the changes in the industry, including grants of \$5,000 to skippers and \$3,000 to crew members who lose their jobs.

At no stage in my press release or at my web site did I indicate there was \$220 million plus an additional \$70 million. Frankly, I believe it is churlish of a Minister who has been poorly advised or who has deliberately misled the House not to have the moral fibre to come into this Chamber and apologise for this disgraceful distortion. I seek leave to table my press release and a copy of a page of my web site.

Leave granted.

Documents tabled.

PARLIAMENTARY SUPERANNUATION LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. JON JENKINS [5.09 p.m.]: I did not intend to speak to the Parliamentary Superannuation Legislation Amendment Bill because it does not concern me greatly. After my short term in the Legislative Council I will not be eligible for parliamentary superannuation. However, I am concerned about some of the comments that have been made. I had to give up my career to become a member of Parliament. At that time I was an adjunct professor at the university—information that is available on the university's web site.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! There is too much audible conversation in the Chamber.

The Hon. JON JENKINS: Because of the field I am in, I will be three years out of date when I finish my term as a member of Parliament, which is probably too long to have been out of that field so I will probably have to pursue a different career path.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! There is too much audible conversation in the Chamber.

The Hon. JON JENKINS: Earlier in debate reference was made to the hypocrisy of parliamentary pensions and superannuation. If the three Greens who complain most about the parliamentary superannuation scheme are so upset about it, I am sure they could donate their superannuation to a reasonable cause or charity. Greens members could then take the moral high ground and tell the House how wonderful they are and how terrible the parliamentary superannuation scheme is. But there is silence.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.09 p.m.]: As we debate the Parliamentary Superannuation Legislation Amendment Bill we might reflect upon why parliamentary superannuation schemes were introduced. I understand that when John Curtin, Australia's wartime Prime Minister who was generally considered to be an excellent leader, died in office, his widow was left in very straitened circumstances. I believe also that Australia's then longest-serving Prime Minister, Robert Menzies, who had left the bar and served in Parliament for many years, was given a house in which to live during his retirement as there was no parliamentary superannuation scheme to support him.

The Hon. Don Harwin: Not by the taxpayers.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I acknowledge the Hon. Don Harwin's interjection. No provision was made for Robert Menzies in his retirement so a Liberal of some means gave him a house when he retired. Thus members on both sides of the House supported the introduction of a parliamentary superannuation scheme in order to ensure them a reasonable standard of living in their retirement. That is a reasonable concept. However, the parliamentary demographics have changed over the years and the age of parliamentarians has fallen dramatically. I do not have figures to back that assertion so I would be interested to see some research on the subject. A career in politics once was pursued by people with established professions and considerable life experience. Nowadays young bucks join political parties, work their way through the ranks, become Ministers in their late 30s or their 40s and then retire relatively early in their working life. It causes considerable public envy when such people, already in receipt of parliamentary superannuation—which is, in effect, a base salary paid for by the taxpayer—continue their old careers or begin new careers, perhaps benefiting from the contacts they made while in Parliament. That often draws public ire.

This bill brings parliamentary superannuation back to the superannuation level of the average public servant. The Hon. Jon Jenkins pointed out that his career has been affected significantly by his time in this place. He said that it will be difficult for him to pick up his academic career after some time away and it appears likely, based on the assessment of his party, that his time in this place is finite. One might ask how time spent in Parliament affects parliamentarians' lives. Before I came to this place I had a relatively modest medical practice. My salary certainly did not increase upon my election and my practice was decimated. It will take some time to build it up again—assuming I return to that job.

I think there is resentment in Australia of politicians, just as there is residual inverted snobbery. But I think the resentment of politicians is more than that. Why are politicians so on the nose? I think Australia has too many politicians, which means that most of them have too little influence. Sadly, democracy in Australia is in a poor state, with the executive having immense power. In New South Wales most government decisions appear to be made in Governor Macquarie Tower. The lower House of Parliament is a very expensive rubber stamp in that the executive tells majority party members how to vote. The Government wins every vote in the lower House. So, having achieved 40 per cent of the vote, it gets 100 per cent of the power. The only purpose of the lower House seems to be to provide the media with footage of the two somewhat presidential styles of the Premier and the Leader of the Opposition, as they snarl at each other during question time, and occasional footage of an embarrassed Minister.

At the Federal level, John Howard happily took us to war without bothering to consult Parliament. When Peter Andren moved a motion on that issue in Parliament the Liberal and Labor parties decided that the House should not debate why Australia was at war. Thus we might reflect upon why people resent parliamentarians' salaries and upon the fact that democracy in terms of parliamentary sovereignty and decision making is under threat. Most Australian States have two Houses of Parliament. Some people who do not understand that the lower House is merely a rubber stamp seek to abolish the upper House, which they believe is a second rubber stamp. That is certainly what this Government would like the Legislative Council to be.

The New South Wales Government slavishly follows the Federal Government on issues such as terrorism and the Federal Government is able to bully State governments into doing what it wants by pulling on the purse strings. So much State policy is simply window-dressing, with the big decisions made in Canberra. Indeed, many young people wonder why they cannot vote for the American President as the United States has more influence in this country than the Federal Government. That claim has some merit. The Australian Democrats would abolish State government and reduce the number of parliamentarians. A great criticism of the Australian parliamentary system and politicians is that they do not tackle the big issues. There has certainly been no attempt to deal with constitutional reform or to reform government. People in the financial world have put it to me that although industry, industrial relations and most government departments have reformed themselves, the parliamentary system has not been reformed and comprises many people with little influence.

The New South Wales Parliament theoretically presides over a \$40 billion budget. Therefore, we should be able to compare it to a \$40 billion corporation and examine its structure in that context. Bit players in the political system can have a considerable influence—although it is not often acknowledged. I played a part in the Department of Community Services inquiry that led to a change in the Minister and the head of the department and, if the Government is to be believed, an extra \$1 billion over 10 years for children at risk. I kicked off the mental health inquiry, which was chaired by the Hon. Brian Pezzutti. According to the Government, it injected another \$249 million into mental health services. I facilitated the inquiry into Campbelltown Hospital, which—if the Government is to be believed—will put an extra \$360 million into Health in Western Sydney. So even bit players can make a difference to the allocation of resources. We do not always get credit for our contributions but they are relevant. If the parliamentary process is to get community input and translate \$40 billion into social policy more efficiently than a \$40 billion corporation would, we must start thinking about how that process works.

We need talent in Parliament. It might be a bit of an ask to expect parliamentarians to accept a low salary, to have little influence and to endure public pillorying. I do not know how we attract the right people—and I am not saying that a superannuation package is the answer. The number of people who leave quite high positions in government to join the Royal Australian College of General Practitioners, lobby groups or Macquarie Bank suggests that, no matter how high one is up the political ladder and no matter how great the superannuation package, some will still try to make more money and profit from the contacts they made while in Parliament.

The Australian Democrats believe that people who leave Parliament should not be able to join a lobby group that pertains directly to their previous portfolio area or expertise. There should be a cooling-off period

after they have been in public service. We need to address the broader issue of why parliamentarians are on the nose and how better people can be secured into Parliament. Mr Steve Whan cited the difficulties of getting quality people into Parliament. There is no substitute for life experience. I am not sure how to attract more experienced people into Parliament. However, it would be a step in the right direction.

The Hon. MICHAEL COSTA (Minister for Finance, Minister for Infrastructure, and Minister for the Hunter) [5.20 p.m.], in reply: I thank all honourable members who have contributed to this debate. One question raised during the debate was whether a member with less than seven years service is able to roll over a defined lump sum benefit to another superannuation fund of his or her choice. I am pleased to advise the House that can be done as before.

Motion agreed to.

Bill read a second time and passed through remaining stages.

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. MICHAEL COSTA (Minister for Finance, Minister for Infrastructure, and Minister for the Hunter) [5.22 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to make amendments to the *Duties Act 1997*, *First Home Owner Grant Act 2000*, *Insurance Protection Tax Act 2001*, *Land Tax Management Act 1956*, *Pay-roll Tax Act 1971*, *Petroleum Products Subsidy Act 1997* and the *Taxation Administration Act 1996*.

The bill makes a number of amendments to these revenue, grant and subsidy Acts to ensure that the legislation remains consistent with current commercial practices, and is more equitable and certain in its application. The proposed amendments are the result of monitoring of business practices by the Office of State Revenue [OSR], ongoing liaison with industry and professional bodies, and consultation with revenue offices in other States.

I will deal with the amendments to each Act in turn.

Amendment of the Duties Act

The major amendments to the Duties Act are to close off 2 mortgage duty avoidance practices.

Where a loan is secured by mortgages of property in New South Wales and another State, New South Wales duty is payable only on the New South Wales proportion of the property used as security. A duty avoidance practice has been uncovered whereby the proportion of New South Wales property is artificially reduced by omitting New South Wales property from the security until after the date at which the liability to duty is calculated.

The avoidance practice takes advantage of an administrative provision in the legislation to bring forward the liability to a date before any loan amounts have been advanced, and therefore before most of the New South Wales property has been included as security. The amount of duty avoided amounts to several million dollars each year.

The bill limits the use of the administrative provision to genuine cases where the property included at the liability date is sufficient to secure the loan advances.

The second avoidance practice relates to an exemption that formerly applied to mortgages securing advances under debentures issued by a corporation. In 1999, this exemption was changed to a more limited concession to prevent avoidance practices. As a result of further identified abuses of these provisions, the concession was terminated in 2003 so that any new debenture arrangements could not be created to avoid payment of mortgage duty. Those amendments also ensured that mortgages previously eligible for the concession would be liable to duty on any further advances, but retained the exemption for mortgages executed prior to 1999.

Recent reviews by OSR have noted an increasing re-use of old debenture structures to facilitate new loans, which has the potential to cost the revenue several million dollars per annum. OSR records indicate that there are more than 700 of these old structures which may still be utilised to avoid duty on new advances.

The bill amends the provisions to close this avoidance avenue by providing that mortgage duty is payable on all new advances made under debenture structures regardless of the date of establishment of the original structure.

The remaining amendments to the Duties Act contained in the bill primarily extend various duty concessions.

The first is an extension to concessions relating to superannuation funds. The Australian Prudential Regulatory Authority, APRA, is introducing new registration requirements for superannuation funds, which are expected to result in the merger of a significant number of funds. The Duties Act contains existing concessions intended to ensure that where members move from one fund to another, the transfer of assets representing the value of the members' benefits is not subject to duty. However, the Association of Superannuation Funds of Australia has advised that the concessions will not be adequate in all cases to allow assets and members to be transferred without the imposition of duty.

The bill therefore provides further duty concessions for the transfer of property from the custodian of one superannuation scheme to the custodian of another scheme where members are transferring to another fund. Relief is also provided for the transfer of property held by a Pooled Superannuation Trust to another scheme as a result of a fund merger or transfer of members.

Land rich duty is payable on the acquisition of an interest in certain land holding unit trusts as if it were a transfer of land. A concession applies to wholesale unit trust schemes, which are defined by reference to a list of persons who are qualified investors. The bill extends this list, and limits the instances in which responsible entities of managed investment schemes can be treated as associated persons. These changes will increase the number of schemes that are eligible for the concession, and reduce the number of transactions that are subject to duty.

The bill extends the period for a concessional rate of insurance duty to apply to insurance effected under the Debtors Insurance Scheme operated by the Stock and Station Agents Association. This concession was originally limited to insurance effected up to 1 February 2005, but the Association subsequently requested an extension due to continuing financial difficulties caused by the drought. The bill extends the concession until 31 January 2010.

The bill implements 3 new exemptions from duty. The first is for transactions entered into for the purposes of an approved home equity release scheme for aged home owners. Many older people have valuable homes, but have little cash on which to live. An equity release scheme allows the home owner to access part of the value of their home without affecting their right to reside in, lease or sell the property.

Such schemes provide home owners with cash in exchange for the right to a specified percentage of the future sale proceeds when the home is eventually sold. The owner's liability under an equity release scheme is capped to a share of the sale proceeds. These schemes are essentially financing transactions, but will in some cases require an agreement to transfer the agreed share in the property, which would be liable to transfer duty. The Government announced an exemption from duty for these transactions with effect from 1 October 2004. The bill gives effect to that announcement.

To allow flexibility in the design of these schemes, the exemption will be subject to approval by the Chief Commissioner of State Revenue, in accordance with guidelines approved by the Treasurer.

The bill also introduces new exemptions from two anti-avoidance provisions. Consultation between OSR and industry groups has identified unintended consequences of these provisions. The bill therefore provides an exemption from call option assignment duty where a person who acquires options over property that is to be held in a trust or syndicate assigns those options to a special purpose vehicle for the purpose of raising funds. An exemption from mortgage duty is also added in relation to transferred mortgages, including for mortgages transferred between members of a group of corporations, or in connection with mortgage backed securities, or to a new security trustee.

Amendment of the First Home Owner Grant Act

The First Home Owner Grant scheme is a national scheme administered by the States and Territories under 8 separate Acts. State revenue offices have identified some minor inconsistencies in the eligibility criteria for the grant and in the administration of the scheme, and have agreed to recommend amendments to the legislation to address those issues. The amendments in the bill arose from that process.

The first amendment is to increase the minimum age limit for applicants from 16 years to 18 years, consistent with the limit in all other States and Territories. Applicants aged under 18 will still be eligible for the grant in certain circumstances. A similar amendment is made to the First Home Plus scheme.

The second is to allow an applicant to be eligible on a second application if the original grant was paid back and any penalty in relation to the earlier application was paid. This situation arises most commonly where the applicant fails to occupy the home as his or her principal place of residence, and is therefore required to repay the grant. Most other States have already amended their legislation to allow payment of the grant in these circumstances.

To complement this provision, the bill also limits the prior ownership restriction, which provides that the grant is only payable on the applicant's first home. To ensure that a small period of occupation does not render the applicant ineligible, prior ownership of residential property will only render the applicant ineligible if he or she occupied the home for a continuous period of at least six months.

The bill also clarifies the circumstances in which the Chief Commissioner may exercise certain discretionary powers. Eligibility for the grant includes a residence requirement, which states that the applicant must occupy the home as his or her principal place of residence for at least six months commencing within 12 months of purchase. The Chief Commissioner is given the power to extend the period of 12 months, to reduce the period of 6 months, or to waive the residence requirement completely. The discretions are intended to allow the grant to be retained in circumstances where the applicant genuinely intended to occupy the home as his or her principal place of residence, but failed to do so due to a change in circumstances after the purchase of the home.

The legislation limits the time at which the Chief Commissioner can exercise this discretion. This could have unfair consequences, particularly where a failure to comply with the residence requirement arose from changes to the health, employment or financial situation of the applicant or the applicant's family. The bill confirms that the Chief Commissioner can exercise the discretions at any time.

Finally, the bill provides a right to object to decisions of the Chief Commissioner to require repayment of the grant or to impose a penalty, in addition to the existing right to object to the Chief Commissioner's decision on an application for the grant. This will formalise the existing practice of the Office of State Revenue.

As a result of these amendments, a small number of applicants who would currently be required to repay the \$7,000 grant will be eligible to retain the grant in future, and a small number of additional applicants will be eligible for the grant.

Amendment of the Insurance Protection Tax Act

The insurance protection tax raises funds for the Policyholders Protection Fund to cover certain claims under insurance entered into by insurers who become insolvent. In some circumstances, a policyholder will already be liable to cover those claims before any claim can be made against the Policyholders Protection Fund. In these cases, the policyholder is effectively paying twice for the same risk. The bill therefore allows the Treasurer to approve such insurance or class of insurance as exempt insurance for the purposes of the insurance protection tax.

Amendment of the Land Tax Management Act

The bill makes amendments to various exemptions from land tax.

Land currently qualifies for a land tax exemption if it is within a rural or non-urban zone and is used primarily for primary production; or if it is within an urban zone and is used in the course of carrying on a business of primary production.

The Local Government Act definition of "farmland" contains a more precise business test. The bill amends the land tax provisions to be consistent with that definition. These amendments will ensure consistency as between land tax and council rates, in relation to the classification of primary production land in urban zones.

The bill provides further concessions for an owner's principal residence. The land tax legislation allows a person who temporarily vacates his or her principal place of residence to retain the exemption for up to six years, provided the property is not rented for more than six months in a particular year and the owner resumes occupation or sells the land within six years.

However, if the owner fails to resume occupation within six years, the land becomes liable retrospectively for the entire six year period. The bill removes this retrospective liability.

The bill also contains minor amendments to remove an anomaly and simplify administration of the exemption for vacant or unutilised land intended to be the owner's principal residence.

When the State Revenue Legislation Further Amendment Bill 2004 was being debated, the Government agreed to introduce amendments to the exemption from land tax for land subject to conservation agreements, to restrict it to agreements made for an indefinite period.

This will provide an incentive for owners to sign indefinite conservation orders. The bill incorporates this amendment, in accordance with the Government's commitment.

The bill also makes a number of statute law amendments to remove redundant provisions, and to update certain section references and exempt organisations due to changes in other legislation.

Amendment of the Pay-roll Tax Act

The bill makes amendments relating to the liability to pay-roll tax on share schemes benefits and long service leave contributions to industry funds.

The Pay-roll Tax Act taxes shares and options provided to employees and company directors. A number of simplifying amendments were made earlier this year after extensive consultations with employer representatives.

The bill reinserts a provision that was inadvertently omitted by these earlier amendments. The provision which is being inserted retrospectively will enable employers to deduct any consideration for the acquisition of the shares when calculating the taxable value of shares and options.

The Pay-roll Tax Act currently taxes employers' long service leave and lump sum payments on termination of employment.

Central Industry Funds have been established in industries which have a mobile work force due to the project nature of the work, such as in the building industry. These funds allow employees who regularly move from one employer to another to qualify for long service leave and redundancy benefits based on their length of service in the industry rather than with a particular employer.

The bill provides for an employer's contribution to a Central Industry Fund to be taxed, but exempts amounts paid by the employer to an employee to the extent that the employer is reimbursed by the Central Fund.

This ensures that an employer is only liable to pay tax on contributions relating to the period during which an employee worked for the particular employer.

Amendment of the Petroleum Products Subsidy Act

The petroleum products subsidy scheme ensures that New South Wales sellers of eligible petroleum products near the Queensland border are able to compete fairly with Queensland sellers of on-road fuel, who receive subsidies from the Queensland Government.

The New South Wales scheme provides for payment of subsidies to service station operators and distributors selling bulk fuel to end users located in 5 zones extending south from the New South Wales—Queensland border. The subsidy is payable when diesel intended for on-road use, or petrol, is purchased from a service station. A subsidy is also payable to a distributor who sells on-road diesel or petrol to a consumer for the purpose of operating a business within one of the five zones.

If a distributor or a consumer purchase subsidised fuel when they are not entitled to do so, the legislation requires them to repay the subsidy to the Chief Commissioner of State Revenue. However, the legislation does not provide a mechanism for the Chief Commissioner to recover such overpayments.

The bill includes provisions to allow the Chief Commissioner to issue a notice of assessment where a subsidy recipient is required to repay the subsidy. In cases of dishonesty, the Chief Commissioner will be able to impose a penalty up to the amount of the subsidy that must be repaid.

The bill also authorises the Chief Commissioner to charge interest if the person enters into an arrangement for repayment by instalments.

In determining the amount of any penalty, the Chief Commissioner will be required to apply the principles relating to penalty tax and interest under the Taxation Administration Act.

The bill extends the rights of subsidy recipients to object or appeal to the Administrative Decisions Tribunal and the Supreme Court in relation to a requirement to refund a subsidy or to pay a penalty or interest.

These proposals are consistent with current provisions for repayment of a grant under the First Home Owner Grant Act.

Amendment of the Taxation Administration Act

The bill makes it clear that the Chief Commissioner of State Revenue may enter into arrangements with corresponding Commissioners in other Australian jurisdictions for the purpose of carrying out investigations under New South Wales taxation laws in those other jurisdictions.

The bill also makes it clear that statutory State Owned Corporations are not grouped for pay-roll tax purposes merely because they have the same two Government Ministers as their notional shareholders. This recognises that State Owned Corporations operate independently of each other despite the fact that they may be responsible to the same Minister.

Matters to be considered by the Legislation Review Committee: Under section 8A of the Legislation Review Act 1987, the Legislation Review Committee is required to consider each bill and report to both Houses of Parliament on the impact of the bill on certain matters affecting personal rights, liberty and obligations, and parliamentary scrutiny of delegated legislation.

The amendments dealing with stamping of mortgages secured on interstate property and the closure of the concession for mortgages associated with debenture issues are taken to have commenced on the date this bill was introduced in the Legislative Assembly. The committee has previously noted that allowing a period of time between introduction of a taxation bill and the commencement of that law can, in some circumstances, undermine the intent of that law. As these provisions are targeted as specific duty avoidance practices, it is appropriate that they commence from the time the intention to amend is made public.

I am pleased to say that in other respects, this bill not only contains provisions that are reasonable and necessary to protect the revenue without unduly trespassing on personal rights or liberties, but also clarify taxpayers' rights and obligations, including extension of the categories of reviewable decisions.

I commend the bill to the House.

The Hon. GREG PEARCE [5.23 p.m.]: At first blush the State Revenue Legislation Further Amendment Bill appears to be reasonably uncontroversial. From my reading of the overview of the bill and the second reading speech of the Parliamentary Secretary, Mr Graham West, who introduced it in the Legislative Assembly, the bill appears benign. Mr West talked about amendments to close off some mortgage duty avoidance practices and other amendments primarily to extend various duty concessions, some relating to superannuation, policyholders protection fund cover and amendments to land tax provisions. In relation to those provisions the Parliamentary Secretary said:

The bill provides further concessions for an owner's principal residence. The land tax legislation allows a person who temporarily vacates his or her principal place of residence to retain the exemption for up to six years ...

He also commented on payroll tax and corrections in relation to the petroleum products subsidy scheme to ensure that New South Wales sellers of eligible petroleum products near the Queensland border are able to compete fairly with Queensland sellers of on-road fuel, et cetera. The bill sounds benign with sensible amendments to tighten up revenue laws. However, the true story—as was disclosed in the Legislative Assembly by the honourable member for Southern Highlands, the shadow Assistant Treasurer, Peta Seaton—is that buried

behind these apparently benign measures is a rip-out of another \$13 million a year in five new tax measures. The Government is slipping those measures through in its latest grab for every cent it can get to try to plug its worsening budget crisis.

It was good to see the Minister for Finance finally present a bill in this place. Honourable members have been wondering what he has been doing for the past 3½ months. There has been no outward indication that the State has achieved anything in regard to rectifying its budget problems. One can understand why the Minister for Finance has not had much to say. As occurred in the infrastructure portfolio, the Premier has pulled the issues into his office and appointed experts to look at the budgets. Clearly, the Premier is not confident that Treasury can get it right. He is certainly not confident that his Ministers can get it right, as we saw with the recent infrastructure legislation.

The Parliamentary Secretary portrayed the land tax amendment as providing further concessions for an owner's principal place of residence. However, the shadow Assistant Treasurer extracted the truth during her briefing with Treasury officials: that approximately 600 extra blocks of land in the outer Sydney area will be liable for land tax because they will no longer be able to meet the tougher business definition of "primary producer" under these new laws. Treasury officials admitted that by bringing the definition of "primary production" in line with the local government definition, more Sydney area farmers will fail the test and will be forced into Labor's land tax net. As a result, an additional \$5 million a year will go to the State's coffers.

Labor is also extending payroll tax to include long service leave and redundancy payments, and some payments for employees into building industry funds. The Government has been dishonest in its claims to be closing avoidance loopholes in mortgage duty. Mortgage duty is one of those so-called inter-governmental agreement nuisance taxes that should have been abolished as part of the GST arrangements. The arrangements were signed by the former Premier, Bob Carr. It was his job to get rid of nuisance taxes. However, this Government is desperate for every cent it can get into its coffers in revenue, not only by not abolishing the taxes but by using retrospective provisions to squeeze out even more money. The mortgage duty measures are expected to bring in an extra \$6 million. The land tax extensions will bring in an extra \$5 million. The payroll tax changes will bring in an additional \$1 million to \$2 million. The Opposition cannot quantify what will happen with the eligibility for First Home Plus scheme for first home buyers that increases from the age of 16 to 18.

The Opposition will not oppose this bill because some of its measures are perfectly sensible and it is the Government's role to introduce its revenue legislation. However, this bill is not what the Government says it is. It is not a benign bill. The Government is squeezing every extra cent of tax revenue it can out of the people of New South Wales. As a result, this bill will contribute to New South Wales being the highest taxed State in the country, with the highest unemployment and the slowest growth in Australia. People who are sick of this Government are moving to Queensland or to other States.

Reverend the Hon. FRED NILE [5.29 p.m.]: The Christian Democratic Party supports the State Revenue Legislation Further Amendment Bill, which amends the Duties Act 1997, the First Home Owner Grant Act 2000, the Insurance Protection Tax Act 2001, the Land Tax Management Act 1956, the Pay-roll Tax Act 1971, the Petroleum Products Subsidy Act 1997 and the Taxation Administration Act 1996. Like the previous speaker, we would be far happier if the bill abolished payroll tax because it is a tax on employment. It always has been illogical to have a tax that discriminates against an employer who wants to expand the number of people on his staff but who has to take into account paying increased payroll tax. I understand the Government has talked about reconsidering payroll tax. It should not be put on the backburner. The Government should consider seriously and urgently the abolition of payroll tax in view of the money it receives from the Federal Government based on goods and services tax [GST] revenue. We note that one of the amendments, which is positive, removes the retrospective liability for land tax when an owner vacates his principal place of residence and does not return within six years. We commend that measure.

We share the Opposition's concern about changing the definition of primary production land, which seemed to be a straightforward matter of consistency with local government for rating purposes. But I assume that the definition of farmland, which is a Government-based definition, would originate from the Department of Local Government. On the surface the definition would appear to discriminate against a number of genuine primary producers. We note that the legislation clarifies the exemption from land tax for unoccupied land, and will amend the exemption for land tax for land subject to conservation agreements to restrict it to agreements held for an indefinite period. One of the main aspects of the legislation is to close two mortgage duty avoidance practices that have been identified by the Office of State Revenue. These practices relate mainly to large

borrowings by corporations, and they have the potential to cost \$6 million per year in revenue. We trust that with the enacting of the legislation an additional \$6 million will be added to the Government's budget income, which can be used as an offset against payroll tax. We support the bill.

Ms LEE RHIANNON [5.32 p.m.]: The Greens support the State Revenue Legislation Further Amendment Bill. The full implications of some of the measures in the bill are yet to be fully understood. We hope that the tightening of exemptions from land tax claimed by primary producers in mainly urban areas will result in a crackdown on rorts. Applying the local government definition of genuine farmland for this purpose is a good idea. We hope that it will not reduce the incentive to engage in genuine primary production in urban areas. We certainly will keep an interested eye on that aspect of the legislation. Land tax exemption for land that is subject to conservation agreements is a very good thing. The whole scheme was expanded in previous legislation when the Government adopted a Greens amendment. Making the exemption apply only when the conservation is for an indefinite period may encourage such long-term commitment as the Government claims, but we want to ensure that there are incentives for conservation even when the commitment is not given forever. We will also keep an eye on that aspect of the legislation.

The proposed anti-avoidance measures for mortgage duty seem like anti-avoidance measures in general—a move in the right direction. The Greens are concerned with the very existence of this tax. From an economic and equity perspective, taxes on the transfer of property are less desirable than annual wealth taxes, such as land taxes. Raising the age limit for first home owner grants from 16 to 18 seems appropriate, and we were pleased to see its inclusion in the bill. Finally, the bill proposes for more payroll tax to be collected by charging employers more when they make payments to their employees in the form of share scheme benefits and long service contributions to industry superannuation funds. This is another loophole closure with which we agree. It ensures that firms pay the tax, even when the workers are remunerated partly in these ways rather than in wages. Whether payroll tax—which we know is a tax on hiring labour—is a good thing is doubtful, but that is a separate issue for debate at another time. However, we acknowledge that the bill provides a loophole-closing measure that is worthy of support. The Greens support the bill.

The Hon. MICHAEL COSTA (Minister for Finance, Minister for Infrastructure, and Minister for the Hunter) [5.35 p.m.], in reply: I thank honourable members for their contributions. It is important to put on the record that we make no apology for closing tax avoidance measures. It is the nature of taxation, even at the Federal level, that every time the Government puts a legitimate tax measure in place well-paid accountants and lawyers find ways to get around it. I have no problem with that: It is the nature of the beast.

The Hon. Greg Pearce: You wouldn't get paid otherwise.

The Hon. MICHAEL COSTA: That is right. But it is incumbent on the Government to monitor these things and ensure that there is equity in the tax system. I will comment on two matters that were raised. In relation to the industry long service leave redundancy payment scheme—increased liability for payroll tax—the bill clarifies employers' liability for tax in relation to industry long service leave and redundancy payment schemes and taxable wages, including employers' long service leave payments and lump sum payments on termination of employment or retirement where the employee is paid a lump sum instead of taking leave. In some industries, such as the building industry, a large number of workers are employed for short periods by the same employer, but may work for a number of employers over an extended period. To ensure that these workers receive long service leave and redundancy entitlements, industry schemes have been established under which workers' accrued entitlements are based on their service in the industry rather than the length of service with a particular employer, and the employer pays an industry levy to pay for leave entitlements based on the length of service with a particular employer.

Workers are able to take paid leave, and are paid by the employer at that time. But the employer is reimbursed from the industry fund for any leave the employee takes that accrues while working for previous employers. The bill clarifies the employer's liability for tax by taking the employer's contribution to the central fund, but it seems any amount is reimbursed by the central fund to the employer to prevent double taxation. Land tax for rural lands for genuine farm purposes is important. We are closing the loophole that has emerged. A developer buys a parcel of rural land from a genuine farmer and organises rezoning to allow subdivision for residential, commercial or industrial use. Under the current legislation all he or she has to do to retain the land tax exemption that applied previously to the land is to ensure that it is fenced, run some farm animals, periodically sell some of them and buy some replacements. The land is then subdivided in stages. Fences are moved back so that the remaining area of subdivided land can continue to be used for primary production. This process continues until all of the land is subdivided and sold.

The only parcels of land on which land tax is ever paid by the subdivider are the subdivided blocks created during the year that have not been sold on 31 December. The amendments will require that the dominant use of the land is primary production. This will allow the portion of the revenue generated from the land from sale of subdivided lots compared to the revenue generated from the sale of animals to be taken into account. The primary production use of the land will have to have significant and substantial commercial purposes, which must be engaged in for the purpose of a profit or on a continuous and repetitive basis. Running a few head of cattle or sheep to attract a land tax exemption rather than to make profits will no longer suffice. The bill also contains an anti-avoidance measure to close a mortgage duty revenue avoidance practice. Under this practice old mortgage documents are being reused to take advantage of the concession that applied formerly to mortgages associated with debentures.

The intention of the bill is to provide for duty to be payable on all new advances made under the debenture structures regardless of the date of the original document. As honourable members would understand, there are always people who seek to avoid taxes at every opportunity. Accordingly, it is a principle in closing taxable avoidance measures that we do not have consultation with those who are likely to be affected because that would pre-warn them of what we are attempting to do.

However, tax law practitioners have expressed concern to the Office of State Revenue that the amendments, as drafted, are open to interpretation that retrospectively opposes mortgage duty on past borrowings. That is not the intention of this policy and I will instruct the chief commissioner to publish a ruling to ensure that the administration of this provision reflects the policy intent and does not disadvantage taxpayers. We believe the intention is fairly clear but to ensure clarity, based on the representations received, I will issue a direction to the chief commissioner to close that particular provision and to apply the policy as provided for in the bill. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [5.42 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 Government is committed to protecting the most important resource in our society—our children.

In 1998, the Government established an independent Commission to represent the interests of children and young people.

The Commission for Children and Young People has since provided invaluable services to promote the safety, welfare and well-being of children and young people in New South Wales.

Over 200,000 background checks are conducted each year to assist employers to build workplaces that are safe for children.

Western Australia and the ACT have followed our example, and overseas, England also has modelled their reform on the NSW Commission.

This Bill follows the statutory 5-year review of the legislation underpinning the Commission.

It implements the review's recommendations, and further strengthens the system we have in NSW.

The review was conducted by Ms Helen L'Orange.

I thank her for her efforts.

384 submissions to the review were received including 255 from children and young people.

The changes the review has recommended are largely directed at the child protection provisions.

They are not however intended to overshadow the Commission's important focus on advocating for the wellbeing of children and encouraging their participation:

It's just that the review found no need to recommend any changes to the Commission's education, research and advocacy functions.

Let me now turn to the main provisions of the Bill.

AMALGAMATING THE ACTS

In line with the review, the Bill amalgamates the two current Acts that underpin the Commission, which provides consistency and clarity for employers about their obligations.

In keeping with the integration of the legislation, a single set of Commission guidelines will cover background checking and employment prohibition.

The Bill also uses uniform terminology and importantly, a single, more precise, definition of child-related employment.

LEGISLATIVE BASE FOR OUR APPROACH

Again in line with the review, the Bill sets out the Commission's function of promoting child-safe and child-friendly organisations.

This will highlight its importance and encourage employers to adopt it.

The Commission currently undertakes this role through promoting and providing training on policies, procedures and methods for identifying risks, assuring quality, encouraging an open and participative workplace culture, and encouraging children to report behaviour that worries them.

Organisations which adopt the Commission's recommended strategies thereby improve their risk management practices and become safer places for children.

TIGHTENING THE BAN ON PROHIBITED PEOPLE

This Bill also strengthens the regime for prohibited employment and responds to community concerns about adults convicted of serious violence against children being prevented from working with children.

Currently, serious sex offenders, kidnappers and child murderers are banned from working with children.

This Bill will now also ensure that those who have been convicted as an adult of intentionally causing grievous bodily harm to a child will also be prohibited from working in child-related employment.

This is an important safeguard for children.

Of course, there is no intention to cover situations such as fights between young people, or harm caused by accident or negligence.

The Bill will also tighten the circumstances in which prohibited persons can apply for a review of their status.

The Bill will ensure that persons who have been convicted of the most serious crimes against children and are therefore automatically prohibited from working with children will not be able to seek a review of their status as prohibited.

The Government stands by this position and makes no apology for it—the protection of the children in our society is paramount.

Serious crimes includes people convicted of murdering a child under the age of 18, producing child pornography or sexual intercourse with a child under the age of 16 - or under 18 where the adult is in a special role, like a teacher or sports coach.

Of course, it does not include sexual intercourse between young people of a similar age, offences committed as a juvenile, or old offences such as carnal knowledge where the parties were of similar age and no force or intimidation was used.

This Bill also will provide an added protection to parents so that they can take steps to ensure the safety of their child.

I am referring here to cases where self-employed persons provide services to children, such as private tutors, music teachers and coaches.

This Bill will require self-employed people to display a certificate that that they are not prohibited. Parents have a right to know.

Where self employed people do not have a registered place of business, they will be required to show the certificate to parents and clients on request.

STRENGTHENING BACKGROUND CHECKING

I now move on to the Bill's provisions about the system of background checks, where an employer requests a check on someone they are planning to employ.

As I indicated earlier, the Commission and other agencies perform over 200,000 checks per year on behalf of employers.

Background checking is not limited to an applicant's criminal record but includes looking at other aspects of the applicant's background and, equally importantly, checking the nature of the job and the workplace, as poor work design and inadequate supervision can place children at risk too.

Emerging research is demonstrating the necessity of looking at these types of workplace situational factors. The Bill also simplifies background checking for some employers.

Where employees do similar work for a number of employers, only a single background check will be required; this provision will be particularly helpful in those industries which rely on casual and temporary staff to work with children.

For example, at present a casual teacher or child care worker has to be checked by every employer they work for, which is a burden both for the employee and the employers.

This Bill now allows "employer-related bodies" to undertake checks on behalf of all those employers so that people will only need to be checked once if they are doing similar work for similar employers.

It also removes the need for an employer to re-check a casual employee if they have employed, and checked, that person in a similar position within the previous year.

Both these measures reduce the cost to NSW without affecting the protection of children.

The Bill makes provision for information about a prospective employee to be provided to interstate bodies undertaking child related background checks, provided those bodies have been approved by the Minister.

As other states and territories progressively learn from the NSW experience and introduce their own background checking systems for child-related employment, this will facilitate the sharing of relevant information while safeguarding its confidentiality.

Because of the current wording of the Act, it has not been clear whether some specific convictions of a sexual nature, like filming a child for indecent purposes, were to be taken into account in the Working With Children Check.

The Bill makes it clear that they will be.

The current Act requires employers to notify the Commission when they have investigated some complaints about staff behaviour, but it has not always been clear when this requirement comes into effect.

This Bill provides certainty to employers about when their obligations arise.

It has also not been clear that if an employer has wrongly notified the Commission about such a proceeding, they can withdraw or delete the notification.

The Bill makes provision for the employer or the Commission to do so.

There has been some uncertainty about whether using a work computer to download child pornography constitutes conduct that an employer is required to report to the Commission.

The Bill clarifies that it is.

Unauthorised disclosure of information acquired during the course of background checking is, naturally, an offence; however, the Bill clarifies that disclosure is permitted with the consent of the person concerned or if Commission staff make a "risk of harm" report to the Department of Community Services, again making it plain that protection of children is our over-riding concern.

COMPLIANCE MEASURES

I will now turn to the Bill's compliance measures.

The Commission's approach to its Working With Children provisions over the last five years has primarily been through education and encouragement.

Employers recruiting people for paid or unpaid child-related employment have now had time to learn about their child protection obligations.

The employers of NSW have overwhelmingly understood the need to protect children in their workplaces, and have incorporated this into their everyday human resource practices.

However, it does appear that a small number of employers have deliberately decided not to request background checks—which may mean that children are at greater risk in those workplaces.

Strengthening the penalty provisions in the legislation will add force to its obligations and promote the child protection objectives of the Act.

This Bill will give the Commission increased powers to audit compliance with the Act, particularly by asking employers to provide documentary evidence that they are meeting their child protection obligations.

Employers who are found not to be complying will be issued with a notice to comply. If they still refuse to comply, they could be prosecuted.

Just the prospect of receiving such a notice may well encourage compliance.

This stronger compliance system is further demonstration of the Government's commitment to protecting children.

The Bill also extends the current voluntary accreditation scheme to programs as well as individual counsellors.

This will assist Courts and others with their referral options as they will be able to rely on its quality in the same way they currently can with individual counsellors who are accredited.

CONCLUSION

Let me conclude with a mention of the on-going work which the Government intends to do to further reform this area following the introduction of the Bill.

We will be consulting with those groups impacted by the review's recommendations for extending background checking to further improve our system in NSW.

They need to be part of this decision so we will be seeking their views.

This Bill will strengthen the protections for our children, and I commend the Bill to the House.

The Hon. MELINDA PAVEY [5.43 p.m.]: I speak on behalf of the Opposition to the Commission for Children and Young People Amendment Bill. The Opposition does not oppose the bill, which was introduced quickly into the Legislative Assembly last week without much notice or consultation with the Opposition or the oversight committee, the Committee on Children and Young People, of which I am a member. I find it rather frustrating, in terms of process and ability, to get the best outcome for all concerned. I do note that during the last sitting week the Hon. Catherine Cusack called for the release of papers, which could have provided important information to the Government in regard to the outcome of the review conducted by Ms Helen L'Orange, which has found its way into the amended bill.

The Hon. Catherine Cusack raised the point during her motion calling on the Government to release the Ombudsman's report on the Child Sex Offenders Register that this report had been in the possession of the Government for many months and had not been publicly released. It would have been better if the Government had made the report available for the Opposition and the minor parties to ensure that the bill currently before the House covers all areas required.

The review of the Commission for Children and Young People conducted by Ms Helen L'Orange was an extensive and thorough review involving 384 submissions from people across New South Wales. However, as we have not seen the Ombudsman's report into the Child Sex Offenders Register, which has been with the Minister for Police for many months, we do not know if further recommendations could have been made to ensure that all necessary aspects of child protection have been covered, and that is disappointing. I was also disappointed that when Minister Meagher delivered her speech in the other place she did not wait around to hear or respond to the Opposition's concerns. The Parliamentary Secretary was sent to do her work on that occasion. That is not the way to run Government business.

In addition to those concerns, I believe that the recommendations and amendments proposed by the Government, as put forward by Ms Helen L'Orange, are sensible. I concede that the changes essentially relate to child protection provisions within the Commission for Children and Young People Amendment Act. The legislation amalgamates the two current Acts that underpin the commission. A single set of commission guidelines will cover background checking and employment prohibition. It amends section 11 to give the Commission for Children and Young People the function of determining all intervening applications by persons prohibited from engaging in child-related employment. The commission conducts 200,000 background checks, which are important in terms of child safety in New South Wales. The statutory five-year review, which received 384 submissions, was based on the Act having come into being in 1998.

The amendment also extends protection from serious sex offenders, kidnappers and child murderers to those adults three years older than the child involved, who have been convicted as an adult of intentionally causing grievous bodily harm to a child. The bill also ensures that self-employed people providing services such as music lessons and private coaches and tutors, will be required to display a certificate that they are not prohibited and that they have been cleared by the Commission for Children and Young People to be an appropriate person providing those services to young people.

Honourable members will recall the tragic case of the music teacher who was recently convicted of having done awful things to young children. One cannot imagine what a harrowing experience it has been for the families involved in that case. It is appropriate for music teachers, private coaches and tutors to display a sign indicating that those checks have been carried out.

The bill simplifies background checking for some employers where employees perform similar work for a number of employers. One single background check will be sufficient, and that is a sensible amendment that will streamline the process. For example, casual teachers who work in a variety of locations and are employed, for example, by the Department of Education and Training will require only one background check that will apply to each location. The bill will also enable one background check to be undertaken on behalf of all employers.

The bill will also remove the need for an employer to check on a casual employee, if the employee's background has been checked in relation to a similar position within the previous year. That is also a pretty sensible provision. The bill also provides for information regarding a prospective employee to be provided to interstate bodies undertaking background checks, provided that is approved by the Minister. The bill tightens the definition of "background check" to make clear the requirements in relation to children. The review pointed out that it was unclear whether filming a child for indecent purposes was included in the original Act. The amending provisions of this bill will make it very clear that that type of conduct is included in the legislation.

The bill will also strengthen penalty provisions that apply to employers who did not request background checks in relation to employees who work with young children, and that is also sensible. On many occasions the commission has reported employers who have not co-operated with the intention of the legislation in protecting children. The bill makes very clear the responsibility that is vested in employers who employ people to care for young children. It also extends the current voluntary accreditation scheme to programs as well as individual counsellors, which also is sensible.

As I stated at the outset, the Opposition does not oppose the bill. However, we were annoyed by the manner in which the bill was introduced—so quickly and without sufficient consultation. Many of the issues raised by the honourable member for Hornsby and the honourable member for Willoughby in the other place are worthy of serious consideration. In the spirit of bipartisan support, adequate consultation and negotiation would have been sensible, and may have resulted in an even better bill.

Debate adjourned on motion by the Hon. Don Harwin.

INDUSTRIAL RELATIONS AMENDMENT BILL

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

CRIMINAL PROCEDURE AMENDMENT (SEXUAL OFFENCE CASE MANAGEMENT) BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.53 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 Government is pleased to introduce the Criminal Procedure Amendment (Sexual Offence Case Management) Bill 2005.

This Bill proposes amendments to the Criminal Procedure Act 1986 to provide that a pre-trial order made by a Judge is binding on the trial Judge if the proceedings relate to a prescribed sexual offence that is dealt with on indictment.

In circumstances where a new trial is ordered or later trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or later trial proceedings.

Delay in criminal proceedings, in particular sexual assault trials, is always a concern. Delay can cause secondary traumatisation of complainants, who prepare themselves to give evidence on each occasion the matter is fixed for trial.

The delay may be caused by legal and procedural issues not determined prior to the hearing date. This is particularly traumatic in sexual assault cases where there may be multiple offenders, or multiple victims.

The proposed legislation will serve to minimise the stress and trauma of giving evidence for these witnesses, and is part of the ongoing process of reform in relation to improving the process surrounding sexual assault prosecutions for complainants.

Rulings on the admissibility of evidence by a judge other than the trial judge are not currently binding and it is not possible to ensure that the same judge will deal with both the pre-trial hearing and the trial. Therefore, in order for rulings made by one judge to be binding on a subsequent trial judge, there must be legislative amendment.

One of the key issues in sexual offence trials is effective case management to ensure all preliminary matters are resolved in advance of the commencement of the trial and to avoid unnecessary legal argument.

Effective case management of sexual assault trials would require the court to resolve issues such as the admissibility of evidence and the use and availability of technology, prior to the trial commencing. Delay due to adjournment or legal argument on the first day of trial may result in complainant dissatisfaction and trauma.

Schedule 1 inserts proposed section 130A into the Criminal Procedure Act.

This section applies only to proceedings in respect of a prescribed sexual offence that is dealt with on indictment. A prescribed sexual offence is defined elsewhere in the Principal Act at section 3.

Section 130A (1) provides that a pre-trial order made by a Judge is binding on the trial Judge unless, in the opinion of the trial Judge, it would not be in the interests of justice for the order to be binding.

Section 130A (2) relates to situations where a matter was appealed against successfully and a new trial ordered. It provides that a ruling made at a listing prior to the trial also apply in a retrial, unless to do so would be inconsistent with a ruling or order given on appeal, or it would not be in the interests of justice.

Where for example, a ruling was made to admit the police electronic recorded interview with a child as their evidence in chief, this earlier ruling will bind the judge hearing the retrial, unless the Court of Criminal Appeal ordered that the ruling was in error. This provision avoids all of the pre-trial rulings in the earlier trial being re-visited where a conviction has been set aside.

Section 130A (3) provides that in circumstances where a new trial is ordered or trial proceedings commence following the discontinuation of an earlier trial, a pre-trial order will also be binding on the trial Judge hearing the fresh or subsequent trial proceedings.

A "pre-trial order" is defined as any order made after the indictment is first presented but before the empanelment of a jury for the trial.

Schedule 2 is a consequential amendment that makes it clear that section 130A does not apply to any pre-trial orders made prior to commencement of the section. The section will, however, apply to offences where criminal proceedings have already commenced, but where proceedings before the trial judge have not yet begun.

I know that all members of the House wish to see delays in sexual offence proceedings reduced, and to allow complainants to be satisfied that a trial will proceed on the day on which it is fixed.

I am sure that this amendment will therefore be welcomed by all members.

I commend the Bill to the House.

The Hon. DAVID CLARKE [5.53 p.m.]: The overall purpose of the Criminal Procedure Amendment (Sexual Offence Case Management) Bill is to obtain better case management of trials for certain prescribed sexual offences, thereby shortening delays and the consequent traumatisation suffered by complainants in such cases. That is a worthy purpose, which the Opposition earnestly supports, but time will tell whether this bill will substantially assist in achieving that purpose.

Rape and other sexual assault crimes are crimes which have a particularly horrific effect on a victim that very often lasts for years and in many instances for an entire lifetime. Victims who come forward to the authorities with their complaints know that, more often than not, they will be facing a lengthy period of great trauma—the giving of statements, conferences with police and legal representatives, facing the perpetrators of the crime in court, giving evidence in the witness box and facing harrowing and aggressive cross-examination when, very often, their integrity, morality and honesty are questioned, if not savaged. These are all procedures and events that traumatise victims and force them to confront again and again the terrible experience that they have suffered.

In some more recent and well-publicised rape trials, the victims and their families, including the parents of victims, have had to endure taunts and abuse—even in the courtroom's public gallery—from relatives and cheer squads of the offenders who are on trial. This is indeed a serious trend that previously had been unheard of, inside or outside Australian courts, which most Australians would find repulsive and alien to accepted standards in this country. It is well known that victims of rape and sexual assault in probably the majority of cases do not report these crimes to the authorities for fear and trepidation of the trauma that they anticipate they will have to face. In recent times the Government has taken some steps to minimise the trauma that victims experience by overhauling the management and conduct of trials of perpetrators of sexual assault crimes, but much more still needs to be done.

This bill is aimed at addressing some areas in which delays in sexual assault cases can, and do, occur. Its object is to obtain better case management of trials for certain prescribed sexual offences by providing that a pre-trial order made by a judge is binding on the trial judge, if the proceedings relate to a prescribed sexual offence that is dealt with on indictment. Specifically the Criminal Procedure Act 1986 will be amended to provide that a pre-trial order made by a judge in sexual offence proceedings is binding on the trial judge of those proceedings unless, in the opinion of the trial judge, it would not be in the interests of justice for it to be binding. If, on an appeal against a conviction for a prescribed sexual offence, a new trial is ordered, a pre-trial order made by a judge in relation to the proceedings from which the conviction arose will be binding on the trial judge hearing the fresh trial proceedings, unless the pre-trial order is inconsistent with an order made on appeal or, in the opinion of the trial judge, it would not be in the interests of justice for it to be binding.

If sexual offence proceedings before a trial judge are discontinued for any reason, a pre-trial order made in respect of those proceedings will be binding on the trial judge hearing any subsequent trial proceedings relating to the same offence unless, in the opinion of the trial judge, it would not be in the interests of justice. The bill clarifies that a pre-trial order means any order made after the indictment is first presented but before the empanelling of a jury for the trial. The amendments apply to pre-trial orders that are made after the commencement of new section 130A, irrespective of whether the relevant sexual offence proceedings have commenced. While the Opposition will not oppose the bill and supports its underlying purpose, we have concerns about how effective it will be. Only time will tell whether it will prove to be effective.

Reverend the Hon. Dr GORDON MOYES [6.00 p.m.]: The Criminal Procedure Amendment (Sexual Offence Case Management) Bill amends the Criminal Procedure Act 1986 to allow a judge other than the trial judge to make binding determinations about evidence and procedural matters relevant to sexual assault trials. According to the Australian Bureau of Statistics [ABS] annual report entitled "Recorded Crime—Victims, Australia", the rate of reported sexual assault has increased in the period 1993-2003. In 1993 the rate was 69 recorded victims of sexual assault per 100,000 persons. By 2003 the rate had steadily climbed to 92 reported victims per 100,000 persons. This increase does not necessarily reflect an increase in the prevalence of sexual assault, but is likely to be influenced by an increase in the reporting of incidents to police and for successful clear-up rates.

Victimisation surveys such as the ABS National Crime and Safety Survey and the Australian component of the International Violence Against Women Survey suggest that between 12 per cent and 20 per cent of sexual assaults against women are reported to police—a reporting rate lower than for other major crime categories. In 2003, the last year for which ABS data is available, 82 per cent of recorded sexual assault victims were female. Why is it that sexual assault victims are reticent to report their assault to the police? There have been many studies conducted about this. Perhaps one of the most elucidating studies carried out on the response of sexual assault victims to the crime perpetrated against them is entitled "A study of women's help-seeking decisions and service responses to sexual assault", prepared by the Australian Institute of Criminology for the Australian Government's Office for Women in June 2005. The report states:

The multiple dimensions and distinct strategies involved in help-seeking are not captured by analyses in which victim decision-making is conceptualized only in terms of seeking legal redress. This nuanced analysis of victim responses indicates that, distinct from the idea that non-reporting is a passive response to sexual victimization:

Seeking help from family and friends suggests that victims are actively engaged in a process of attempting to deal with the aftermath of crime. Although help from family and friends does not necessarily bring about justice-based solutions to criminal victimization, help from informal networks provides social support, comfort, and other tangible resources to crime victims.

It is important to note that current research focuses less on asking why women do not report to police and more on understanding the meaning of different help-seeking decisions from the survivor's perspective. The actions taken by a sexual assault victim to seek help are multi-faceted. Recourse to legal redress is but one option

available to sexual assault victims, but few make their way down that lonely and difficult path. The effect of this bill will be to alleviate or mitigate, in some way, the trauma that sexual assault victims can suffer in the process of seeking redress for the actions perpetrated against them. The bill will allow trial proceedings to continue in a less stunted fashion. As we are all very well aware, court proceedings can be stressful for all parties involved, whatever emotional and/or physical fortitude those parties may have.

Delays in proceedings can exacerbate the stress that a person may experience, none the more so than for victims attesting in criminal proceedings relating to sexual assault. Apart from the initial assault suffered by the victim, criminal proceedings can act as a vehicle for reopening suffering and trauma experienced by the victim. Thus delay in such criminal proceedings can tend to cause secondary trauma for complainants. The current law provides that rulings on the admissibility of evidence by a judge other than the trial judge are not currently binding—that is, such rulings may be overturned or questioned within the trial framework. Further, under current legislation, it is not possible to ensure that the same judge will deal with both the pre-trial hearing and the trial.

It is a fair assumption that if there are two judges—pre-trial and at trial—dealing with the case, it will take more time for those judges to familiarise themselves with the circumstances of the case that they are involved in. That only adds to the trauma of the female victim. The proposed legislation will make a ruling given by a judge in a pre-trial hearing binding on the trial judge serving to minimise the stress and trauma of giving evidence for sexual assault witnesses. However, in cases where the pre-trial order is inconsistent with an order made on appeal, or if in the opinion of the trial judge it would not be in the interests of justice for the order to be binding, the ruling will not be binding on the trial judge.

"Trial" is defined by the bill as the date on which the accused is arraigned—that is, brought before the court to answer an indictment or before the tribunal of fact, that is, the jury or judge sitting alone. The bill is in similar terms to a provision currently in place in Victoria and amends the Criminal Procedure Act 1986 in a number of ways, namely through introducing proposed section 130A. It is part of the ongoing process of reform in relation to improving the process surrounding sexual assault prosecutions for complainants.

I note the Federal Government's national initiative to combat sexual assault is aimed at reducing and preventing sexual assault, and aims to implement strategies that address the increasing incidence of sexual assault in the community. Legal redress does not have any comparable capacity to bring about emotional healing as support services may. In fact, it can exacerbate the need for emotional healing. What is needed is the eradication of sexual assault through the creation of a culture that will not tolerate violence and that embraces a degree of respect for the emotional, physical and spiritual integrity of individuals, regardless of their gender. The Christian Democratic Party commends the bill to the House.

Debate adjourned on motion by the Hon. Don Harwin.

DEATH OF THE HONOURABLE JOHN PATRICK DUCKER, AO, A FORMER MEMBER OF THE LEGISLATIVE COUNCIL

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) [6.06 p.m.]: I move:

1. That this House express and place on record its deep regret in the loss sustained to the State by the death on 25 November 2005 of Mr John Patrick Ducker, AO, a former member of this House.
2. That this House acknowledge the contribution made by Mr Ducker to the Australian Labor Party as President of the New South Wales Branch and Secretary of the New South Wales Labor Council, and to the people of New South Wales through various organisations.
3. That this resolution be communicated by the President to the family of the deceased.

I wish to pay tribute to the late John Ducker, an esteemed former member of this Chamber between 1972 and 1979. Neville Wran had occasion to say that John Ducker was the most effective Yorkshire man to come to these shores since Captain Cook. And when one recounts John Ducker's very active and dedicated life, this comment is not far wide of the mark. John Ducker was one of those millions of immigrants who made Australia their home and then contributed immensely to the wellbeing of its citizens. Indeed, his work had a profound effect on the political life of both New South Wales and Australia and on the lives of many people whose paths he crossed.

John Ducker was 18 when he arrived from Yorkshire, England, in 1950, part of the post-war immigration scheme launched by the Chifley Labor Government. He went to work as a furnace man at an ironworks, a tough job in a new country. But within three years his people skills and organising talents saw him as a union organiser with the Federated Ironworkers Association in one of the most turbulent periods of Australian industrial history. He was a key player in a tough game where bitter internal union ideological battles were raging, especially in the ranks of blue collar workers such as those in which the young John Ducker worked. In 1961 his talents were further recognised and he became an organiser with the New South Wales Labor Council. In 1967 he became the Labor Council's Assistant Secretary and went on to be Secretary of that body, the most powerful trade union official in the most unionised State. He was also to serve as Vice President of the Australian Council of Trade Unions.

John Ducker's leadership of the trade union movement produced an era of stability with a minimum of industrial disputes. He was renowned for the ability to always look for a way out of a problem and for a compromise in the most difficult situations. His intellectual ability, debating skills and negotiating mastery placed him above the majority of his peers in the trade union movement at the time and amongst industrial relations practitioners on either side of the table. He was active in the Labor Party and became Junior Vice-President of the New South Wales branch in 1966. In 1970 he took over as State President from long-serving President Charlie Oliver. It is to be noted that John Ducker championed the Australian Labor Party Youth Council in the 1950s and 1960s. That body was to produce a number of successful Australian Labor Party politicians for the second half of the twentieth century, including Paul Keating and many future members of the New South Wales and Australian parliaments.

John Ducker took over the presidency of the New South Wales Australian Labor Party in a period when the party was in the political doldrums. When he departed, the structure of the party had been successfully restructured and he had sowed the seeds for a long period of electoral success at both a Federal and State level. He was noted for his mastery of the difficult forum of the New South Wales Australian Labor Party annual State conference—a body of almost 1,000 delegates. Ducker had no equal in the chair with his strategic sense, his bluff humour and shrewd wit and the Yorkshire accent he never lost, which some of us eventually came to believe was effected.

As State President he played a large part in Labor's success in New South Wales in the 1972 "It's Time" campaign, which saw the election of the Whitlam Government. He was a great admirer and supporter of E. G. Whitlam. John Ducker entered this Chamber in 1972 as a member of the Labor Opposition upon the resignation of Reg Downing. His impact on politics in New South Wales was immense through one very complicated but successful political manoeuvre. John Ducker was amongst the few who realised the talents of Labor Legislative Council member Neville Wran and saw him as a potential leader.

John Ducker did what no other officer of the Labor Party had ever attempted: he used all his negotiating and debating skills to get Neville Wran, a virtually unknown Legislative Council member, out of the upper House and into a seat in the Legislative Assembly. He then worked to have the parliamentary Labor Party elect him as leader. John Ducker achieved that and the Wran Government was a monument to Ducker's stewardship of the largest State branch of the Australian Labor Party. John Ducker served with distinction in this Parliament.

In his maiden speech on 23 August 1972 in this Chamber he said the Legislative Council was a "world different from the one I have been used to"—referring to the courtesy and friendship extended to him and the quietness of the atmosphere in this Chamber. No doubt he found this a tranquil forum compared with those over which he had presided on many occasions in his career in the labour movement. After leaving Parliament in 1979 John Ducker served on the New South Wales Public Service Board, including a term as its chairman. In 1979 he was admitted to the Order of Australia, and he was proud of the fact that he received a papal knighthood from Pope John Paul II in recognition of his service to the church and the community.

John Ducker dedicated his entire working life to trade unions and to the Labor Party. He built a successful career from his natural talents and asserted the role of the self-made working man in the political process. John Ducker's political skills were second to none. He was a quick-witted debater, a master of persuasion, a clever political thinker, a splendid negotiator and a skilled chairman. I state from a personal perspective that he was a decent human being. He was described as "a formidable and unrelenting factional warrior and, when it came to his interests and those of the party as a whole, he was pragmatic and his philosophy was winning".

Most importantly we knew him as a compassionate and loyal friend. Those Government members who were lucky enough to have known John as a colleague and those honourable members who knew him as an opponent would always vouch for his sincerity and his decency. Today many people in industry, commerce and the labour movement owe an immeasurable debt to John Ducker. I extend my sympathy and that of my family to John's wife, Valerie, and to his sons, Paul and Anthony, on the passing of a husband and father and one of the great achievers in the industrial and political history of this State.

The Hon MICHAEL GALLACHER (Leader of the Opposition) [6.13 p.m.]: No doubt everyone in this Chamber knows the name John "Bruvver" Ducker, but few would know much about the man and the interesting times in which he lived and worked for the union movement in this country. If we asked young Australians what was the biggest danger confronting them today, overwhelmingly the response would be the threat of terrorism and the impact it is having and will continue to have on our way of life. Not a day goes by without yet another local angle. For the first time in years young Australians question their sense of security.

A little over 40 years ago this country was in the midst of another struggle—a battle of beliefs that saw the rise of communism, particularly through the union movement; a battle that took place to control the wharves, the factories and the Australian Labor Party itself. Names like Santamaria, Mannix and the Movement took on an approach that would kill off the communist's attempt to take over. Others, like Ducker, went about it in different ways. I would not suggest for one moment that I support all the thoughts and works of John Ducker, but I have to say he was a man who fought hard against those influences that threatened our way of life. He was also prepared to make the tough decisions irrespective of how unpopular they might have been with some of his friends and peers at the time.

During recent years, through our mutual respect and support for members of the New South Wales police force, I was fortunate enough to get to know John Ducker. Despite his age and health problems I found him to be a man who believed rightly that he still had a job to do. Crucial in the elevation and subsequent election of two former members of this Chamber to the position of Premier—Neville Wran and Barrie Unsworth—John Ducker was an active participant in the political process for over four decades. We might all be aware of the Peter principle, but John was the basis for the Ducker principle—when a person takes on more and more senior roles and responsibilities contrary to his or her health and stamina. It was that which saw him leave this House in 1979, but he most certainly did not retire from public life.

It was John's family involvement in policing that gave us a basis to meet, and from there we built a friendship. It is important to place on the record that at no time was John anything other than loyal to the Australian Labor Party but he was truly interested in discussing the problems confronting police and the challenges facing the Police Association, and he sought to achieve improvements for its members. I gathered from discussions we had that one of his biggest disappointments after he decided to retire was being denied an opportunity to become police Minister in this State once Neville Wran handed over that portfolio. Honourable members might remember that Premier Neville Wran was also the police Minister and that he passed that portfolio on to Bill Crabtree. From the conversations I had with John Ducker he left me in no doubt that the police ministership would have been a cherished prize for him.

I remember quite an amazing meeting between us just a couple of years ago. We decided to have lunch. At that time I was shadow Minister for transport, up against John Ducker's good friend the Hon. Michael Costa. For that reason we decided to be discreet. I picked the Menzies Hotel as a good central location, given that back in 1971 the Labor Council celebrated its centenary there. I requested management at that hotel to provide us with a table on the first floor in an area where there were no other guests present. Imagine my surprise when midway through our meal I saw that the two pairs of legs descending the stairs in the area in which we were seated belonged to the Hon. Michael Costa and Vince Graham, the Chief Executive Officer of RailCorp. They were attending an award ceremony on the floor above us. When I asked the Hon. Michael Costa why they were walking down the stairs he said that they had decided not to catch the lift but to walk down the stairs. If honourable members think I was surprised, they should have seen the look on the Hon. Michael Costa's face when he saw who my lunch guest was! He could not work out what was going on. Right up until the end I believe that the Hon. Michael Costa never quizzed John Ducker about the reason he was having lunch with me that day.

This afternoon when we agreed to debate this condolence motion I was advised that such motions are not usually moved for backbenchers. It is extremely important that we mark with respect the contribution made to public life by individuals in this Chamber irrespective of their political differences. And we should do so in ways other than a formal motion. John Ducker worked to build a better New South Wales and a better nation.

We both agreed that our objectives were to achieve those better outcomes. However, the pathways we have taken to achieve that goal have been completely different. I extend condolences to John's wife, Valerie, to his two sons, Paul and Anthony, and to their respective families.

[Debate interrupted.]

DISTINGUISHED VISITORS

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): I draw the attention of members to the presence in the President's gallery of the Hon. Johnno Johnson, a former President of the Legislative Council of New South Wales.

DEATH OF THE HONOURABLE JOHN PATRICK DUCKER, AO, A FORMER MEMBER OF THE LEGISLATIVE COUNCIL

[Debate resumed.]

The Hon. ERIC ROOZENDAAL (Minister for Ports and Waterways) [6.18 p.m.]: It is with immense sadness that I pay tribute tonight to a former member of this House, John Ducker. John was a great Australian. I first met John when I was in Young Labor. He was a legend. He was intimidating; a political giant. But in person, and especially with young people, he always had time to discuss matters that we thought were important—although I suspect he did not always share our level of interest in them. He always made time for us. He was always approachable, warm and friendly. As other members have acknowledged, Neville Wran described him as "The greatest Yorkshireman to arrive on these shores since Captain Cook." And indeed he was. The community has broadly recognised the huge contribution of this great Australian. He was made an Officer of the Order of Australia in 1979 and was given a papal knighthood for his services to industrial relations. He was respected in political, industrial and business circles in Australia and abroad.

John Ducker did not just enter a room: he filled it. The thing I remember most about him was that he never overstated his own importance. However, when we spoke to him we understood why he commanded such great respect from all those who met him from all walks of life. He brought stability to a very volatile era in New South Wales politics. He was President of Young Labor in the 1950s and President of the Australian Labor Party [ALP], New South Wales Branch, in the 1970s. His chairing of ALP State councils and the annual ALP State conference was legendary. John Ducker joined the Labor Party at the worst of times and he led the party to much better times. He paved the way for long-serving State and Federal Labor governments throughout the 1980s and the 1990s.

It is easy to forget how different the times were then and how high the stakes were—particularly with the threat of communism and the monumental battle to hold Labor's working class base together. When we look back at the period and consider the burdens that John Ducker carried, we can see that he really was a political giant. Our thoughts are with his wife, Valerie, his sons, Paul and Anthony, and their families. May his noble soul rest in peace.

The Hon. AMANDA FAZIO [6.21 p.m.]: Tonight I wish to express my sincere condolences to the family of John Ducker, AO, a truly great figure in the Labor movement in New South Wales who passed away last Friday at the age of 73. I wish to place on record the many achievements of John Ducker in the labour movement, in both its industrial and political wings and in public service. John Ducker was born in Hull in England in 1932 and arrived in Australia on 24 April 1950 with his brother and parents. His father had been an active member of the Transport and General Workers Union. John Ducker found work as a labourer at Austral Bronze, where he joined the Federated Ironworkers Association [FIA]—a very fine union. Through his membership of the FIA he met Laurie Short, and together they fought the communist influence in the union.

John joined the Australia Labor Party [ALP] at the Gladesville-Ryde Branch in 1951 and later, after the death of his father in 1953, converted from his Protestant faith to Catholicism. He was active in the Australian Labor Party Youth Council and became its President. John Ducker and many other young men and women learned their political skills in the Youth Council, which was a minefield of factional warfare. In his farewell speech as president of that council he stated that youth councillors should:

... demonstrate to the Party generally, and to youth everywhere, that we are ready, willing and able to accept our share of responsibility in the building of a better world based on respect for the person, the family and having as its basic principles peace, justice and freedom.

In 1954 John Ducker became an organiser for the FIA and in May 1961 was elected as a Labor Council organiser. Two years later on 28 September 1963 he married Valerie Smith and they later started a family. Also in 1963 he was elected to the ALP central executive and in August 1966 he was elected Junior Vice-President of the New South Wales ALP.

By May 1968 John was Assistant Secretary of the Labor Council of New South Wales and Senior Vice-President of the ALP—a meteoric rise for a young activist. On 6 November 1970 John Ducker was elected unopposed as the New South Wales ALP President. He led the generational change that shook up both the union movement and the party, and helped to rejuvenate and strengthen the party and its connection with the unions. He was instrumental in moving the ALP into the Labor Council's new Sussex Street building in May 1971 and in consolidating the relationship between the political and industrial wings of the labour movement. In the years that followed, the factional skirmishes between the steering committee and the right escalated as John Ducker condemned the left-wing steering committee as being:

... a party within a party.... dangerously close to the structure and functions of the previous industrial groups... (which) had sought to divert the ALP from democratic principles.

On 1 March 1972 John Ducker was elected to this Chamber, where he served with distinction until 5 September 1979. He was awarded an Order of Australia in May 1979 for his services to the trade union movement. He was instrumental in having Neville Wran elected as the leader of the State parliamentary Labor Party and was quoted as being:

... proud that he was instrumental in Wran translating from the Legislative Council to the Legislative Assembly and securing the support.

Additionally, John Ducker acted as mentor to a young Bob Carr and employed him as the education officer at the Labor Council. In 1979 John Ducker accepted the offer from Neville Wran to become a member of the newly restructured Public Service Board. At the young age of 47 John Ducker left the labour movement and became a public servant. I was then a member of Young Labor and John Ducker had been around for a long time. He was so powerful and had done so much that I naturally assumed, from my youthful perspective, that he was older than 47. But he had achieved a monumental amount in the labour movement before he moved on. John was very successful in his new career and became Chairman of the Public Service Board in 1986. He resigned from that position when the Greiner Government was elected in 1988. He then forged another career in the private sector and said that he preferred "to wear out rather than rust out".

The Labor Party and the labour movement owe a great debt to John Ducker. He helped to keep the party strong and united when conflicting forces were trying to tear it apart and he was instrumental in ushering in the Wran era. He promoted and encouraged young, committed people in both the party and the union movement and instilled the discipline in the Labor Party that has helped to make the New South Wales branch of the ALP one of the strongest and most efficient political organisations in the nation. John Ducker was a hard-working and serious person who could instil the fear of God into people. Yet at the same time he had a good sense of humour, a practical and pragmatic approach and a genuine commitment the like of which we will not see again for a very long time. Vale John Ducker.

The Hon. MICHAEL COSTA (Minister for Finance, Minister for Infrastructure, and Minister for the Hunter) [6.25 p.m.]: It is with sadness that I express my condolences on the passing of John Ducker. As a former Secretary of the Labor Council of New South Wales, I am a member of a club that is probably more exclusive even than the Legislative Council. Much history and tradition surrounds the role of secretary. People are probably not aware that Labor Council secretaries have always met—and continue to meet—on a regular basis to exchange views about how the world, the Labor Council, most importantly, and the trade union movement were going. The Labor Council is an institution that gets into one's blood and forms one's key relationships in one's working and private lives. The Labor Council is the sort of place that is hard to describe to people who have not been involved with it. Three speakers who preceded me tonight were involved with John Ducker through the Australian Labor Party but the Labor Council has a unique flavour because of its connections with the trade union movement and the industrial difficulties that it addresses.

I will not relate John Ducker's history—that was done well by my three colleagues. I think we all agree that he had a long and illustrious career. I want to talk about John Ducker the man, because that is whom I knew—the person who is not in the history books. People who want to get a feel for that history should read Marilyn Dodkin's book *Brothers, Eight Leaders of the Labor Council of NSW*, which explores the history of the Labor Council and its secretaries. It contains some interesting and humorous quotes that reflect the nature of that organisation.

But John Ducker was something more. We used to get together at the lunches for former secretaries and I would often stay back to talk to John. Those who knew him from the old Trades Hall days will remember that he liked a drink or two. John was remarkable after a couple of glasses of wine. We would chat about the history of the labour movement, and I often asked him why he had not bothered to write about his history. At one time everyone was writing historical accounts—Graham Richardson had just released a book, and a biography on Keating had just been published. John said something along the lines of that there were too many bodies to write about and he thought it unseemly that people would write such histories. He thought someone else should write his history, not him. But, having said that, he would proceed to tell us remarkable stories—stories that should have been in the history that he did not write!

I wanted to speak tonight not only to acknowledge John Ducker but to set the record straight. Somebody pointed out to me a story in yesterday's edition of the *Sydney Morning Herald* by Dave McKnight. I do not usually read articles about the Right by Dave McKnight because I knew Dave when he was in the Communist Party. I note that fact is not stated in his by-line; all it states is that he is a "senior lecturer in journalism at the University of Technology, Sydney". He was a member of the Communist Party and a political opponent of John Ducker, and I think he should have put that on the record at least.

The notion that the Central Intelligence Agency [CIA], ASIO and everything else allegedly defeated the Left is nonsense. John Ducker told me a story about how this fellow ended up in the Labor Council—he was a librarian of the Labor Council. I do not think he had a senior role in ASIO; he was a filing clerk or something of that nature. When he found out where he worked it suited him to spread the story that he had this connection. He has taken Dave McKnight for a ride on that story. The guy was a good filer. With all the files at ASIO he must have learnt how to put away filing cards, and that is why he was in the library. But it suited the image, the myth.

We used to talk about the myth of the Labor Council. The Left had an obsession with the Harvard Trade Union program in which John Ducker and all Labor Council secretaries were involved. Basically, it consisted of going overseas to Harvard. It was a good experience meeting other trade unionists and doing what one usually does there. The Left built it up into being some sort of training ground for CIA spies. I remember that Michael Easson, another former secretary, used to point out to the Left that its training school was less effective and that is why it was always criticising us. He used to talk about the Georgi Dimitrov training school in Moscow. Obviously, it was not as good as the Harvard Trade Union program because we ended up winning the Cold War and they lost.

The article to which I have referred should be taken with a grain of salt. Whilst there were difficult periods, there was the Cold War. Security agents—the KGB, ASIO and others of that nature—tried to infiltrate organisations. The Hon. Ian Macdonald has authored a book about this that seems to refer to all sorts of quite dubious connections between everybody. The Right succeeded in the trade union movement because it gave practical trade unionism. It did not get involved in the ideologies but in doing what trade unions ought to do: deliver for its membership. I remember when I talked to John Ducker about an ideological issue that was likely to divide the movement. We would often take the moderate, sensible, Labor position. However, we did not lose sight of the core business to service our affiliates and the members of those trade unions.

That is the principle that John Ducker left with all of us. It was to get out there and service the affiliates and the movement would look after itself. When one looks at the nonsense that has been written about John Ducker one should remember that he was primarily a trade unionist who came into the trade union movement through the Federated Ironworkers Association [FIA]. At the time the FIA was engaged in a battle against communist control of the union, but he came in with the principle of Laurie Short and others—that is, to look after the members and the ideological war would be won because one would be doing what people expect trade unions to do. That is what I want to say about John Ducker. He was a mentor and somebody one could call on for support.

I am not surprised that he talked to the Leader of the Opposition. In fact, the role of all Labor Council secretaries is to talk to everybody and not be part of an insular institution but one that has broad connections across the community and the political divide. Our primary role was to ensure that workers were looked after and to not engage in the politics that is common with a Johnnie-come-lately to workers' issues. I will not mention names—honourable members know them. John Ducker was a great man. He was a very influential man. As has been pointed out, he had a role in relation to Neville Wran. However, people forget that he was also involved in some dramatic changes at the ACTU level, changes that made it a sensible institution. Whilst I do not think they supported Hawke the first time round, they ended up being big supporters of Bob Hawke. They certainly supported him when he was Prime Minister.

What I loved about John Ducker was when there were family tensions, such as the Liberal Party went through in Pittwater on the weekend. There were often tensions in the sub-factions and I was involved. He would often play mediator, sit down with people, cut through the personalities and get us to refocus on what was important—that is, the core business of dealing with protecting the rights and entitlements of workers. That is the lesson I got from John Ducker. People ought to be generous at this time and understand that history rather than play political games, such as are reflected in the article to which I have referred and in comments I have heard. John Ducker was a giant. He shaped modern Labor, he created the modern Labor Party and he moved us away from the old ideological straight jacket that kept us out of government. He helped modernise the party. He acted as a mentor. Even though he dealt with a broad group he had an incredible ability to make you feel like an important person. In the passing of John Ducker we have lost somebody who was of great benefit to this society. It is a major loss. I express my condolences to his family.

Reverend the Hon. FRED NILE [6.36 p.m.]: On behalf of the Christian Democratic Party I support the condolence motion:

1. That this House express and place on record its deep regret in the loss sustained to the State, by the death on 25 November 2005, of John Patrick Ducker, AO, a former member of this House.
2. That this House acknowledges the contribution made by Mr Ducker to the Australian Labor Party as President of the New South Wales Branch and Secretary of the New South Wales Labor Council, and to the people of New South Wales through various organisations.
3. That this resolution be communicated by the President to the family of the deceased.

Mr Ducker is a man of great achievement not only within the Labor Party but as a former member of the Legislative Council and as Chairman of the Public Service Board. As I understand from press reports, he had a major role in the planning and success of the Wran victory and he had successes in the Federal area as well. What I admire about men such as John Ducker is that they achieve so much even though they come from a working class background. He was an ironworker and a member of the Federated Ironworkers Association. Other people have advantages of education and wealth that enable them to achieve so much, but people such as John Ducker have been brought up the hard way and have set an example of what a person can achieve with determination and natural ability. The Christian Democratic Party supports this motion.

The Hon. CATHERINE CUSACK [6.38 p.m.]: I will provide a couple of anecdotes from this side of the Chamber that will reflect on the character of John Ducker. When I learned of his death I emailed my predecessor on the North Coast, the Hon. Dr Brian Pezzutti, who is again saving lives in Iraq. His return email stated that when Jill Spence, Chris Pezzutti's mother, was in Royal North Shore Hospital for a number of weeks—she was a member of North Sydney Area Health Service Board—John Ducker visited her regularly. Jill very much appreciated his visits and his genial concern for her. She was the only non-Labor appointee on the board of the area health service at the time. She was also chair of Dalwood Children's Home. "Chris and I greatly appreciated his generosity", Dr Brian Pezzutti said.

The Hon. Eric Roozendaal commented on the respect with which John Ducker was held by the business sector in New South Wales. I agree with him. John Ducker facilitated many solutions for people behind closed doors. He was a man of strong and decent values. I know John Ducker did some tough things politically but, as was clear from Dr Brian Pezzutti's comments and my experiences, he was, beneath the legend, quite a human being. I am possibly the only person on this side of the House who can say that I worked for John Ducker. I am a former account manager with Edelman Australia on which Mr Ducker served as a board member and later as president.

I confess to feeling very intimidated the first time I was sent to meet with Mr Ducker, given his reputation. As Virginia Chadwick said on the weekend, he was very much a larger-than-life character. However, I was amazed by his courtesy and his approachableness. He told me that he remembered me because I was a former member of the Royal Institute for Public Administration, which was quite true. I found that remarkable. Obviously, he had an incredible grasp of detail to remember details such as that. Mr Ducker's desk at Edelman had nothing but a phone, a notepad and a pen on it. I could only speculate on what an amazing amount of work, decisions and influences were wielded with that notepad, pen and telephone. He operated his own business within the company. I am pleased to have had what I regard as a brush with fame, and I am very pleased to pay my respects to his memory tonight.

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) [6.40 p.m.], in reply: I thank honourable members for their comments. I thank the crossbench and the Opposition for supporting this condolence motion and recognising that John Ducker was an extraordinary person who made a broader contribution to the people of New South Wales than his contribution as a member of this Chamber. I thank the House for its courtesies. I am very pleased to extend this unanimously to his family.

Members and officers stood in their places.

Motion agreed to.

[The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.42 p.m. The House resumed at 8.15 p.m.]

TABLING OF PAPERS

The Hon. Tony Kelly tabled the following papers:

1. Annual Reports (Departments) Act 1985—Reports for the year ended 30 June 2004

Department of Ageing, Disability and Home Care
Premier's Department
2. Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2005

FSS Trustee Corporation
SAS Trustee Corporation
SAS Trustee Corporation controlled entities:
Buroba Pty Limited
State Super Financial Services Australia Limited
Valley Commerce Pty Ltd

Ordered to be printed.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

Ms SYLVIA HALE [8.16 p.m.]: The Greens support the Commission for Children and Young People Amendment Bill. However, while not disagreeing with the content of the bill, we have a few misgivings about the process whereby the Act was reviewed. We are also concerned that the timing of this bill has been brought forward by adverse headlines in the *Daily Telegraph*. The review was conducted by Ms Helen L'Orange, with the assistance of commission staff. I question whether this is an appropriate basis for an independent review of legislation. Standard practice is now to include review provisions in legislation.

The review process is a very important accountability mechanism to ensure that legislation achieves the outcomes intended and also meets the community's needs. Yet it seems today to be common practice for reviews to be conducted by one person who is appointed by the department or the Minister's office, rather than by a genuinely independent panel. Protecting children from abuse is of course an extremely important and pressing task. It is disappointing that there has been no thorough accompanying review in New South Wales of the success to date of the Working with Children Check Scheme. I have been unable to find any reference to statistics on relevant crimes mentioned in the commission's latest annual report.

I am informed by the commission that the way both the Department of Community Services [DOCS] and police statistics are collected makes it hard to determine whether background checks are in fact reducing offences against children. I am also informed that DOCS collects statistics about child victims and not perpetrators, whereas the police collect statistics about perpetrators, but not necessarily about where the crime was committed, which would indicate whether or not it was in a workplace where a background check was required. Better statistics would allow us to check whether the legislation is meeting its aims. This is not meant as a criticism of the commission, just as a constructive suggestion. It is important to ask the general question of whether this very expensive and time-intensive scheme has to date been effective and whether it really is the best possible way to protect children from abuse. Evidence is important so that we will be able to assess the effectiveness of the operation of a law.

I now turn to address the specific provisions of the bill. More than 200,000 background checks are conducted each year on people working with children. In regard to the review of the current legislation, apparently 384 submissions were received, including 255 from children and young people. The bill amalgamates the two current Acts that the commission operates under. The Commission for Children and Young People Act will absorb the provisions of the Child Protection (Prohibited Employment) Act 1998. The bill introduces uniform terminology and a single, more precise, definition of "child-related employment". I welcome the merging of the two Acts.

As matters stand, it is difficult for any newcomer, whether an employer or employee, to get a handle on the scheme and therefore understand their rights and responsibilities. The commission currently promotes safer workplaces for children by providing training on policies, procedures and methods for identifying risks, assuring quality, encouraging an open and participative workplace culture, and encouraging children to report behaviour that worries them. This bill will exclude persons from working with children who have been convicted of serious violent offences, such as intentionally wounding or causing grievous bodily harm to a child, where the adult was three years older than the child. This will extend the types of offences already listed in the Act as grounds for excluding someone from working with children.

The bill will prevent some persons convicted of extremely serious offences from seeking a review of their status as prohibited persons. This is an inherently unacceptable provision and one that the Greens will seek to delete at the Committee stage. Proposed section 33G subsection (2) provides some leeway for review in certain circumstances, such as where sexual intercourse occurs but there is an age difference of less than three years between the parties and there are no circumstances of aggravation. This would apparently allow a young person who is less than 19 years of age who had sexual intercourse with a 16-year-old and was convicted of the old offence of carnal knowledge to appeal.

The Minister and Premier were quoted recently in the *Daily Telegraph* as saying that 89 prohibited persons whose status had been reviewed under the current Act and who had been granted an exemption are now working as bus drivers, teachers, sports coaches and youth workers. The Premier said that, in his opinion, if the new legislation were enacted, three of these 89 would not be granted exemption. This leaves 86 whose exemptions would stand. Given that the legislation already has tight requirements as to who is a prohibited person, it is highly likely that the 89 people who had their status reviewed and are working in such roles are offering no threat to the community. The *Daily Telegraph*, in its tabloidist way, may be whipping up unnecessary fear and concern but it has been able to force the Government into a hasty response. This aspect of the bill is largely pandering to media-driven hysteria.

Proposed section 33G would prohibit persons convicted of certain offences from even applying for a review and from even lodging an appeal for their status to be reviewed. To deprive people of the right to appeal, no matter what they may have done, is to deny them natural justice. Existing legislation already requires the commission to take into account various matters such as the type of offence committed. The onerous nature of the current review process is more than adequate to respond to the question of whether a person should be permitted to be employed to work with children. The legislation as it stands already makes it very difficult for people to succeed in a review of their status if they pose a risk or have been convicted of a serious offence. Other provisions in this bill require self-employed persons who provide services to children, such as private tutors, music teachers and coaches, to display a certificate stating that they are not prohibited from working with children.

The scheme for people who are self-employed is a very flimsy strategy to protect our children from abuse. Displaying a certificate that they are not a prohibited person may create a false sense of security. Minister Meagher said, "Parents have a right to know". Obviously, it would be of great relief to all parents if they could definitively know that their child's football coach did not abuse children. But this can in no way be guaranteed simply by a certificate. I suggest that this scheme will give parents a dangerously false sense of security. We all know that the vast majority of child abusers do not have a criminal record. One must ask how extensive the checks will be as to whether a declaration made that a person does not have a criminal record is accurate, or that the certificate is not a forgery.

Again, the Government is seeking newspaper headlines, claiming that it has protected the public against child abusers. The reality is very different. Requiring that the certificate be displayed is of little worth unless it is accompanied by a comprehensive education campaign aimed at informing parents and carers about the new scheme. The Act does not extend the scheme to volunteers. Although the Greens acknowledge that applying the scheme to volunteers is a very tricky business, I note that the Government is not so keen to make

an issue of the lack of coverage of volunteers, because, in all probability, the deficiency would be all over the front page of the *Daily Telegraph*, as was the exemption process for prohibited persons.

The failure to deal with volunteers, apart from their having to sign a form saying that they have not been convicted of certain offences—a form which is then probably filed away somewhere—suggests that this scheme is not as comprehensive or as effective as the Government would have us believe. Having a volunteer sign a declaration is not the same as undertaking a background check. The commission can audit an organisation to make sure the declaration forms have been signed, but that does not necessarily prevent someone from lying or falsifying his or her history. However, I understand that the commission will consult with the volunteer sector and perhaps will recommend amendments. The Greens support such an approach.

The bill makes it easier for a single background check to be carried out on an employee where that employee performs similar work for a number of employers, as for example a casual teacher who works in a number of schools. A further check will not be required to be carried out where another employer has carried out a check on a person occupying a similar position within the previous year. Information about a prospective employer is to be provided to interstate bodies that undertake child-related background checks, provided those bodies have been approved by the Minister. I will not go through the other provisions of the bill in detail apart from noting that they increase reporting requirements for employers and make it possible for an agency in one jurisdiction to share information with an agency in another jurisdiction, where there appears to be a risk of harm to children.

The bill makes it clear that other offences, such as filming a child for indecent purposes, are to be taken into account in the working with children check. The Greens support the bill, but there are clearly other ways to protect children such as educating employers about how to improve their supervision and recruitment practices. Relying on background of criminal checks alone is not in itself a comprehensive way of protecting our children from predatory adults. The checking of volunteers is still not adequately provided for in the bill, and it is time for the Government to broaden its approach.

Reverend the Hon. Dr GORDON MOYES [8.26 p.m.]: On behalf of the Christian Democratic Party I speak to the Commission for Children and Young People Amendment Bill. The bill implements the statutory review of the legislation for the Commission for Children and Young People and I commend the spirit and intention of this bill. Last Saturday I had the annual privilege of meeting with the Dalmar old boys and old girls group, people who have been within the Wesley Mission Dalmar Child and Family Care Homes during their upbringing. For 90 years, beginning in 1894, Wesley Mission's Dalmar cared for 10,000 children. In the years from 1984 to 2000 Dalmar cared for another 10,000 children. Currently every 2½ years Wesley Mission cares for 10,000 children. Professor Don Wright, a professor of Australian History at the University of Newcastle, was invited to bring a team of senior students, those doing masters degrees, to visit as many of those children still living who could be traced. We have excellent tracing practices, because many children want to access their records and are part of the Dalmar old boys and old girls group.

Professor Wright reported, after the follow-up of about 10,000 children who had been brought up in care, that there were very few cases of abuse. Today, Wesley Mission conducts child care facilities on 37 sites in New South Wales. Based on that background I now address some of our concerns with the bill. Within the hearts and souls of our children and young people lies the future of our nation. As legislators, we act as vanguards for protecting the interests, wellbeing and safety of our children. Having said that, we must do all within our power to protect our children and young people as our children are one of the most vulnerable segments of our society. Jesus spoke about the vulnerability of children and young people and laid down a principle for their treatment. Jesus said, in Matthew 18:10, "But whoso shall offend one of these little ones which believe in Me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea."

In Greek the word "offend" denotes causing a child to stumble, violating a child's innocence, or putting a stumbling block or impediment in the way of a child's growth. A child's development can be severely hindered and deviated when he or she is mistreated physically or verbally. Anyone who contributes to a child being emotionally or physically downtrodden must be brought to account by the relevant authorities. In my time I have had to deal with abusers, including some who have been on my staff. My approach has always been instant dismissal for any person who has been accused, the charging of that person by police and allowing the courts to determine his or her innocence or guilt.

We follow a policy of believing what the child says and not the adult. In caring for so many thousands of children every year we also have a policy where every person working with a child in any of our youth

programs, camping programs, child care programs and the like, is checked for background referencing. Very rarely have we found people who have got through that kind of screening process. This bill seeks to make amendments to the legislation that regulates the Commission for Children and Young People, an independent entity charged with the responsibility of representing and advocating for the interests of children and youth.

I congratulate the commission and Gillian Calvert, its leader, on the vital work that has been done for our children and young people to date. Their work must be encouraged and never undervalued. In 1979 I was guardian ad litem—guardian in the eyes of the law—for 134 children. In 1979 I thought that was an awesome responsibility. The legal niceties about guardians ad litem have changed somewhat over the years, but for the year 2004 the number exceeded 3,000 children who came to Wesley Mission in need of protection and care, and usually also accommodation and everything else that went with that. That is a great responsibility. I honour those people who go out of their way to care for other people's children.

The commission reports directly to the New South Wales Parliament and the parliamentary Committee on Children and Young People oversees the work of the commission. The commission is responsible for implementing and monitoring laws that affect all people working with children and young people in New South Wales to make workplaces safe for them. The commission also runs a voluntary accreditation scheme for counsellors who work with people who have committed sexual offences against children. I have reason to be indebted to the Commission for Children and Young People. In 2004 the legislation underpinning the commission was reviewed by Ms Helen L'Orange, drawing on recent research findings and oral and written submissions from a wide range of interested parties including, as was mentioned earlier, 384 organisations and individuals, 255 of whom were children and young people.

The justification for the review of the Commission for Children and Young People Act 1998 and the Child Protection (Prohibited Employment) Act 1998 is that the statutory period for review, being five years, needed to be met. However, the 95-page report enumerates a number of findings. Ms L'Orange found that the policy objectives of the legislation generally remain valid and that the terms of the Acts generally remain appropriate for securing those objectives. The report contains a balanced set of suggested strategies responding to feedback from stakeholders, development in similar schemes outside New South Wales, contemporary research, recent judgments, Operation Auxin and other emerging issues. There were 26 recommendations for amendments to legislation and 24 general conclusions not requiring legislative implementation.

It was envisaged by Ms L'Orange that a significant reduction in level of risk to children and young people would result from the proposed changes, which we welcome. As part of its analysis the review sought to minimise the impact on large and small organisations. At least for the next three or four weeks I still remain in charge of one of the largest organisations caring for children in New South Wales. It also reviews the behaviour and background of employees, employers, self-employed persons and, unlike what was said earlier by Ms Sylvia Hale, it includes volunteers, who can be banned. An education program will be undertaken to remind all those people of their responsibilities. Applicants for prohibited employment exemptions must also be examined.

The review was mindful of the needs of rural and regional communities. I have filled in my forms and I have been passed, even though I am a member of a board. I might explain that not just people working with children have to undergo such scrutiny; even board members of organisations have to do so. In view of the recommendations and conclusions of the review the bill has sought to do a number of things. I will not try exhaustively to cover all aspects in the bill but I wish to draw the attention of honourable members to some salient aspects.

The bill strengthens the prohibited employment regime. It will require self-employed persons working with children to display a certificate that they are not prohibited persons—something that Wesley Mission has been urging for some time. In spite of what an earlier speaker said, we believe it will be of great benefit to parents to establish that self-employed people such as teachers, coaches or mentors are not prohibited persons. Obviously, that will reassure parents that the prospective or current workplaces in which their children are involved or exposed to are safe. Self-employed persons include private tutors, music teachers, coaches and the like.

Significantly, the bill will prevent those who have been convicted as adults of intentionally causing grievous bodily harm from working in any child-related employment. It is only sensible that that requirement is entrenched in law. Children should not in any way be exposed to adults who have committed intentional acts of harm against them. Currently, serious sex offenders, kidnappers and child murderers are banned from working with children. This bill will extend the net of prohibition to those who intentionally cause grievous bodily harm

to children. Some areas within our community unfortunately have a large number of persons who may be paedophiles or may have had the full thrust of the law against them because of their guilt in harming children.

When I was in the relatively small suburb of Lurnea in the south-west of Sydney recently I spoke to a senior police officer. I have an interest in helping to rehabilitate people in that area. Lurnea is the area in which a young girl was taken from her home overnight. She is still missing, which is a matter of deep concern for many people. The senior police officer told me that in the Lurnea community alone there are in excess of 60 convicted paedophiles. That is a real concern for any person in that community. I make no apologies for supporting this bill as its provisions ensure that persons who have been convicted of the most serious crimes against children cannot apply for a review of their prohibited status.

I heard Ms Sylvia Hale refer earlier to how serious it was when convicted criminals—people convicted of the most serious crimes against children—were not allowed to have a review of their prohibited status. From my experience of working with some paedophiles this review and the law have it right. It is difficult to rehabilitate people who have been convicted of the most serious crimes against children. Such people should not be given a chance or an opportunity to be around children in future. In the rehabilitation work for which I have been responsible we never allow any such persons to be around other children.

Serious crimes include murdering a child under the age of 18, producing child pornography, sexual intercourse with a child under the age of 16, or a crime against a child under 18 where the adult is in a special role, such as a sports coach. Those people's future contact with children should be limited. There are certain exceptions, for example, where there was sexual intercourse between two young people who are both of a young age. The bill amalgamates the two current Acts that form the basis for the establishment, and define the function, of the commission. Part and parcel of this change is laying down a single set of commission guidelines that effectively will cover background checking and prohibition on employment. The commission and other agencies carry out some 200,000 checks per year on behalf of employers. It is worth noting that background checking is not restricted to an applicant's criminal record but includes looking at other aspects of the applicant's background and checking the nature of the job and the workplace, as poor work design and inadequate supervision can also place children at risk.

One salient point is that the bill introduces a single and more exact definition of child-related employment. The bill also makes explicit the commission's function of promoting child-safe and child-friendly organisations. The bill will give the commission audit powers to strengthen background checking. For example, employers will be asked to provide documentary evidence that they are meeting their child protection obligations. Employers who are found not to be complying will be issued with a notice to comply. If they still refuse to comply they may be prosecuted. Importantly, the Government has said that it intends to do further reform in this area following the introduction of the bill. Consultation will take place with those groups impacted by the review's recommendations for extending background checking to further improve the New South Wales system. Nothing is more important than the children for whom we care, and we commend the Government for introducing this bill.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.40 p.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.

In Committee

Clauses 1 to 5 agreed to.

Ms SYLVIA HALE [8.42 p.m.]: I move:

No. 1 Page 16, schedule 1 [31], lines 8-32. Omit all words on those lines.

The effect of the amendment is to delete the entire proposed section 33G. We should not discard judicial processes lightly. No matter what a person has done, I believe he or she should have the opportunity to seek review. This is a matter of proper process and of natural justice. Under proposed section 33G the commission will have limited discretion to entertain a review application. For example, there is an exception when the age difference between the offender and the person against whom the offence is committed is less than three years. But, other than that, a person who murders a child, has sexual intercourse with a child or is involved in the production of child pornography will be denied the right to seek a review.

It is quite possible for all of us to contemplate a circumstance in which a child may be murdered but that is a secondary outcome of another offence. I believe an offence committed in those circumstances should not necessarily reflect upon a person's suitability or otherwise to work with children, particularly in light of the provisions of proposed section 33J. This proposed section details an extremely onerous test, and states:

The Commission... is not to make an order on a review application unless it is satisfied that the person the subject of the application does not pose a risk.

That is the initial safeguard. A second requirement in the proposed section reverses the onus of proof. It states:

... it is to be presumed, unless the applicant proves to the contrary, that the applicant poses a risk to the safety of children.

So there is that presumption and the necessity for the commission to satisfy itself that the person does not pose a risk to children. But in deciding whether to make an order in relation to the person the commission or a relevant tribunal is also to take account of the following: the seriousness of the offences, the period of time since the offences were committed, the age of the person at the time the offences were committed, the age of each victim, the difference in age between the prohibited person and each victim, whether the person knew or could reasonably have known that the victim was a child, the prohibited person's present age, the seriousness of the prohibited person's total criminal record, and such other matters as the commission or tribunal considers relevant.

It seems to me that proposed section 33J contains enormous safeguards. The commission must satisfy itself on a range of issues that are so comprehensive as to make it unnecessary in proposed section 33G to deny the right of appeal. In denying the right of appeal the bill implies that once a person is found guilty of an offence that is the end of the matter. It wants us to put our trust in the absolute infallibility of the criminal justice system and ignore the possibility of error. I believe that, in so doing, it denies people a fundamental right and overturns a fundamental presumption in much of our modern law to no good purpose. As I have suggested, the commission must meet sufficient tests in granting a review of the status of a prohibited person that embody all the safeguards we would need to ensure that children are protected adequately as far as is humanly possible. I commend Greens amendment No. 1 to the Committee.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.48 p.m.]: The Government does not support Greens amendment No. 1. The Act allows for prohibited people to seek a review of their status and thereby seek permission to work with children. There has been some concern in the community about people convicted of extremely serious offences seeking to have their status reviewed. In keeping with the child protection status of the legislation, some people will now be unable to apply to have their status reviewed in the future. This includes those convicted as adults of murdering a child under 18 years, of producing child pornography, of the offence of sexual intercourse with a child under 16 years and of the offence of sexual intercourse with a child under 18 years if the adult is a teacher, coach or in some other position of trust. The Government believes in cases of the kind listed above the protection of children must take priority over an offender's ability to apply for employment. By placing this provision in the legislation we will remove any doubt about our community's requirement for safe workplaces for children.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.49 p.m.]: The Australian Democrats believe that it is extremely important to look after children and, therefore, support this very important legislation. But an appeal system must be available in all jurisdictions. One can always relate the anecdote that certain people should be kept away from children, but in this regard a number of mistakes are being made. It is important that a judicial review is available, and it is sound principle that administrative decisions be reviewed judicially.

The Hon. MELINDA PAVEY [8.50 p.m.]: The Opposition does not support the amendment. The Greens want a right of appeal, but such a right is available already for a person convicted of the offence of murder of a child under 18 years of age, producing child pornography, sexual intercourse with a child under 16 years of age or having sexual intercourse with a child under 18 years of age if the adult is a teacher or coach or is in some other position of trust. The convicted persons could have appealed those sentences at the time if they believed they were innocent. The Opposition believes that a right of appeal is available already for those who believe they have been wrongly convicted in court. If a jury decides in a court that a person is a guilty of such heinous crimes, an accused should never again work with children.

Amendment negated.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

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

MINE SAFETY (COST RECOVERY) BILL
WATER MANAGEMENT AMENDMENT BILL

Bills received.

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

Motion by the Hon. Tony Kelly agreed to:

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

Bills read a first time and ordered to be printed.

CRIMINAL PROCEDURE AMENDMENT (SEXUAL OFFENCE CASE MANAGEMENT) BILL

Second Reading

Debate resumed from an earlier hour.

Ms LEE RHIANNON [8.56 p.m.]: The Greens support the Criminal Procedure Amendment (Sexual Offence Case Management) Bill, which is designed to deal with evidentiary, procedural and technical issues prior to the commencement of a sexual assault trial. Every small step towards making it easier for women who have suffered the horrendous crime of sexual assault to engage with the criminal justice system is, of course, welcome. If the orders of the judge who conducted the pre-trial hearing are binding on the trial judge, this hopefully will discourage the defence, for example, from using the first day of the trial to re-argue the issues at the pre-trial hearing. Those kinds of delays are particularly harrowing for women who must gather themselves together emotionally and physically in order to front a court. The Greens share the reservations expressed in the Legislative Assembly by Andrew Tink about what in practice will stop the trial judge from overturning pre-trial orders. One can only trust that trial judges will not overturn pre-trial orders frivolously and will understand the need for these orders to be binding. But it remains to be seen how the bill will work in practice.

It is always important to not only develop and pass a law but also test its success on the ground. This Government is often more interested in getting a headline about the commendable work it is doing than following through to ensure laws work in practice. The legislation will be of benefit to complainants only if trial judges obey orders of the pre-trial hearing judge. If the orders of the pre-trial judge are to be binding and effective, the trial judge must be in a position to see the value of the orders and resist attempts by the defence to argue that they should be overturned. I ask the Minister to detail in his reply how the Attorney General plans to monitor the effectiveness of the new laws once they are up and running.

It would seem sensible for the Attorney General to keep track of whether pre-trial orders are being followed by trial judges or, if overturned, why they are overturned and whether they are overturned for valid reasons. If it appears after a reasonable period of time that the pre-trial judge's orders are not being followed for spurious reasons, the Attorney may then be in a better position to consider what other strategies may be more effective in achieving the same desired end of removing excessive delays for women willing to engage in the criminal justice system. I take this opportunity to underline again the need in New South Wales for a specialist sexual assault court, not just in name but in practice. I understand that this proposal is currently being considered by the Sex Offences Task Force, which was set up by the Attorney General in response to calls by the Rape Crisis Centre and the Greens for a overhaul of sexual assault laws. Such courts have been established in Canada and South Africa and they provide encouraging models for the Attorney to emulate.

Finally, I encourage the Attorney General to ensure that the report of the Sex Offences Task Force, which is due to be released this month, is not publicly released on Christmas Eve or in the following holiday season. This Government has a bad track record in that regard. We saw evidence of that today with the announcement of changes to liquor hours and other matters relating to the liquor industry. Let us hope we do not have a repeat with this very important report, which will have useful recommendations designed to achieve positive outcomes for women who survive sexual assault. It is too important a report to be released at a time when the public is not in the best position to scrutinise it. I believe the Government would find it most valuable to assess full and detailed responses to the report from the community, and I hope the Government will work towards facilitating that.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.59 p.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

MENTAL HEALTH (CRIMINAL PROCEDURE) AMENDMENT BILL

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.00 p.m.], on behalf of the Hon. John Della Bosca: 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 Government is pleased to introduce the Mental Health (Criminal Procedure) Amendment Bill 2005.

It is estimated that close to one in five people in Australia will be affected by a mental illness at some stage of their lives. The trend over the last five years indicates a substantial increase in the numbers of people with mental illness who come before the courts.

The prevalence of mental illness in the NSW correctional system is substantial and indicative of the high incidence of defendants in court who have mental illness.

These amendments simplify procedures, improve operational efficiency and update the law with respect to people suffering a mental illness, mental condition or intellectual disability.

This Bill is the result of the most exhaustive process of consultation and we have reached an uncommon degree of consensus.

The amendments are based on the Law Reform Commission Report 80, People with an Intellectual Disability and the Criminal Justice System.

The Interdepartmental Committee on the Mental Health Criminal Procedure Act 1990 and Cognate Legislation (the Committee) was established to consider the recommendations. The Committee comprised representatives from the:

- (a) NSW Police;
- (b) Office of the DPP;
- (c) Crown Prosecutors;
- (d) Department of Corrective Services;
- (e) NSW Health (including Corrections Health Service, Community Court Liaison Service, and the Centre for Mental Health);
- (f) Legal Aid Commission of NSW;
- (g) Public Defenders;
- (h) Department of Community Services;
- (i) Department of Ageing, Disability and Home Care;
- (j) Mental Health Review Tribunal;
- (k) Department of Juvenile Justice;
- (l) Magistracy; and
- (m) Attorney General's Department.

The Committee also proposed other recommendations independently. All of the recommendations of the Committee were unanimously agreed upon.

I now turn to the specific provisions of the Bill.

Schedule 1 amends the Mental Health (Criminal Procedure) Act 1990—"the Act".

These amendments relate to the functions of the Attorney General, the Court, the Tribunal and Director of Public Prosecutions.

The first amendment relates to the question of fitness hearings.

Item 1 amends section 8 of the Act to require the Court, rather than, as at present, the Attorney General, to determine whether an inquiry should be conducted as to a person's fitness to be tried for an offence where this question is raised before arraignment.

The Court already has this power under section 9 of the Act in circumstances where the question of a person's fitness is raised after arraignment.

There is no good reason why the Attorney General makes the decision before arraignment and the court makes the decision after arraignment.

Where expert reports support the issue, invariably the Attorney General directs that an unfitness inquiry be conducted. This process takes time. It is an unnecessary process, particularly where the defence, the crown and the court are of the same view that the issue of unfitness should be determined before the trial. **Items [2] and [3]** make consequential amendments.

Items [8], [9] and [15] remove the Attorney General from the process of directing that fitness hearings and special hearings be conducted.

Item [8] omits section 18 of the Act which requires the Attorney General, after receiving notification from the Tribunal that a person is unlikely to become fit to be tried for an offence within 12 months, to direct the Court to hold a special hearing in respect of the offence or to notify the Court and the Minister for Police that no further proceedings will be taken.

Item [9] substitutes section 19 of the Act to require the Court to hold a special hearing after receiving such a notification unless the Director of Public Prosecutions advises that no further proceedings will be taken.

It is intended that the DPP's power to direct no further proceedings in relation to a special hearing matter mirror the DPP's powers in relation to criminal proceeding trial matters.

Item [15] substitutes section 29 of the Act to require the Court to hold a further inquiry into the fitness of a person to be tried for an offence if the Tribunal has notified that a person who was previously found to be unfit to be tried has become fit.

However, the Court is not to hold a further inquiry if the Director of Public Prosecutions advises that the person will not be further proceeded against. Currently, the Court holds such further inquiries at the request of the Attorney General.

Unfitness through mental illness can be a fluctuating condition. An unfit person may become fit, only to regress again at some subsequent time into a state of unfitness. It is desirable that there be an efficient process of bringing a person who has been found unfit back before the courts promptly upon an indication from the Tribunal that he has become fit. Once again, the removal of the Attorney General from this procedure will help to improve the efficiency of the process without adversely affecting the nature of the proceedings. **Items [6] and [10]** make consequential amendments.

Item [7] amends section 17 of the Act to require the Court to notify the Tribunal of the grant of bail or the detention of a person in a hospital or other place under that section. This is required because those on bail will now be forensic patients and subject to the review of the Tribunal.

The next amendments relate to judge alone fitness hearing and special hearings.

Item [4] substitutes section 11 of the Act and omits section 11A to provide that the question of a person's unfitness to be tried for an offence is to be determined by the Judge alone. **Item [5]** makes a consequential amendment.

At present, that question is determined by a jury unless the person, with the consent of the prosecutor, elects otherwise.

The use of a jury in a fitness hearing delays proceedings and is unnecessarily costly. In the majority of cases there is no issue between the parties that the accused person is unfit and both the crown and defence experts agree on this. Despite this, because the accused is often not capable of making an election for a judge-alone hearing, the unfitness hearing must proceed before a jury.

Such a hearing may be significantly and unnecessarily protracted when compared with one that is determined by a judge alone who can often determine the issue of fitness by simply reading the expert reports and finalising the matter in less than one hour.

In contrast, if the hearing proceeds before a jury, the process takes up to two days. The jury must be empanelled, the judge must explain to the jury the proceedings and their role, evidence of experts is more likely to be called rather than reports being relied upon, both the defence and the crown address the jury, the judge sums up and finally the jury considers its verdict.

It is not uncommon for the jury to be confused as to its role and to return back to court on several occasions to ask questions. On some occasions the questions relate to the guilt or innocence of the accused rather than the issue of unfitness. The question of a person's unfitness to be tried is preliminary to any determination of guilt or innocence. Members of the jury may be perplexed and frustrated, as they may not understand their purpose in the proceedings.

Item [12] substitutes section 21A of the Act to provide that a special hearing is to be determined by the Judge alone unless an election to have the special hearing determined by a jury is made by the accused person, a legal practitioner representing the accused or the prosecutor.

At present, a special hearing is determined by a jury unless the accused person, with the consent of the prosecutor, elects otherwise. This provision protects the rights of an accused person to have a jury determine his or her matter where it is in their best interests.

The unfitness of the accused will be no impediment to electing for a jury because the legal practitioner is allowed to make that decision. The accused person is entitled to elect for a jury up until the day before the day fixed for the special hearing. The Prosecution, however, must elect at least a week in advance in order to secure a jury. **Item [11]** makes a consequential amendment.

Item [13] inserts proposed section 22A into the Act to enable the Director of Public Prosecutions to amend an indictment for a special hearing. The DPP follows a similar process in amending an indictment in ordinary criminal proceedings. It will save the accused person from having to undergo an unfitness inquiry again in relation to the fresh matters on the amended indictment.

Item [14] amends section 23 of the Act to enable the Court when imposing a limiting term after a special hearing to impose the term consecutively with, or partly concurrently and partly consecutively with, another limiting term applying to the person or a sentence of imprisonment imposed on the person.

This amendment is directed towards dealing with a deficiency in the legislation highlighted in the judgment of Justice Giles in *R v RTI* [2005] NSWCCA 337, in particular at paragraph 45. The amendment gives effect to Justice Giles' suggestion that there should be a power to accumulate limiting terms.

It is not intended that accumulation of limiting terms be dealt with in a way that is more onerous than the accumulation that takes place after a normal trial. The insertion of the proposed section 23 subsection (6) is intended to ensure that the court takes account of, and is guided as far as possible by, the provisions governing consecutive sentences after a normal trial. In all but the worst cases limiting terms where accumulation is warranted should be partly concurrent and partly consecutive.

The next amendments relate to proceedings under section 32.

In summary proceedings before a Magistrate, the Magistrate has the power to divert the defendant away from being dealt with at law and being subject to a punishment. The purpose of section 32 of the Act is to allow defendants with a mental condition, a mental illness or a developmental disability to be dealt with in an appropriate treatment and rehabilitative context enforced by the court.

As currently drafted, under section 32, a magistrate is required to consider the state of mind of the accused only at the time that he or she appears before the Court, not at the time that the offence was committed. This is inconsistent with principles that apply in mental health criminal proceedings under Part 4 of the Act (concerning the defence of mental illness).

For example, a person may have committed a minor offence such as shoplifting during a manic stage of a manic depressive illness. By the time he or she appears in Court (even one or two weeks later), his or her illness may be under control, the person having recommenced medication after arrest. As currently drafted, section 32 can only be invoked if the person is suffering from a mental condition or illness at the time of the hearing.

Accordingly, item [17] amends section 32 to allow diversion for a person who suffers a mental condition or illness or a developmental disability at the time of the commission of the offence, even though they might have recovered by the time of appearing before a magistrate on criminal charges.

This means the Magistrate has the option of adjourning the proceedings, granting the defendant bail or making any other appropriate order. It also enables the Magistrate to dismiss the charges and to release the defendant unconditionally or into the care of a responsible person or subject to the condition that the defendant undertake specified treatment.

Item [16] makes a consequential amendment.

Items [18] and [20] amend sections 32 and 33 of the Act to require a Magistrate to state reasons for the Magistrate's decision as to whether or not a defendant should be dealt with under those sections.

This will provide more information about the type of people being refused applications and allow a body of law to be built up in this area.

Item [19] inserts a new section 32A into the Act to permit a person who provides treatment in accordance with an order under section 32 to report failures to comply with the order and other associated information.

Service providers are to make breach reports to the Community Offender Services of Probation and Parole or to officers of the Department of Juvenile Justice, as the case requires. These agencies will then weigh up whether it would be appropriate to bring the matter to the attention of the Court.

The provision is designed to facilitate the reporting of failures to comply with conditions, and to ameliorate concerns of service providers in relation to client confidentiality issues. This will strengthen the integrity in operation of the orders.

Item [21] omits section 34 of the Act which requires a Magistrate to disqualify him or herself, on the application of the defendant, from hearing the proceedings if the Magistrate has refused to deal with the defendant under sections 32 or 33 of the Act.

Members of the magistracy have noted that this section permits spurious applications to be made to facilitate 'magistrate shopping'. The improper use of this section can create problems in regional areas serviced by a single magistrate, and result in lengthy delays in the resolution of the proceedings.

The repeal of section 34 will not remove the common law obligation on magistrates to disqualify themselves where appropriate. The common law provides that a magistrate should not hear and determine proceedings if affected by actual bias, or if there is a reasonable apprehension that the magistrate is not impartial and unprejudiced. That is the test to be applied in all proceedings and the same test should apply in relation to continuing to hear a matter after declining to divert a defendant under section 32 or 33. The situation is no different to where magistrates continue to hear matters (where appropriate) even though the facts, criminal history and evidence about the mental condition of the defendant have been raised on bail hearings.

The final amendments in Schedule 1 relate to sections 38 and 39 of the Act for people found not guilty by reason of mental illness.

In 2003 section 39 was amended to allow the court to order the conditional or unconditional release of a person found not guilty by reason of mental illness. Prior to that amendment all people found not guilty by reason of mental illness had to be detained in "strict custody".

Items [22] and [23] amend sections 38 and 39 of the Act to ensure that such persons are not released into the community by order of the Court unless the Court is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release.

Section 39 is also amended to require the Registrar of the Court to notify the Minister for Health and the Tribunal of the terms of any order made under the section. The Court will be given the power to remand the person in custody pending its consideration of this issue. While Courts already take public safety into account on a routine basis when determining whether to release an accused pursuant to section 39, the proposed amendment provides an extra layer of comfort to the community by specifically requiring the Court to carefully consider this issue—one that I'm sure all honourable members will agree is of paramount importance.

Schedule 2 makes amendments to the Act by way of statute law revision. The amendments change out of date references to prisoners and the Prison Medical Service and include references to detention centres for juveniles. The amendments also include references in certain provisions to the Director-General of the Department of Juvenile Justice and juvenile justice officers so as to involve them in certain matters relating to accused persons who are juveniles.

Schedule 3 amendments relate to the *Mental Health Act 1990*.

As Honourable Members are aware, the Minister for Health is currently undertaking a review of the Mental Health Act. The amendments in this Bill are mostly procedural issues which are consequential to the changes to be made to the Mental Health (Criminal Procedure) Act 1990.

Item [1] amends section 80 of the Mental Health Act 1990 to require the Tribunal to review the case of a person, who has been found unfit to be tried for an offence by a court and has been granted bail, to determine whether the person has become fit to be tried.

This amendment will fill an identified gap in the existing legislation. Currently there is no procedure for a person who becomes fit whilst on bail to be promptly brought back before the court to have a further fitness hearing. As previously discussed, unfitness through mental illness can be a fluctuating condition. An unfit person may become fit, only to regress again at some subsequent time into a state of unfitness. It is desirable that there be an efficient process of reviewing a person's mental state while they are on bail and bringing a person who has been found unfit back before the courts promptly upon an indication from the Tribunal that he has become fit.

Items [2], [3], [4], [5] and [8] amend sections 80, 82 and 104 of the Mental Health Act as a consequence of the amendments made to the Mental Health (Criminal Procedure) Act by Schedule 1 [8], namely to remove the role of the Attorney General from provisions relating to the holding of special hearings.

Item [6] amends section 82 of the Mental Health Act to prevent the Tribunal recommending the release of a forensic patient who has been transferred to a hospital while serving a sentence of imprisonment and has not served the term of the sentence or, if a non-parole period has been set in relation to the sentence, the non-parole period.

The proposed amendment has no impact on the situation of a forensic patient who was found at trial to be not guilty by reason of mental illness or a forensic patient who was unfit to stand trial. It is limited to a person who was fit to be tried, found guilty by a jury and sentenced to imprisonment by the sentencing court.

This amendment pays reverence to the ruling of the sentencing court, as well as to expectations in the community that convicted persons will not be released until they have served the non-parole or fixed term period to which they have been sentenced. **Items [9]–[11]** make consequential amendments.

Item [7] amends section 93 of the Mental Health Act to enable the prescribed authority, if it appears that a person has committed a breach of a condition of an order releasing the person from custody under section 39 of the Mental Health (Criminal Procedure) Act, to make an order for the person's apprehension and detention, care or treatment.

This amendment arises from a recommendation of District Court Judge Marien in the case of *R v Milakovic*, unreported, 22 March 2005, and brings persons released under section 39 of the Mental Health (Criminal Procedure) Act (after a finding of not guilty by reason of mental illness) into line with those released by the Prescribed Authority following a review under section 84 of the Act, by providing a mechanism whereby a breach of a condition imposed upon their conditional release can be effectively enforced.

Item [12] amends section 108 of the Act to provide that the Minister for Health may release certain forensic patients following advice from the Director of Public Prosecutions (rather than from the Attorney General, as is currently the case) that further proceedings will not be taken.

Item [13] amends the definition of *forensic patient* in the Act to include a person who is granted bail pursuant to section 14 (b) or 17 (2) of the Principal Act. This is an important change because the Tribunal conduct regular reviews of forensic patients. The Tribunal review is the trigger for promptly bringing the person back before the Court where necessary, that is, in circumstances where they have become fit or where the Tribunal has determined that they will not become fit within 12 months from the date of the finding of unfitness.

Item [14] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and **Item [15]** contains savings and transitional provisions consequent on the enactment of the proposed Act.

The foregoing amendments are expected to provide a safer and more efficient regime for dealing with persons affected by mental illness and other mental conditions in the criminal justice system.

They will also produce a more responsive system—one that is better equipped to deal with the fluctuating nature of unfitness through mental illness—while further strengthening public safety considerations.

They provide greater opportunity for diversion from the criminal justice system for those who should properly be dealt with in an appropriate treatment and rehabilitative context enforced by the court.

The extensive consultation process underpinning the Bill has helped to ensure that the rights of accused persons are preserved, and that the improvements produced will have long-lasting effect.

I commend this Bill to the House.

The Hon. DAVID CLARKE [9.01 p.m.]: The Opposition does not oppose the Mental Health (Criminal Procedure) Amendment Bill. The bill results from recommendations contained in the Law Reform Commission Report 80, entitled "People with an Intellectual Disability and the Criminal Justice System". The recommendations were assessed by a committee set up specifically for that purpose, the interdepartmental committee on the Mental Health (Criminal Procedure) Act 1990 and cognate legislation, which comprised representatives of relevant bodies, including NSW Police, the Director of Public Prosecutions, the Department of Corrective Services, NSW Health, the Legal Aid Commission, the Department of Community Services and the Attorney General's Department. The purpose of the bill is to simplify procedures, improve operational efficiency and update the law as it applies to people suffering from a mental illness who appear before the courts. Greater recognition must be given to the fact that a considerable percentage of the community will, at some stage of their lives, suffer from mental illness.

The number of people with mental illness or intellectual disability appearing before our courts is considerable. The special issues arising from this fact need to be considered and factored into our legal system. The bill is part of that process, and makes a number of changes to the way in which our courts will deal with matters involving those with mental health problems who come before the courts. Changes are made to the method of operation of fitness hearings conducted in the Supreme Court and the District Court. The Mental Health (Criminal Procedure) Act 1990 is amended so that the court, not the Attorney General as is the present situation, will determine whether an inquiry should be conducted as to a person's fitness to be tried for an offence when the question is raised before arraignment. This will give the court the power before arraignment that it exercises already after arraignment, and will simplify greatly the procedure presently operating.

At present the question of whether a person is unfit to be tried for an offence is determined by a jury unless the person charged, with the consent of the prosecutor, elects otherwise. That process will be changed so that the judge, rather than a jury, will determine whether a person may be tried, and that will result in savings of time and cost. However, the accused person or a legal practitioner on behalf of the accused, or the prosecutor, will be able to elect to have the matter decided by a jury. Procedures are put in place to deal with a defendant when there are gaps in the law, such as in the case of a person who becomes fit while on bail. A number of amendments are made to section 32 of the Mental Health (Criminal Procedure) Act, which currently sets out the process by which magistrates can divert those with mental illness or developmental disability out of the criminal justice system and the prospect of punishment and, if necessary, into appropriate treatment or placement programs enforced by the courts for the purpose of rehabilitation, if considered appropriate.

However, for the purposes of section 32 a magistrate must consider the state of mind of the defendant at the time of the court appearance and not at the time of the commission of the offence. This situation can, and does, work unfairly against a defendant who has committed an offence during a time of medically recognised temporary or periodic mental illness or instability, but which is not present at the time of the court hearing. The magistrate is constrained in such circumstances to divert the defendant into alternative treatment options

available to those with problems associated with a mental illness. The bill will change that situation and give the magistrate the option of dealing with a defendant in the same way as the magistrate would deal with a defendant suffering from a mental condition at the time of the hearing. A further amendment will require a magistrate who exercises the options available pursuant to section 32 to state reasons why a defendant has or has not been dealt with under these available options.

The Act will be amended to enable a person appointed by a magistrate pursuant to an order under section 32 to assess the mental condition of, or provide treatment to, a defendant to report breaches of the order to defined officers to facilitate and ensure that failure by a defendant to comply with conditions will be reported, and to overcome concerns of service providers in respect of client confidentiality. Currently, section 34 of the Act requires the magistrate to disqualify himself or herself on the defendant's application from hearing the proceeding if the magistrate has refused to deal with the defendant under section 32 or section 33 of the Act. As this requirement has resulted in sham and spurious applications for the purpose of magistrate shopping and unnecessary court delays, the bill omits section 34. The common law provision that a magistrate should not hear matters if there would be actual bias or a reasonable apprehension of partiality or prejudice will remain.

As result of an amendment to the Act in 2003 the court can allow the conditional or unconditional release of a defendant found not guilty by reason of mental illness. The bill will amend that provision by introducing a public safety test so that the court must be satisfied that the safety of the person or a member of the public will not be endangered. An amendment will be made to the Mental Health Act 1990 to clarify that the Mental Health Review Tribunal does not have the power to recommend release of a person who is a forensic patient if the patient has been transferred to hospital while serving a sentence of imprisonment and has not finished serving a sentence or non-parole period for the offence. This will ensure that the defendant has at least completed the non-parole period part of the sentence. This is an important bill by virtue of, among other matters, the fact that so many people suffering from mental illness or serious intellectual disabilities appear before our criminal courts. Unfortunately, it would appear that their numbers are rising significantly.

The bill will provide more flexibility in dealing with those suffering from mental illness who come before our courts. For example, it will factor into the criminal justice system the fact that the mental illness status of a person before the courts can be extremely variable and can change dramatically during different stages of criminal proceedings. It is an unacceptable state of affairs that an increasing number of people with mental disorders are coming before our criminal courts as a direct consequence of the continuing lack of mental health services in New South Wales. For this deplorable state of affairs the State Government stands well and truly condemned. As I indicated at the beginning, the Opposition does not oppose the bill.

Reverend the Hon. Dr GORDON MOYES [9.08 p.m.]: I speak to the Criminal Procedure (Mental Health) Amendment Bill on behalf of the Christian Democratic Party. The purpose of the bill is to improve criminal procedures relating to persons affected by mental disorders by amending the Mental Health (Criminal Procedure) Act 1990. An amendment will be made also to the Mental Health Act to clarify powers of the Mental Health Review Tribunal. This is a significant problem in every Australian community. In 2004 the Australian Bureau of Statistics publication "Mental Health in Australia: A Snapshot" indicated that in 2001, 9.6 per cent of the population, or 1.8 million people, had a long-term mental or behavioural problem. Females are more likely than males to report long-term mental or behavioural problems—10 per cent of females compared with 8.5 per cent of males.

Mental and behavioural problems are most prevalent among those who are separated or divorced. Married persons report rates of mental and behavioural problems that are half that of people who live on their own. People who are in the most socioeconomically disadvantaged areas experience a higher prevalence of mental and behavioural problems than do those who live in the least socioeconomically disadvantaged areas. In other words, those who seem to have money also seem to have the resources to obtain the type of help they need when they recognise they are suffering from a mental illness.

In 1997 a national survey of mental health and wellbeing of 13,600 adults showed that one in five—in other words, 18 per cent of all the people in Australia—had a mental disorder during the 12 months prior to the survey. The prevalence of mental disorder generally decreases with age. Young adults in the 18 to 24 age group have the highest prevalence of mental disorders—27 per cent—but the rate declines steadily to 6.1 per cent for those aged 65 years and over. Men and women have a similar overall prevalence in rates of mental disorder. However, from the age of 35 onward, women are more likely to have mental disorders than men. As reported in the 2003 Australian Bureau of Statistics publication "National Health Survey: Mental Health in Australia", the most commonly reported mental and behavioural problems in 2001 were mood problems and anxiety-related

problems. In 2001, 317,000 males reported having severe anxiety-related problems and 535,000 females reported having severe anxiety-related problems.

Anxiety disorders include feelings of tension, distress, nervousness, panic disorder, agoraphobia, generalised anxiety disorder, obsessive-compulsive disorder and post-traumatic stress disorder. What implications do these statistics have? If the numbers of individuals suffering from mental health conditions are progressively increasing, there will need to be an increased focus on understanding and assisting such individuals. The issue of mental health will surface in many forms and will continue to demand attention on many different levels. This bill reflects the need to cater for the prevalence of mental illness on just one level: within the New South Wales correctional system. These amendments will simplify procedures, improve operational efficiency and currency of the legislation in regard to people who are suffering from a mental illness or an intellectual disability. It is well known that far too many people in correctional centres suffer from mental illness.

The Law Reform Commission handed down a report in 1996 entitled "People with an intellectual disability and the Criminal Justice System". A number of amendments in this bill arose as a result of that report. An interdepartmental committee formed in 2001 to consider the report comprised senior representatives from the legal, correctional, health and social welfare areas, and it supported the recommendations of this bill.

I will now canvass some of the main amendments to the Mental Health (Criminal Procedure) Act 1990. The bill amends section 32 of the Mental Health (Criminal Procedure) Act, which is the main section used by magistrates to channel those who are mentally ill out of the criminal justice system and, if required, into treatment or placement programs. I will not take the time of the House to indicate how few places there are to which these people might be sent for treatment.

By virtue of the amendment in item [17] of schedule 1, this bill will allow the court, under section 32, to deal with people who have suffered a mental illness at the time an offence is committed, but who are compliant by the time they come before the courts. That usually happens when an offender has not been taking medication at the time of the offence, but since arrest or confinement has undergone treatment, with the result that by the time he or she comes to the court, he or she is feeling what might be described as rather normal. Amendments to the Act will allow service providers—who provide treatment in accordance with an order to divert an offender under section 32—to report breaches to the Probation and Parole Service or to an officer of the Department of Juvenile Justice, as the case may require.

Honourable members might recall that for a number of years I served as a probation and parole officer. I have experienced first-hand the trials and tribulations faced, as well as caused, by many offenders who have mental ill health. I have an intimate understanding of the inherent difficulties faced by the Government in trying to treat prisoners who suffer from mental illness. By providing service providers with an outlet to report breaches to the Probation Parole Service, the proposed amendment to section 32 overcomes concerns held by service providers that they might be breaching a patient's confidentiality. It has always been a problem for probation and parole officers who understand the situation and frequently for priests and chaplains who feel they may be breaching a patient's confidentiality but must pass on information they have received—often for the sake of the welfare of the prisoner or detainee. Other amendments in the bill will provide that magistrates will be required to give reasons for making a decision in relation to whether or not to use section 32 or section 33. This bill will also allow magistrates to hear matters, even if they have previously refused an application under section 32 or section 33. The intention of such a provision will be to prevent magistrate shopping, which was referred to by a previous speaker.

Some amendments will concern fitness and special hearings in the District Court and Supreme Court. The bill provides that all fitness hearings will be by a judge sitting alone—a provision I applaud. Although this will result in the efficient disposal of fitness hearings—and efficiency is a vastly important consideration in case management—one person entirely exercising discretion in determining a person's fitness to plead may in some cases lead to an incorrect determination. Currently a jury must be empanelled to listen to all the proceedings. Although there will be a presumption that a special hearing will be by a judge alone, the accused, the accused's barrister or solicitor or the prosecution may nonetheless elect to choose a trial by jury.

Under the present system, an accused can elect to have a judge-alone special hearing only if the court is satisfied that the accused is fit and knows what he or she is doing. This raises the issue that in practice an accused can never elect because of his or her own mental state and cannot fully understand the implication of electing for a matter to be heard by a judge alone. The bill will remove the Attorney General from the process of

directing fitness hearings and special hearings. It has been said by the Government that involving the Attorney General in the process of directing hearings is solely a formality and that this view was based upon recommendations of the Director of Public Prosecutions [DPP]. Rather than involving the Attorney General, the issue should be one for determination by the court, relying on advice from the DPP and the Mental Health Review Tribunal. The bill will allow the DPP to discontinue proceedings following a finding of unfitness to be tried and will allow the DPP to amend the indictment after a finding of unfitness, with the leave of the court. That will allow the DPP to no bill a matter, or find that there is no indictment, or amend the indictment, which is what is done in other criminal proceedings.

In conclusion I mention the release of forensic patients by the court under section 39 of the Mental Health (Criminal Procedure) Act, which was amended in 2003. This amendment confirmed the court's discretion. After a finding of not guilty by reason of mental illness and pending a court's final order in relation to the person charged, the court is empowered to order the person's detention or release on such terms and conditions as the court considers appropriate. This amendment expressly overrode the famous 1999 case of *R v Stephens*, in which Justice Levine held that the use of the word "detain" meant that the court must order the detention of the person in some form of secure custody—that is, either in a gaol or in a hospital. Detention in a hospital or detention in custody is usually inappropriate when a person has an intellectual disability as distinguished from a mental illness, or in the case of a person who has recovered from his or her mental illness at the time that he or she appears before the court and who presents no danger to the community. This bill will give the court an alternative to ordering detention in a hospital or in custody and will allow a court to make orders in the same terms as the bail conditions with which the person may have complied for the duration of the trial.

The power of the court to release certain people will be improved in a number of ways by this bill. A public safety test is being added to the power of the court to release. Prior to ordering the release of a person under section 39, the court must be satisfied on the balance of probabilities that the safety of the person or any member of the public will not be seriously endangered by that person's release.

The court is given the power to remand a person in custody subject to the making of an order under new section 39. That provision is being made to enable the Minister for Health to take action when a person breaches a condition of an order under new section 39. Finally, the bill will make amendments to the Mental Health Act to clarify that the Mental Health Review Tribunal does not have the power to recommend release of a transferee who has not completed his or her non-parole period or fixed term. This will ensure the defendant has at least completed the non-parole period part of his or her sentence.

In a sermon that I delivered for the Sunday Night Live Series at Wesley Mission last Sunday night, I touched on the issue of the prevalence of mental health problems that currently pervade our society. However, mental and emotional brokenness is but one facet of the brokenness that individuals commonly face in their day-to-day lives. In my experience, I have discovered that healing over brokenness for the individual, for churches and for the scattered human family is one of the most important things we do. Among the most helpful psychologists I have studied is Dr Paul Tournier of Switzerland. One of our Wesley hospital psychiatrists studied under him in Switzerland. His book *The Whole Person In a Broken World* reinforces the good news that people can be made whole.

Throughout my life at Wesley Mission these last 27 years, through our hospitals for the mentally ill and all of our health and counselling services, we have sought to make broken people whole. I believe in using scripture in my preaching over television and radio every week to help people find wholeness in a broken world. This bill will help those charged with the task in courts and in the prison system to act to help those who are mentally ill. In society we seek to make people whole physically, socially, emotionally, psychiatrically, spiritually and sexually. For these reasons, I commend the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.21 p.m.]: The Mental Health (Criminal Procedure) Amendment Bill amends the Mental Health (Criminal Procedure) Act 1990 and the Mental Health Act 1990. The amendments to the principal Act remove the role of the Attorney General in relation to an inquiry held by the District Court or Supreme Court as to the fitness of a person to be tried for an offence and in relation to directing the holding of a special hearing in respect of a person who is not fit to be tried for an offence. In this regard, I refer to new sections 8, 10 and 20. Amendments to section 16 and section 17 give the court, the Mental Health Review Tribunal and the Director of Public Prosecutions certain functions in relation to these matters.

The Australian Democrats support the idea that the Attorney General should not be involved in such procedures. We believe that the judiciary should be kept separate from people in political office. The new

sections provide that a judge alone, rather than a jury, is to determine the question of a person's fitness to be tried for an offence. It also provides that a judge alone is to determine a special hearing unless the defendant, the defendant's representative or a prosecutor elects to have the matter determined by a jury. I had planned to move an amendment that the judge had to take medical evidence into account, but the Government has assured me that this would happen in any case. It is a general precedent that legislation does not tell judges where to get their advice or the procedures they must follow. Hence, I will not move an amendment of that nature.

New section 32 extends the options available to a magistrate when dealing with a person who is developmentally disabled or suffering from a mental illness or other mental condition at the time he or she committed an offence but was not a mentally ill person within the meaning of the Act. This bill requires a magistrate and certain authorised officers to state reasons for certain decisions made in proceedings where it is alleged that the defendant is such a person or a mentally ill person under new subsections (4A) and (4B) of section 32. This bill enables a person who, in accordance with an order of the magistrate, assesses the mental condition of or provides treatment to such a defendant to report breaches of the order to certain officers of the Probation and Parole Service, the Department of Juvenile Justice, or other person or body prescribed by the regulations.

I was going to suggest that the people doing this must report breaches. I am informed that they would like to have discretion because mandatory reporting has created a huge amount of work. For example, the Department of Community Services does not have the ability to use discretion, which has resulted in a great deal of reporting that the reporters may not have thought necessary. Of course, that transfers the decision to those who have less information on which to base a decision and so effectively creates more work. My information is that people who might report breaches would like to have discretion as to whether they report them. All things considered, such a report may prejudice the interests of the subject of the report and take attention away from the serious breaches. New section 34 requires a magistrate, on application of a defendant in proceedings, to disqualify himself or herself from continuing to hear the proceedings in certain circumstances.

The amendments to the Mental Health Act prevent the Mental Health Review Tribunal from recommending the release of a person who is a forensic patient if the person has been transferred to hospital while serving a sentence of imprisonment and has not finished serving the sentence or non-parole for the sentence if applicable. The Minister for Health, as the prescribed authority under the Mental Health Act, will be able to take action when the person breaches a condition of an order of a court under section 39 of the principal Act releasing a person from custody after a finding of not guilty by reason of mental illness.

The Select Committee on Mental Health, which I established, heard evidence that New South Wales is the only State in Australia and one of only a few in the western world that hospitalises forensic patients within the precincts of a correctional facility and under the authority of corrections staff. As part of that inquiry, I was horrified to see mentally ill patients in the gaol. It was like something out of a movie. There was a large central corridor and what could only be described as cages down each side—in other words, cubicles with one wall made of bars. It was not conducive to the mental health of any person, least of all one already suffering from a mental illness. Something must be done about this situation. It is good to know that a mental health hospital is being built. I hope that it will be modelled on the Thomas Embling Hospital in Victoria, which I saw as part of the committee inquiry. It was almost like a holiday camp, in the sense that the wall on one side was low so one could see over it. The wall was not visible because of the topography of the land. One looked out across a river to what had been the Fairfield Infectious Diseases Hospital precinct.

The Thomas Embling Hospital had airy and luxurious accommodation, almost like a holiday camp. There was a gym and so on. There were almost as many staff as there were patients. There was a genuine commitment that everybody who was in the hospital would, by dint of enthusiastic treatment and real commitment, take their place in society once their mental illness was cured or in remission. It was an inspiration. The high staff numbers meant that if a reluctant patient had to be moved it could be done without anyone being hurt. There is a danger of physical violence if the staffing level is low and a patient needs to be moved from one area to another. It makes the job far more dangerous and staff have a tendency to take strong action to avoid being hurt. That breeds a culture of violence that does not occur in a more highly staffed ward. The Thomas Embling Hospital in Victoria was an inspiration. It is a far cry from what we have in New South Wales. I hope that we will be emulating the Victorian practice shortly.

Under the Mental Health Act 1990 forensic patients are those who are found not guilty by reason of mental illness, those who are found unfit to plead and those imprisoned who are later found to be mentally ill and are transferred to hospital for treatment. Forensic patients are currently located within hospitals in the

community, minimum-medium secure units and correctional centres. The two main forensic mental health services are the Corrections Health Service and the Mental Health Review Tribunal [MHRT]. The MHRT is a quasi-judicial body with powers to review decisions, make orders and hear appeals about the treatment and care of people with a mental illness. The MHRT operates in both civil and forensic jurisdictions. In the forensic jurisdiction the MHRT has a number of responsibilities under the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990. When a person is found to be unfit to be tried for an offence, the MHRT must review the case and determine whether the person is likely to become fit for trial within the next 12 months.

The MHRT may need to consider also whether the person is suffering from a mental illness or from a mental condition for which treatment is available in a hospital. For those found not guilty by reason of mental illness, the MHRT must review the case and make recommendations to the Minister for Health concerning the person's detention, care and treatment, and whether it is appropriate to release the person either conditionally or unconditionally. The MHRT is required to review the case of each forensic patient every six months and make a recommendation to the Minister concerning the person's continued detention, care and treatment, or appropriateness for release. That recommendation may stipulate where the patient is to be held, under what kind of security, the range and kinds of leave privileges, if any, which can be enjoyed and, if the patient is on conditional release, the range and kinds of conditions which apply in order to allow the patient's continuing presence in the community.

This is a very important issue. A number of seminars have been conducted by plaintiff lawyers and other civil rights groups concerning the Minister for Health approving releases recommended by the MHRT. It is a slow process to get a review by the MHRT—they happen every six months. Even then they tend to err on the side of caution, which is obviously a problem. The Minister has been slow to implement the results of the MHRT. If the Minister recommends releases and if only one goes wrong, he would cop a great deal of political flack. The solution is that the decision should not be politically based; a Mental Health Review Tribunal should make and carry out those decisions without political interference or concern. Hopefully a mistake will not be made, but we must acknowledge that we do not live in a perfect world. Obviously the power to make a judgment should be given, with the imperative of a follow-up in the community.

I was disappointed that ministerial discretion for implementation of the MHRT is not provided for in the bill. I am informed by the Attorney General's Department that that will come in the review of the Mental Health Act, and this bill is under the purview of the Attorney General and hence has not impinged on the powers of the Minister for Health. Given that a number of people are still held in prison that the MHRT had recommended should be released, I would like the review of the Mental Health Act as quickly as possible so that matter can be corrected.

The number of hearings conducted by the MHRT concerning forensic patients has increased in the past decade from 185 forensic patient case reviews in 1991 to 481 in 2001. The total number of hearings conducted by the MHRT has tripled since 1991, with a total of 6,931 hearings in 2001. The number of forensic patients within the correctional system increased from 52 in 1991 to 259 in 2001. The Corrections Health Service informed the Select Committee on Mental Health that forensic patient numbers were projected to increase to about 400 by 2006. It can be seen that there is quite a serious problem, particularly with regard to the civil rights of those with a mental illness. An increase in forensic patient numbers would necessitate increased legal representation. The MHRT submission to the inquiry expressed concern, and this was expressed also by consumer organisations, that there was a shortage of legal representation available from the Mental Health Advocacy Service [MHAS] of the Legal Aid Commission.

Legal representation for involuntarily detained and treated people is a right provided for by the Mental Health Act. Currently that right cannot be effectively ensured. Not only is the MHAS stretched beyond all limits but it has had to use agents whose knowledge of mental health issues and legislation can be lacking. The MHRT asserted that responsibility for community supervision of forensic patients released into the community was not clear. It stated:

Currently, the Tribunal not only undertakes required statutory reviews of forensic patients ... but also provides what amounts to unofficial supervision of these patients ... once they are conditionally released into the community. This "supervision" is undertaken on what is largely an ad hoc and informal basis.

The MHRT informed the committee also that there is no formal agreement between the MHRT in the various groups of people involved in the supervision of released patients. There is no formal understanding regarding what is expected of supervisors or the line of responsibility that should be followed when things do not go

according to plan. When a forensic patient breaches his release conditions it is usual for the patient to be sent to a secure setting such as Long Bay prison hospital. That process and response was described as draconian by the MHRT. The MHRT concluded that it should not continue to perform the supervision function unless it is accorded formal legal recognition and allocation of adequate resources. The Select Committee on Mental Health supported extending the MHRT's purview to alleviate the fragmented approach to the management of released forensic patients. My experience of the Long Bay prison hospital would back that recommendation. The committee's report stated:

Recommendation 108

That the Minister for Health implement a formal agreement with the Mental Health Review Tribunal for the supervision and management of released forensic patients, including:

- clarification of the responsibility of clinical services in the monitoring and reporting of clinical supervision, including the role of the Mental Health Review Tribunal in monitoring progress, and
- clarification of formal procedures for managing breaches of released conditions.

The Government has taken on this recommendation. However, ongoing monitoring to help patients still falls short. The Legislation Review Committee considered trespasses on personal rights and liberties, as provided for in section 8A (1) (b) (i) of the Legislation Review Act, and the right to a fair trial, in proposed section 11 of the principal Act. The committee commented that proposed section 11 provides that a judge alone is to determine the question of a person's fitness to be tried for an offence. It is arguable that the removal of the right to a hearing before a jury may impinge upon a defendant's right to a fair trial. However, the New South Wales Law Reform Commission noted that fitness hearings involved primarily technical matters and, therefore, are most suitable for a hearing by a judge alone, particularly as they are not designed to be adversarial and no decisions are made about a person's criminal liability.

The Law Reform Commission noted that hearings by a judge alone may be quicker, less formal and less confusing or stressful for the defendant, particularly if experts for both sides agree that the defendant is clearly unfit to be tried. The commission recommended that fitness hearings should always be heard by a judge alone. The Legislation Review Committee referred to the Parliament the question of whether removing the right to have a fitness hearing held before a jury trespasses unduly on the right to a fair trial. I support this bill, which is a step in the right direction. I certainly look forward to the day when the Mental Health Act is amended so that the discretion of the Minister to not implement the decisions of the Mental Health Review Tribunal is removed.

All these fine words are not worth much if there are not sufficient resources to implement good mental health. I certainly believe that community-based mental health services are still highly deficient. It is extremely worrying to find the Government still no longer funding community-based services in Western Sydney, and closing the mental health centre in Cremorne and moving it to the Royal North Shore Hospital. Many mentally ill people are frightened to go to hospital; they do not want medicalisation—they want services in the community. The geographic location of services is extremely important in their attitude to undergoing services. Although the Government is talking about what it is doing about mental health in the community, it still has to resource those services. When I hear stories of the Government closing those community mental health facilities, that is very worrying and detracts from the Government's credibility.

It is one thing to pass fine laws but it is another to have the wherewithal to implement them. The Richmond report, which states that de-institutionalisation is the best way forward for mental health, was disgracefully underresourced and resulted in people being cast out onto the street. While there were plans to accommodate those who were immediately de-institutionalised the functions of those institutions were not replicated, resulting in the shambles that we see now. There has been an improvement in the rhetoric and an improvement in accountability and there has been a minor increase in resources but the problem in New South Wales is still severe. We must establish whether we need to follow up this inquiry into mental health. Has there been a serious attempt to improve this situation and has that afforded any benefits to those who are working at the coalface? If we are committed to mental health this legislation is a good start. As I said earlier, changes to the Mental Health Act are required but we must resource our services on the ground.

Ms LEE RHIANNON [9.41 p.m.]: The Greens support the Mental Health (Criminal Procedure) Amendment Bill, which is a good piece of legislation. However, this review of mental health is just a start. We must also tackle the problems confronting people in prisons. Prisoners have been punished as a result of their deprivation of liberty but that does not mean they should suffer mental health consequences because of a lack of assistance. This legislation is a small step towards resolving those problems. Prisoners are less likely to have their mental health needs recognised and to receive psychiatric help or treatment. We know that prisoners have a

higher risk of suicide. The Minister, in his second reading speech, said that 20 per cent of people in society would suffer a mental illness at some time in their lives. The figures show that 40 per cent of all prisoners have some form of mental health problems and they are up to seven times more likely to commit suicide than are people in the community.

Prisoners are more susceptible during the remand period. Despite the size of the problem, prison services have had little guidance on mental health issues, including mental health promotion and the reduction of harm that might arise from imprisonment. In addition, prison staff dealing with disturbed or otherwise difficult prisoners might experience workplace-induced stress, with implications for their mental and physical wellbeing and, in turn, the good management of our prisons. The subject of mental health in prisons deserves to be given urgent priority. Imprisonment has an adverse effect on the mental health of a significant number of prisoners, and the prevalence of mental health in all prisons is high. I believe this is relevant to our society. Great abuse is heaped on prisoners in this place but we must remember that one day the majority of people in prison will become members of our society.

We must recognise that prisoners have rights. It would be healthier for society if their mental health issues were addressed. The majority of prisoners come from the most disadvantaged groups in society. Many have histories of damaging experiences in childhood such as physical, sexual or emotional abuse or neglect. Usually they have a low educational attainment and that obviously leads to impaired employment prospects. Often there has been experimentation with or addiction to drugs or alcohol, which might be a factor in their crimes. There are mental disorders, suicide attempts and self-harm and, in some cases, extremely traumatic events, such as torture in their countries of origin, which attributed to their problems.

This is a worldwide problem. A review carried out by the World Health Organisation established the prevalence of mental disorders among male prisoners in some European countries. The review suggested that, on average, 32 per cent of all prisoners suffered from a mental disorder, excluding substance misuse, while the inclusion of substance misusers raised the rate to 63 per cent. Suicide rates were also much higher in prison than in the general community, although the prevalence of mental disorders among the prison population clearly was a contributory factor. Many prison systems lack the necessary number of appropriately trained staff, and screening procedures could be improved. Clearly, problems could be decreased with extra staff, training programs, improved referral possibilities, and the spreading of good practice and learning from other prison systems that have dealt effectively with this issue. I refer next to the critical mental health problems of prisoners. The use of imprisonment must be kept to a minimum, consistent with the needs of the wider community to see crime punished effectively and community safety assured.

I emphasise that the issue of mental health is being dealt with in this piece of legislation, which is a step forward. However, the issue of the mental health of prisoners must be considered within the wider imprisonment issue. When imprisonment is kept to a minimum it is the best way to treat the mental health of prisoners. However, when imprisonment is imposed, loss of freedom constitutes the punishment and the health and wellbeing of prisoners must not be compromised. I believe we often lose sight of those issues in this State. Corrective Services must do more to ensure the positive mental health of our prisoners. By that I do not mean just the absence of mental illness; I also mean positively addressing the issue of mental health so it is maintained and so that people do not endure the damaging consequences of mental health problems.

Mental health is important for everyone, not only those who have been diagnosed as suffering from a mental disorder. It underpins health and wellbeing. While it may be difficult to contemplate the existence of positive mental health among prisoners, prisons should provide an opportunity for prisoners to take advantage of the opportunities available to them for personal development without harming themselves or others. If that is to happen prisoners must feel safe. They must be provided with insight into their offending behaviour and be treated with respect. I often find that prisoners are ridiculed in this place, which I think is regrettable. It is essential for individuals and society to remember that prisoners will be taking their place in society once again. Under sufficient pressure most people would be vulnerable to a degree of mental ill health or to distress that would be sufficient to detract from their enjoyment of life and their general wellbeing. I made that comment because it is important for us all to recognise that mental health problems are something to which we can all succumb. Mental health is an issue that can affect us all. When conditions are as harsh as they are in prison obviously it is more likely.

The possibilities for fulfilment and enrichment in life are much more readily apparent to those who enjoy a positive sense of mental, emotional and social wellbeing. Clearly, if the mental health of prisoners is addressed it will assist in the rehabilitation of prisoners. Practical ways of enhancing the emotional resilience

and strength of a community, which has been shown to be effective in prisons and in assisting the mental wellbeing of prisoners, include regular physical exercise; regular participation in education, work or training; access to the arts; anti-bullying strategies; prevention of depression; cognitive behavioural procedures; spiritual reflection, which could include mediation or yoga; the acquisition of skills, utilising prisoners' resources, for example, for peer support; and mental health promotional activities, such as education, regular work, the arts, and exercise. Surely those are small things to ask for prisoners in the twenty-first century. Our penal colony history must be left far behind us. We can improve a great deal by taking into account some of the suggestions I just mentioned that come from the report of the World Health Organisation. I believe it would not be enormously expensive and it would build on the small step that has been taken in this legislation.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.50 p.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.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 7 to 9 postponed on motion by the Hon. Tony Kelly.

MINE SAFETY (COST RECOVERY) BILL

Second Reading

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.51 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This government has consistently promoted the goal of zero deaths or serious injuries in the mining industry in New South Wales.

Its commitment to this goal was first highlighted when it undertook an independent review into mine safety in 1996, and accepted all the review's recommendations to improve mine safety.

In 1998, this commitment was further emphasised with the acceptance of all the safety recommendations from the inquiry which followed the Gretley coal mine disaster.

The outcome of these two reviews has led to great changes in the way mining is conducted in this state.

Safety has become a central aspect of what mining is about in New South Wales.

It is about the building of a culture of safety so that our fifteen thousand mine workers come home safely at the end of each day's work.

The good work of employers, workers and government has seen a significant drop in the numbers of deaths and rates of injury in recent years.

It is gratifying to report these improvements—however, this government is still determined to have a mining industry that is free of fatalities and serious injuries.

To meet this goal, the government asked the former Premier, the Honourable Neville Wran, QC, to review the progress we are making on mine safety.

The government also asked him to see what else needed to be done to have a truly safe industry.

The review acknowledged the significant improvement in the industry's safety performance.

At the same time, it made clear that the journey to a totally safe mining industry is not yet complete.

To map out that journey, the review made thirty one wide-ranging recommendations.

The review recommended that the role of the Mine Safety Advisory Council be enhanced.

The Mine Safety Advisory Council is constituted under the *Mining Act 1992*. It is made up of representatives from industry, unions and government.

The review calls for independent occupational health and safety experts to be included on the Council, and for top level representation from its present core groups.

The review recommends that the Council should have the tools and resources to drive the new reform agenda for mine safety.

Further, it calls for the Council take forward examination and progression of mine health and safety issues.

These recommendations on the Mine Safety Advisory Council are pivotal, with the potential for far-reaching improvements to mine safety.

The government has accepted the Wran review recommendations.

A second key review recommendation is to form a Board of Inquiry. The Board is to examine the issue of safety enforcement policy and implementation.

It will look at the adequacy of the current enforcement policies.

Further, it will develop a strategic approach to enforcement with a view to long term improvement in industry health and safety performance.

The Board of Inquiry will also consider the role, resourcing and training of the safety Inspectorate of the Department of Primary Industries, and look at the sanctions available to it.

Implementing these recommendations will lead to significant changes in the mine safety framework of New South Wales.

Other significant recommendations from the review, such as those relating to fatigue and hours of work, are to be referred to the Mine Safety Advisory Council to consider and progress.

The Department of Primary Industries is also specifically tasked with implementing several recommendations. These relate to the preparation and implementation of safety and health Regulations, and the benchmarking and improvement of safety data systems to international best practice.

They also include the Department being given responsibility for identifying, monitoring and reporting on mine health hazards.

As well, it will undertake monitoring of contractor management and a major audit of its performance and compliance with new legislation.

The review recommends that the Inspectorate also regularly monitor and audit the implementation of industry's mine risk management plans and safety management systems.

An innovative part of this work will be a requirement to consult with the workforce during that process.

This government will ensure that the review recommendations are addressed.

The review calls for a levy on mining industry employers to provide the means to implement the recommendations.

The Mine Safety (Cost Recovery) Bill 2005 enacts legislation for a levy to cover the costs of implementing the recommendations.

As well as covering these costs, the levy will cover the Department of Primary Industries' costs in relation to regulating mine safety.

Other industries in New South Wales currently pay all the costs of their workplace safety regulation through the WorkCover scheme.

This proposed safety levy means that the mining industry will pay its way like other industries.

The cost of regulating mine safety and implementing the Wran recommendations is estimated to be at least thirteen and a half million dollars per year.

Until now, the government has provided the majority of the financial resources to support the mine safety functions of the Department of Primary Industries.

We know the community expects that industry will strive to improve the safety record of every mine site.

However, the community also expects that industry will pay its share of the cost of regulating and improving mine safety.

The mining industry is in a good position to pay the levy. In 2004-2005, the value of mineral production in New South Wales is expected to be more than \$9 billion.

The levy is estimated to add around a mere eleven cents a tonne to costs in producing coal. To demonstrate this in terms of its impact on coal profits, let me give you some figures from 2004-2005.

Average free-on-board cash costs at New South Wales coal mines are between forty and forty five dollars a tonne.

In comparison, the average price for export thermal coal prices in 2004-2005 was a little over sixty one dollars a tonne. For export hard coking coal the price was over eighty-three dollars a tonne.

Clearly the mining industry can afford to pay the costs of regulating and improving mine safety.

The safety levy will apply to the mining, oil, gas and extractive industries.

The levy will be modelled on the other levies in place in the workers' compensation system.

The Dust Diseases Levy is one of these, a practical and sensible model which can be applied across the mining industry.

This levy is currently collected from employers in relevant industry sectors through WorkCover Is scheme agents. It is also paid by some self-insurers.

The Dust Diseases Levy is charged as a small percentage of an employer's wages bill. The mine safety levy will be based on this model, with details to be settled with industry.

The levy will begin operation in the first half of 2006, once these administrative details have been settled.

A further point of similarity with the Dust Diseases Levy is the levy collection system.

The Dust Diseases Levy is added to relevant workers' compensation premiums and collected when these premiums are paid.

A similar system will be adapted and used across the mining industry by WorkCover. Coal Mines Insurance, a separate specialised workers' compensation insurer, will implement a similar system for the coal industry.

By using these well established systems, this new levy will be collected efficiently and effectively and will minimise extra costs.

It is intended that the WorkCover and Coal Mines Insurance collection system will use existing methodologies for defining who is an employer and who is a worker. If there are changes in this system, levy arrangements will be adjusted accordingly.

I now turn to the Bill itself.

The mining industry can be assured that the money it contributes to mine safety regulation will be used only for that purpose.

In Clause 5 of the bill, a Mine Safety Fund is proposed, into which all levies will be paid.

Clause 7 of the bill sets out that funds will only be spent on the Department of Primary Industries' regulatory mine safety functions and the costs associated with them.

The Director-General may, under Clause 8, invest the monies in the fund.

These provisions ensure transparency and accountability in how government manages the fund.

Industry also needs to know, Madam President, how the levy amount is decided each year.

In Clause 9, the bill provides for the Director-General of the Department of Primary Industries to estimate the Department's mine safety costs each year.

That estimate will take into account any surplus or deficit from the previous year, and adjustment will be made accordingly to the total to be levied.

This estimate will be passed to the Mine Safety Advisory Council, which will have a high-level oversight role in advising the Minister.

The Council will provide policy and strategic advice on the mine safety functions of the Department of Primary industries.

The Council's representation makes it a good sounding board for advice to the Minister.

The Council will report to the Minister on the levy estimate, and the Minister will be responsible for approving the amount to be raised.

Under Clause 10 of the bill, the Director-General will determine the insurers and classes of insurers who will make contributions to the levy fund.

The Director-General will also determine the contributions to be made by these insurers or classes of insurers, and when they are to be paid.

These provisions will make it clear for those raising the levy what is expected of them.

WorkCover will play an important part in raising the levy through its established premium collection systems.

Clause 12 of the bill allows for arrangements to be made with WorkCover. These arrangements cover such issues as exchange of information on practical matters, contributions from specified insurers, notification of amounts to self insurers and debt recovery.

The bill includes proper safeguards in how industry's levy contributions are assessed each year and how the levy funds are managed.

This is responsible legislation for a very important purpose. I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.51 p.m.]: I lead for the Opposition in debate on the Mine Safety (Cost Recovery) Bill, which many in the industry regard as a contentious bill. I state from the outset that the Opposition will not oppose the bill. However, we have a number of concerns about the imposition and administration of the mine safety levy to fund the mine safety regulatory activities of the New South Wales Department of Primary Industries. Before I discuss those concerns in greater detail I indicate that the Opposition and the mining industry in general are extremely supportive of any measures that improve mine safety in New South Wales. Safety is paramount.

New South Wales is fortunate to have one of the lowest rates of mining fatalities and serious injuries in the world. There has not been a death in the coal industry for approximately 18 months—and let us hope that trend continues. In recent years there has been a significant decrease in the number of deaths and serious injuries in the New South Wales mining industry. According to the New South Wales Department of Primary Industries "Mine Safety Advisory Council: Industry Performance Measures" quarterly report of March 2005, the lost time injury frequency rate in the New South Wales coalmining industry fell steadily from 39 in 1998-99 to 22 in 2003-04. Over the same period the rate for the metals mining and extractive—quarry—industries oscillated around a lower rate of 8.46 in 1998-99 and 11.5 in 2003-04.

In respect of serious injuries in the New South Wales mining industry, fewer workers than ever are sustaining serious workplace injuries. In the coalmining industry the number fell from 61 in 1997-98 to 23 in 2003-04. Given the current high level of mining activity in New South Wales, that is a pretty good result. In the metals mining and extractive industries the number fell from 42 to 7. As to fatalities, eight deaths occurred in the New South Wales mining industry over the four years from 2001 to 2004. That is an average rate of 0.07. This rate is based on the number of fatalities per million employee hours worked. These losses, though tragic, compare favourably with the 28 deaths that occurred during the preceding four years from 1997 to 2000, at an average rate of 0.19. But, as we know, any death is one too many.

As I said, the Opposition supports achieving zero deaths and serious injuries in the mining industry. To achieve this end we supported the Government's March 2005 review of mine safety in New South Wales. The review made 31 wide-ranging recommendations to improve mine safety in this State and all but one have been adopted. Included in the review's recommendations was the formation of a board of inquiry by the Minister under the Coal Mines Regulation Act 1982 to examine the issue of enforcement policy and the processes used to implement that policy. The review also recommended that the Mine Safety Advisory Council be reconstituted, strengthened and enhanced to take forward the future examination and progression of mine safety and health issues. The review recommended that the Mine Safety Advisory Council be resourced appropriately to carry out its charter and work program.

The review favoured the imposition of what the Minister in the other place—I suspect it is also in the second reading speech that was incorporated in this place—described as a small percentage levy. We are not sure what that means, but it adds up to \$13.5 million that will be collected from coal companies to provide financial independence for the Mine Safety Advisory Council; we will work out what that figure comprises. It also gives the Mine Safety Advisory Council the capacity to engage independent advisory consultants as required. The review stated that this levy might also be used to help provide the funds necessary to enhance inspectorial resources and mine safety initiatives in New South Wales. At the same time the Government would need to give consideration to an appropriate levy system on the metalliferous and extractive sectors of the industry.

The bill provides for the raising of a levy through the workers compensation system from mining employers across New South Wales to cover the cost of mine safety regulation and the implementation of the Wran safety review. The estimated cost of covering the two activities in 2006-07 is \$13.5 million, as I said earlier, with an amount to be added for the administration of the levy. The Government has indicated that the levy will amount to less than 1 per cent of the wages bill of the mining industry.

Frankly, this is just a blatant money grab from the mining industry by a greedy, debt-ridden Labor Government. The New South Wales Government has already recovered an extra \$396 million from the coal industry in mining royalties this financial year to help fund schools, hospitals, police, a desalination plant and anything else in New South Wales that the Government puts its mind to. That is in addition to the environmental levies, lease fees and high workers compensation premiums paid by the coal industry to Coal Mines Insurance, not to mention the mining companies' community development funds that are invested in local communities. The Government is treating this industry as a milch cow. The Westpac Rescue Helicopter, local hospitals and sporting clubs are all major beneficiaries of the mining companies' community development funds. By lumbering the industry with yet another levy, the New South Wales Government is removing a proportion of the funds that mining companies would otherwise invest in their local communities. It is a bit like what it is doing to registered clubs in this State.

The money raised by registered clubs went into sporting organisations, charities and the local community. But the Government has made it more difficult for clubs to raise funds and has put the taxes it collects from clubs into consolidated revenue to be used, for example, for a desalination plant. This Labor Government is unashamedly bleeding dry the New South Wales mining industry and is treating it as a milch cow. Some might say that is okay because the mining industry is going well at the moment. But we all know that the mining industry has peaks and troughs, and at the moment it is on a peak. The coal royalty levy rises and falls, depending on the price, but this levy does not. Wages do not go down, and the industry is based on wages. The cost will remain static and could be a significant factor in causing the loss of employment in the future, but certainly not at the moment. This levy, which is faulty, could cause real problems in the future for some of the marginal struggling companies.

A key recommendation of the Wran review has been that responsibility for the regulation of mine health and safety issues be brought together under the Department of Primary Industries, rather than by separate agencies, as is currently the case. The Opposition certainly supports that recommendation but shares the concern of the industry that the Government is not removing duplications and inefficiencies of Coal Services Pty Ltd in providing the same functions through coalmines insurance, coal services health, statistical services, dust diseases and health inspectors. Instead of cutting red tape and inefficiencies, the Government, in a style that seems to be truly its own, is forcing the industry to pay twice for mine safety regulations—because it has already paid for them. The bill is testament to the fact that the Government is heading towards a user-pays system for industries it considers are able to afford their own regulation.

It is a significant concern, from a public policy point of view, that the Government is relying on an industry to fund the functions and services of its own departments. The Department of Mining, which is now part of the Department of Primary Industries, has always provided inspectors to fulfil those services. Under this bill the Government will charge a new levy for something that has always been provided by the department. It is little wonder that the industry is concerned. Frankly, this bill creates a dangerous precedent. Separate taxes may be introduced for each industry sector, depending on the Government's perception of industry's capacity to fund its own regulation.

The Hon. Tony Catanzariti wants to be careful, because the Government will certainly look at the rich primary industries in the Riverina funding their own inspections, as is happening in the coal industry. It is doing it through SafeFood, in dairy, in fisheries and in other areas. It is ironic that the mine safety levy, which will collect \$13.55 million from the mining industry for the 2006-07 financial year, comes shortly after \$149 million was ripped from the budget of the department of the Minister for Primary Industries. The Minister put up his hands and let the Treasurer rip his budget apart, and he will now allow the stakeholders, whom he is meant to represent, to cover the cost of what the fiscal fiend ripped out of his budget.

The Opposition is concerned that the details of the mine safety levy will not be settled with industry until after this bill is passed. During the second reading of this bill, the Government indicated that the mine safety levy will be modelled on other levies in place in the workers compensation system and will be charged as a small percentage—whatever that means—of an employer's wage bill. According to the Government's briefing note, the levy will amount to less than 1 per cent of the wages bill of the mining industry. There is no mechanism in the legislation to cap the levy to ensure industry's future capacity to pay it and that it does not spiral out of control. The Opposition has searched everywhere in this legislation and the only thing we can see is that the director general of the Department of Primary Industries can vary the amount of money, but nowhere is there an actual cap on that amount.

The Opposition will seek a commitment from the Minister in his reply that the percentage will not increase. It was estimated that it is currently at 1 per cent to collect the mine safety levy of \$13.55 million. The

Opposition wants a guarantee that the current amount will not increase. Division 2, proposed sections 9 and 10, gives the director general of the Department of Primary Industries unfettered power to determine an estimated amount of revenue collected from the mining industry to be contributed to the fund when contributions are to be paid, and the manner in which they are to be paid. The bill does not stipulate what that amount is and whether it will remain at that rate. This Minister might have a handle on his director general, but a future director general might be out of control. The industry and the Opposition want a degree of certainty about the amount of the levy. It is entirely unacceptable that the funding of the Department of Primary Industries mine safety activities is entirely at the discretion of the director general.

The Government has provided no indication as to whether the \$13.55 million will increase or decrease after this financial year, or how future contributions will be formulated. While it has indicated that the director general's annual estimate will be passed on to the Mine Safety Advisory Council, which has a high-level oversight role in advising the Minister who approves this estimate, the Opposition remains concerned that there is no other independent body or process where the contributions, expenditure and investment of the levy collected by the Mine Safety Fund, can be further reviewed and scrutinised. The Government's justification for the introduction of a mine safety levy is that it will bring the mining industry into line with all other industries that contribute to the cost of safety regulation through WorkCover.

What the Government has failed to mention is that the coal industry has not received the same workers compensation reforms as other industries. They have not had the caps the Government put on other parts of workers compensation reform. The coal industry pays much higher workers compensation premiums and has higher liabilities than most other industries. It is the concern of both the Opposition and industry that the legislation lacks accountability and transparency. The Government is forcing the mining industry to pay for the cost of its mine safety reforms and the mine safety regulatory activities of the Department of Primary Industries [DPI], yet there is no capacity for the mining industry to audit the functions of the DPI to ensure that industry funds collected through the mine safety levy are being used efficiently.

If the regulatory functions of the DPI are effective and work safety in the mining industry is being improved, it stands to reason that workers compensation premiums for the industry will decrease. Essentially this means that less money will be available to fund mine safety activities within the Department of Mineral Resources. The Opposition is concerned that the Government has a vested interest in keeping premiums high to enable funding of the department's mine safety regulatory functions to continue—similar to its costly, inefficient WorkCover scheme. Another justification the Government has given for the imposition of the mine safety levy on industry is that it is in a good position to pay.

That may be the case at that moment, but, as I indicated earlier, it is not always the case. Although the New South Wales mining industry certainly is benefiting from a boom in the mineral resources industry, it is unlikely that it will last forever. The Opposition has significant concerns that if there is a considerable downturn in the minerals sector the capacity for smaller mining companies, which are major employers in regional areas, will experience great difficulty in contributing to the Government's mine safety levy. Unlike the ad valorem coal loyalty scheme payments, which are based on the market price of coal and, therefore, fluctuate in line with commodity prices, the levy, being a percentage of a wages bill, most likely will increase over time.

Another concern that has been brought to the attention of the Opposition by industry is that definitions of "employee" and "employer" in the legislation are not used to extend coverage of generous workers compensation provisions available to the mining industry to people who are not considered employees within the mining industry. The effect of doing so would bring more people into the Coal Mines Insurance Scheme and add significant costs to mining industry employers. This is dreadful legislation. It is forcing the mining industry to pay for the functions, services and wages of the Department of Primary Industries without any accountability or transparency whatsoever. The Opposition will move an amendment at the Committee stage to ensure that money paid from the Mine Safety Fund is used for mine safety purposes only and not for the purposes of any other Act. As it is constructed it can be used for any other Act and it is not beyond the realms of possibility that the Minister would consider doing that. I will seek a commitment from the Minister about the cost of the levy. The Opposition does not oppose the Mine Safety (Cost Recovery) Bill, but we will move an amendment in Committee.

Debate adjourned on motion by the Hon. Peter Primrose.

TABLING OF PAPERS

The Hon. Ian Macdonald tabled the following papers:

Annual Reports (Departments) Act 1985—Reports for the year ended the 30 June 2005:

Department of Corrective Services
Department of Juvenile Justice
Department of Lands
New South Wales Fire Brigades
State Emergency Service

Ordered to be printed.

ADJOURNMENT

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.15 p.m.]: I move:

That this House do now adjourn.

AUSTRALIAN WORKPLACE AGREEMENTS

The Hon. GREG DONNELLY [10.15 p.m.]: Recently I visited Coffs Harbour to speak to retail employees who have experienced first-hand the harsh impact of Australian workplace agreements [AWAs] on wages and working conditions. The employees, who work at a store at Park Beach Plaza Shopping Centre, have asked me expressly not to name them or the store for fear of reprisal by the employer. I can say that the store is a franchise business and the owner has other retail interests on the North Coast. The owner took over the store about three months ago. Existing employees were told that they were required to sign an AWA—no choice, no option, no negotiation; just sign the AWA. I have spoken to various employees and I have been informed that the threats were very specific and clear. One employee was told, "Sign the AWA or you won't get paid." Another was told, "If you don't sign the AWA you will be fired." Employers in Coffs Harbour are getting away with this threatening and intimidating behaviour. Sadly, employees are succumbing to the pressure and doing one of two things: either signing the AWAs or leaving their jobs.

Let us look at this AWA that employees are required to sign. The hourly rate in the AWA is exactly the same as the award rate of pay. Under the AWA long service leave is included in the hourly rate of pay without one cent of compensation for losing the right to long service leave. Under the AWA overtime rates are included in the hourly rate of pay without one cent of compensation for the right to overtime rates. Under the AWA evening penalty rates are included in the hourly rate of pay without one cent of compensation for losing the right to evening penalty rights. Under the AWA weekend penalty rates are included in the hourly rate of pay without one cent of compensation for losing the right to weekend penalty rates. Under the AWA instead of being paid public holiday penalty rates of double time and a half, employees get an additional \$2.50 per hour. Under the AWA an employee must work more than six hours instead of the current five hours before getting a meal break.

All of these and other award benefits and entitlements disappear and not one cent more is included in the hourly rate of pay. The AWA rate is exactly the same as the award rate. The whole crass exercise has been all about reducing the pay and working conditions of these Coffs Harbour employees—ordinary working people, most of them young and female—who now find that they are much worse off because of the AWA. It is hardly surprising that of the 13 people employed in the store when the new owner took over, 6 have already resigned. Of course, this suits the employer perfectly because all new employees will be signed on to the AWA when they commence. This AWA was introduced under the current Commonwealth industrial relations legislation. Heaven help us when the new industrial legislation commences and the no-disadvantage test is abolished. The cold, harsh reality is that future workers will not have their wages and working conditions underpinned by an award.

Very little will be guaranteed under the proposed new laws. We now find that even the so-called protected-by-law rights are not what they seem. For example, workers are not guaranteed four weeks annual leave per year. The new legislation enables employees to buy out two weeks and the employer does not have to pay any compensation for the buy-out. The retail employees in Coffs Harbour got absolutely nothing for the buy-out of their long service leave. What about the protected-by-law 38-hour week? The bill provides for an average of 38 hours per week, not 38 hours per week. Furthermore, an employee can be required to work reasonable additional hours on top of the 38 hours without the payment of any additional loading or penalty rates—an example of further deception.

Do honourable members know that every North Coast Nationals member of Parliament, State and Federal, fully supports the changes? This is a disgrace, and employees on the North Coast will not forget that The Nationals support a reduction in wages and working conditions. The workers and voters on the North Coast of New South Wales resent being fitted up in this way. WorkChoices? What rot! It is a great choice all right—take it or leave it. Thank you, John, and thank you North Coast Nationals.

DOMESTIC VIOLENCE

The Hon. ROBYN PARKER [10.20 p.m.]: Fear is a topic that has been on everyone's lips and is often discussed in the media lately. There has been much debate about terrorism—indeed, parliaments have been recalled and new legislation has been introduced to discuss terrorism. Fear has changed our way of life. Consequently we think about violence in terms of terrorism. Rarely—sadly, all too frequently—do we think about the violence that takes place every day in many households in Australia. All too often people forget about that violence and terrorism and the fear that it engenders in women who live with domestic violence every day.

We live in a country in which violence against women and children is rife, but it is hidden. Violence against women does not make the news every night, and unfortunately we do not make new laws to address it. Violence against women may be invisible, but its impact is not lessened and the number of women and children admitted to hospital are not reduced. In the past few weeks children have died as a result of domestic violence. However, Friday 25 November was the day when violence against women was acknowledged.

White Ribbon Day is the day on which it is declared that violence against women is never okay. White Ribbon Day is part of a program that examines violence against women as an issue concerning men. After all, it is men's wives, mothers, sisters, daughters and friends whose lives are limited by violence and abuse. It is an issue for men because, as community leaders and decision-makers, men play a key role in helping to prevent violence against women. Men can, and should, speak out, step up and intervene when their male friends, or even people they do not know, insult or attack women.

Unless everyone in the community stands up and says that violence against women is not okay, unless we all take an active role and unless we all declare that violence against women is not okay, we may as well lend a hand to the perpetrators of this violence. If we do nothing to prevent violence against women we might as well lend a hand in committing such acts of violence. The White Ribbon Day campaign for putting an end to violence against women was sponsored by Saatchi and Saatchi and organised by the United Nations Development Fund for Women [UNIFEM]. The campaign involved a number of men making statements and standing up to be counted.

I was particularly impressed this year by Warren Mundine, a Federal Australian Labor Party member of Parliament, who commented on violence in the indigenous community. He declared his view that violence in indigenous communities needs to be stopped and he discouraged people from taking a passive role rather than acknowledging the existence of domestic violence. The wearing of a white ribbon constitutes a pledge not to commit or condone, or remain silent about, violence against women and children. White Ribbon Day marks 16 days of activism, and 25 November marks the commencement of that period of activism. There are other days of acknowledgement within that period, such as World AIDS Day on 1 December, International Day of People with a Disability on 3 December, and Human Rights Day on 10 December.

I would like to commend a local Port Stephens group run by Susan Ware, from the Port Stephens Women's Information and Counselling Centre, who ran a number of programs in schools to educate students to take a stand against violence. The Tomaree Together Say No to Violence Program enables children to contribute art work and poems about violence in conjunction with a number of other organisations. The group manned a stall in the Salamander Bay shopping centre to give people the opportunity to find out more about what they should do if they find themselves in a violent situation. A number of other groups in the community have committed to White Ribbon Day also. Unfortunately the New South Wales Government is not committing enough to the cause. We are not doing enough to stop violence against women, which is prevalent in our society. I support White Ribbon Day. I call on everybody to take a more vigilant approach to combating violence against women.

PITTWATER BY-ELECTION

The Hon. DAVID OLDFIELD [10.25 p.m.]: It should not be lost on anyone that the northern beaches area, that is, Manly to Palm Beach, is known as the insular peninsula. The area is geographically and culturally

unique. It is populated by people who actively demonstrate a strong local identity and a wariness of outsiders. I was born on the northern beaches, went to school there, surfed there, dived there and opened my first business there. My wife, Lisa, has lived most of her life at Pittwater. Her parents and many of our friends live in Pittwater. We often stay overnight there. We shop there, we dine there, we go boating there and we appreciate the unique character of the area and its people. When we have children we are likely to return to Pittwater because we would like our children to grow up there.

Last Saturday's swing against the Liberal Party has caused all manner of pundits to interpret the result in ways that assist their personal agendas. Some of the explanations offered are so inaccurate and blatantly political that they are ridiculous. John Howard was not an issue in the Pittwater by-election, nor was his industrial relations bill. Nor, for that matter, was Peter Debnam's leadership. As much as members of the Labor Party try to point the finger of blame at Peter Debnam, the fact is that the locals did not see Peter Debnam's leadership as a reason for voting against the Liberals. Much was made of anger over what was purported to be the treatment of John Brogden, but the number of votes lost for that reason has been overstated.

Of course there were other issues in the minds of some, but the outstanding critical factor in identifying what made a swing into a loss is found by understanding the locals. The candidate was not a local. In a general election without such an extraordinary lead-up, that may not have been fatal. The impact created in the electorate of Pittwater by not having a local candidate is not just opinion but is historically validated by past electoral results. In the 1995 election the electorate of Pittwater was held by Jim Longley. Although the Liberals lost government, Longley still polled more than 60 per cent of the primary vote. Following the Coalition Government's defeat, Jim Longley decided to retire. The subsequent by-election was held in 1996.

The preselection was won by local media personality, Jon Harker, but circumstances caused Mr Harker to stand down. A controversial preselection was very speedily put together and held at Liberal Party headquarters. John Brogden, the golden-haired boy of the Liberal Party, was not from anywhere near Pittwater, and, in the minds of many, had been imposed on the locals. It seems to have been forgotten that in the ensuing by-election John Brogden, the seemingly nice young man but very much the candidate who was seen as a foreigner, lost nearly a massive 11 per cent of the primary vote and was almost pushed to preferences. While some of that may have been attributed to a by-election that Pittwater did not want, the message should have been loud and clear: We want a local to represent us.

It is appropriate to note that John Brogden was ultimately accepted by the locals and that in following elections the Liberal Party vote recovered. In last Saturday's by-election locals viewed the Liberal candidate as even more of a foreigner than John Brogden had been considered in 1996. People were angry about the candidate, who could not even vote for himself. The efforts to try to make him fit in were, at best, a source of laughter at local dinner parties and, at worst, considered offensive. A *Manly Daily* photograph of the candidate, Mr Nicolaou—looking awkward as a lady led him around on a horse during an attempt to gain support from local riding enthusiasts—discredited him and he became a local joke. A whispering campaign even circulated that the candidate had tried to take a dip in the surf and had to be rescued. Matters of this nature, as well as posters of Mr Nicolaou which attempted to localise him by using a beach background, were received by locals with a mixture of contempt and hilarity.

I know from my time in the Liberal Party that the electorate of Pittwater was regarded as one that could fall to a strong local independent, yet this knowledge was ignored. The Christian Democratic Party vote was three times what it normally would be and it has been stated that those preferences would have been directed to the Liberals had the candidate been a local. The successful candidate has stated that he would not even have run had the Liberals preselected a local. One thing is certain: Regardless of any other issue, a local Liberal would have comfortably held the seat of Pittwater at last Saturday's by-election.

WORLD EAT RIGHT EXERCISE RIGHT DAY

The Hon. AMANDA FAZIO [10.30 p.m.]: On 13 November 2005 I had the pleasure of attending the launch of World Eat Right Exercise Right Day at the Grand Apollo Function Centre at Burwood. Dr Kan Kapoor, a general practitioner from the inner western suburbs of Sydney, developed the concept of World Eat Right Exercise Right Day. The launch was designed to celebrate and support World Eat Right Exercise Right Day, which will be held each year on 20 November. The aim of World Eat Right Exercise Right Day is to focus the attention of people on the need to adopt more healthy lifestyles; that is, to eat right and exercise right. The day was launched by the Hon. John Hatzistergos, Minister for Health. In attendance were Paul McLeay, Parliamentary Secretary Assisting the Minister for Health, Virginia Judge, member for Strathfield, in whose electorate the launch took place, and Angela D'Amore, member for Drummoyne.

The menu for the meal that was served at the launch showed the calories for each dish so that everyone was aware of their calorie intake. Many participants commented most favourably on that idea. At a time when so many people in the community, ranging from politicians to health professionals, are talking about how best to address the problems of obesity that are confronting nearly all developed countries, this is a local initiative aimed at raising awareness of simple and inexpensive ways that individuals can adopt to help solve this global problem. For the first time we are facing the prospect of children having shorter life expectancies than those of their parents, solely attributable to the growing problem of obesity.

The New South Wales Government acknowledged the seriousness of the problem in 2002 when the Childhood Obesity Summit was held from Tuesday 10 September to Thursday 12 September at Parliament House. The summit was co-ordinated by the Department of Health. The summit brought together health experts, parliamentary representatives, industry, parents, teachers and children to develop practical solutions to the problem of childhood obesity. Issues discussed included food sales and advertising, exercising, community and school programs and education campaigns. The Government has placed a great deal of importance on ensuring that healthy options are available in schools by improving the healthiness of the foods and drinks available in schools across New South Wales. In the 10-year period from 1985 to 1995 the level of the combined overweight and obese categories in Australia more than doubled, while the level of obesity tripled in all age groups and for both sexes. These are concerning trends, partly because of the health effects on children but also because of the effects that potential lifelong obesity will have on their life expectancy and quality of life.

The summit passed a resolution calling for stronger measures to ensure the sale of healthier foods in school canteens, which the Government has acted upon. A recent NSW Health-funded research study entitled "Food advertising on Australian television: the extent of children's exposure" analysed television Australia-wide to determine the extent of the impact of advertising of unhealthy foods to children. If children watch the average amount of television each day they are exposed to at least 11 advertisements each day for foods high in fat, salt or sugar. The least advertised food products aimed at children are fruit and vegetables, at 0.1 per cent. There is clear evidence of a strong link between obesity and its increased prevalence in recent years and the consumption of junk food that is high in fat, salt or sugar.

Just look at the trend in fast food franchises offering healthier menu options. This is a direct response to the concerns in the community about the unhealthy nature of traditional fast food offerings. The State Government continues to provide resources and research to tackle this problem, but individuals also need to act to help themselves and their families confront this issue. This is, of course, a global problem. A relevant article in today's United Kingdom *Daily Telegraph* states:

In the Industrial Revolution, British children suffered notoriously from rickets. Today, unimaginably greater affluence has afflicted their successors with obesity. Whatever definitions are used, its incidence is growing.

And now, two liver specialists and the clinical director of the National Obesity Forum have warned that excessive consumption of fatty foods is producing isolated instances among teenagers of cirrhosis of the liver. It is an ominous indication of a worsening problem.

It is because of this global problem that we need local initiatives, such as that of Dr Kan Kapoor, to ensure that the public is aware of inexpensive and easy ways that they can help themselves and family members to fight off this epidemic in public health. As part of Dr Kapoor's Eat Right Exercise Right regime, he is promoting the concept of healthy talks, where people get together to talk about ways in which they can improve their health by eating more healthily and exercising. I commend Dr Kan Kapoor for initiating this most important day. I look forward to next year and in future years supporting his initiative, which I hope will spread from the inner western suburbs of Sydney across Australia and ultimately become a global event.

MONARO ELECTORATE AND PORT MAQUARIE ELECTORATE SERVICES AND INFRASTRUCTURE

The Hon. MELINDA PAVEY [10.35 p.m.]: This year, 2005, has been a very disappointing year for the electors of Monaro and Port Macquarie in the delivery of State government services and infrastructure. As New South Wales goes into budget deficit—a deficit that the Premier and Minister for Finance have been petrified to announce and have been trying to hide until the quiet season—many infrastructure projects in Monaro and Port Macquarie are piling up and are not being delivered. In an article in today's *Daily Telegraph* Mr Oakeshott, the member for Port Macquarie, is reported as saying that the Independents were now an organised group who met once a week. Well, it is a shame that that organised group, that unofficial party, is not delivering services to the electorates that they purport to represent.

Port Macquarie is still waiting for the Lake Cathie primary school, and it has been waiting for many years. There is still no light at the end of the tunnel, because State government policy is that no new schools are needed on the North Coast. The area health service is in absolute crisis, because no-one in the service knows for certain whether they will have a job tomorrow. The laundry of the local hospital is being serviced outside the area. Morale in the hospital and area health service is at an all-time low. People are not doing their work because they are more worried about their future.

But most disappointing to the people of Port Macquarie is the denial of funding by the State Labor Government for the Oxley Highway. Former Minister Scully gave a commitment to that highway prior to the 2003 State election. It was one of the big ticket items promoted by the Independent member, but no funding has been forthcoming. The only money provided for the Oxley Highway was for planning. It has been to the detriment of the community that good money has not been allocated to fix the dangerous and winding sections of that road.

Last week I asked the Minister for Health about the future of the rural medical school at Port Macquarie, the construction of which is some 18 months behind its counterpart in Coffs Harbour. Coffs Harbour's rural medical school, funded and organised by the University of New England, has been up and running for about six months. However, in Port Macquarie there has been stalling and delays because the NSW Health bureaucracy has not made a decision on the land.

The Hon. Amanda Fazio: That was Chris Crawford.

The Hon. MELINDA PAVEY: No, it was not. The construction of the rural medical school is of great concern. In Monaro there has been a lack of attention and a lack of passionate representation by the Government's yes man, Mr Steve Whan. It is very disappointing to the people of Monaro. There are only 32 days remaining in which construction of the Queanbeyan Base Hospital can commence, because Steve Whan promised that construction would start in 2005—a promise he made to match a pre-election commitment of the Liberal-National Coalition. However, construction will not begin by the end of the year. So that is yet another broken promise. In the 2½ years since that promise was made only \$3.5 million has been allocated for the hospital—and that was this financial year—while \$8 million has been allocated for an office block development in Queanbeyan to house New South Wales government bureaucrats.

The indecision over the site of the hospital has been a delaying tactic by the Government and has incensed the local community. Construction of that hospital will not commence until 2006, and it certainly will not be finished before the next State election. The people of Monaro will not be very happy about that, and Steve Whan will feel their wrath at the ballot box.

Last week the Leader of The Nationals, Andrew Stoner, and I met with the Queanbeyan Development Council and the mayor of Queanbeyan, Frank Pangallo, to discuss infrastructure issues affecting roads and water. All development and progress in Queanbeyan has ceased in the Jerrabomberra area because the Australian Capital Territory Government has made no decision about water.

It also affects the residents of Yass. Therefore, we call on the two State Labor administrations to get their act together and make some decisions. The northern truck bypass for Queanbeyan is finally coming to completion, helped by Federal funds. There is also concern about the Kings Highway, on which six people died in 2004 and two people have died so far this year. We also need some future decision and resolution on the Queanbeyan ring road. [*Time expired.*]

POLITICAL REPRESENTATION

The Hon. JON JENKINS [10.40 p.m.]: There seems to be some expectation that I am going to use my contribution to this adjournment motion to dump on people, but that is not the case. However, I am going to use the opportunity to reflect on my experience as an ordinary bloke with a wife, two children, a dog and a mortgage, thrown from a completely apolitical setting into political life as a complete political novice. The average voters expect their politicians to be what they would like to be: open, honest, making hard decisions when necessary, and always being straight with people. When one enters politics many of the norms of social behaviour seem to be inverted, or perhaps even sometimes perverted. Being straight with people is more often considered naïve or a weakness, and viewed with suspicion, whereas being devious is considered the height of political skill.

When I first entered Parliament I suppose I could have been called conservative, leaning slightly towards an agrarian socialist view of life—probably closer to The Nationals than anything else. However, I am slowly but relentlessly being turned from a conservative person into a believer of somewhat more radical philosophies. This House's original function was for the elders, free from the encumbrances of financial and career imperatives, to contemplate the laws of the plebs in the lower House. The word "Senate" comes from the Latin root "senex", which means "old man". In my view this House does not seem to serve its original function, and that is partly why the Hon. Michael Egan said he wanted it abolished. For that reason I, too, support its abolition. There is an additional reason: This House provides a mechanism whereby those with extreme political agendas can have an effect outside their representation in the community.

I wonder if politicians realise the extent of the anger that is present in the community towards politicians and the outright disparagement with which we are thought of in the community. How can we become so disconnected from the average person? To me such feelings in the community are palpable; I can feel it when I talk to people. What happens to people when they become politicians? Do we suddenly lose those basic features that make us human? I know from talking to many members of this House that they understand what those values are, but how can they subvert those values to the almighty bloody party?

Things have happened recently that have caused me angst and spurred this speech. In an attack on me regarding the cross-city tunnel recently it was intimated that I had taken no interest or part in the committee system of this House. Yet the very first thing I tried to do when I entered this House was to become a part of the committee system. Those who made such accusations were the very same members who conspired to prevent me from being a part of the committee system. Since that time I have substituted for other members on other committees, including on a very successful disability services committee chaired by the Hon. Patricia Forsythe. Apart from the fact that I am also a member of General Purpose Standing Committee No. 3, I have sat in on many inquiries, including that which related to the Orange Grove designer outlet centre. I have also been granted permission by many of committees, to the consternation of some, I might add, to ask questions of Ministers during numerous inquiries. Only today was a sort of belated half apology forthcoming for this misleading of the House.

Several other incidents in the House that have arisen over the cross-city tunnel have also caused me to have a somewhat cathartic moment. For members to yell out in this Chamber that I have "sold my vote", knowing full well that members of the press gallery, public, parliamentary staff and anyone listening on the webcasts can hear what is being said, is wrong by any basic civilised standards. I am told that such behaviour is just politics and not to worry about it too much, but from where I come, usually only one person is left standing after accusations of thief or liar are made. Conversely, members on the Government benches take my fundamental support of the right of the duly elected government to govern as some sort of tacit approval—it is not! I resent the way people's basic democratic rights are horse traded behind the closed doors of Governor Macquarie Tower for Greens preferences at the ballot box. This is just wrong, but we seem to accept this as the normal way of doing politics. I do not agree with it and I do not think the general public agree with it either.

Before I decided to take on the responsibility of a member of Parliament I made myself a promise that I would never sell my vote regardless of what was offered in return. To this day I have kept that promise and I intend in the time I have remaining as a member of this place to honour that undertaking. Hopefully the results of recent elections, such as at Pittwater and overseas in New Zealand and Germany, indicate an ushering in of a fundamental change to party politics whereby transparency and true consultation are the norm and Ministers are selected from all parties based on their experience and skill rather than some party loyalties. Government by party line is as archaic and outdated as rule by blood line was in the time of King John and the Magna Carta. I hope that in my short time as a member of this House I will contribute in some small way to its eventual demise.

Motion agreed to.

The House adjourned at 10.45 p.m. until Wednesday 30 November 2005 at 11.00 a.m.
