LEGISLATIVE COUNCIL

Thursday 1 December 2005

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

The Clerk of the Parliaments offered the Prayers.

NEWCASTLE TRANSPORT PLAN

Production of Documents: Order

Motion by the Hon. Robyn Parker agreed to:

That, under standing order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Minister for Transport or the Department of Transport:

(a) the Government's Newcastle Transport Plan in response to the recommendations of the Lower Hunter Working Group, and

(b) any document which records or refers to the production of documents as a result of this order of the House.

TABLING OF PAPERS NOT ORDERED TO BE PRINTED

The Hon. John Hatzistergos tabled, pursuant to Standing Order 59, a list of all papers tabled in the previous month and not ordered to be printed.

COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

Report

The Hon. Dr Peter Wong, on behalf of the Chair, tabled report No. 11/53, entitled "Comparison of Various Models of the Regulation of Traditional Chinese Medicine, August/September 2005", dated November 2005.

PETITIONS

Breast Screening Funding

Petition requesting funding to ensure access to breast screening services for women aged 40 to 79 years and to reverse falling participation rates, received from **the Hon. Robyn Parker**.

Fairfield City Councillor Racial Vilification Allegation

Petition requesting an inquiry into the statements of Fairfield City Councillor Lawrence White in relation to Asian residents of Cabramatta, received from **the Hon. Dr Peter Wong**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 1 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

Ms LEE RHIANNON [11.21 a.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 191 outside the Order of Precedence, relating to the usage of the Cross-city Tunnel, be called on forthwith.

The usage of the cross-city tunnel is a matter of urgency. The figures on the cross-city tunnel clearly need to be in the public domain. Both the Premier and the Minister made that promise on a number of occasions but the figures are still not available. I urge honourable members to support the motion.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 18

Mr Breen	Miss Gardiner	Ms Rhiannon
Dr Chesterfield-Evans	Mr Gay	Dr Wong
Mr Clarke	Ms Hale	*Tellers,*
Mr Cohen	Mr Lynn	Mr Colless
Ms Cusack	Ms Parker	Mr Harwin
Mrs Forsythe	Mrs Pavey	
Mr Gallacher	Mr Pearce	

Noes, 19

Ms Burnswoods	Mr Hatzistergos	Ms Robertson
Mr Catanzariti	Mr Jenkins	Ms Sharpe
Mr Costa	Mr Kelly	Mr Tsang
Mr Della Bosca	Mr Macdonald	
Mr Donnelly	Reverend Dr Moyes	*Tellers,*
Ms Fazio	Reverend Nile	Mr Primrose
Ms Griffin	Mr Obeid	Mr West

Pair

Mr Ryan	Mr Roozendaal

Question resolved in the negative.

Motion negatived.

RESIDENTIAL PARKS AMENDMENT (STATUTORY REVIEW) 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) [11.29 a.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

I have great pleasure in introducing the Residential Parks Amendment (Statutory Review) Bill. The bill demonstrates that New South Wales continues to lead the rest of Australia in laws applying to this unusual but significant form of community housing. Recent figures suggest that there may be up to 30,000 people residing in 900 or so parks around the State. Most who live in residential parks—which used to be known as caravan parks, mobile home villages and relocatable home estates—have unique housing arrangements in that they live in their own homes on rented parcels of land. Park residents live in what are effectively small, self-contained communities, where the actions and attitudes of their fellow residents and the park manager can have a profound effect on their quality of life. The special nature of these living arrangements calls for well-targeted laws, and that is what the Residential Parks Act, which began on 1 March 1999, provides. The amendments in the bill I am introducing today will further improve what are already the country's most extensive and responsive laws for people who make their homes in residential parks, and for the operators of such establishments.

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

Leave granted.

The Bill arises as a result of the Government's broad consultation with stakeholders and a statutory 5-year review of the Act's operation in practice.

The Office of Fair Trading prepared and released a Discussion Paper for consultation purposes and over 260 submissions were received in response.

A report on the review was tabled in Parliament by my colleague the Honourable Reba Meagher MP on 7 December 2004.

A number of issues have emerged in the residential park landscape that makes some refinement to the legislation necessary.

We have seen, for example, an escalation of the value of the land on which many parks, particularly those in desirable coastal locations, are situated. This has led to some park owners seriously considering their redevelopment opportunities.

The uncertainty over the future of some parks has flowed on to many residents who have understandably raised concerns over their housing arrangements should their park close.

Another issue is that uncertainty over the safety of travel abroad has encouraged many Australians to travel and holiday within our own country, and this has led to some park operators wanting to focus more on short stay tourist accommodation in place of long stay arrangements.

The residential park way of life is an attractive one to many in our community who appreciate the relative affordability, the sense of community, the support of their neighbours, and the relaxed informal lifestyle.

To others, the reality of living in a park is that it is the only housing choice they have due to their financial and personal situation.

The Government wants to encourage the continuation of residential parks as an accommodation option and part of the housing mix for the people of NSW.

But it is no easy task to balance the perfectly reasonable expectation by residents that they will have an appropriate level of security and consumer protection, with the equally acceptable aspirations of park owners to operate a profitable business.

At the outset, I want to stress that by introducing this Bill the Government does not intend to take away or unreasonably restrict the rights of park owners to make commercial decisions about remaining in the industry. That is their choice, as it is of any other provider of accommodation services.

Park owners will continue to be able to use their own land for other lawfully permissible purposes. However, it is the Government's clear intention to ensure that residents are properly and adequately afforded with consumer rights that are tailored to their unique living arrangements, as well as being protected against unfair and unjust treatment.

I know that the former Fair Trading Ministers Reba Meagher and John Hatzistergos met with a number of park resident and park industry interest groups before and after the tabling of the Review report.

The current Fair Trading Minister, Diane Beamer also met with some of these groups and has personally visited parks to see first-hand for herself the circumstances under which park residents and park managers co-exist.

Indeed in her former capacity as the Assistant Minister for Infrastructure and Planning, the planning and land use challenges affecting residential parks around NSW were prominent in Minister Beamer's responsibilities, and she understands the various angles that each of the respective interest groups are coming from.

The Government is committed to ensuring that legislation relating to residential parks results in fair and equitable outcomes for park residents and owners, and the measures contained in this Bill achieve this.

I will now give an overview of the provisions contained in the Bill.

They fall into three main areas:

- firstly, there are changes strengthening the provisions dealing with the events that take place before a resident enters a park,
- secondly there are modifications to the day to day relationship between the park owner and the resident during the tenancy;
- finally there are changes to the mechanisms that apply when the time comes for the tenancy to be brought to an end.

Turning to the first of these areas, the review of the legislation confirmed that many residents have not been given adequate information about their occupation arrangements before they moved in.

Of great concern is that some of the information, or lack of information, may in some cases have been deliberately misleading.

Many residents stated that they believed they were tricked into thinking they could stay in their park for as long as they liked in a "retirement" style of living, only to find that the park owner later sought to terminate their agreement so that the park could be emptied for another type of use.

Residents were able to produce advertisements that did not show some park owners in a good light in terms of the accuracy of the information they provided.

Some advertisements created the illusion that the resident would be buying a home and land, with no attempt made to clarify the fact that the land is actually occupied under a tenancy which could come to an end at any time in the future.

The Bill takes a number of steps to minimise these practices, and to improve the relevance and accuracy of information required to be given to prospective residents upfront.

Among the changes are those that will:

- Require any advertising to spell out the fact that the land is subject to a tenancy and will not be owned by the resident—failure to put this information in the advertisement will attract a penalty of up to $2,200
- Increase the penalty for failing to give incoming residents all the necessary information to a maximum of $2,200
- Provide any additional clauses to those contained in the standard tenancy agreement on a separate sheet of paper—so that additional clauses cannot be hidden amongst the detail of the tenancy agreement
- Give incoming residents additional information on the following:
- whether there have been any development applications over the previous 5 years
- whether termination notices have been given to any residents on the grounds of a redevelopment
- whether the park is on Crown land
- what the electricity and gas arrangements are and
- whether homes can be sold while located in the park
- Significantly, it will also now be an offence for park owners not to give residents a written tenancy agreement.

These improvements will apply from the beginning of park tenancies, and will reap benefits in the future by providing residents with a much clearer understanding of the basis of the occupancy arrangements they are about to enter into.

The next group of changes that I wish to summarise covers the relationship between the park owner and the resident once a tenancy agreement begins—these are the provisions which govern the day to day relationships between park owners and residents.

Several provisions contained within the Bill seek to iron out or clarify operational issues in parks, and to streamline the manner in which they are dealt with.

Some of the more significant changes include:

- Park liaison committees will no longer be a mandatory obligation upon a park owner where there are 20 or more residents. But, if a majority of residents want to retain a committee then this will still be possible.
- Internal residents' committees are to be formally recognised, as is the case under the Retirement Villages Act, and they are to be entitled to meet without hindrance in suitable facilities within the park.
- Park Disputes Committees, which were originally designed to deal with park rule matters, will also be dispensed with.
- Instead, residents will now be able to take any park rule disputes directly to the Consumer, Trader and Tenancy Tribunal. In addition, individual residents will be able to pursue park rule matters in the Tribunal rather than a minimum of 5 residents from 5 different sites as currently applies.
- Residents will only be prevented from selling their homes within the park if both the disclosure material and the tenancy agreement itself so specifies. To ensure that public land policies are not unduly affected, these changes will not apply to Crown or National Parks and Wildlife lands.
- Where residents are permitted to sell their homes, park owners will not be entitled to restrict the use of "for sale" signs that are affixed to the homes.
- The penalties for illegally interfering with residents trying to sell their homes to make a new life for themselves will be increased from $220 to $2,200.
- Where residents find that their only option is to sell their home to the park owner, but agreement cannot be reached on a fair price, the Tribunal will have the jurisdiction to break the deadlock and provide an independent valuation with the assistance of qualified valuers.

- To give park owners some relief from small rent increases being challenged through the Tribunal as being excessive, rent increases that do not exceed the Consumer Price Index for the period involved will only be subject to review where it can be established that a service or facility has been withdrawn or reduced.

This will give park owners and residents more certainty and will discourage ambit or over-inflated rent increases, and will save the cost of the Tribunal dealing with mass rent increase applications over relatively minor amounts.

- Billing and charging arrangements for electricity, water and gas supply will be made more consistent and more closely aligned to utility services provided to members of the community living in conventional housing in the same locality.

The supply of electricity to park residents has particularly been a bone of contention, as residents often receive a far smaller capacity of supply than do other members of the community, yet they pay the same rate.

Through a new Customer Services Standard, park residents will pay for any supply charges—as distinct from consumption charges—proportionately to the capacity provided by the park owner. In practice, for residents this will mean that if they receive less than 30 amps of power to their home, they will only pay 50% of the normal availability charge. If they receive 30 to 59 amps they will pay 70% of the availability charge.

Park owners will be obligated to agree to the terms of the Customer Service Standards, which have been developed through extensive consultation including with the Energy and Water Ombudsman's Office.

- Certain clauses which would have the effect of severely disadvantaging residents will be prohibited from inclusion in tenancy agreements. The prohibited clauses include:

- those that would allow park owners to allocate rent payments by residents to any charges that they see fit

- appointment of the park owner or manager as the sole selling agent for the resident's home

- indemnification of the park owner against legitimate and lawful claims by the resident

- requirements for residents to only use trades and services persons nominated by the park owner.

- And finally, penalties for offences will be increased across the board to assist in gaining compliance with the laws.

I would like to give a little more attention to two major initiatives in this Bill connected to the day to day operation of residential parks. They concern:

- the appointment of an administrator, when things have gone horribly wrong with the management of a park, and

- access arrangements to the park by emergency services when residents need them.

The provisions in the Bill for the appointment of an administrator to take over the running of a park would, I hope, rarely have to be used. But it is one of the more important reforms contained in this package of amendments.

The need for the provision has arisen through the irresponsible and inexcusable actions of a small minority of park owners who have demonstrated they will go to any length to make the lives of residents miserable.

Some park owners can make life for residents in a park virtually unbearable: through intimidation and harassment, gross neglect of residents' health and safety, continual refusal to comply with orders of the Consumer, Trader and Tenancy Tribunal or to pay penalties that have been imposed upon them.

The Government is not prepared to stand by and allow this appalling behaviour to continue. While they may be few in number, the devastation that disreputable park owners can wreak on the lives of residents, many of whom are in the autumn of their lives, cannot be underestimated.

When the management of a park has reached the abysmal level that I have just described, the Commissioner for Fair Trading will be given authority to apply to the Supreme Court for the appointment of an administrator.

The object will be to have the offending operator replaced by a substitute park operator with the necessary skill, business acumen, and an appropriate regard for the welfare of residents.

A similar provision currently applies under the NSW *Retirement Villages Act.*

We want residents to be afforded common decency and respect, rather than have to live in an environment threatening to their health or safety, and this provision will enable the Commissioner to step in and initiate the necessary action through the Supreme Court.

I want to assure reputable park operators that they have absolutely nothing to fear from this new provision: it will only have effect on the rogue park owners who have grossly neglected or are grossly neglecting their responsibilities to residents, and it will only be a measure of last resort.

Judicial oversight of this provision via the Supreme Court will ensure the highest level of procedural fairness and natural justice.

The other innovation in the Bill that I wanted to refer to at this stage relates to access by emergency services to parks when needed by residents. At present there are some hurdles for residents to overcome should they need to call for help in an emergency.

There have been actual examples of residents whose spouse has suffered a heart attack and a call to triple 0 has been made. When the ambulance has reached the gate, which is usually secure, entry has not been immediately possible. Upon entry, it is sometimes hard for ambulance officers to find the resident's home in question due to inadequate maps or signage.

In these situations, every second is vital.

The amendments aim to minimise delays for all emergency services including fire, state emergency service, police, ambulance and even home care-type services.

The Bill places an obligation on park owners to devise emergency access arrangements appropriate for their park, in consultation with the residents and local emergency services.

There is obviously no single simple solution that fits every park and every situation, but park owners will not be able to ignore their responsibilities to residents in this area.

They will have to take all reasonable steps to ensure that residents in their park, like the rest of us in the community, have ready access to emergency services when the time and occasion arises.

The third and final group of reforms contained in this Bill relate to the termination mechanisms where the park owner wishes to redevelop his or her establishment, and to the compensation payable to residents as a consequence.

This is the area that has changed so much since the legislation came into effect in March 1999.

As I commented earlier, the redevelopment environment has altered somewhat in the intervening years and some park owners are weighing up whether to remain in the business of providing permanent residents with home sites.

It is clear that pressures have built up and the process for dealing with park owners seeking to regain vacant possession of their land for redevelopment purposes, and the subsequent payment of compensation to affected residents, needs to be improved.

I make no apologies for the fact that the refinements in the provisions relating to termination of tenancy and access to compensation will strengthen the position for park residents.

This is only right and just, as they have the most to lose in a park redevelopment scenario.

Not only do they facing losing their home but also their community, and their longstanding neighbours and friends.

They also have the challenge of making new housing arrangements, either by moving their dwelling to another park—if they can find a suitable and available site—or by trying to sell their home independently and then finding suitable alternative accommodation.

The cost of moving modern moveable dwellings is substantial and the relocation logistics can be a tricky exercise. It can be an extremely traumatic and difficult time for people who may well have expected to see out their remaining days in the park.

It is essential that if the park owner has legitimate reasons to seek closure of his or her park for redevelopment purposes, residents are granted the most dignified and helpful process as is possible in such circumstances.

I will now outline the fundamental changes to the mechanism to apply to the regaining of possession where the reason is for redevelopment or change of use.

To ensure a transparent and fair process, particularly for park residents, park owners will now have to obtain development approval from the appropriate authorities before such a notice of termination can be validly given.

Too many times in the past, park residents have been hoodwinked into vacating their homes on the premise of a vague redevelopment proposal or rumour that has never actually been formally put to the local council. This will no longer be possible.

Before the process of bringing the resident's agreement to an end even begins, this fundamental step of obtaining a development approval will have to be taken.

In instances where development approval is not required, park owners will need to seek approval from the Consumer, Trader and Tenancy Tribunal to authorise the issuing of a change of use termination notice after being satisfied that the grounds are bona fide.

The second big change will see the minimum period of notice that has to be given to a resident when a park redevelopment is proposed, increased from 180 days (6 months) to a minimum of 12 months.

This will give residents more reasonable time to make what are, after all, quite significant changes to their lives.

However, as is the case under the present law I must stress that no resident is required to vacate their home even after the 12 months has expired, until an order of possession is made by the Consumer, Trader and Tenancy Tribunal. If it is found by the Tribunal that no development approval has been obtained for the so-called park redevelopment, then an order of possession will not be granted.

The notice of termination itself will make it clear that residents have the right to remain in possession until the Tribunal orders them to leave, and to be paid compensation by the park owner in line with the requirements of the legislation.

A new obligation will be placed upon the park owner, at the time of issuing the notice of termination, to also notify the Department of Housing.

This will help to trigger the Park Closure Protocol which the Department of Housing and other Government agencies have developed, so that eligible residents affected can be assisted with coordinated Government services.

The other major reforms to the termination provisions of the legislation in the redevelopment context relate to the payment of compensation to residents.

Access to compensation is a justified right of residents who have not only lost their place of abode but have also had their lives uprooted.

Park residents who live in their own homes on rented sites and who have their tenancies terminated have had access to compensation for over 10 years now, and this right will continue but with some necessary improvements.

Compensation is currently payable to assist residents in moving their homes to another location and having services reconnected. The amount of compensation payable is assessed by the Consumer, Trader and Tenancy Tribunal.

A number of refinements to the compensation provisions are contained in the Bill, and I will quickly highlight what these amendments will achieve.

Firstly, residents are to be entitled to get their compensation before they leave. In fact they will have the right to remain in the park until they get it. This is a significant improvement for residents, as the cost of moving a modern moveable dwelling is substantial and may amount to $20,000 or more.

It is essential that park residents, most of whom are older members of the community and almost certainly on limited incomes, are paid upfront to lessen the financial burden on them.

Secondly, the criteria are to be broadened so that residents can be compensated for the relocation of a home to another park up to 500 kilometres away, which is an increase from the current 300 kilometres.

This recognises that park sites are becoming scarcer and some residents may well wish to look a little further for their alternative housing arrangements.

This will reduce the likelihood that they will be out of pocket after their move.

I want to point out that residents are eligible for compensation even if their home is not to be moved to another park, but to some other parcel of land, for instance in a country town or rural area where it may be permissible to locate such a dwelling and where the former park residents may have some connections.

This gives some residents additional options to consider and other possibilities when thinking about their changed housing arrangements if they are leaving their park.

Thirdly, the Bill provides for residents being able to go to the Tribunal more than once over compensation, should there be a dispute over the adequacy of any amount awarded to them.

This will allow for compensation to be 'topped-up' should the Tribunal's original estimate be proven to be insufficient due to higher than expected costs of relocation and connection to services or, for instance, repairs to any damage to the home that occurs during transportation.

The final item in this Bill connected with the termination and compensation process deals with the scenario of the resident selling their home to the park owner in lieu of moving it somewhere else. I referred to this situation earlier.

Sometimes residents are faced with a very difficult choice: they have decided not to move their home to another park due to their own personal reasons or because they cannot find a suitable site, but they find that they cannot sell their home on site to anyone else because their park is facing closure. Also there is a limited market in selling a park home to a buyer who is willing to remove it for use elsewhere.

Often the resident's only option is to negotiate with the park owner to take the dwelling off their hands.

This situation creates its own set of problems. The park owner is obviously in a powerful position and some residents have reported to the Office of Fair Trading that they have been forced into accepting a pittance for a home that is worth much, much more.

What is particularly galling to the residents is that some park owners then on-sell their home to someone else for the amount that the original resident should have received, thus making a tidy sum on the basis of the resident's unfortunate predicament.

This type of manipulation has clearly got to stop, and the Bill provides a circuit-breaker for residents caught in this situation.

The Consumer, Trader and Tenancy Tribunal will be given the power to establish a fair price where the resident and park owner cannot agree. The Tribunal will be able to use the services of valuation experts to assist it in its task.

In circumstances where a park is being redeveloped, park owners cannot begrudge residents for wanting a fair price for their home and this new provision will help to bring this about.

The Bill makes it clear that the value of the resident's home is to be calculated on its stand-alone value, and will not include any component of the land which it stands upon.

You couldn't have a more even-handed provision than this one.

It provides for an independent referee when the parties can't agree on a fair price. It ensures that residents are not taken advantage of. And it makes it clear that park owners do not have to pay any proportion of the land value that they already own.

The Tribunal's decision will not be binding on either party, but this mechanism will bring much greater transparency and parity to the process of selling a home, and it will also bring these issues to the attention of the Tribunal when a park owner seeks to regain possession at the end of the process.

The reforms to the provisions dealing with these two prime areas of concern—termination of tenancies for redevelopment and the payment of compensation—are crucial aspects of the Bill.

The Bill achieves a balanced and more transparent process for park residents and owners. But I want to particularly urge park owners to do what is right and fair by residents in these difficult circumstances, the Minister for Fair Trading has indicated that she will keep these provisions under review.

Finally, the Bill contains a number of miscellaneous amendments that:

- increase the level of penalties for contraventions of the Act,
- make it clear that residents' homes cannot be regarded as improvements to the land in connection with mortgages taken out by the park owner, and
- ensure that residents who have to leave the park for long-term hospital or aged care service do not suddenly lose the rights they had as a permanent park resident.

The Bill arrives in this place today with an amendment from the Legislative Assembly, which was agreed to on a bi-partisan basis. The amendment relates to the process by which the Tribunal issues orders for possession under section 113 of the Act.

The effect of the Amendment is that the Tribunal will not be able to make an order for possession to a park owner at the end of the termination process in connection with a park redevelopment, unless the Tribunal is satisfied that :

- compensation for relocating the dwelling has been determined in accordance with section 128, or
- the park owner has agreed to buy the dwelling from the resident at a price no less than its value as determined by the Tribunal under s130A, or
- the park owner and resident have reached an acceptable agreement and that agreement is bona fide.

In concluding, this Bill delivers a range of refinements and improvements to the operation of residential park laws that NSW has pioneered.

It comes as a result of the Government's statutory review and extensive consultation with all stakeholders, and it deserves to receive strong support.

I particularly wish to thank the park residents and park owners who have contributed their individual stories of life within their residential park, and their views on how the operation of the Residential Parks Act could be improved.

This Bill is all the better for their contribution, and I commend the Bill to the House.

The Hon. CHARLIE LYNN [11.31 a.m.]: The Opposition does not oppose the Residential Parks Amendment (Statutory Review) Bill. We thank the Government for supporting our amendment to the bill, which, in essence, provides that park residents who have their tenancies terminated for purported redevelopment purposes and who leave their dwellings on site must be paid the bona fide value of the dwelling as set by the Consumer, Trader and Tenancy Tribunal. The bill is important because it affects the lives of thousands of everyday people throughout New South Wales, many of whom live in Western and south-western Sydney. Some 30,000 people live in residential parks across New South Wales and the bill is a step forward in protecting their rights.

I am concerned only about the timing of the bill's introduction. A discussion paper concerning a review of the Act was released some 15 months ago and the report became available almost a year ago. On the last parliamentary sitting day of the year the Government has introduced a bill that affects 30,000 people throughout the State. I think the bill's introduction is untimely and delayed and demonstrates the lackadaisical approach this Government takes to many of these sorts of people. I suggest that if the Government were not so focused on the spin of certain failed infrastructure projects it would have more time to focus on the real priorities and issues facing New South Wales.

Residential park residents need our help. I suppose I have spent as much time as anyone in camping and caravan parks around Australia, and I enjoy the experience very much. I enjoy the camaraderie that exists between caravan park residents. Many of them live in residential parks by choice because they want an easy, stress-free, simple lifestyle that allows them to pursue their recreational activities, such as fishing, at their leisure, free from the pressures of everyday life. Other residents have no choice as their financial situation forces them to live in residential parks. Residents are part of the culture of caravan and camping parks, and they are important stakeholders.

I note that many key stakeholders participated in the government review, and we thank them for their contributions. These contributions are reflected in many aspects of the bill. The Combined Pensioners and Superannuants Association raised a number of very important issues in its submission. Among them, two important issues were the provision of access to emergency services in parks and the power of the Office of Fair Trading to apply to the Supreme Court to appoint an administrator if the actions of a park owner seriously threaten the wellbeing of residents. I share the latter concern, particularly in view of the power vested in the Office of Fair Trading. I have been involved in cases where I believe the Office of Fair Trading and its director have abused their position of power. In one instance they completely destroyed the business and lifestyle of an innocent person. While Mr O'Connor remains the Commissioner for Fair Trading I will have serious reservations about vesting any power in him.

A significant change is the need for a development application to be in place before a notice can be given to tenants. The bill extends the notice period from six to 12 months. Furthermore, residents can now be compensated for the relocation of a home to another park up to 500 kilometres away, which is an increase from the current 300 kilometres. Such compensation will also be paid up front before a move. If a person feels that the compensation is inadequate he or she can have the matter heard before the tribunal. In the past there was no written agreement to refer to when a dispute arose. Also noteworthy is the use of compulsory a written tenancy agreement. This will have the effect of decreasing the chances of conflict between owners and residents as the tenancy agreement will clearly define each party's role. Previous practice in this area was poor, and the bill will go a long way towards preventing disputes of this nature.

The bill introduces a prohibition on challenging a rent increase that is less than the consumer price index increase. A constant concern for residential park owners and tenants is the lack of a fair and proper method of charging for the provision of utilities to residents, such as water, gas and electricity. The bill contains a provision that will hopefully make these negotiations easier and clearer. The Opposition amendment is warranted because it provides for a specific provision in the bill for the payment of a bona fide value or market value for a residence in the case of development. This is necessary because in normal circumstances the resident has made a long-term commitment in terms of both the site and the cost of the dwelling. So we are pleased the Government has accepted the amendment. In regard to bona fide payments, some owners—who are in a position of strength—have acted to the detriment of a resident, which has resulted in the resident receiving far less than the dwelling is worth.

I have visited camping and caravan parks around, across and through the centre of Australia and I have met some outstanding, professional caravan park owners. Standards have improved dramatically and caravanning is a great way to see the country. However, I have also come across caravan park owners whose ethics and business practices were very questionable and whose management style involved intimidation. I believe that residents of parks with this sort of management require legislative protection. Many people put their life savings into residential park dwellings and if the park is redeveloped through no fault of their own they may face the very real prospect of having to start again. They will need the capital from their home to do so, and the amendment will ensure that they receive the correct sum for their homes.

The Consumer, Trader and Tenancy Tribunal will not make an order for possession until it is satisfied that proper compensation for relocation has been determined. When a park owner has agreed to buy the resident's dwelling the price shall be determined by the tribunal under section 130A of the Act. The tribunal must also be satisfied that the park owner and residents have reached an acceptable negotiated settlement and that the agreement is bona fide. I commend the bill to the House and congratulate the shadow Minister for Fair Trading, John Turner, on his amendment that will strengthen the rights of the 30,000 people who live in residential parks across the State.

Reverend the Hon. Dr GORDON MOYES [11.39 a.m.]: In general, the Christian Democratic Party supports the Residential Parks Amendment (Statutory Review) Bill and is interested in supporting some of the foreshadowed amendments that address inequities in the system. The purpose of the bill is to amend the

Residential Parks Act 1988 following a statutory five-year review. New South Wales has more than 900 residential parks, known by various names—such as caravan parks, mobile home villages and manufactured home estates—which house some 30,000 permanent residents. I visited a number of those places in my role as superintendent of Wesley Mission. In some of them a large number of people are economically disadvantaged and the children in single parent families do not get adequate support and help because they are socioeconomically underprivileged.

For a number of years Wesley Mission has been running breakfast programs for children before they leave for school each day. It has organised support for families who have difficulty keeping their families together. I have visited quite a number of residential parks, particularly on the Central Coast, where a number of development orders have been placed and where tenancy in resident parks has come under a severe amount of questioning. A large number of elderly pensioners who live in or who rent park-owned dwellings are deeply troubled at this time. Those who own their own homes have frequently been threatened because of development orders on the sites. There is an injustice because many people do not get the proper values for their homes.

The Residential Parks Act sets out the rights and obligations of park owners and residents and deals with tenancy and related aspects of park living, where occupation is a principal place of residence. Most of the people I have visited and spoken with on the Central Coast do not have any other form of residence. The park is their sole residence and where they have placed their life savings. When they are threatened with being excluded from the park or when the park is being redeveloped for other purposes they are anxious to retain the value of their asset. They have to move to other areas. I am pleased that Minister Diane Beamer has taken those issues into account; many of them have been picked up in some of the reviews and reforms.

I refer to specific information that will have to be disclosed to residents about their continued occupation rights, their obligations to pay for energy and water, any redevelopment proposals that might be in the wind and the sale of home conditions that they would be obligated to follow. Park owners who mislead incoming residents about their potential occupancy or the long-term viability of their leasing will be subjected to a new offence, which should get rid of some of the charlatans in the industry who have taken advantage of some of the poorer and older residents. It is important that under these reforms there will be written agreements between park owners and those who are leasing properties, either their own building or a building leased from the park owner. When something as important as a home is involved there must be written agreements. Twelve months notice of termination will have to be given to residents if park owners seek to redevelop the park.

There needs to be good compensation. I am pleased that the compensation for relocation of moving a dwelling is now set at 500 kilometres rather than the current 300 kilometres. If a park is redeveloped people have to look for alternatives. As most of these parks are on the eastern seaboard, they usually have to move to the far north or to the far south. I am pleased that compensation is to be paid up front to residents who are faced with a redevelopment order on their property. Provision has been made for disputed compensation claims to go to a tribunal. Taking those matters into account with other issues, I congratulate the Minister for Fair Trading on these proposals. The Christian Democratic Party will support the bill.

Ms SYLVIA HALE [11.45 a.m.]: The Greens support the Residential Parks Amendment (Statutory Review) Bill. We pay tribute to the residents who have pressured the Government to ensure this bill passed through the Parliament before the end of the year. I thank all residents and their organisations for welcoming me to their communities and for explaining the issues. I thank the various legislative experts who have assisted us with our foreshadowed amendments to the bill. This bill is the response to a review of the principal Act. It is also the Government's response to residents' disquiet and outrage over the way the current legislation has failed to deal with park closures. To the Government's credit, it has finally taken park residents' concerns seriously.

It should be noted that until recently residents thought that they were going nowhere with the Government in relation to residential parks issues. The former Minister for Fair Trading,. John Hatzistergos, appeared to be very slow in responding to the review of the Act instituted by his predecessor, Reba Meagher, who seemed even more tardy in her approach. Residents and organisations such as the Park and Village Service and Tenants Union were constantly trooping in and out of ministerial offices but felt that they were being stonewalled. However, still they persisted.

Since being elected to Parliament in 2003 I have met with many park residents. I visited the Lansvale Caravan Park at Fairfield on many occasions when Meriton was endeavouring to evict almost 1,000 of the park's residents and subdivide the land into some 60 residential blocks. It was an appalling instance of the profit-driven motivations of one of the State's largest developers; genuine social need is sacrificed to rapacity. We

subsequently organised a fundraiser to help them raise funds to challenge Meriton in the Land and Environment Court. I arranged for residents to meet with Reba Meagher, to meet with residents on the Central Coast and North Coast, and to attend meetings of park residents associations. We hosted a forum in Parliament House that was addressed by Jim Clark, President of the Affiliated Residential Park Residents Association; Warwick Blackman of the Central Coast Residential Parks Network; Leslie Wakeling of Taskers Park, Port Macquarie; June Newitt of the Northern Alliance Park Residents, Macksville-Tweed; Kel Burgess of the Lansdowne Caravan Park; Jill Edmonds of Karalta Court, Erina; and Dr Judith Stubbs of the Social Justice and Social Change Research Centre, University of Western Sydney.

It is appropriate at this time to pay tribute to the work of Dr Judith Stubbs, who has worked tirelessly with residents of caravan parks and public housing estates in Western Sydney. She has admirably gone to the heart of many of the problems that beset those residents. She has certainly done her best to make the community as a whole aware of them. Everywhere I went in my numerous meetings with park residents, people expressed their frustration at the Government's lack of action. They asked, "What's happening with the review? What can you do to speed things up?" In response, the Greens gave notice of our intention to introduce our own residential parks amendment bill. However, suddenly we were assured that a government bill would be forthcoming in the near future and that it was in the process of being drafted. We have had considerable contact with Minister Beamer's office. In particular, I thank Chris Lacey from that office for his efforts.

We have seen widespread closures of residential parks in the State, and up to 40 residential parks remain under threat of closure. The closure of parks is a reflection of how park owners, anxious to cash in on rising property prices, are seeking to dispossess park dwellers and redevelop, despite the resultant loss of affordable accommodation. We are still waiting for a constructive Government response to the crisis of affordable housing. It is all very well for the Premier to say that the provision of affordable housing is a matter of common decency, but words are cheap and it is actions that count. There is still much unfinished business. The Greens actively are encouraging the creation of a co-operative residential parks sector, where residents run and control their own parks. I am aware of moves, assisted by Gosford City Council, by residents who are under threat of eviction from their parks to establish such a co-operative. We call on the Department of Housing to assist this sector by helping the groups of residents to raise the necessary finance to acquire land to establish co-operative parks. The fostering of an autonomous resident-controlled park centre may be one of the few ways, and perhaps the only way, to stem the flow of park closures.

We recognise that the changes outlined in the bill are necessary and we welcome the bill, as do many park residents. Although it will cushion the blow for residents who are forced to relocate because of park closures, it cannot address the wider problems of decreasing affordability and declining availability of housing in New South Wales. The Department of Housing and the Minister for Housing act as though they are the department for public housing and the minister for public housing respectively. But there is more to housing than this. The sooner the Government recognises its responsibility to the whole community and not just to the public housing sector the sooner it can address the scarcity of low-cost housing options in the State. Although the bill alleviates some of the worst aspects of the impact of park closures, they will continue because land prices will continue to rise, park owners will continue to sell, and residents will continue to be displaced and struggle to find another place in another park. That is the bigger picture that the bill fails to confront. The bill is no substitute for a coherent State housing policy and a coherent approach from the Department of Housing.

I will turn briefly to the provisions in the bill. I will not go through every amendment because many are of a minor nature and the Minister outlined them adequately in her second reading speech in the lower House. The amendments strengthen the provisions relating to rights and responsibilities. New section 16A ensures that a park owner who does not enter into a written agreement can be convicted of an offence and fined. This is a positive change, because it makes clear the responsibility of the park owner to provide a standard agreement to the prospective tenants. New section 17 provides that the owner must give the tenants a copy of the agreement and any additional terms. The penalties referred to throughout the principal Act have been increased from 5 to 10 penalty units. New sections 36 and 37 affect payments for utilities, which are of a minor nature. The detail is to be found in the respective gas and electricity codes, which will be prescribed in the regulations.

The Greens will seek to amend new section 39 (2A) because it requires residents to pay a new charge—a charge for water availability. Given that tenants are not landowners, the Greens are of the opinion that the owner should pay what are, effectively, rates, and that the tenant should continue to pay only for water consumption. There are question marks over the amount of the charges, which are to be calculated by the gauge of the pipes supplying the park, and just what proportion of those charges individual tenants will be required to pay. New section 58 (2A) appears problematic and provides that tenants could not go to the tribunal seeking an

order that rent is excessive when a rent increase is equal to or less than the consumer price index [CPI], all groups, for Sydney. In effect, this gives park owners a guaranteed yearly CPI rent increase. Other landlords do not receive a guaranteed annual rent increase. The tribunal may find that a rent increase is excessive if the tribunal has regard to the market. Imagine being in a recession or, suddenly, many parks competing with each other for tenants. Why should all landlords have a free rent increase even if facilities or amenities are not being upgraded? New section 58 (2A) is not consistent with the Residential Tenancies Act, and the Greens will seek to amend it.

New section 66A allows the establishment of a single residents committee per park. Such a committee can liaise with the park owner. There are penalties for an owner who discourages or prevents the formation of a residents committee, and for obstruction of a committee in the exercise of its functions. New section 71A makes it clear that a park owner must arrange for the unimpeded access of emergency service and home care service personnel, and vehicles to residential parks. This is a matter many residents have raised, and I have been told of the consequences for residents who did not receive help because an emergency vehicle could not get past the boom gates. This is a very real issue, particularly for many retired and elderly park residents who may be in need of emergency care. I have been told of ambulances that could not reach people in time because there was only one key to the boom gates, the office was closed and residents had to run around trying to find the key to open the gate. Clearly, that is unsatisfactory. I am pleased to see that the bill seeks to rectify that. The new section obliges the owners to make practical arrangements for the access of vehicles at all times, both during the day and the night. The penalty for failing to do so is 20 penalty units.

New section 73 increases the disclosure requirements so that prospective residents are informed of matters that may affect the park and the tenancy. Information relating to development applications, redevelopment and whether the park is situated within a Crown reserve or a national park are the sorts of things that prospective park residents must be informed of. New section 73 (3) sets out clearly the documents the park owner must supply to a prospective resident. They include a document informing the resident that the land is leasehold only and not a freehold right, and that the lease may, in certain circumstances, be terminated. The penalty for failure to supply the specified documents is 20 penalty units. This is of particular concern to residents, many of whom are given the impression when they move into a park that they will be there for life. But many of them fail to realise just how tenuous the nature of their tenancy is. New section 74A imposes a similar penalty if the owner gives false or misleading information to any prospective resident. All these amendments are positive. Many park owners have said that owners can offer enticements for a resident to move in and not inform the them that—after they have investing their life savings in a significant dwelling—the owner has lodged a development application with the council and may be in the process of selling the entire park.

The provisions ensure that the prospective resident has all relevant information made available to them. Many people regard these parks as providing housing only for the most disadvantaged people and people who are receiving low incomes. However, increasingly along the coast, people are renting or purchasing units within these parks at substantial cost. It is not uncommon for some of these dwellings to cost in excess of $100,000.

Many people invest their entire life savings under the misapprehension that they are buying freehold title instead of leasehold. If a park owner decides to sell or capitalise on increasing land values, many people, particularly elderly people and the many park tenants who are single or widowed, may be confronted, at a time in their life when they are looking forward to retirement, with their entire financial future being placed in jeopardy. Indeed, some have found themselves almost destitute. The amendments to clauses 88, 89, 90 and 91 will allow the tribunal to hear the representations and to make orders about park rules.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

SNOWY MOUNTAINS HYDRO-ELECTRIC SCHEME

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Finance, Minister for Infrastructure, and Minister for the Hunter. Does he support the Premier's secret plan to privatise the Snowy Mountains Hydro-Electric Scheme, given his well-known support of privatisation—including his privatisation of new rail carriage maintenance? As the Minister for Infrastructure, has he consulted the union movement?

The Hon. MICHAEL COSTA: As usual, the Leader of the Opposition's premise is wrong. I do not know that the Premier has said he has any plans of the sort claimed in respect of this matter.

HIV-AIDS TREATMENT AND PREVENTION

The Hon. KAYEE GRIFFIN: My question without notice is addressed to the Minister for Health. What is the latest information on the New South Wales Government's efforts to fight the HIV-AIDS epidemic?

The Hon. JOHN HATZISTERGOS: I thank the Hon. Kayee Griffin for her very important question, which is timely as today is World AIDS Day. I am pleased to inform the House that Sydney has been chosen as the host city for the Fourth International AIDS Society Conference On HIV Pathogenesis Treatment and Prevention. The conference is set to take place between 22 and 25 July 2007. The number of people worldwide who live with HIV-AIDS has hit a record high of 40.3 million. Despite this sombre fact, this year, according to the joint United Nations Program for HIV-AIDS and the World Health Organisation, Australia's rates of HIV and AIDS are among the lowest of comparable countries. The conference will offer a tremendous opportunity to learn from the world's leading HIV-AIDS experts and will reinforce our existing efforts in fighting this epidemic. The conference will provide a focus on this region, which is home to 60 per cent of the world's population and an estimated 19 per cent of the people who are living with HIV infection.

This prestigious event will bring up to 6,000 people, the world's top HIV-AIDS experts, to Sydney. The decision to hold the International AIDS Society 2007 conference in Sydney recognises the great contribution to the fight against HIV-AIDS made by New South Wales and Australian scientists, clinicians and researchers to advance our knowledge and understanding of this disease. Australia was one of the first countries to develop a national strategic approach to HIV-AIDS control and has supported dedicated research centres in several disciplines that have established international reputations for innovation and scientific excellence.

The response to HIV-AIDS in Australia has always been a collaborative partnership between the research sector, the medical fraternity and government and community sectors. The New South Wales Government can indeed be proud of its longstanding commitment to helping people who are living in the community with HIV and AIDS. Since the earliest days of the HIV epidemic, New South Wales has developed effective policies to manage HIV-AIDS, provide the best possible care and treatment, support leading-edge research into the disease and prevent and control new HIV infections.

After 25 years experience, there is overwhelming scientific evidence that the HIV management policies followed by the New South Wales Government have been immensely successful in preventing thousands of young people from being infected by HIV and AIDS. In 2004-05 NSW Health allocated approximately $81.6 million to area health services and non-government organisations for HIV-AIDS and to related disease prevention programs, and treatment, care and support services for those living with or affected by HIV-AIDS. In 2005-06 it is estimated that $85.8 million will be allocated—representing an increase of $4.2 million on last year's allocation.

AIDS program funds are deployed for the implementation of the National HIV-AIDS Strategy, the National Hepatitis C Strategy, the National Sexually Transmissible Infections Strategy and the National Indigenous Australian Sexual Health And Blood Borne Viruses Strategy in New South Wales. This funding will target HIV-AIDS and related disorder prevention programs, treatment, care and support services for those living with or affected by HIV-AIDS.

It is estimated that in New South Wales approximately $25 million of AIDS program funding will be expended on HIV and AIDS related diseases prevention activities in 2005-06. These activities include health promotion, the needle syringe program and control strategies for sexually transmissible infections. The 2007 conference will be organised by the Australian Society of HIV Medicine, which represents 800 Australian and New Zealand HIV scientists, clinicians and researchers. I commend to the House the efforts of the society in winning the bid to host the conference.

NATIONAL WATER INITIATIVE

The Hon. DUNCAN GAY: My question is directed to the Minister for Natural Resources. Given that engaging industry and consulting publicly on the New South Wales National Water Initiative's implementation plan would result in the best possible outcome, why is his Department of National Resources allowing less than a week for reviews and submissions to be made on the final draft? Why does he continue to ignore the wishes of the people of New South Wales on just about every issue under his portfolio?

The Hon. IAN MACDONALD: That is really nasty. I could be tempted to retaliate with some nice literature I have seen here this morning about the Deputy Leader of the Opposition. I do not think he should take this nasty attitude because the reality is that the department has carried out endless negotiations on all of these activities.

The Hon. Duncan Gay: One week.

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition is quite wrong. Negotiations and discussions in relation to these matters have been going on since 2004.

The Hon. Rick Colless: Nonsense!

The Hon. IAN MACDONALD: Absolutely—particularly in the lead-up to the National Water Initiative. This matter is the subject of a bill before the House. Discussions were held with various stakeholders prior to that.

WAVERLEY COUNCIL PARKING FINES

The Hon. Dr PETER WONG: My question without notice is directed to the Minister for Justice, representing the Minister for Local Government, the Hon. Kerry Hickey. It was quoted by the *Sydney Morning Herald* on 29 November that Waverley Council officers are patrolling the car park at Westfield Bondi Junction and booking drivers who have strayed outside the white lines that mark each car space. Under what law is Waverley Council able to police infringements on the private premises of Westfield Bondi Junction? As the arrangements between Westfield and the council would appear to be a private agreement, will he explain how residents and ratepayers may be sure that they are not being inappropriately fined? What processes are in place to monitor the probity of such private profit-making ventures between a council and a major retail company?

The Hon. TONY KELLY: I undertake to pass the honourable member's series of questions on to the Minister for Local Government and ensure that he gets an answer next year.

ABORIGINAL ROLE MODEL DAY

The Hon. PENNY SHARPE: My question without notice is addressed to the Minister for Juvenile Justice. What information can the Minister give about efforts to provide positive role models to young Aboriginal men in juvenile justice centres?

The Hon. TONY KELLY: I am pleased to inform the House that a group of Aboriginal achievers visited Cobham Juvenile Justice Centre last Wednesday to participate in an Aboriginal Role Model Day, and to pass on messages of encouragement to young offenders. Guests included National Rugby League players Preston Campbell, Nathan Merritt and Joe Williams, boxing champion Anthony Mundine, comedian Roy Arcee and members of the band Local Knowledge. The visitors gave high-spirited accounts of their lives and accomplishments, with Anthony Mundine delivering an important underlying message to the young offenders. He told the young people that he wanted them to be aware of what is going on in their lives, to build up their self-esteem, to be proud of who they are and to have a different outlook on life.

Joel Wenitong from Local Knowledge also had an important message for the young men which centred on knowing who they are and taking pride in themselves. Wenitong told them about being positive and knowing what they want to achieve. He said that he hoped to inspire other young Aboriginal people to make an effort to reach their goals. One of the boys said that he was grateful to the role models for making the effort to spend time with them. After the event he told staff at Cobham that the visitors' stories really made him think a lot about life, to realise that he only got one go at it, so he had to make something of it. He said he really looked up to those guys, especially footy players such as Preston Campbell, who made him realise that it is possible for him to reach his goals. That young man aspires to become a football player when he leaves the centre.

The event helped encourage the young offenders find their own talents. Many of those young people come from difficult backgrounds with limited opportunities and no positive support from their peers. It is important to overcome this by providing support and encouragement and helping them to break free of the crime cycle. Meeting successful Aboriginal people from all walks of life can give the detainees aspiration to work in fields such as sport and music and to recognise that with the right attitude they can make something of themselves. I am grateful to Preston Campbell, Nathan Merritt, Joe Williams, Anthony Mundine, Roy Arcee and the members of Local Knowledge for giving up their valuable time and providing young people at Cobham with positive role models.

MACDONALDTOWN STABLING PROJECT

Ms LEE RHIANNON: I address my question to the Minister for Ports and Waterways, representing the Minister for Transport.

The Hon. JOHN DELLA BOSCA: He is not present; you can ask me.

Ms LEE RHIANNON: I will direct my question to the Special Minister of State, representing the Minister for Transport. Is the Minister aware that the Macdonaldtown Stabling Project, one of the CityRail Clearways projects, will see up to eight trains stabled adjacent to residential areas in Erskineville? Given that the review of environmental factors states that once operational both noise and sleep disturbance criteria under the New South Wales Industrial Noise Policy will be exceeded, what is the Government doing to modify the proposal to comply with noise standards and protect local residents?

The Hon. JOHN DELLA BOSCA: I am very understanding of the member's general political position, but I get a little confused by some of her questions. She is a great advocate for public transport, but she wants the trains to make no noise. I am afraid I am getting more confused about how any government could possibly satisfy that criteria. Obviously this is a very important question.

Ms LEE RHIANNON: Do you have to do both?

The Hon. JOHN DELLA BOSCA: Yes, you are right, you have to learn to walk down the street and chew gum at the same time. I am sure that the Minister will provide the honourable member with a satisfactory answer. I could not help making that observation.

LEURA RESPITE FACILITIES

The Hon. JOHN RYAN: My question without notice is directed to the Minister for Disability Services. What specific plans has the Department of Ageing, Disability and Home Care made to support families using the Greystanes respite facility after it closes next year? What plans has the Government made to support families from Orange and Bathurst who use this facility after February next year? Has the Government made plans to accept the offer by Disability Enterprises to buy the building used for respite, provided the Government continues to fund services for clients?

The Hon. JOHN DELLA BOSCA: The honourable member has asked a question about a very important facility, the Greystanes Children's Home at Leura. His question acknowledges the Government's commitment to ensuring that Greystanes remains open for respite until February 2006. Many families who use the Greystanes centre as a respite facility have concerns about its closure. I have personally intervened in this matter and confirm that respite will be available to the families who are not satisfied with the alternative respite offered to them by the department and those not offered enough respite to meet what they were receiving before closure. I have asked the department at the highest level to provide me with urgent advice about how the Government can meet the respite needs of those families and what plans it has to meet all the respite needs of families on an ongoing basis.

The honourable member indicated that many of the families who rely on the Greystanes Children's Home are not from the immediate Blue Mountains area; they come from towns and cities further west. It is very important that they have access to adequate respite care. In the time I have been the Minister for Disability Services I have met many families and gained some insight into the challenges that they face as carers and into the great importance of adequate respite. I have been told that respite in general is essential, and I agree. I have received representations from my colleague the Hon. Bob Debus about this matter, and we have personally intervened. For the information of honourable members I advise that the Government will provide more than $160 million for respite services this year. Recently I announced that in a joint initiative with the Commonwealth Government a further $48 million will be provided for 1,000 new respite places for older carers.

In response to the honourable member's question about an offer put to the Government by Disability Enterprises to purchase the building used by the Department of Disability, Ageing and Home Care for respite, that offer has not been put to me directly through the department or by the non-government organisation concerned. Obviously, as an offer has not been put to me, I can make no further comment.

INFRASTRUCTURE PROJECTS FINANCE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question without notice is directed to the Special Minister of State, representing the Treasurer. Do infrastructure bonds effectively allow such a tax advantage for private borrowers that they can finance projects that have a lower return than the New South Wales Government is able to finance? If so, is that the reason the New South Wales Government appears to have abandoned any plans to borrow to finance any significant infrastructure projects? If not, why has New South Wales Government abandoned borrowing for any major infrastructure projects and left them to public-private partnerships?

The Hon. JOHN DELLA BOSCA: That is a very good question, but it is based on a false premise. The honourable member wants to engage in a bit of deja vu and go back to the times of bonds issues. That is an interesting approach, and obviously the Government is always keen to hear interesting ideas. The premise of his question is that the Government does not borrow for major infrastructure and public capital. That is simply wrong. It is wrong now, as can be seen if the honourable member examines the Government's current balance sheet, and it will be wrong into the future. The Premier has made it very clear that the Government is prepared to borrow for valuable public infrastructure. Indeed, over the past 10 years that has been the way in which many important infrastructure programs of all types have been funded.

The concept that public-private partnerships have completely displaced public borrowings or other mechanisms on the State-owned corporations balance sheets or otherwise is not correct. That is obvious from any of the past 10 State budgets. Over time the Government has been cautious and sensible in looking at private-public partnerships, as it is part of its policy to provide infrastructure in a timely fashion.

[*Interruption*]

Opposition members well know that there are many examples that they and members on the crossbenches would support.

[*Interruption*]

I was trying not to be provocative as this is probably the last day of sitting this year, but I cannot let the Leader of the Opposition get away with the argument that there are parallel issues between the cross-city tunnel and the airport rail link.

The Hon. Michael Gallacher: You have got to be joking!

The Hon. JOHN DELLA BOSCA: The cross-city tunnel has not cost the taxpayers of New South Wales a cent and it will never cost them a cent. The former Government punted away $800 million worth of taxpayers' funds, so I cannot let Opposition members get away with that. If ever there were a problem in the history of New South Wales capital budgets and public finance where people tended to punt away taxpayers' funds on high risk projects rather than properly securing those finances, it has been on the Opposition's side of politics. From 1945 onwards the only time that happened in a serious way was when the Coalition was in government.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask a supplementary question. Will the Minister answer the component of my question relating to infrastructure bonds?

The Hon. JOHN DELLA BOSCA: I refer the honourable member to my earlier answer. I said to him that it was an interesting approach but not one that the Government was immediately considering.

PUBLIC SECTOR RECRUITMENT FREEZE

The Hon. GREG PEARCE: My question without notice is addressed to the Assistant Treasurer. How many exemptions has Treasury approved to the recruitment freeze on non-frontline staff? How many exemption requests has Treasury received since the commencement of the freeze? How many private recruitment consultants have been employed in relation to those exemptions? What is the average cost of each recruitment consultancy? Yesterday the Minister did not even know about this matter.

The Hon. JOHN DELLA BOSCA: The honourable member is misrepresenting me. Yesterday I gave a perfectly adequate answer to the honourable member's general question. He has now asked me a series of specific questions. In relation to the general part of his question I refer him to my previous answer. I will provide him with information to the specific questions that he asked as soon as practicable.

PRISONERS AID ASSOCIATION

The Hon. PETER PRIMROSE: My question without notice is addressed to the Minister for Justice. What is the latest information about the work of the Prisoners Aid Association?

The Hon. TONY KELLY: Last week I had the pleasure of addressing the annual general meeting of the Prisoners Aid Conference. In fact, it was the organisation's 104th annual conference. Prisoners Aid is a splendid example of a small community organisation providing quality services in a highly effective manner. It has been at the forefront of service delivery for inmates in correctional centres in New South Wales for over 100 years. The association is honoured to have as its patron Her Excellency Governor Marie Bashir. I am also pleased that the New South Wales Government has been able to assist that organisation to the tune of a quarter of a million dollars a year.

The association is also a charity and, as such, receives donations from the general community to provide emergency financial assistance to families of inmates and to people recently released from custody. Its main role is to collect and store property of inmates until their release and to assist inmates and their families with financial matters. Last Christmas the association packed and delivered food and toy hampers to more than 50 families of inmates and to people released. In one example, an inmate contacted the association regarding property she had at a boarding house in Surry Hills, including clothing, photographs of her children and personal documents. The association made contact with the landlord and arranged to collect the belongings, which were then placed in storage.

In another example, the spouse of an inmate who had four children under the age of nine contacted the association because she was experiencing financial difficulties. The association assisted with financial support for school uniforms and food vouchers. In the past year the organisation has assisted in the relocation of the association's property storage facility from the Long Bay complex to the Silverwater complex. The successful completion of the relocation was accomplished through co-operation with the department and through the efforts and adaptability of all association workers.

It is no easy task for a small organisation comprising three full-time workers and one part-time worker to move the property of 1,500 inmates while maintaining regular services. Obviously that important task was well done. One of the areas in which the association is experiencing an increase in demand for service is in relation to foreign nationals. Often, apart from consular officials, the association is the only contact outside the correctional centre. The association is often required, at short notice, to arrange for the delivery of an inmate's property to the correctional centre when deportation is required. I understand that the association provided assistance to an inmate in a South American prison who required medical treatment because that inmate was not eligible for assistance from the correctional system in which she was incarcerated.

After contacting the Department of Foreign Affairs and the inmate's family, the association was able to arrange for the transfer of funds to her through her solicitor so she could receive the treatment she needed. I pay tribute to Joan Ellard, the association's president and Craig Baird, the managing secretary, and his small team for their work in assisting inmates across New South Wales. I refer to a document that has just come into my hands entitled, "Weeds of The Nationals Significance." Those weeds are listed as follows: Duncan "Boneseed" Gay, Jenny "Rubber Vine" Gardiner, Rick "Pond Apple" Colless and Melinda "Bridal Creeper" Pavey. Those species, which have been nominated as "Weeds of the Nationals Significance", represent in the opinion of experts the most serious weeds in New South Wales.

INTERNATIONAL WALK AGAINST WARMING DAY

Mr IAN COHEN: My question without notice is directed to the Special Minister of State, representing the Premier. On Tuesday Premier Iemma announced, "The greatest threat to our environment and way of life comes from global climate change." Will there be ministerial representation on Saturday 3 December for the International Walk Against Warming Day in Sydney which is to commence at 11.00 a.m. at Sydney Town Hall and conclude at Hyde Park north?

The Hon. JOHN DELLA BOSCA: I am not sure of the arrangements that Ministers might have made in order to be represented at this Saturday's International Walk Against Warming Day. I am sure that quite a few of my colleagues will participate in that walk. I know of at least one who will not be able to make it. I have a pressing personal commitment on that day so I will not be there. The Premier, someone who does not mince his words, was quoted as stating, "The greatest threat to our environment and way of life comes from global climate

change." The Premier said—and the Deputy Leader of the Opposition acknowledged this earlier—that we need an ongoing commitment to ensure that the New South Wales Government does its part to secure environmental sustainability for future generations.

Mr IAN COHEN: I ask a supplementary question. In a display of the striking new direction of the Iemma Labor Government, will the Special Minister of State ask Minister Costa to go along for the walk?

The Hon. JOHN DELLA BOSCA: I suspect that Minister Costa has all sorts of other commitments on that day, but I am sure he will be there in spirit.

The Hon. Michael Costa: Point of order: I do not mind being the butt of the honourable member's jokes but when I drove out of the car park at 3.00 a.m. this morning, as did most honourable members, Ms Lee Rhiannon was in front of me. I would have expected her to be driving a Prius, which is what we all drive, but she had a big Toyota, which is a disgrace. If Mr Ian Cohen is worried about global warming he ought to start with his own party—

The PRESIDENT: Order! Members must not attempt to make personal explanations while taking points of order. A member may make a personal explanation at a time when there is no other business before the House, and that is certainly not during question time.

NATIVE VEGETATION ACT REGULATIONS

The Hon. RICK COLLESS: My question is directed to the Minister for Primary Industries. Is it a fact that the document comprising part of the Native Vegetation Regulation 2005 and entitled "Environmental Outcomes Assessment Methodology" is 86 pages long and contains extremely complex mathematical formulae? Is this document meant for use by individual landowners or by departmental and/or catchment management authority officers? How many officers are trained in the use of the document and the decision support tool, PVP Developer? Is the Minister aware that these officers will be inundated with requests for property vegetation plans, commencing tomorrow? What action will the Minister take to ensure that producers in New South Wales will not be hampered by a lack of trained staff and will be able to implement their farming schedules next year?

The Hon. IAN MACDONALD: The Government is mindful of the rollout of the regulations. In fact, we have spent considerable time training catchment management authority staff for the rollout of the Act and its regulations, and especially in the computer-based program, PVP Developer. Yes, there is an 86-page document that gives details of how and what is required under the terms of the regulation, but much of that information is embedded in the computer model. When the details of an on-farm proposition are entered into the program the computer model resolves many of the issues. So, although there is a great deal of detail in the program, when a proposition is assessed and developed through the computer model many issues are resolved. How will it happen? When a farmer makes a proposal under a property vegetation plan, trained catchment management authority staff will visit the property. They will walk the land required and input in the program all the information and features of that land. That will give us the answers we need.

The Hon. Duncan Gay: But they cannot do their own work beforehand to know where they stand.

The Hon. IAN MACDONALD: They can talk to the catchment management authority. The staff are trained.

The Hon. Rick Colless: How many are trained?

The Hon. IAN MACDONALD: There are about 300 staff involved with catchment management authorities.

The Hon. Rick Colless: And about five are trained in the use of it.

The Hon. IAN MACDONALD: There are far more than five.

The Hon. Melinda Pavey: How many—10, 15?

The Hon. IAN MACDONALD: There are far more than that. Many officers have been trained. I believe they will be able to handle any major problems quite adequately.

QUEANBEYAN FIRE STATION

The Hon. PATRICIA FORSYTHE: My question is directed to the Minister for Emergency Services. Why was a decision made to build an extension to the Queanbeyan fire station when it has lain empty since its opening in June 2004? Why is the fire station not staffed 24 hours a day? When will the Government commit to employing additional staff to ensure that Queanbeyan has adequate, 24-hour fire protection?

The Hon. TONY KELLY: The staffing of Queanbeyan fire station was reviewed recently by the Rural Fire Service Commissioner. He bases his decisions on need and he uses several criteria to determine this. One criterion is that an area must have a population of about 35,000. Queanbeyan just meets that criterion according to the council but not according to the Australian Bureau of Statistics. Twenty-four hour staffing also requires that there be about 900 call-outs a year. My recollection is that last year the Queanbeyan fire station had about 600 call-outs.

FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY

The Hon. GREG DONNELLY: My question is addressed to the Minister for Industrial Relations. Can the Minister provide an update on the Commonwealth Government's WorkChoices bill and its impact on the community?

The Hon. JOHN DELLA BOSCA: I can, and it is a great pleasure to answer the Hon. Greg Donnelly's question. It is quite clear that Mr Howard and his Government are not prepared to deviate far from the ruthless strategy of reducing the wages and working conditions of Australian workers embodied within the original WorkChoices bill.

The Hon. Michael Costa: What about Barnaby?

The Hon. JOHN DELLA BOSCA: Yes, what about Barnaby? When the pressure was on he wimped out. He knows that he is doing the wrong thing.

The Hon. Michael Costa: Typical Nat.

The Hon. JOHN DELLA BOSCA: No, I think the Nats in this place would have woken up and realised that they were doing the wrong thing. The Prime Minister's only compromise has been a token preparedness to tinker on the fringes of the legislation, provided the amendments do not interfere with the overall intent of the bill, which will hurt workers and Australian families. In fact, the blink-and-you'll-miss-it conduct of the recent Senate inquiry proves just how arrogant the Federal Government has become. The inquiry was opened and closed with lightning speed. It was an arrogant exercise in crushing debate on this significant and controversial issue.

To compound the farcical nature of the inquiry process inside a Government-dominated Senate, committees were prevented from doing their job in any meaningful manner because they had to conform to totally unreasonable reporting deadlines. I am alarmed that, in the committee majority report into WorkChoices, Government senators describe the bulk of submissions they received as "spam". It is outrageous to think those Liberal Party members would trivialise the genuine concerns and valid criticisms expressed by people from all walks of life, including churches, welfare groups, State and Territory Ministers, the Federal Sex Discrimination Commissioner, economic researchers and analysts, and distinguished legal authorities.

Ron McCallum, the Dean of the School of Law at the University of Sydney, was debunked and derided publicly on radio by some Coalition backbench character from Newcastle. I think it was Bob Baldwin. I debated him on radio and he proceeded to deride Ron McCallum, calling him a white-haired academic who would not know anything about practicalities. That is an incredible attitude: running down the dean of one of the most respected law schools in the Southern Hemisphere. What is most odd about Mr Baldwin's stance is that Rob McCallum is a supporter of unitary industrial relations.

The Hon. Michael Costa: The Boeing workers are in his electorate.

The Hon. JOHN DELLA BOSCA: Yes, the Boeing workers are in Bob Baldwin's electorate. They do not love him at all—and nor does anyone else who is concerned about a fair go for those workers. It is outrageous that the Government senators ultimately recommended seven amendments to the bill but failed to

shed any light on the why, where and how. In fact, when questioned, the committee Chair was at a loss to explain the significance of the amendments that she was recommending. After a Coalition party meeting yesterday the Federal Government revealed a number of amendments, packaged nicely as some sort of artificial display of its willingness to accommodate public concern. That is a disguise. Although the amendments appear to protect workers' rights, they grant workers the right to refuse work on Christmas Day and Good Friday only if the worker has reasonable grounds for doing so.

The provisions were Orwellian but now they are positively Dickensian! That is a great concession: people can refuse to work on Christmas Day and Good Friday if they have reasonable grounds for doing so. Presumably simply wanting to spend Christmas with their families will not be a good enough reason. If people do not work on a gazetted holiday, even with a so-called "reasonable" excuse, there is no guarantee of payment for that day. If an employee is sacked, he or she faces the prospect of a complex unlawful termination claim that could cost the employee more than $30,000 and the employer even more than that. The Nationals and their Federal Government colleagues are looking more and more like the Grinch who stole Christmas. [*Time expired*.]

PORT BOTANY EXPORTS

Ms SYLVIA HALE: My question is for the Minister for Ports and Waterways but, in his absence, I suppose I will have to direct it to the Special Minister of State. Is it true that the four largest exports from Port Botany are aluminium, wool, beef and cotton? Why are these commodities hauled through Sydney suburbs rather than being exported from the port closest to where they are produced? How much of the 610,000 tonnes of aluminium produced at Tomago and Kurri Kurri in the Hunter Valley is exported from Port Botany, and how much is exported from the nearest port, which is Newcastle? How many trucks and freight trains are required each year to haul the aluminium from the Hunter, through Sydney to Port Botany?

The Hon. Michael Gallacher: This is a detailed question and the member will get a better answer from this Minister than he would have from the Minister for Ports and Waterways, who wouldn't have the faintest idea.

The Hon. JOHN DELLA BOSCA: I am sure the Minister for Ports and Waterways will give a very adequate and detailed answer to the honourable member's question, so I will take it on notice on his behalf. The Leader of the Opposition could not be more wrong: the Minister for Ports and Waterways is doing an excellent job. He is well and truly on top of his portfolio. He is developing a new vision of the ports strategy for New South Wales, and nothing could be further from the truth than the interjection of the Leader of the Opposition.

SNOWY MOUNTAINS HYDRO-ELECTRIC SCHEME

The Hon. ROBYN PARKER: My question is directed to the Minister for Finance, Minister for Infrastructure, and Minister for the Hunter. What other public assets are on the Government's sales list given the Government's secret plan to privatise the Snowy Mountains Hydro-Electric Scheme, which has now been confirmed by the Premier and the Victorian Government? When does the Minister plan to tell the union movement?

The Hon. Christine Robertson: Didn't we just have that question?

The Hon. MICHAEL COSTA: I realise it is the last question time of the year, but recycling questions within the same question time is a new low for the Opposition, which usually recycles questions at least a day apart.

The Hon. Robyn Parker: But no-one answers them.

The Hon. MICHAEL COSTA: Now it is recycling them within the same question time. I refer to my previous answer.

NATIVE VEGETATION ASSISTANCE PACKAGE

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources. Will the Minister provide the House with information on the Government's native vegetation assistance package?

The Hon. IAN MACDONALD: Honourable members will be aware that the Government recently released the final regulations for the Native Vegetation Act 2003. The Act will see the end of broad scale land clearing in New South Wales, unless the overall effect is to improve or maintain the environment. The regulations governing the Act also come into effect today. While the vast majority of farmers will not be affected by the new laws, the Government recognises that a small number of landholders may experience economic difficulties as a result of these new laws. In response, I have today announced a native vegetation assistance package of $37 million to help our farmers adjust to the new laws. To be eligible for funding, landholders must meet strict criteria. Farmers must demonstrate to their Catchment Management Authority [CMA] that they will suffer genuine economic hardship as a result of being unable to clear native vegetation. If that is the case, and all other avenues have been exhausted—

The Hon. Rick Colless: The $37 million won't be enough.

The Hon. IAN MACDONALD: The honourable member said that $37 million may not be enough.

The Hon. Rick Colless: It won't be because it's going to impact on everybody.

The Hon. IAN MACDONALD: I have written to the Federal authorities asking them to match us. The package has three components: sustainable farming grants, farmer exit assistance and a statewide offset pool. An amount of $15 million is committed to the sustainable farming grants, and that will allow producers to develop new practices that both benefit the environment and provide additional income. Dollar for dollar grants up to $80,000 will be available for landholders who have been unable to clear and who will suffer economically as a result. This will help them diversify their enterprises and remain viable, while still ensuring the environment is protected. A further $12 million will be made available in the form of a farmer exit assistance package. Under that component, a CMA may recommend the purchase of a property once the owner has demonstrated that the inability to clear will cause his or her enterprise to become unviable.

The Hon. Duncan Gay: Is that a further $12 million or is it part of the $37 million?

The Hon. IAN MACDONALD: It is part of the $37 million, yes.

The Hon. Duncan Gay: So it is not a further $12 million?

The Hon. IAN MACDONALD: No, I started by referring to $15 million and then to a further $12 million. The Deputy Leader of the Opposition has misinterpreted me, as he does often in this place. I spoke of a $37 million package, which I then broke down into its various elements.

The Hon. Duncan Gay: Over how many years?

The Hon. IAN MACDONALD: Now the member is backsliding, as usual. Under this component, a CMA may recommend the purchase of a property once the owner has demonstrated that the inability to clear will cause his or her enterprise to become unviable. The property may then be re-sold under strict management conditions, and funds from any sale will be returned to a revolving funding pool. Finally, the State Government has allocated $10 million for a statewide offset pool for farmers. Under the regulations, clearing may be approved if the landholder agrees to carry out an offset activity, such as planting or improving further native vegetations, either on his or her own land or an adjoining property. In some cases that may not be possible for a variety of reasons. In those circumstances farmers may be eligible for funding from the offset pool, which will allow them to conduct offset programs on another property while continuing to farm their own.

Once again, funding will be allocated on the advice of experts from the local Catchment Management Authority. This financial assistance package will help mitigate the concerns of some farmers who believe they may be unduly impacted upon by the new native vegetation laws. The funding will be allocated based on historical clearing rates for each CMA, and that means it will go to those areas of the State most in need of assistance. But it must be remembered that the majority of farmers will be able to continue to manage their enterprises as they have always done. The State Government has also factored social and economic concerns into the new regulations by allowing the clearing of regrowth and invasive native species. In addition, $436 million has been provided for on-ground works through the investment strategies of the CMAs. [*Time expired.*]

STANDARD INSTRUMENT (LOCAL ENVIRONMENTAL PLANS) ORDER 2005

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Minister for Justice, representing the Minister for Local Government. Will the Minister explain why brothels and other restricted premises are not specifically covered in the draft Standard Instrument (Local Environmental Plans) Order 2005? Will the Minister indicate how development applications for restricted premises will be governed by the draft order? Will the Minister detail how this instrument will impinge upon the ability of local councils to independently determine the validity of a development application for a brothel, sex shop or restricted premises? What appeal mechanisms under the proposed instruments will be afforded to citizens concerned with a potential development application for restricted premises in their area?

The Hon. TONY KELLY: It may have been more appropriate for this question to be directed to the Hon. Frank Sartor because it involves planning. I will forward the question to the appropriate Minister and obtain a speedy reply.

COOMA HOSPITAL DIALYSIS MACHINE

The Hon. MELINDA PAVEY: My question is directed to the Minister for Health. Is the Minister aware that six people from the Cooma area who require kidney dialysis treatment are being forced to travel from their homes to Canberra, three hours back and forth as often three times a week, for treatment because a dialysis machine is not available at Cooma Hospital? How many dialysis patients does the Cooma area need before the Department of Health will look at placing a machine at Cooma Hospital? Has the department analysed the social and economic cost of sending patients to Canberra? Would that money be better spent on servicing Cooma Hospital with its own machine for local people?

The Hon. JOHN HATZISTERGOS: I am not aware of the specific demands of the need for dialysis at Cooma, but I did give the estimates committee a thorough analysis of this issue in response to a question asked by the Hon. Kayee Griffin. I ask the honourable member to refer to that very lengthy answer, which dealt with what the Government is doing in regional New South Wales to extend dialysis facilities.

INTERNATIONAL DAY OF PEOPLE WITH A DISABILITY

The Hon. TONY CATANZARITI: My question is directed to the Minister for Ageing, and Minister for Disability Services. What action is the Government taking to acknowledge International Day of People with a Disability on 3 December 2005?

The Hon. JOHN DELLA BOSCA: Last night I launched the International Day of People with a Disability 2005 at the Museum of Contemporary Art. More than 350 people attended the event. On this day we celebrate the valuable contribution to our community made by people with a disability. Designated by the United Nations as 3 December, it is a day of celebration, inclusion and partnership. To help promote the day, the Government has developed a powerful campaign with its message "Don't DIS my ABILITY" specifically for New South Wales. The campaign includes an extensive program of more than 110 events across the State including arts, sport, community and education that aim to confront some of society's stereotypes around disability.

In New South Wales 1.2 million people have a disability and more than 800,000 people care for people with a disability. As Minister for Disability Services, I was heartened to see so many people at the launch last night, including business leaders, representatives from the corporate and the disability sectors, chief executive officers of our public agencies and commissioners from government departments.

The Government has been working hard to raise awareness across business, government and the general public. Last night was a real achievement for us. In fact, the demand to attend the event was so high that we had to turn people away. About 1.2 million people in New South Wales have a disability and more than 800,000 people care for people with a disability. More than 30 per cent of people in New South Wales are involved directly with disability. The Government has more than doubled funding to the disability sector. This financial year the Department of Ageing, Disability and Home Care has a record budget of almost $1.55 billion to assist the most vulnerable in our community. One of the key messages of the "Don't DIS my ABILITY" campaign is to challenge perceptions of different levels of ability. One of the highlights of the evening was a panel discussion about how people with a disability cope with everyday life. Six people with various disabilities spoke honestly and openly to the audience about their abilities, their carers, their careers and their relationships.

Following the panel discussion the audience had the opportunity to meet the panellists and talk to each other about some issues raised in the discussion. Everyone who attended left the event with a better understanding of what it would be like to have a disability. All members of Parliament received a copy of the program of events and posters for their offices. I encourage all members of the House to continue to promote an understanding and awareness of disability by playing their part in promoting a lasting change in community attitudes. Let us resolve to carry this message throughout the rest of the year and not just on International Day of People with a Disability. "Don't DIS my ABILITY" should be an everyday theme in our everyday lives.

CARINGBAH SEX SHOP LOCATION

Reverend the Hon. FRED NILE: I ask the Minister for Finance, representing the Minister for Planning, a question without notice. It is a fact that on 7 April 2005 at a Land and Environment Court hearing Commissioner Robert Hussey stated, "I don't think two sex shops for Caringbah would be a problem, maybe three or four." The commissioner gave approval for a second pornography shop less than 100 metres from a preschool and within 200 metres of two schools, a baby health centre, a library and the YWCA. Within two months of its opening there have been two attempted abductions of children in Caringbah, both in close proximity to the second shop. Why does the Government allow these pornography shops to operate so close to schools and family-oriented services and the overall wishes of local councils, especially the wishes of parents and residents of the area, thereby putting the lives of children at risk? What action will the Government take to change the objectives, priorities and policies of the Land and Environment Court, which is completely out of touch with community standards?

The Hon. MICHAEL COSTA: Obviously, this is a question for the Minister for Planning. I certainly will refer it to him. I am not aware of the comments, and I am not aware of any police evidence that shows any causal connection between the events that were outlined, but maybe there is. I will refer the matter to the Minister for Planning.

UNPAID TRIAL WORK

The Hon. IAN WEST: My question without notice is addressed to the Minister for Industrial Relations. Will the Minister inform the House of the common practice at Christmas of employers offering unpaid trial work to prospective employees, and what steps the Government is taking to redress this practice in light of the Federal Government's changes to industrial relations?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for his ongoing interest in industrial affairs and for raising this important issue, especially on what is likely to be our last sitting day. People starting work during the Christmas holiday season, particularly young people, may be tempted to take a job on trial without payment to prove themselves to an employer. Unpaid trial work in New South Wales is illegal. The law states that all workers must be remunerated for their work in an employment relationship, including work completed during a trial period. Employers in New South Wales who engage workers on a trial basis can be prosecuted, and workers can get help to recover unpaid wages. Laws in New South Wales are backed up by a strong and active inspectorate. The New South Wales Office of Industrial Relations has 120 inspectors working from contact centres across the State.

Last year the office completed more than 14,500 workplace investigations, which identified more than 6,000 industrial relations law breaches affecting 80,000 employees. Under our system in New South Wales workers have recovered $32.5 million in unpaid wages and entitlements in the course of the Carr and Iemma governments terms of office. Several recent examples illustrate this practice. In one case a 20-year-odd bar attendant at Newcastle RSL recovered $1,000 after five weeks of illegal, unpaid trial work following an investigation by New South Wales Industrial Relations inspectors. In another recent matter the Office of Industrial Relations helped an 18-year-odd beauty therapist from Kellyville to recover her rightful pay of $623 after six days of unpaid work in a beauty salon in Parramatta. Finally, a receptionist from Enmore was assisted in the recovery of $136 to which she was entitled for one day's unpaid trial work at a manufacturing company in Redfern. The company used the receptionist to pack up a warehouse and storeroom before an office move, with no intention of employing her or paying her for the work done.

A recent survey of young people conducted by the Office of Industrial Relations found that more than 10 per cent had worked an unpaid trial at the start of their current job, and those who did an unpaid work trial were more likely to have had other bad experiences such as working unpaid overtime, being bullied or being forced to work in potentially hazardous or dangerous situations. Young people are exploited easily and will be

among the hardest hit by the Howard Government's radical workplace changes, which will force them to negotiate individual contracts with employers. Under the Howard "WrongChoices" legislation if an employer does not agree voluntarily to repay workers for an unpaid trial, workers will have to take their employer to a Federal court, a daunting prospect for anyone let alone those who are new to the work force. In other words, workers will be on their own. Unlike New South Wales, the Commonwealth does not have a strong and active inspectorate. To suggest that just 200 inspectors can provide any real protection for the entire Australian work force is a joke.

Apparently New South Wales will get just 15 new Federal inspectors, all of whom will be based in Sydney—a matter that members of The Nationals might find interesting. These 15 inspectors will be expected to support 1.5 million employees to be forced off State awards—one inspector for every 100,000 workers. The amount of compliance work done currently by Federal agencies is negligible compared to that of State inspectors. In 2003-04 almost 5,000 workplace relations breaches were reported to the Federal Department of Employment and Workplace Relations, but only nine prosecutions were made. Last financial year this figure fell to just seven employers nationwide. The Federal Office of the Employment Advocate has made only one prosecution, has no full-time compliance staff and does no workplace visits. It is more important than ever for workers to know their rights before entering into a work contract, especially young people during the Christmas period. The Fair Go Advisory Service, operated by the New South Wales Government, helps people compare State award entitlements to a proposed Australian Workplace Agreement and outlines issues to consider before signing. [*Time expired*.]

BUSHFIRE HAZARD REDUCTION

The Hon. CHARLIE LYNN: My question without notice is directed to the Minister for Emergency Services. How many planned hazard reduction burns were not undertaken as planned in the past year? Given that the Rural Fire Service Commission has said that up to 70 per cent of burns were not completed, will the Minister release publicly within seven days the details of all incomplete hazard reduction burns on a district basis?

The Hon. TONY KELLY: I am sure that I have said on other occasions in this House that it is as impossible to fireproof New South Wales as it is to drought proof it. Hazard reduction burning is a useful tool in helping to reduce the intensity of fires under moderate conditions. A number of improvements have been made to ensure that hazard reduction programs are pursued more efficiently. We have cut red tape and we are using our resources more efficiently. However, it must be understood that the quality of hazard reduction is more important than the quantity. The priority is carefully targeted burns that protect families and their assets. These burns are more complex and often more dangerous than many people realise. They are entirely dependent on suitable weather conditions.

Even during the drought there may be as few as 20 days a year when the weather conditions are safe enough for burning. Often it is too hot or too dry or, most often, too windy. Conditions have to be just right for a burn-off to be effective, and at the same time it has to be safe for personnel and communities involved. But under the right conditions the Rural Fire Service, volunteers and land managers will maximise the number of operations undertaken. Particularly in the latter part of this year the State received significant rainfall, and that has caused problems with the Rural Fire Service being able to undertake the operations it had planned.

The Rural Fire Service, landowners and managers across the State have been working throughout winter, wherever possible, on hazard reduction operations to prepare for the current bushfire season. The Rural Fire Service Commissioner has warned that the current bushfire season could be severe. An article in this morning's *Land* referred to my area in the Central West, which the commissioner expects will experience a very difficult season later this year. The commissioner has also pointed out that this season is likely to be a difficult one for hazard reduction. That has been the experience up to now.

The Hon. Michael Costa: But we have had a bit of rain.

The Hon. TONY KELLY: The rain tends to only make it worse because it prevents hazard reduction from being undertaken and promotes growth later in the year that will turn into hay and will burn. Rain can create an even bigger fire risk than usual. The rains and unseasonable storm activity that have signalled the end of the drought in many regions have forced the postponement of numerous planned hazard reduction activities until the conditions are suitable. That has unavoidably curtailed completion of the work and means that the targets that were set for summer have not been reached.

It does not take much rain to force the cancellation of planned operations involving scores of personnel, numerous appliances from the fire services and land management agencies, but variable weather conditions have enabled some areas to fare better than others. Those areas include the South Coast and Warringah on the northern beaches. As the commissioner stated, the wet weather is a double-edged sword. Not only has it delayed burn-offs but also it has sparked grass growth that will eventually dry and become bushfire fuel early in the new year, particularly, as I said, in areas in the Central West and as far down as the Riverina. The fire services know that we cannot rest easily because of the wet weather we are currently experiencing. Long-term weather forecasters predict that the unseasonable conditions will lift in the next couple of weeks

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

DEFERRED ANSWERS

The following answer to a question without notice was received by the Clerk during the adjournment of the House:

LORD HOWE ISLAND SHIPPING CONTRACTS

On 29 November 2005 the Hon. Don Harwin asked the Special Minister of State a question without notice regarding Lord Howe Island shipping contracts. The Special Minister of State provided the following response:

> I can advise the Member, and the House, that I am aware that the cargo and fuel contract is due for renewal in March next year.
>
> On the question of how the bulk fuel will be transported to the Island, any tenders submitted will require full consideration of environmental and maritime regulations in relation to the Lord Howe Island region.

Questions without notice concluded.

BUILDING PROFESSIONALS BILL

MINE SAFETY (COST RECOVERY) BILL

TERRORISM (POLICE POWERS) AMENDMENT (PREVENTATIVE DETENTION) BILL

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

[*The President left the chair at 1.03 p.m. The House resumed at 2.30 p.m.*]

PARLIAMENTARY ETHICS ADVISER

Annual Report

The President tabled, pursuant to the terms of the agreement made with the Clerk of the Parliaments and the Clerk of the Legislative Assembly, the annual report of the Parliamentary Ethics Adviser for the year ended 30 November 2005.

TABLING OF PAPERS

The Hon. Tony Kelly tabled the following papers:

1. Annual Reports (Departments) Act 1985—Report of the Department of Aboriginal Affairs for the year ended 30 June 2005.

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

   Board of Veterinary Surgeons of New South Wales
   Centennial Park and Moore Park Trust
   Independent Pricing and Regulatory Tribunal of New South Wales
   Sydney Catchment Authority

3. Rail Safety Act 2002—Report of the Office of Transport Safety Investigations entitled "Ferry Safety Investigation Report: Collision of the Manly Ferry Collaroy Number 3 West Wharf, Circular Quay—4 March 2005", dated 25 November 2005

Ordered to be printed.

RESIDENTIAL PARKS AMENDMENT (STATUTORY REVIEW) BILL

Second Reading

Debate resumed from an earlier hour.

Ms SYLVIA HALE [2.31 p.m.]: The proposed amendments to section 102 of the Act are probably the most significant, as they provide that a park owner cannot give notice of termination on the ground of a change of use unless the park owner has already received development consent under the Environmental Planning and Assessment Act. That provision will stop a park operator from issuing residents with a termination notice when no planning approval for change of use is in place. This provision has been a source of great worry to many park residents. The lack of certainty of their future has caused many park residents to leave prematurely. Frequently it has been possible for a park owner to suggest that the closure of a park will have no adverse social impact, because the park has already been cleared.

This requirement will ensure that tenants know exactly what has been approved and what has not been approved, and will remove a lot of speculation and uncertainty about their occupancy. When a development application has been approved, residents must be given at least 12 months notice of termination. That is an improvement on the current stipulation of six months. Proposed section 102AA will allow the tribunal to consent to the park owner's issuing of a notice of termination where development consent is not required, but only if the tribunal is satisfied that the owner genuinely intends to change the use of the site. The Greens believe that the wording is not quite strong enough and will move an amendment in Committee.

The amendment to section 128 allows a resident who has received compensation under that section to return to the tribunal if the original compensation was insufficient to cover a tenant's relocation costs: for example, if the cost of removal of belongings, or relocation of the van, or electricity and gas connection charges were higher than expected. The amount of compensation is often inadequate if a tenant is required to move. Proposed section 128A allows a resident to receive compensation prior to giving up possession of residential premises. This is an important change that allows a resident who has to leave a park to receive the amount needed up front. Some park residents exist on welfare or have very meagre incomes, and it is extremely difficult for them to finance the relocation. It is cold comfort if they receive that compensation after the event rather than when payment is required.

If residents do not have the money available at the time they move, they may need to take out a short-term loan or use their credit cards excessively. Of course, that will eat into the compensation they eventually receive. Proposed section 130A comes into play after a resident has been given a legal termination notice but is unable to move the dwelling itself. Unfortunately, that is a common occurrence. Anyone who has visited a residential park would be aware that the dwellings often bear no resemblance to caravans. Many are, in effect, permanent structures. An ongoing source of concern and grief to many tenants who have to move from a park is that they have paid money for a dwelling that physically cannot be moved, and the amount of compensation bears no relationship to the money they have outlaid. Proposed section 130A allows the tribunal to make a determination of the value of the resident's dwelling. Unfortunately, that determination will be advisory only.

In the lower House the Government and the Opposition agreed to an amendment to allow the tribunal to defer a possession order until an adequate amount of compensation has been paid by the park operator to the tenant for the sale of the dwelling. The Greens welcome that amendment. Proposed section 130A (4) states:

> The Tribunal's determination may not have regard to the dwelling's location.

That means that the price a resident paid for a dwelling—and part of the price might have represented its advantageous location—cannot be taken into account. Only the value of the actual physical structure can be taken into account, as though the dwelling had been removed from its location and been located in a showroom. Honourable members would be aware that residential parks occupy some of the most scenic land along the coast. Many permanent residents pay a premium to live in those areas. I find unfair the failure to compensate them adequately for location.

Once the tenants have gone, a park owner or operator will be the person who benefits from those dwellings. So park owners or operators will benefit twice over. They will benefit from the original premium paid for the location and, once caravan or mobile home residents depart, park owners or operators will not be obliged to compensate them for the loss of the premium originally paid. The Greens intend to move an

amendment to that proposed section but it is my understanding that the Hon. Jon Jenkins intends to move an identical amendment, so the Greens are more than happy for him to take the running on that issue. Our main concern is that that issue should be addressed.

The suggested amendments under division 1 will enable the director-general to appoint any officer as an investigator. Division 1 also sets out the investigator's power. Division 2 refers to a situation where a residential park has become insolvent. These amendments would enable the director-general, through the Supreme Court, to appoint an administrator. That would add a layer of protection for park residents who are living in a park that cannot continue to operate as a business. The proposed amendment to section 143 of the Act will insert a new section requiring park owners to spell out in advertisements for residential premises that the agreement is for leasehold right only and that the agreement might be terminated. That would warn people with elaborate homes that are difficult to relocate that they could be required to quit the park. Unfortunately, even though residents are to be warned, park owners may still verbally entice them into parks with promises of long-term security of tenure, even though that amounts to false or misleading information. I have spoken to residents in Whispering Pines, one of the more up-market parks in the Erina area.

The Hon. Michael Gallacher: Pine Needles. Whispering Pines is another sort of resting place.

Ms SYLVIA HALE: The facilities provided at Pine Needles are quite extraordinary and the homes are very impressive. It is easy to believe that a park of that nature could be sold to people as a permanent park. However, as I have had the benefit of talking to a number of residents at Pine Needles I am aware they are concerned about the lack of security and the fact that they were misled when they moved into the park. It was not made perfectly clear to them how potentially tenuous their occupation was. The Greens welcome this legislation but we believe it really does not go far enough. Living in a residential park is a choice for many, but for others it is a necessity. Residential parks provide an important source of affordable housing, of which we desperately need more in New South Wales.

The Greens are aware that residents have suffered a lot of disquiet about the direction in which this sector is moving and the prospect of a number of parks closing. The Government can only do so much about the supply of housing through this fair trading legislation. This legislation can only ever regulate the relationship between residential park landlords and residential park tenants. The Greens ask the Government and, specifically, the Department of Housing, to go further. They should address the whole issue and give practical and financial support to those residents who wish to start up a residential co-operative. If the Department of Housing and the Department of Local Government co-operate to make this happen it would certainly go a long way towards improving the availability of residential park places in New South Wales, thus putting at ease the minds of many vulnerable people because of lower income levels or age or because many of them sank all their resources into acquiring mobile homes in residential parks.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.47 p.m.]: Historically, many residential parks in New South Wales were located near pretty beaches, towns or natural features. They were located in areas where people who liked camping or caravanning would spend their holidays. Often people travelled to those parks annually so they could stay relatively cheaply in rural or coastal locations. The towns in which those holiday houses were located in the main now have permanent residents. Historically, those parks were established on large plots of land located in central positions in towns and they now have immense value as development sites.

The beauty of those caravan parks was that a large number of people could spend their holidays there at a relatively cheap cost. People now tend to drive less and to park their caravans more. Some people pay fees for a whole year because caravan sites are located on small plots of land, which are cheaper to rent than holiday houses, which have upkeep costs. However, permanent residents tend to look after caravan parks. When people retired they would live in their caravans in those parks. There is now a trend for people to live in mobile homes. They travel with two semi-trailer loads filled with sections of their mobile homes and with specially built unloading facilities and when they arrive on site they bolt their homes together. So, in a sense, people were living on smaller and cheaper subdivisions of land than any council would have allowed. Mini suburbs developed and sites were sold, affording people access to sites that were still nominally owned by park owners, and all that happened within a stable framework.

As that framework evolved and site values changed with inflation, another model emerged. This model was the caravan park whose land was occupied by transients with tents or caravans who stayed for a few nights or perhaps a week while motoring up the coast and then moved on. The park operators owned the land and,

technically, people occupied short-term leases and could be pushed off the land. Park operators who wish to develop their land have recourse to the legal model that I mentioned. However, the gap between the two models is brought into stark relief when park owners change the land use and develop the property to accommodate residential housing or time-share accommodation—which at least gives more people the chance to enjoy the area. If the traditional economic model holds, all the money goes to the owner. There is a huge transfer of capital from the developing model, which favours the residents, to the traditional model, which favoured the owner.

It could be argued that, legally, it was assumed that residential parks would comprise transient dwellings. The market model assumed that the land use would not change and, when it did, the edifice collapsed. However, it might be wise to draw on the analogy of taxi plates and licences. Taxi plates were cheap to buy initially but then restricted supplies pushed up their price. They are now worth hundreds of thousands of dollars. The Australian Competition and Consumer Commission [ACCC] has recommended that the price of taxi plates and licences decrease in order to reduce market entry costs. This would improve the operation of the taxi market by increasing the number of taxis on our roads. Costs could cover merely the price of registration, reasonable quality control and inspection services.

But the Government has not changed the taxi plate system despite the fact that there seems to be a shortage of taxis. I put it to the House that it has not abolished that system because the few licences that exist are extremely valuable to their owners. Perhaps it is not surprising there is no register of taxi plate owners. We do not know who owns the immensely valuable licences for the taxis in which drivers slave to earn very little per hour. Despite the ACCC's recommendation that the Government deregulate the market, that has not happened. One can conclude only that taxi plate owners are powerful, affluent and would suffer if the status quo were rocked. In the case of residential parks, a major market change is occurring as park owners seek to move from the model that evolved in a market situation to completely different land use. As a consequence, all the money that accrued in that historic market for the sites and the homes on them will go immediately to the park owner. The value of individual sites has increased over time, and the owner probably got the land for a song in the first place.

An estimated 30,000 people live in about 900 residential parks in New South Wales. As house prices and rental costs have increased in metropolitan areas such as Sydney, Newcastle and Wollongong and in many attractive towns up and down the coast, living in a residential park has become the only economically viable lifestyle for people, particularly the elderly or the disabled. Caravans and residential parks provide a permanent home for many people in New South Wales. The paper by the Park and Village Service outlines current changes and points out that the loss of permanent accommodation in New South Wales residential caravan parks is estimated to affect the housing of more than 2,000 people this year.

The current changes and loss of the permanent accommodation provided by caravan parks is the result of a complex interplay of factors that vary in each region. Parks are being sold off for development because of increased land values, gentrified for manufactured homes, upgraded for tourism and lost as a result of a range of regional, State or Federal initiatives, such as increased insurance costs and the routing of highways. Housing for the most disadvantaged residents has been hit hardest. Those affected include residents who own their dwellings and rent the site. Dwelling owners, many of whom are elderly, face the loss of their investment in their housing and the prospect of homelessness unless they can find a park to which to relocate and the up-front resources to meet relocation costs.

Some residents rent both the dwelling and the site. Permanent renters from parks that have been closed or upgraded—families and those with disabilities frequently fail to maintain tenancies in the rental market—face the loss of their housing of last resort. But we cannot portray all park residents as low-income earners who are scraping by in society. Many residents have retired to parks and enjoy the sense of community and flexibility that the lifestyle brings. The Park and Village Service commented on the Office of Fair Trading review of the Residential Parks Act and noted:

> … security of tenure is not a concept that will be provided for in any amendment bill.

The Park and Village Service supports most of the bill. However, some very serious matters are yet to be resolved. The Park and Village Service has serious concerns about the options that park owners may be given, and the Australian Democrats agree. The Act must be amended to ensure that, when a change of use would require consent by a relevant authority, no notice of termination is issued unless the local council or relevant authority approves the change of use first. If the Act is not amended to include this requirement, park owners

will be able to continue to circumvent the checks and balances that are provided by the tribunal and local government planning processes. Residents will continue to be displaced and suffer unnecessary hardship.

The Hon. Jon Jenkins foreshadowed that he will move an amendment in Committee—Ms Sylvia Hale also mentioned this. The amendment will ensure that payments to residents take account of the market value of their homes in situ and not merely the market value of their homes when shipped away. Often the location of the home is a large part—indeed, it could be up to 90 per cent—of its value. The value of a house that is split in half, removed in two semi-trailers and located elsewhere—should one find somewhere else to put it—is quite different from that of a house that is established in a pleasant setting in a preferred area near housing, shops and perhaps a pretty natural feature. I believe this is an important amendment and I hope that the Government and the Opposition will support it. If they do not, they will be responsible for a massive transfer of funds from the poor to the rich.

The Government took back fishing licences and hire car plates, and a compensation scheme was available. If the Government does not want to support the amendment of the Hon. Jon Jenkins that would give a much larger compensation package to residents, it must consider some other package, perhaps in the context of the provision of low-income housing, which has been sadly neglected by both Federal and State governments for many years. The Government should think about the diminution of housing stock and the increased demand, particularly because of the huge rise in property prices, which caused the evolution in the market of people who increasingly establish homes on land owned by a residential park owner in response to the lack of affordable housing.

Affordable housing needs to be looked at more broadly by the Government. If the Government is not willing to support the amendment, it needs to provide an alternative scheme to guarantee reasonable housing at an affordable price. People have their housing taken from them and are offered trivial compensation. That compensation does not enable them to get comparable housing. Their main asset is being taken from them. Most of them are on a fixed income, which would cover rental costs and levies. However, it would not cover the cost of moving and setting up again. The Government needs to look at those issues. I am concerned about the compensation levels. The difference of the two models needs to be acknowledged far more openly than it has been by the Government so far.

The Hon. JON JENKINS [3.02 p.m.]: I want to tell a short story about an infamous caravan park. I think it is this event which, more than any other, has spawned the Residential Parks Amendment (Statutory Review) Bill. I do not want to defame anybody who does not have a right to reply so I will not mention names, but I will say it is the infamous Banora Point Caravan Park. The park is situated on beautiful riverfront land at Banora Point near Tweed Heads in the north of the State. It is close to shops, hospitals and what little transport we have in the Tweed. In 1996 the park was purchased by a company. At that time the park had 147 resident-owned units, a few cabins, and a number of approved and unapproved tourist sites. Some time later the company that owned the park let it be known that the park was to be closed for a riverfront residential development and it refused to allow the sale of the homes of permanent residents.

Whilst I support the right of the company to sell its assets in a manner of its choosing—I support the principle of caveat emptor to a certain degree—the company has a duty to compensate and assist residents to move with dignity into a place of their choosing, regardless of the fact that the company inherited that duty when it bought the pre-existing caravan park. The company has been "encouraging" its residents to move by using a plethora of techniques. I will not go through the large number of them. However, I refer to one in particular that the Government may want to take into other departments. The caravan park became an emergency housing centre. The people who require emergency housing may be dysfunctional, they may have behavioural or mental illness problems, they may have serious alcohol and drug problems, they may have social or criminal problems, et cetera. When pressure was to be applied to a resident, his or her home was surrounded by large numbers of dysfunctional people. The park is a permanent patrol point for police, and council and staff officers refuse to enter the park. To quote one journalist, "It looks like a Soweto ghetto."

The residents' homes in the park have always been acquired for less than $5,000—they are worth much more. Less than three kilometres away similar houses sell for $200,000 to $250,000. Of the original 147 resident owners only 23 of the most vulnerable people are left. Many are elderly, disabled and disadvantaged. I mention a particularly heroic figure, Len Hogg, one of the final residents of Banora Point Caravan Park. Although he is fortunate enough to have the means to move from the caravan park, he has selflessly defended the residents in the face of sometimes overwhelming threats. Mr Hogg has legally defended the remaining residents, who cannot defend themselves. In some cases, he has physically defended them from being harmed. Len is a true Australian.

I am somewhat disappointed in both the member for Tweed and the local council—from different sides of the political spectrum. They have allowed this situation to continue for a number of years. I hope this bill will be implemented with speed to protect the dignity of the last few remaining residents of the Banora Point Caravan Park and many other residents who are in the same situation.

Reverend the Hon. FRED NILE [3.07 p.m.]: I refer to a few matters in relation to persons affected by the Residential Parks Amendment (Statutory Review) Bill. I know that the bill has been developed in consultation with many people living in caravan parks and that it contains many positive aspects. It seems to meet the needs of people with caravans or mobile homes, but it does not satisfactorily provide justice to another group of residents: those who have erected permanent homes in what I call residential parks. Mr Don Leonard of Erina wrote that three years ago his house cost $310,000. A $5,000 caravan can be moved if a caravan park closes down. However, people have been allowed to build permanent houses on land owned by park owners. Those houses cannot be shifted and demolished.

He went on to say that many people, particularly those on the Central Coast, wanted to be located in parks such as the one at Erina because it was near medical services, relatives and other facilities. They were involved in landscaping the park extensively, including water features, bridges and pathways. It is nothing like the old caravan park, which was a great big bare flat piece of land on which there were caravans. They are attractive developments. I do not know whether honourable members can see the photographs I am holding, but they show houses that one would expect to see on the North Shore. It really is a residential house park in which many fine buildings, costing $300,000, have been erected. The photographs also show the landscaping and attractive walls. It seems that the legislation has not hit the target in providing justice for these individuals. Mr Leonard's letter continues:

> If the house is valued as separated from its location, it would virtually attract an assessment for its potential to be dismantled in four parts for movement on the back of a truck (a task which our park owner has stated would be extremely difficult).
>
> Having regard to the very small number of houses sold in such manner associated with park closures on the Central Coast, it would seem that a house may be worth $30,000 to $50,000 "on the back of a truck".

However, the house cost the resident $300,000. The letter continues:

> The demand for number of houses involved in a park closure may defray values.

Don Leonard said that his house is one of 250 on the park, and that there are thousands of similar homes on the Central Coast alone. The letter continues:

> I would stand to lose in the vicinity of $270,000. I am a senior citizen and would not have the funds to buy other accommodation.
>
> The park owner would own my house (an asset worth $310,000) and could rent the property or later dispose of it to take full benefit from its value, or set up another park elsewhere and relocate it to that park with a large net profit.
>
> In any event a large windfall would accrue to the park owner to supplement the profit from the new use of the land. If a park owner gains $200,000 from 250 houses on parks such as this he would gain a windfall of about $50 million at the expense of residents.
>
> I, together with my fellow residents on the Central Coast seek your action to correct this outrageous inequity. There are about 40,000 residents throughout NSW in a similar situation. Most residents are in the 60 to 80 age bracket and often do not have the capacity to understand the process or to lobby, such as the capacity enjoyed by park owners and developers. We particularly depend on you to ensure a fair and just outcome.

It is clear that the original legislation was aimed at assisting people who lived in a caravan or a mobile dwelling to relocate if the property was sold. But it is inappropriate and misleading to refer to parks established specifically for manufactured homes fixed to the land as caravan parks. The term "caravan park" gives the impression of mobility and low cost, but there is no mobility and there is no low cost. The scarcity of suitable sites for relocation of resident homes and the difficulty of relocation increases in magnitude from a caravan to relocatable mobile homes to the virtual non-existence of alternative sites for manufactured homes, particularly when up to 200 to 300 homes may be dislocated by a single park closure. I am pleased that the Government in the other place accepted the amendment moved by The Nationals to page 14, schedule 1, new section 113 (3A), "Application to tribunal by park owner for termination and order for possession", which is now incorporated in the second print of the bill. The amendment improved the legislation, and I know that residents are very pleased to with it.

However, residents are concerned about the impact of new section 130A (4), which is identified in the Hon. Jon Jenkins' proposed amendment, with reference to the words in the first line of page 16 of the new print

of the bill, "The tribunal's determination may not have regard to the dwelling's location". But if the location of the dwelling has value it is an important factor. At first glance it would be logical to say that the tribunal's determination may have regard to the dwelling's location. The current wording is negative and will not assist the tribunal in resolving the conflict between the resident and the park owner to achieve just compensation wherever possible. The Christian Democratic Party is concerned about this aspect of the bill. The Government should give further consideration to how it can assist those who do not have a mobile home or a caravan but a three-bedroom fixed dwelling, similar to those seen in the suburbs of Sydney. Residents must receive fair compensation for the market value of their homes, a principle that both Labor and Coalition governments have tried to achieve. I hope that will happen on this occasion.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.17 p.m.], in reply: I thank all honourable members for their contributions to the debate on the Residential Parks Amendment (Statutory Review) Bill, which amends the Residential Parks Act 1998. It is good to see the broader support for the bill and for the ongoing protection of the rights of residents in residential parks, and for the strong support for greater security and safeguards, which the bill provides. Amendments foreshadowed by the Greens were made available to the Government in advance, and I thank Ms Sylvia Hale and her office for that. Some productive discussions between the Office of the Minister for Fair Trading and Ms Sylvia Hale's office have occurred.

The Government has had time to consider carefully these issues and their effects on what is already a delicate relationship between park owners and park residents. Indeed, many of the foreshadowed amendments come directly from some park residents groups, who also made their views known strongly during the Government's extensive consultation on the bill. The Residential Parks Act ultimately involves a balance between park owners and park residents who, after all, have to live together day in and day out. Achieving that balance, as we have done with the bill, has not been an easy task. I thank Ms Sylvia Hale and her staff for their contributions and for their ongoing interest in this area. In response to the Hon. Jon Jenkins and Reverend the Hon. Fred Nile, one must remember that the resident does not own the land on which the home is located.

One of the reasons for the disclosure of information provisions being made tougher is to ensure that the residents are 100 per cent clear that when they buy into a park it is only the dwelling and not the land itself that they are buying. The land belongs to the park owner. It would be unjust to oblige the park owner to effectively pay for property that he or she already owns. While it is true that the price that the resident originally paid for the home reflected the site on which the home was situated, it is more likely that the transaction was with the previous owner of the home, not the park owner. If residents wish to retain an asset for removal to another site, even if it is not in a park, they may do so. It is their asset. If the park is being redeveloped, they will have access to the expanded compensation provisions for removal costs.

In summary, I reiterate that the Residential Parks Amendment (Statutory Review) Bill takes a number of important steps to refine and improve the coverage of matters arising from the statutory review of the legislation. The review was extensive and a large number of comments and suggestions were considered during the development of the proposals that are before the House today. I am confident that this bill fairly and reasonably addresses the issues. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Ms SYLVIA HALE [3.22 p.m.]: I move Greens amendment No. 1:

No. 1 Page 4, schedule 1, lines 3-6. Omit all words on those lines. Insert instead:

(1A) A resident is entitled to the full protection of this Act until his or her residential tenancy agreement is terminated under section 95.

If this amendment is passed, it will delete from the bill subclause (1A) of clause 5, "Application of Act", which states:

A person does not cease to occupy residential premises as the person's principal place of residence by reason only that the person is absent from the premises for the purpose of receiving medical, nursing or domestic care.

While the provision in the bill is all well and good so far as it goes, the Greens—and other members of this House, I trust—believe that the provision does not go far enough. Judging by the manner in which the subsection is expressed, its aim is to take into account really appalling practices. I well remember being told about a woman whose husband had suffered a heart attack. He had gone into hospital and then subsequently had to be cared for in a nursing home, but he was signatory to the lease. Because the husband was deemed to have left the park, the park operator closed up the house. Every time the woman wanted to obtain access to her possessions, she had to ask for a key so that she could, for example, get her clothes. It was an extraordinary set of circumstances.

As currently stated, the subsection deals adequately with occupiers who are absent for the purposes of receiving medical, nursing or domestic care, but what must be remembered is that many residents of the parks are elderly. In many cases they are retirees who have sold their houses and moved to a park which suits their needs—they can enjoy the company of neighbours and they like the location—but that does not mean that they want to remain there for their entire lives. If a person rents a flat, provided the rent is paid and all other tenant obligations are met, that person would be at liberty to take a trip overseas to visit children, or to take a tour around Australia, or to take an extended holiday. However, in similar circumstances, residents of parks who are absent for extended periods may be held to have breached their leases, and that is absolutely unjust and totally unfair.

Irrespective of which side of the political fence one is on, this legislation is a matter of common justice. I have not heard one logical argument—or any argument, in fact—to suggest that those who comply with the conditions of their lease, pay their rent and do not cause nuisance to or problems for their neighbours should be forced to stay on the site while every other member of the community is allowed to move around. The restriction falls particularly heavily on older people, who are the majority of the residents of such parks, and they like to travel to see their children, their grandchildren, or perhaps relatives who may live in countries from which they originally came.

The Greens would like the subsection to provide that a resident is entitled to the full protection of the Act until his or her residential tenancy agreement is terminated under section 95. That will give residents the full protections that currently operate for tenants under the Residential Tenancies Act. I urge all honourable members to support the amendment.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.27 p.m.]: The effect of Greens amendment No. 1 is that even persons who obtained another principal place of residence and no longer needed or used the park as their home would continue to receive the full benefits of the Act. They would be able to claim compensation for relocation of the home even at the end of a tenancy and even if they no longer lived there. The amendment is not supported by the Government.

The consumer protection provisions of the Residential Parks Act are based on the situation of a resident living in a park that is his or her principal place of residence. This is significant because it is the resident's home—his daily shelter. It was never intended that the unique consumer rights provided under the Act would be extended beyond those arrangements, but that is what the amendment moved by the Greens would do in some situations. What the provision could lead to is a person basically using a park as an investment property while being treated the same as someone whose home is in the park. This is clearly inappropriate.

The Consumer, Trade and Tenancy Tribunal already has jurisdiction to decide whether individual tenancies are subject to the principal place of residence rule, and that is how matters should stay. The amendment would remove that discretion and would require the tribunal to treat all occupancy arrangements as being subject to the full coverage of the Act until termination—when the facts of individual cases may well establish that that is totally inappropriate. The provisions about absence due to nursing or medical care were included in the bill to ensure that residents finding themselves in such situations did not lose their status while their long-term arrangements were being finalised. It was important to identify this special situation, but the attempt to have an all-encompassing provision, as proposed in the amendment, cannot be agreed to by the Government.

The Hon. CHARLIE LYNN [3.30 p.m.]: The Opposition does not support the amendment. The Opposition believes that the Green's amendment weakens the position of residents. The existing provisions state clearly that a person can retain his or her rights if absent for medical, moving or domestic care reasons. Section 95 of the Act, on which the Greens rely, states that a person's tenancy can be determined "if the resident abandons the residential premises". The Opposition believes that unscrupulous owners could use section 95F,

which would operate under the Greens amendments, to put out people in long-term care by claiming they had abandoned the residential premises.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 10

Mr Breen	Reverend Nile	
Dr Chesterfield-Evans	Mr Oldfield	*Tellers,*
Mr Jenkins	Ms Rhiannon	Mr Cohen
Reverend Dr Moyes	Dr Wong	Ms Hale

Noes, 19

Ms Burnswoods	Miss Gardiner	Ms Sharpe
Mr Catanzariti	Mr Gay	Mr Tsang
Mr Clarke	Ms Griffin	Mr West
Mr Colless	Mr Lynn	
Mr Donnelly	Ms Parker	*Tellers,*
Mrs Forsythe	Mrs Pavey	Mr Harwin
Mr Gallacher	Ms Robertson	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Ms SYLVIA HALE [3.37 p.m.], by leave: I move Greens amendments Nos 3, 6, 9, 10, 11 and 12 in globo:

No. 3 Page 7, schedule 1, lines 1-16. Omit all words on those lines.

No. 6 Page 7, schedule 1, lines 17-25. Omit all words on those lines.

No. 9 Page 13, schedule 1. Insert after line 38:

(4A) A resident who is served with a notice of termination under this section may, at any time before the termination of his or her residential tenancy agreement, give notice of termination of the agreement and still preserve his or her entitlement to compensation under section 128.

(4B) A notice of termination given under subsection (4A) must not specify a date for vacating the residential site earlier than 21 days after the day on which the notice is given.

(4C) A notice under subsection (4A) may be given even if the residential tenancy agreement creates a tenancy for a fixed term and that term has not ended when the notice is given.

No. 10 Page 14, schedule 1, line 12. Omit "genuinely intends to". Insert instead "will".

No. 11 Page 15, schedule 1. Insert after line 2:

(2A) An application for such an order may also be made by the resident in separate proceedings for compensation following service of a notice of termination under section 102 (4A).

No. 12 Page 15, schedule 1. Insert before line 3:

(2A) An application for such an order may also be made by the resident in separate proceedings for compensation on the ground that the amount of compensation fixed by an earlier agreement between the park owner and the resident is inadequate.

Greens amendment No. 3 deletes the section that would require park residents to pay for water availability. Currently park residents do not pay for water availability, but they do pay water usage charges. As in other tenancy situations the landlord should pay water rates and the tenant should pay for water usage where there is a meter, and that is fair. In the case of residential parks there is a prospect of tenants moving on over time. It is unfair that the park owner should be continually reimbursed for the laying of pipes.

The Greens have been informed that the current formula suggested in the Government's amendments could fluctuate wildly, depending on the gauge of the pipe that supplies water to a park. That might result in one set of tenants in a park paying much higher water availability charges than another set of tenants in another park. There is a provision that these things should be worked out in the regulations, which might indicate that the Government did not think through this proposed section sufficiently prior to drafting the bill.

Greens amendment No. 6 removes the Government's proposed section 58 (2) (a). If we read the Government's provision carefully, we find that it guarantees to park owners an annual rent increase equivalent to the consumer price index [CPI]. Tenants cannot contest at the tribunal any rent increase equivalent to or less than the CPI. The tribunal is prevented from making an order that the rent increase is excessive. That is not the case with other tenancy legislation. I believe that tenants should always have the right to contest a rent increase at the tribunal, no matter how small, if they think it is unfair or it does not reflect market rents.

The Government's suggested provision gives park owners a guaranteed rent increase against which tenants may not appeal. Many residents of residential parks believe that is inherently unfair. All we are trying to do with these amendments is to put residents of mobile homes and caravan parks on the same footing as many other tenants. They should be able to enjoy many of the same benefits. We are not pleading that they should be entitled to more than other tenants; we are suggesting that they should not be entitled to any less.

Amendment No. 9 will add some new subsections to deal with a situation when leases have been terminated and park residents have been given 12 months notice, but the park residents' leases are for a fixed term. We think this amendment is necessary because a resident might receive an offer of a place at another residential park in the meantime. Obviously this applies to those situations where a resident knows that a park may be closing. The first thing many of them would want to do would be to look around to see whether there was a possibility of being relocated elsewhere. So the purpose of this amendment is to ensure that they are not penalised for wanting to leave before the 12 months has expired. They know that the park is going to close and they might wish to take the opportunity to move, but they are under a fixed term agreement so they would suffer detriment if they broke the agreement early.

This amendment would ensure that a resident in that situation would be allowed to give 21 days notice, the standard notice agreement for tenants in a continuing agreement. Tenants would also receive compensation under proposed section 128. This amendment reflects the situation better where a park is closing and tenants might not want to wait for 12 months to elapse or for the conclusion of their fixed-term tenancy. They might also need the money to relocate. Amendment No. 10 will strengthen the Government's suggested amendment by changing the words "genuinely intends to" to "will". The tribunal must be satisfied that the park owner will, and not just intend to, be using the park for another non-residential purpose where that purpose does not require development consent. If the tribunal is satisfied that that is the case, termination orders can be issued.

We moved this amendment because it sets in place a higher threshold of proof. It is not enough that park owners can terminate all residential tenancies because the tribunal might think they genuinely intend to close. I believe that the wording leaves the situation somewhat indeterminate; therefore, we are trying to strengthen it. Greens amendment No. 11 will enable a resident to seek an order for compensation following service of a notice for termination under section 102 (4 (a), which is the subject of Greens amendment No. 9. Honourable members would remember that that amendment relates to tenants under fixed-term agreements where a park was closing because of a change of use and 12 months notice had been given.

Amendment No. 12 would enable a tenant to return to the tribunal because the amount of compensation that had been fixed by an early agreement between the park owner and the tenant was shown to be inadequate. Even though a resident and a park owner might have come to an agreement, if residents subsequently establish that the compensation is inadequate or that they made a bad decision and agreed to an amount that they should never have agreed to, they can seek a further amount and no previous tribunal order will be necessary. People might enter into compensation agreements a number of months before they move. Sometimes they have no understanding of what the relocation or moving costs will be.

Most of us do not move house extraordinarily frequently. If many honourable members had to estimate how much moving and incidental costs were, they would find that they seriously underestimated them. Some tenants do not have any experience in entering into agreements. They might not read, say, the removal contract carefully and they might think they were being covered for all their goods when they were not. It is a matter of simple justice to extend to tenants of residential parks many of the rights that are afforded to tenants in more conventional circumstances. I commend these amendments to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.47 p.m.]: The Government does not support Greens amendments Nos 3, 6, 9, 10, 11 and 12. I will deal, first, with Greens amendment No. 3. The bill takes a consistent approach in regard to electricity and water availability charges by ensuring that residents make a small contribution to the cost of providing those essential services. With water in particular being an increasingly scarce resource, it is totally in line with the Government's policy to have the costs of providing the service more evenly spread. The charge will be spread across all the sites in each park so that the impact on individual residents is relatively minor. The bill contains a regulation-making power that will enable water availability charges to be limited should it be necessary, such as in the case of the size of the water pipe coming into the park attracting a high commercial availability rate which would have an adverse effect on residents.

I deal, next, with Greens amendment No. 6. The provision in the bill on the consumer price index level rent increases is important. It provides a level of stability and certainty to both residents and park owners and it also avoids overuse of the tribunal's resources for relatively trivial matters. It is important that the parks regulation takes a balanced approach and has regard to the concerns of both park owners and residents.

I deal next with Greens amendment No. 9. Park residents and park owners can already negotiate their way through these issues. It is likely to have a very adverse impact on park owners who, when giving 12 months notice of termination, have factored in the resident's continued occupation for that period as part of their financial arrangements.

Amendment No. 10 appears to be a consequential amendment. It is hard to see how the tribunal could differentiate that a park owner "will" use the park for another purpose rather than "generally intends" to use it for another purpose. The rationale behind this amendment is not clear. The Government simply does not see the point of the amendment and we do not support it. Amendment No. 11 is linked to amendment No. 9. It ensures that a resident who has been given 12 months notice of a termination on redevelopment grounds and who is subsequently given 21 days notice can commence proceedings for the payment of compensation. The effect of amendment No. 12 is problematic. It will allow the tribunal to reopen negotiations between the parties that resulted in settlement. From the park owner's point of view there would be little point in negotiating if the mutually acceptable agreement were subject to review later.

The Hon. CHARLIE LYNN [3.50 p.m.]: The Opposition does not support the Greens amendments. As to amendment No. 3, we believe a water availability charge is a valid component of supplying water. There is already provision in the Act to recover from the resident the cost of the water supply. There is also provision for regulations to be used to control this charge if necessary. We do not support amendment No. 6 because we believe it reflects almost a flat-earth policy in regard to the economy. Returning to the tribunal to seek a rebate on rent increases less than the consumer price index [CPI] would tie up the entire system. Pensions and so forth are already linked to CPI increases, and we think that is fair and reasonable. As to amendment No. 9, we believe there is adequate protection under section 128. We believe amendment No. 10 is pedantic and we do not support it. We do not support amendments Nos 11 and 12 because we believe the amendments that the Government has accepted that allow us to revisit the compensation payments are adequate.

Amendments negatived.

The Hon. JON JENKINS [3.52 p.m.]: I move:

Page 16, schedule 1, line 1. Omit "not".

I listened to the Hon. Henry Tsang's arguments during his speech in reply to the second reading debate when he addressed the substance of my amendment, and I was astounded. People do not buy a semi-permanent house—or whatever we choose to call it—in a desert. They buy it in situ: in location and in place. By the same token, such houses are not sold in the middle of a desert. They are sold in situ and in place. Their value is their value in situ. We cannot separate the house from its location: the two parts make the whole. When a company buys a caravan park it assumes both the profits and the risks involved with that operation.

Residential parks are advertised as being permanent retirement locations, and people move expecting to live out their lives there. Residential parks are used predominantly by retirees. Homes are advertised on that basis, people purchase them and move in only to discover that the park owner can deny their expectations without offering them compensation. That is ridiculous. It is no different from the business concept of goodwill: people who purchase or lease a business receive the goodwill that goes with it. If the former owner or the lessor acts deliberately to remove that goodwill, he or she must offer compensation. That is a standard business concept. I am extremely disappointed that the Opposition and the Government will not support the amendment.

The Hon. HENRY TSANG (Parliamentary Secretary) [3.54 p.m.]: This amendment would allow the tribunal to consider the dwelling's location when making a ruling on the sale value of the home being sold by a resident to a park owner. The bill specifically excludes the dwelling's location from such consideration. Under this amendment the park owner may have to pay the resident a price that takes account of a proportion of the land that the park owner already owns. This is clearly unfair. The dwelling is a chattel and the park resident's ownership does not extend to the land. For the reasons I outlined in my speech in reply, the Government does not support the amendment.

Ms SYLVIA HALE [3.55 p.m.]: I support the amendment. The Government's explanation for not supporting the amendment is patently absurd. All members must agree that when people bought into a residential park in a particular location they paid a premium for the land they would occupy. Many of them moved precisely because of the location. If they are subsequently forced to move they should be compensated for the additional amount they paid. They paid a premium, and windfall profits will result from reuse of the land. I find extraordinary the suggestion that all that should go to the park operator.

We have many large houses in our community. Then children leave, the nest is empty and people decide to relocate. People decide to move to residential parks for a variety of reasons—often because the sites are on level ground, the neighbours are close and they are friendly communities comprising people with similar interests. If we do not put this provision in place it will be a real disincentive to relocation. People who know that their tenure is uncertain and not at all similar to their home ownership will be discouraged from moving to residential parks. We must remember that the tribunal determination is only advisory; it is not binding. The bill says that the tribunal can make use of the services of a registered valuer. I know that valuers are extraordinarily clever people—that is evident from the prices they come up with—but they usually have a sound basis for their valuations. I would be interested to know how a valuer could possibly divorce a building from its location.

When people enter into an agreement to live in a residential park they pay the park owner a premium for moving there. Why should that owner receive a double benefit? The owner has already been paid by the tenant, and if the tenant is forced to move, the owner will be in a position to capitalise and profit from the park's re-use. That is presumably the only reason he would want to close the park and move the tenants. why should the owner be allowed to benefit twice? That is patently unfair.

The Hon. CHARLIE LYNN [4.00 p.m.]: I do not have a copy of the amendment moved by the Outdoor Recreation Party. Because of its voting pattern in the past, I put anything I get from it in the bin. I am also greatly concerned about the new alliance between the Outdoor Recreation Party and the Greens because I think they are now both competing for the same constituency. The Opposition supports the Government's opposition to the amendment.

Reverend the Hon. FRED NILE [4.00 p.m.]: The Christian Democratic Party supports the very simple amendment moved by the Hon. Jon Jenkins. For the benefit of the Hon. Charlie Lynn, proposed section 130A (4) states:

> The Tribunal's determination may not have regard to the dwelling's location.

Location is obviously a major factor. The Hon. Jon Jenkins seeks to delete the word "not" from that subsection. As it stands, the legislation forces the tribunal not to have regard to the dwelling's location. It would be fairer to leave it open to the determination of the tribunal. Proposed subsection (5) states:

> The Tribunal's determination of the value of the resident's dwelling is advisory only, and does not bind the resident or the park owner or affect any agreement between them for the sale of the dwelling.

That brings greater accuracy to a true calculation of the compensation for the building on that site.

The Hon. JON JENKINS [4.02 p.m.]: I note the contempt with which the Opposition treated this amendment. The amendment came from caravan and park residents, and the disgraceful response of the Hon. Charlie Lynn was to throw it in the bin.

The Hon. Charlie Lynn: Point of order: I am being verballed. I mentioned specifically the Outdoor Recreation Party.

The CHAIR: Order! That is not a point of order, and I so rule.

The Hon. JON JENKINS: Under this amendment the tribunal is not compelled to look at the compensation issue but it may. I am not a lawyer—I stand to be corrected by lawyers—but the tribunal must then abide by the standard common law practices of natural justice and fair and just compensation. What is wrong with that? I do not see any problem with applying fair and just compensation and natural justice to the issue of compensation for these owners, who may have bought in good faith and purchased what effectively amounts to a business version of goodwill. If someone can explain to me why that does not apply to this matter I will be enlightened.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.03 p.m.]: I support the stance taken by the Hon. Charlie Lynn. The compensation relates to the cost of moving people who had not planned to move and did not want to move, and to the interruption to their life, for which they should be compensated. The Opposition supports that part of the argument, which is most defensible. But it would be nonsensical to take the argument a step further to extend compensation to the location of the site. That would mean that if someone rented a house without a water view they would not be entitled to compensation if someone wanted to realise the asset and cancel their lease, but if someone else was forced to move from a house with a fabulous water view, he or she would get compensation. The argument is basically illogical. The basic argument that those who have been disadvantaged deserve compensation is legitimate. Like the Hon. Henry Tsang and the Hon. Charlie Lynn, I do not believe that amendment can be legitimately sustained, as much as we would like it to be.

The Hon. HENRY TSANG (Parliamentary Secretary) [4.05 p.m.]: In response to the concerns of Ms Sylvia Hale, I point out that not all residents buy their residences from park owners but in most cases from another owner. The Government understands how residents might feel about this matter, but one of the reasons that the disclosure of information provisions are made tougher is to ensure that residents are 100 per cent clear that when they buy into a park they are buying only the dwelling, not the land itself. The land belongs to the park owner, and it would be unjust to oblige the park owner to effectively pay for property that he or she already owns. While it is true that the price the resident originally paid for the home may have reflected the site it was sitting on, it is more likely that the transaction was with the previous owner of the home and not the park owner.

If residents wish to retain the asset for removal to another site, even if it is not in a park, they can do so. It is their asset, and if the park is being redeveloped they will have access to the expanded compensation provisions for removal costs. Honourable members should also understand that not all park redevelopments are for major residential housing estates. Some park owners seek to terminate tenancies so they can focus on tourist accommodation, so to claim that all park owners reap windfall benefits from development is not true.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 10

Mr Breen	Reverend Nile	
Dr Chesterfield-Evans	Mr Oldfield	*Tellers,*
Mr Cohen	Ms Rhiannon	Ms Hale
Reverend Dr Moyes	Dr Wong	Mr Jenkins

Noes, 19

Dr Burgmann	Mr Gay	Ms Sharpe
Ms Burnswoods	Ms Griffin	Mr Tsang
Mr Catanzariti	Mr Lynn	Mr West
Mr Clarke	Ms Parker	
Mr Colless	Mrs Pavey	*Tellers,*
Mr Donnelly	Ms Robertson	Mr Harwin
Miss Gardiner	Mr Ryan	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Schedule 1 agreed to.

Title agreed to.

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

TERRORISM (POLICE POWERS) AMENDMENT (PREVENTATIVE DETENTION) BILL

Protest

The President announced that the Clerk had received a protest under Standing Order 161 against the passing of the Terrorism (Police Powers) Amendment (Preventive Detention) Bill 2005. The President announced further that the protest would be entered in the *Minutes of Proceedings* for 1 December 2005 and that a copy of the protest would be forwarded to the Governor.

DEPARTMENT OF THE LEGISLATIVE COUNCIL

Annual Report

The President tabled the annual report, volumes 1 and 2, of the Department of the Legislative Council for the year ended 30 June 2005.

Ordered to be printed.

NEW SOUTH WALES PARLIAMENT JOINT SERVICES

Annual Report

The President tabled the annual report of the New South Wales Parliament Joint Services for the year ended 30 June 2005.

Ordered to be printed.

GENERAL PURPOSE STANDING COMMITTEE NO. 5

Reference

Mr IAN COHEN: I inform the House that on 1 December 2005 General Purpose Standing Committee No. 5 resolved to adopt the following terms of reference:

That General Purpose Standing Committee No. 5 inquire into and report on a sustainable water supply for Sydney and, in particular:

(a) the environmental impact of the proposed desalination plant at Kurnell,

(b) the environmental assessment process associated with the proposed desalination plant,

(c) methods for reducing the use of potable water for domestic, industrial, commercial and agricultural purposes, including sustainable water consumption practices,

(d) the costs and benefits of desalination and alternative sources of water including recycled wastewater, groundwater, rainwater tanks and stormwater harvesting,

(e) practices concerning the disposal of trade waste,

(f) the tender process and contractual arrangements, including public-private partnerships, in relation to the proposed desalination plants, and

(g) any other relevant matter.

WATER MANAGEMENT AMENDMENT BILL

Second Reading

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [4.18 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.

This bill covers a raft of significant changes which are essential to protect our fragile river and ground water ecosystems and ensure the prosperity of our regional communities that depend on continued and certain access to water. This bill will strengthen and improve the provisions of the Water Management Act, an Act which, when passed by Parliament in December 2000 and significantly updated in June 2004, represented a major overhaul of the State's previous water legislation and heralded a new approach to water management in New South Wales. At the same time the bill will align our reforms in New South Wales with the broader platform of the national water initiatives agreed to by the Council of Australian Governments [COAG]. The New South Wales Government has clearly indicated its willingness to work with the Commonwealth and the other States to ensure that our water policies represent best practice and promote long-term sustainability.

At this point I would like to put the legislative changes that I am tabling today into perspective by outlining some of the major outcomes that have been achieved in water management in the past few years. These cover both real environmental outcomes as well as substantial progress towards a sustainable water industry in New South Wales through a transparent and community-involved planning process. Eighty per cent of water extracted in New South Wales is now managed through statutory water-sharing plans. In July 2004, 31 water-sharing plans commenced setting the rules for allocating water between water users and the environment for the next decade and, therefore, guaranteeing environmental and water users' rights. The gains New South Wales has made have been recognised nationally and internationally.

The Murray-Darling Basin Commission, for example, has stated that New South Wales is leading the way in implementing sound ecological water management. New South Wales water reforms are also directing much of the broader national water agenda. Through the water-sharing plans we have now preserved the majority of water in the State's major inland river systems for the environment. Some 200 gigalitres, or 200,000 megalitres, of water have been returned to the environment. These rules not only preserve water for the environment, they also are designed to help reinstate natural flow patterns to critical wetland areas. In New South Wales we have also provided for the important Aboriginal cultural connections to water.

The Murrumbidgee water-sharing plan allocated more than 2,000 megalitres of water to be granted under licence for indigenous cultural activities. I am pleased to advise that the first Aboriginal cultural access licence has been issued to the Nari Nari Tribal Council for the inundation of a culturally significant wetland on their lands. In the overallocated ground water systems, New South Wales is committed to an approach of reducing entitlements to achieve sustainability, while also recognising the impacts on water users and their local communities through the dedication of substantial funds totalling $110 million to assist in their adjustment to the new levels. It must be noted that if ground water resources continue to be mined, the eventual result is the collapse of the aquifer and the industries and communities that depend on this water.

While the water-sharing plans focus on providing water through the environmental rules and managing extractions to a set limit, we are also looking at other innovative ways to provide additional water for the environment that will not impact on the water availability to licence users. As a result the Government has committed substantial funds to improve the efficiency of water delivery as a means of freeing up water for the environment. For example, under the Living Murray initiative, New South Wales, in partnership with the Victorian, South Australian, Australian Capital Territory and Australian governments, will invest $500 million over the next five years to recover up to 500,000 megalitres of water to improve the environmental health of the Murray River. Similarly, through the Snowy Joint Government Enterprise, the Australian, New South Wales and Victorian Governments have committed $375 million over the next eight years to water-efficiency projects to increase environmental flows to the Snowy River and the River Murray systems.

Under the Wetland Recovery Project we have also allocated $13.4 million to improve water efficiencies in the Macquarie Marshes and Gwydir wetlands. Major water savings from our artesian aquifers are being achieved through the Government's Cap and Pipe the Bores Program. In addition we are developing a program of measures to minimise the release of cold deoxygenated water from the bottom of major storages. Release of this water can have significant effects on the environment downstream, often for many kilometres. The significant advances in environmental initiatives have not come without acknowledging the importance of our $3 billion irrigation industry.

The water-sharing plans not only specify the environmental rules but provide licence holders with greater certainty over their allocations of water and open up water trading opportunities. Last year we also legislated for perpetual water licences for commercial users and for guaranteed water titles, similar to land titles, for water licences. This increases the value, mortgageability and tradeability of water licences, encouraging investment in water industries. A whole new expanded range of water-dealing or water-trading options are now also available to licence holders. The legislative amendments which I am tabling today are designed to build on and support the substantial achievements that have already been made. In New South Wales we have done more than any other State to ensure that water users can act with confidence about their investment in water businesses such as irrigation.

This has been demonstrated through the introduction of perpetual water licences and the statutory water-sharing plans. These water-sharing plans are backed by compensation provisions providing a significant safeguard for water users. In June last year the COAG agreed to a further refinement of these compensation arrangements through what is called a risk assignment framework. The COAG risk assignment framework specifies when and how the costs of future reductions in water availability should be shared between licence holders and governments, including the Australian Government. The COAG risk assignment framework recognises that reductions can arise as a result of three factors—firstly, natural events such as climate change; secondly, via improvements in knowledge; and thirdly, as a result of changes in government policy.

The risk assignment framework is to be implemented in two stages: until 2014 and after 2014. The initial stage of the framework is consistent with the Government's existing compensation provisions. Compensation is already available to licence holders if the Government makes a change to a water-sharing plan which is not provided for in the plan irrespective of the factor driving the change. The post-2014 risk assignment framework provides for different arrangements for the sharing of the costs of reduction in availability of water. Climatic changes will be borne by the licence holder and policy changes will continue to be borne by government.

The significant difference, however, is for changes arising from improvements in knowledge or science. The first 3 per cent of the change would be borne by the licence holders. A reduction between 3 and 6 per cent would be compensated by both the State and Australian governments—one-third paid by the State and two-thirds by the Australian Government. Reductions above 6 per cent would be shared equally by the State and Australian governments. I believe that the national risk assignment framework is an appropriate compromise between the concerns of government and stakeholders. It excludes government compensation for natural events which are outside our control, retains the status quo on government policy changes and addresses industry concerns about investor certainty. The risk assignment framework applies to water-sharing plans that are amended and implemented after 2014. As we already have 31 water-sharing plans in place and plans will be completed for the rest of the State before 2014, the risk assignment will apply to all second-term plans in New South Wales.

Although the provisions of the risk assignment framework will not commence until after 2014, it is important that the framework be reflected in our legislation now. This will give farmers sufficient time to take into account the new arrangements in their future planning and investment decisions. Certainty over future access to water is essential for licence holders and lending institutions to invest in the productive capacity of the State. To provide licence holders with confidence in the risk assignment process, the Minister has given the independent Natural Resources Commission an extended role. Currently the commission can recommend that a water-sharing plan be rolled over unchanged at the end of its 10-year term or that a replacement plan be made. The commission will now also be asked to specify the factor responsible for any change and the impact on a licence holder's water availability when it makes its recommendation.

If a new plan is to be made the Minister will specify the reason for this in the order for the plan, and compensation will be paid according to the risk assignment framework. Another key obligation of the national water initiative is the achievement of an open water trading market, and a particular focus is the removal of trading restrictions imposed by irrigation corporations on their members. There are five private irrigation corporations in New South Wales—Murray Irrigation, Western Murray Irrigation, Murrumbidgee Irrigation, Colleambally Irrigation and Jemalong Irrigation. The irrigation corporations hold the water licences on behalf of their members or shareholders. Their entitlements can represent the majority of the water in a valley.

For example, Murrumbidgee Irrigation and Coleambally Irrigation together hold 70 per cent of the total entitlement of the Murrumbidgee Valley and so have the potential to be a major player in the water trading market. The national water initiative requires the irrigation corporations to permit permanent trade out of their areas up to an interim threshold level of 4 per cent per annum of their total water entitlement that is available for irrigation. These corporations, through their constitutions and other contracts, have restricted permanent trade of water out of their areas because of concerns about the remaining members having to bear higher infrastructure and overhead costs. In the extreme case, the assets could be stranded and the whole corporation scheme made unviable. Numerous discussions have been held with the irrigation corporations and most of their concerns can be alleviated through the imposition of exit fees on the seller.

They have agreed in principle to amend their memoranda of articles of association where necessary to permit open trade up to the threshold level and they are taking the proposals to their shareholders for endorsement. However, the national water initiative still requires New South Wales to have back-up legislative powers to enforce these changes. As a result, the bill amends the Water Management Act to allow for civil penalties if the constitution of an irrigation corporation prevents trade up to the threshold. New South Wales is required to have this legislation in place by January 2006. Although representing smaller entitlements, I believe it is appropriate that similar principles be applied to other licences held by multiple persons.

For example, there are thousands of former water authorities in New South Wales in which the landholders have a holding in a common licence. Currently a co-holder can only exit or trade out of his or her holding with the agreement of all the other co-holders. This can represent a major stumbling block for such trades. To facilitate the sale of a licence holding the bill, therefore, provides for majority consent. If majority consent cannot be obtained, the parties may apply to the Supreme Court to allow the trade. The court must take account of whether the remaining holders would be unduly burdened by stranded water-supply works.

An important part of the bill covers the need to extend the definition of "environmental water" in the Act to provide a more practical definition and one that reflects how water access is managed on a daily and long-term basis. This will not alter the intent of the legislation, that is, the environment and its dependent ecosystems will continue to have priority in the sharing of water. A Court of Appeal decision on the Gwydir regulated river plan last year confirmed that the plans comply with the intent of the environmental provisions of the legislation. However, the amendments will allow clarification of two aspects: first, that environmental water can be expressed by reference to extractive requirements for water; and, second, that it does not have to be provided at all times. This will not change the significant commitment of water to the environment already provided for in the current water-sharing plans. As I have already stated, some 200,000 megalitres of water have been reallocated to the environment under the regulated river plans.

All the current water-sharing plans have specific environmental rules, which have to be met or delivered and, in addition, the plans preserve all water left over after extraction for the environment. The water taken by licence holders is directly controlled and managed within the extraction limit set in the plan so as not to erode the share to the environment. In the regulated river systems from 50 per cent to 80 per cent of the flow is reserved for the environment, clearly demonstrating that, as required under the legislation, the environment is given priority in the allocation of water. Whilst over the year the majority of water is committed for the environment, it is not appropriate for environmental water to be provided at all times.

Under natural conditions there are dry periods when the environment does not receive any actual water. One of the aims of environmental water rules is to replicate natural flow patterns and requirements, which means that at times it is natural for there to be no or little flow in a river. Our native flora and fauna have adapted to such extremes of nature, and to do otherwise would be detrimental to our aquatic ecosystems. The bill includes a provision to ensure that such changes required to clarify the wording of the Act will not invalidate the existing water-sharing plans.

Another key part of the bill focuses on clarifying the circumstances under which compensation will be paid for changes to a water-sharing plan. The Government last year deferred the commencement of the five inland alluvial ground water plans that had been gazetted. While it is clear that reductions in access are necessary to ensure the sustainability of the ground water systems and the regional communities—and this will occur—there was concern over the across-the-board approach to reducing

entitlements in these overallocated aquifers, and some of the plans were appealed against on this basis. The method has now been refined and will take into account the past water use of licence holders when determining their entitlement reductions. This recognises the significant investment some farmers have made in obtaining and using ground water for irrigation. In the past few months the Australian Government has also agreed to contribute $55 million dollars in matching funds to the structural adjustment package to be paid to affected ground water irrigators and communities.

Some $100 million will be provided to these farmers and an additional $10 million to affected regional communities once the plans commence, which is expected to be in July 2006. As a result of the changes to the entitlement reduction approach, amendments will now need to be made to the five inland ground water plans. This could give rise to claims for compensation on the grounds that the plans as made—that is, as gazetted—are now being changed. Given that some 650 ground water licence holders will receive substantial financial assistance under the structural adjustment package, other claims for compensation would simply be double dipping. As a result the bill includes amendments to the compensation section of the Act clarifying that compensation is not payable for financial loss arising out of the development of a plan, including representations, consultation and changes that occur prior to its commencement.

In addition, the validating provision will ensure that these plans are still valid. As the legal appeals to some of these ground water plans were held over awaiting the changes to the entitlement reduction method, the Minister has determined that the Government will now pay the costs of these appeals. The entitlement reductions in the overallocated ground water systems, and those that have also recently been agreed to in the Barwon-Darling river system, require another consequential amendment to the Act. As the legislation now stands, entitlements when converted from the former legislation to the Water Management Act must be equivalent. The wording needs to be changed to provide for a methodology that will provide a lesser entitlement to some licence holders to account for overallocation.

In the inland catchments, some water users pump or gravity feed floodwater into large storages using pumps that have not been metered or licensed. The Murray-Darling Basin cap requires all water extraction to be accounted for and controlled. A floodplain harvesting policy and rules for managing floodplain water are being developed. As a result changes may be needed to the water-sharing plans to incorporate these rules. The bill allows these necessary changes to be made without invoking the compensation provisions of the Act. As a result of the water-recovery projects I earlier outlined, substantial water savings will be created that can then be used to provide additional water for the environment. Licence holders may also choose to commit all or part of their licence to environmental water purposes, or to do this as result of an agreement with the Government on funding of on-farm or other efficiency measures.

This water will be licensed as adaptive environmental water. In contrast to the water that is committed as a priority under the environmental rules in a water-sharing plan, adaptive environmental water may be temporarily traded when not required for the environment. The funds generated from this trade can then be used to implement further environmental measures. The bill, therefore, includes a number of provisions to ensure the proper management and use of this water. This includes the granting of the licences, the conversion process, the accounting process and reporting requirements and conditions, such as the need for a plan that specifies how the water will be used and when it can be traded.

While the Government's focus is on the use of water savings to provide additional environmental water, in some cases the most cost-effective use of public funds may involve the purchase of water. For example, the purchase of supplementary water and its conversion to rules-based water is being investigated as a means of topping up critical environmental allocations to the Macquarie Marshes. A reduction in supplementary water would reduce the extraction limit for irrigators and require a change to the water-sharing plan. There has also been some concern from industry that the removal of supplementary water would expose general security irrigators earlier to reductions in their annual allocations if total extractions increase. Under the Government's growth-in-use strategy, supplementary water—which is opportunistic and lower-priority water—is the first to be cut to maintain extractions within the plan's extraction limit.

After supplementary water has been effectively extinguished, general security users would then have to bear the brunt of their growth through lower annual allocations. This should not be compensatable as it is the general security irrigators that are causing the growth. Similarly, they should not be granted compensation for the loss of the supplementary water buffer since this becomes an issue only if there is growth in the first place. Those who sold their supplementary water licences to the Government would, of course, be compensated through the sale price they would receive, which would be the market value of the water.

I said that the Government is currently developing a statewide program of works and operating protocols to minimize the impact of cold-water releases from dams. To enable these measures to be implemented, the bill allows agreed modifications to smaller dams or the protocols for releases from all dams to be enforced through the water management works approval for the dam. For the major storages, modifications to the dam wall and outlet structure may be applied under the Environmental Planning and Assessment Act. Across New South Wales there are hundreds of local water utilities providing water to towns outside the major metropolitan areas. The Act currently provides for automatic review of all local water utility entitlements every five years. This will produce unnecessary work as not all rural towns will grow in the next five years. The bill replaces the automatic review with one that would be undertaken when required, such as when the population is increasing or when the utility requests such a review. This is a prudent risk management approach.

Although under the Act local water utility licences have priority over most other licences—as part of the consideration of the entitlement increase—the local water utility will now need to demonstrate to the Minister for Utilities that it has implemented the best practice management guidelines for water supply. It is important to point out that the entitlement granted to a local water utility under the Act is already relatively generous and any increase will impact on the water available to the environment and other users in the water system. In addition, civil penalties as currently apply to major utilities are to be introduced when a local water utility breaches the conditions of its licence.

The Act specifies that the review of the water utility's entitlement is to reflect any variation in population and associated commercial activities. At the request of local water utilities the requirements of food and fibre processing will now be included in the definition of associated commercial activities. Under the current Act, in times of restricted supply the allocations for water

utilities must be reduced at a lesser rate than allocations for other licence holders. The Greater Sydney water sharing plan will require the Sydney Catchment Authority, by far the major water user in the system, to operate within a benchmark extraction level. The bill allows for a water-sharing plan to change the priorities for water allocation, and the amendment is primarily to accommodate the requirements of the Sydney plan.

A number of amendments to the Water Management Act are also required to facilitate trading and water licensing arrangements. To assist with the accounting of water traded within New South Wales between the Murrumbidgee, Murray and Lower Darling regulated river valleys, the bill incorporates a system of tagging of all or part of the water allocations under a licence. Tagging has already been adopted by New South Wales as the preferred method for the trading of water between States. This means that if a Murrumbidgee licence is traded downstream to another river system the water can still be debited from the original source. The Minister's access licence dealing principles will specify where tagging can occur.

Four other procedural changes are included to improve water trading. The first involves a term transfer that was added as a new water dealing in the Act last year. A term transfer allows a licence holder to effectively lease the water licence to another person for a period of time, usually a couple of years. A more flexible arrangement allowing a term transfer to be extended before the current period expires is now included. The second procedural change requires applications for all types of dealings to be assessed in accordance with the Act and the dealing principles. In error, the Act currently excludes water allocation assignments from this requirement.

The third change enables conditions to be added to the works and water use approval when a water access licence is changed through a water dealing. For example, if a licence is moved to another location the impacts of this will be assessed and, as a result, new conditions may need to be added to the water use approval. The fourth change allows the Government to auction or tender the right to transfer a licence into a water source or zone that has a limit on the quantity of licences within it. This situation could arise when an opening is created because a licence has moved out of the water source. Rather than the opening going to the first person who lodged an application, a tender or auction process would provide a fairer solution. Currently the auction-tender process is permitted under the Act only when there is unallocated water.

To provide licence holders with a guaranteed legal water title the Water Access Licence Register has been established and water access licence certificates are being issued by the Department of Lands. This places water title on a similar footing to land in New South Wales. The process of listing a water access licence on the register involves checking the licence details, verifying its ownership and confirming the details of any security interest. Security interest holders are companies or mortgagees who have an interest in the licence. As with land, they would want to be party to any agreement to sell or significantly change the licence. This bill builds on the significant work already undertaken by this Government to provide a sustainable and secure resource for the environment, farmers and the community. It focuses on providing certainty for licence holders, opening up the market in water, clarifying and supporting our environmental initiatives and driving greater water efficiencies. I commend the bill to the House.

The Hon. RICK COLLESS [4.20 p.m.]: I am a little disappointed that the Minister for Natural Resources did not comment on the bill in addition to incorporating the second reading speech that was made in the other place, because I understand that there were a few issues that he might have wished to address on the public record. Perhaps he will address those matters during his reply. The Water Management Amendment Bill has been introduced essentially to refine water management in New South Wales in line with the Federal Government's national water initiative—an initiative of the former Deputy Prime Minister and former Leader of The Nationals and member for Gwydir, John Anderson. The national water initiative has been welcomed in principle by most players and observers in the water industry as setting the framework for future water management in Australia but, of course, the New South Wales Government decided to play petty politics and delayed signing it.

The national water initiative covers a wide range of water management issues and encourages the adoption of best practice approaches to the management of water in Australia. In particular, the national water initiative will result in the expansion of permanent trade in water, bringing about the more profitable use of water, more confidence for those investing in the water industry due to more secure water access entitlements, more sophisticated, transparent and comprehensive water planning dealing with the key issues, a commitment to addressing overallocated systems as quickly as possible, in consultation with affected stakeholders, and addressing significant adjustment issues, where appropriate, and better and more efficient water management in urban environments by the use of recycled water and stormwater.

The initiative was agreed to and signed at the Council of Australian Government meeting on 25 June 2004, yet this tired old Government failed to recognise the value embedded in the initiative until 8 March 2005. The political games played by the former Premier, Mr Carr, and the former Minister for Natural Resources, Mr Knowles, in withdrawing from the national water initiative agreement in the run-up to the 2004 Federal election were nothing short of scandalous and showed that the agenda of Labor in this State is not about delivering for the people of New South Wales but about protecting its own political interests. I preface my remarks on this bill by informing the House of some of the facts with respect to the most important river system in New South Wales and Australia: the Murray Darling Basin.

The average annual run-off under natural flow conditions from the basin has been estimated by the National Land and Water Resources Audit as 23,850 gigalitres per year. The total surface water extractions each

year by State are: New South Wales, 6,265 gigalitres; Victoria, 3,975 gigalitres; South Australia, 720 gigalitres; Queensland, 584 gigalitres; and the Australian Capital Territory, 33 gigalitres. The total volume of water that is extracted each year is 11,577 gigalitres. A further 1,233 gigalitres of ground water are extracted. A total transfer into the basin of some 1,200 gigalitres is derived from the Snowy and Glenelg rivers. The overall flow figures for the Murray Darling Basin are: total run-off, 23,850 gigalitres; transfers in, 1,200 gigalitres; total extractions, 11,580 gigalitres; and evaporation, 1,430 gigalitres.

In addition, 6,970 gigalitres are consumed in plains and wetlands, leaving a total outflow to sea through the mouth of the Murray River of approximately 5,070 gigalitres per year. I believe the evaporation figures quoted by the audit to be somewhat underestimated as the average evaporation for the Menindee Lakes scheme alone is estimated at 425 gigalitres per year, but could be as high as 900 gigalitres per year when the lakes are at full supply level. Lake Alexandrina and Lake Albert, which are at the lower end of the Murray River, cover an area of 570 square kilometres. The annual evaporation from these lakes, at two metres per year, would be 1,100 gigalitres per year, less the annual rainfall input of approximately 300 gigalitres per year, making a net loss to that system of 800 gigalitres per year.

Better management of the Menindee Lakes would save at least 200 gigalitres per year—an option that is available to the Government, right now, but one that it has failed to take up. A commitment by this Government to fix the Menindee Lakes and work with the South Australian Government to address the evaporation losses from Lake Alexandrina would be a welcome change to the complete lack of vision this Government has in relation to water management in New South Wales at present. It has been estimated that the concept of the twin lakes proposal for Lake Alexandrina may save 300 gigalitres in evaporation. Jointly saving 500 gigalitres per year with the Menindee Lakes scheme improvements from better managing just two of the major lake systems in the basin would be a far better investment in the environment, and would provide a more far-reaching environmental outcome, than a highly expensive option of simply buying water from irrigators to secure preferences from the Government's Greens colleagues.

This bill will amend the Water Management Act 2000 to allow for new compensation provisions for remade water management plans, as required by the national water initiative, and also to require irrigation corporations to remove barriers to shareholders wishing to transfer their water entitlements away from the corporations. The Coalition supports the national water initiative and supports the amendments to the Water Management Act 2000 to bring it into line with the initiative. The amendments that have been proposed to bring the Act into line with the national water initiative have been well distributed and have been discussed in detail with various stakeholder groups and the industry, and should be supported by this House. Some of the other provisions contained in the bill are not related to the national water initiative and have not been worked through with the stakeholders. In those circumstances, the Coalition is opposed to some of those amendments being moved—at least until such time as proper consultation has occurred with the industry and stakeholder groups.

Schedule 1 to the bill provides for definitions of environmental water, the tagging of water moved on the sale of an entitlement to allow for the amendment and validation of management plans, facilitation of water trading, provision of proper procedures for dealings in access licences, compensation, the operation of local water utilities and various transitional matters. Schedule 2 amends the Act in relation to irrigation corporations. Schedule 3 seeks to amend the Protection of the Environment Operations Act to exempt a person from releasing cold water from an offence under that act.

Under schedule 1, definitions of environmental water will be clarified by the inclusion of a new section 8 (1A), which will reflect how water access is managed on a daily and long-term basis through the water sharing plans. As the honourable member for Ballina, Don Page, said in another place, the Opposition seeks a guarantee from the Minister that no entitlement holder will be disadvantaged by this proposed amendment. We do not want to see any water entitlement placed in a higher security regime than it currently enjoys. If any licence holder has his or her entitlement diminished by this amending provision, either in relation to access or more stringent security conditions, compensation should be available, consistent with the diminished nature of the entitlement.

One major concern of the Coalition is the conversion of supplementary water to planned environmental water as proposed in subsections (1) to (3) of new section 8A. This provision appears to represent yet another trade-off with the environmental extremists who simply demand more and more water for the environment at any cost. There has been no modelling, and there is no clear rationale as to why the Government should proceed with this amending provision, other than that the Government once again has succumbed to the demands of the extremists in exchange for Greens preferences. As suggested by the New South Wales Irrigators Council, this

water can be tagged to retain its original characteristics instead of being permanently converted to planned environmental water. That would constitute a far more pragmatic approach to the issue and would retain the future use options for the resource, which is a concept that should apply to all natural resources.

The other option that the Government apparently has not considered is to convert this water to adaptive environmental water, which would mean it could be traded and as such would retain a much wider range of options for future use. I ask the Minister to inform the House whether the option on conversion to adaptive environmental water was considered and, if it was, the reason that it was not preferred over conversion to planned environmental water. The Government has indicated that any water purchased as planned environmental water will retain its original characteristics, but I find that impossible to comprehend because that water will be permanently converted to environmental water and the future use option will be extinguished. Once again, I believe that the provision was included in the bill without proper consultation with stakeholders. It should be excluded from the bill until such time as consultation has occurred and the Government has made its intentions perfectly clear. The Coalition will be moving an amendment to exclude this provision from the bill.

New sections 8B to 8E and the amendments to schedule 12 of the Act allow for the committal of adaptive environmental water through dedication of existing water entitlements, system improvements and water savings. These amendments are not controversial and will allow for the administering and management of water in the environmental water account. New sections 43A, 46 and 87AA are the major sections that apply to the implementation of the national water initiative, and the framework for the cost-sharing arrangements following changes to a water-sharing plan between the licence holder and the State and Federal governments needs to be legislatively endorsed by January 2006.

The framework recognises three factors that can result in change: natural events such as climate change, improvements in our knowledge base and government policy. The Parliamentary Secretary in another place made the point that the changes will be reductions in entitlements only. It is worthy to note that no provision has been made for increases in entitlements in situations where improved scientific knowledge may indicate an increase in extractions may be feasible. I would have felt much more at ease about the comments of the Parliamentary Secretary, the honourable member for Canterbury, in another place if she had referred to changes in entitlements rather than reductions in entitlements. Where these recommended changes are reductions in extractable water, changes as a result of natural conditions such as climate change, the cost of those impacts are to borne by the licence holder.

If the reductions in entitlements are as a result of changes in scientific knowledge, the first 3 per cent will be borne by the licence holder, between 3 per cent and 6 per cent—one-third of the compensation payable—will be the responsibility of the State Government, and two-thirds will be payable by the Federal Government. Compensation for reductions over 6 per cent will be shared equally between the State and Federal governments. In the case of reductions in entitlements as a result of a change in government policy, compensation payments will be met by the State Government. The amendments provide for this framework to apply to all second-term plans as from 2014, with existing compensation provisions to apply until that time.

Local water utilities have the responsibility for providing potable water to urban communities in regional areas. The Act currently requires an automatic review of all local water utilities every five years. The bill provides for review of these entitlements on an as-required basis depending on population growth and industry expansion. While this may seem logical initially, this issue has not been properly worked through with local government bodies. This is a big issue in towns and provincial cities that are attempting to encourage population growth and new industries to establish in their local government areas. There needs to be a full and frank discussion with all the stakeholder groups in relation to this issue, including the irrigator groups, local water utility representatives, regional development organisations and environmental groups.

The Opposition believes that the appropriate course of action at this stage is to remove the amendment to section 66 from the bill, undertake the discussion and consultation and bring the appropriate amendment back to the Parliament during the next session. There is no urgency for this amendment and no plausible reason for forcing it through today—the last parliamentary sitting day of the year—without proper consultation with regional communities in New South Wales. It is worth pointing out to the House that The Nationals successfully moved an amendment during debate on the original Act in 2000, which included section 66 (4) of the Act, which states:

> On the application of a local water utility, the Minister may at any time increase the utility's entitlement to water under a local water utility licence so as to reflect any rapid growth of population within the utility's area requiring an immediate increase in the availability of water for supply by that utility.

The Minister, in his former role as Parliamentary Secretary, told the House on that day that the Government supported this amendment, but now it appears he wishes to renege on that commitment. My colleague the Deputy Leader of the Opposition and I raised this issue with the Minister, and I understand the Government will move amendments to remove the local water utilities provision from the bill to allow for more consultation to occur. We thank him for that. Schedule 2 provides for a more open trading market within the irrigation corporations where the corporation holds the licence on behalf of the members of the corporation. There are five major corporations in New South Wales—Murray Irrigation, Western Murray Irrigation, Murrumbidgee Irrigation, Coleambally Irrigation and Jemalong Irrigation.

The national water initiative requires those corporations to permit trade out of the area up to an interim threshold level of 4 per cent of their total water entitlement that is available for irrigation. Corporations have been reluctant to allow trade out of their areas because of the increased infrastructure and overhead costs that will need to borne by the remaining members of the corporation. Concern has been expressed that in extreme cases assets may end up stranded in the corporation area that ultimately could make the corporation unviable. Currently an individual member can exit the scheme, conditional on all other members agreeing to the exit, and the amendment allows for this to be changed to majority consent. Irrigator organisations are generally comfortable with these changes, with the exception of the severe civil penalties in the case of non-compliance.

It is not clear what impact this provision will have on small private irrigation trusts, as there has been absolutely no consultation with irrigation organisations other than the five major corporations I mentioned previously. I ask the Minister to table all the other irrigation trusts in New South Wales where water entitlements are held by the trust or under a similar arrangement, and to give a commitment that small private trusts will not be caught up in this net until such time as a proper consultative process has occurred. The New South Wales Irrigators Council is concerned that the Government is attempting to impose conditions on private irrigation trusts or any other amalgamations of water without this prior consultation with stakeholders and a full analysis of all resultant implications.

The end result of this amendment proceeding is that some of the private trusts may be captured by the amendment under the arrangements that were negotiated with the irrigation corporations. Such a lack of consultation is contrary to the principles of the national water initiative and much more consultation is needed on this aspect of the bill. I ask the Minister to give a commitment in his speech in reply along the lines that there will be no deleterious impacts on private irrigation trusts that are inadvertently caught up in this issue.

In summary, there are many positive components to this bill, particularly those that are proposed to assist with the implementation of the national water initiative. However, it is clear that the Government has been lacking in proper consultation for much of this bill despite the rhetoric of the Parliamentary Secretary, the honourable member for Heathcote, in reply in another place, when he tried to convince that House that "extensive consultation was held with all stakeholders throughout 2004". Clearly, it was not. The Parliamentary Secretary pointed out also that concern about the conversion of supplementary licences to environmental are unfounded because, as he said, "it is only an option; the Government's preferred approach is to fund water savings works and commit the saved water to the environment".

The Government has not done that—it has denied the irrigators of the Barwon-Darling system at Bourke the opportunity to deepen their storages and implement other improvements because of the ban on works on the Darling floodplain. That statement is also in conflict with the Premier's statement just two days ago when he announced that the Government will increase taxes through the waste levy to raise $150 million to buy back 100 billion litres of water. This is just 100 gigalitres of water. To put this into perspective, New South Wales and Victoria must supply 1,850 gigalitres of water to South Australia each year, after all the extractions that occur in New South Wales and Victorian irrigation areas within the Murray-Darling Basin. The Premier did get one figure correct: the value of the licensed water at $1,500 per megalitre. The Premier is spending $150 million to return just 100 gigalitres, or 0.4 per cent, of the total flow of the Murray-Darling to the river!

I do not believe that is the most effective use of funds to be injected into environmental management, as better environmental outcomes could have been achieved in water availability for rivers by immediately funding water-saving works on the Menindee Lakes for approximately one-third of the cost of purchasing 100 gigalitres of water. For approximately $50 million the Premier could have saved at least 200 gigalitres of water from the Menindee Lakes scheme alone, yet that was not considered, apparently. I call on the Minister and the Premier to give a commitment to the Parliament that when purchasing irrigation entitlements and converting them to planned environmental water, the vendor must be willing to sell the water in an open and transparent manner. The purchasing process must be fully accountable and reportable, and the Government must ensure that all management and environmental outcomes are accountable and fully measurable.

A rural communities economic impact statement should be prepared, showing the full effect of the lost water on the economic activity in the community from which the water was taken, including the extra headworks and delivery charges that may apply to that particular system as a result of less water being delivered.

The irrigation industry in New South Wales will be worth $3 billion after the delivery of the 6,200 gigalitres of water to which I referred earlier. One would not have to be a very bright mathematician to work out that any extraction of water from that system would have a severe impact on economic activity in New South Wales. Given that the irrigation industry enjoys a multiplier effect of at least 5:1 it means that industry is worth in the vicinity of $20 billion a year. The Coalition is concerned about some aspects of the bill. Essentially, there has been a lack of consultation with the stakeholders and organisations affected by the bill.

The Government's claims that extensive consultation has occurred are simply untrue. Consultation has not occurred. The Minister's claim that it has occurred is an insult to all those stakeholders who have not been consulted. In many instances proper consultation has not even occurred with peak organisations. I repeat my call to the Minister to ensure that no irrigators or other water users will be disadvantaged as a result of the implementation of this bill, particularly in view of the fact that so little consultation has occurred. The Coalition acknowledges the need to pass most aspects of the bill through the House today in order to meet the requirements of the national water initiative and, as such, we will not oppose those aspects.

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [4.41 p.m.]: Today I am in the unusual position of having to back my colleague the Hon. Rick Colless, who led in debate for the Opposition, because I am acting shadow Minister for Natural Resources. It is appropriate for me, as acting shadow Minister, to back my colleague because of his knowledge of, confidence in and commonsense about these matters. I do not intend to unnecessarily delay the House by covering some of the things that I had intended to cover, as the Hon. Rick Colless has already done that. Yesterday this House sat until 3.00 a.m. because certain honourable members wanted to reiterate points and call unnecessary divisions, but I do not believe that should prevent me from putting on the record some of the Opposition's concerns about the Water Management Amendment Bill.

The Hon. Rick Colless said earlier that the water industry in New South Wales is worth $3 billion a year and that it is worth $10 billion nationally. Water is an important part of our economy. In regional New South Wales, which is where the water is, there has been incredible growth and value adding. The Opposition supports striking a balance between the often conflicting use of water for agricultural production and the environment, and communities. However, the Opposition does not believe in rushing legislation through this Parliament without appropriate industry consultation just because Government members are eager to embark on their Christmas break. This legislation, most of which we support, should have had better community consultation. It is typical of this Government to take every available opportunity to legislate for something that was agreed and that people supported.

However, the Government included in this legislation things with which most people do not agree. The Opposition wants to delay the passage of certain parts of this bill, not necessarily because it disagrees with them but because they will need greater community consultation to ensure there are no unforeseen ramifications. Opposition members have spoken to Government members, advisers, departmental people and to people from the water industry, for example, Murray Irrigation, Murrumbidgee Irrigation, the State Water Customer Committee, the New South Wales Irrigators Council, the New South Wales Farmers Association and Macquarie River Food and Fibre. Members of my staff have also spoken to the Environmental Liaison Office but I have not had an opportunity to do so. All those bodies have indicated their concern about the fact that there has not been proper consultation on this bill. Most groups are concerned about those sections of the bill that Opposition members would like to have delayed. Sadly, when it comes to the crunch, we desire to delay the passage of different provisions in the bill.

The New South Wales Irrigators Council is concerned with those amendments that seek to clarify the definition of "environmental water". Amendments to proposed section 8 (1) and schedule 9 seek to provide a full definition of "environmental water"—one that reflects how water access is managed in practice on a daily and a long-term basis through water sharing plans. The amendments provide for planned environmental water to be identified in several ways. First, by reference to the commitment of the physical presence of water; second, the long-term average annual commitment of water; and, third, that water remaining after the commitments to basic landholder rights and for extraction have been met. The Opposition asked the Government to guarantee in the third reading stage that no entitlement holder would be disadvantaged by these amendments, that no water entitlements would be afforded a higher level of security than they already enjoy and that compensation would

be paid to any entitlement holder whose access to or the security of his or her licence entitlement was diminished by these amendments. The Opposition is also aware that the Nature Conservation Council is currently challenging these issues in the High Court.

New section 8A refers to the conversion of supplementary licences to planned environmental water. The amendments provide for supplementary water licences to be purchased and converted to planned environmental allocations to the Macquarie marshes. Provision is made for water sharing plans to be amended where such initiatives are undertaken. We believe that further consultation is necessary on these amendments. Stakeholders believe it is imperative for all water to be tagged and to retain its original characteristics. The security of other entitlement holders must not be diminished by water sales. The Opposition will be looking for such a guarantee from the Minister when he replies to debate on this bill. I know that the Government proposes to move amendments to remove the local government area. However, the Opposition proposes to move an amendment to remove that area until there has been further consultation. The areas of concern are mixed and the responses we are getting are also mixed. Only today I received a letter from the Hon. Gary Nairn, MP, Parliamentary Secretary to the Prime Minister, in which he wrote:

> Dear Mr Gay,
>
> RE: Water Management Amendment Bill 2005
>
> I write in relation to the proposed amendments in the Water Management Amendment Bill 2005, currently before the NSW Legislative Council.
>
> The amendments have largely been justified on the basis that they are required to comply with the National Water Initiative (NWI).
>
> While much has been achieved toward achieving the objectives of the NWI, I am concerned that some of the proposed amendments are inconsistent with the intent of the NWI.
>
> My principal concern is the proposed amendments to section 8 of the principal Act relating to the cancellation of supplementary licences and their subsequent reallocation as planned environmental water.
>
> The explanatory note to the Water Management Amendment Bill 2005 provides that:
>
> > Proposed section 8A enables the Minister to cancel a supplementary access licence or a licence of a prescribed category or subcategory that is held by the Minister and commit an equivalent amount of water as planned environmental water in the relevant water source.

He continued:

> A key principle of the National Water Initiative is the establishment of secure access entitlements for all users, including the environment, and the implementation of management regimes that protect the integrity of those entitlements.
>
> The intent of the proposed amendment appears to enable a licence that is held by the Minister, such as a supplementary access licence, to be cancelled and then reallocated to the environment with modified licence characteristics in the form of 'planned environmental water'.
>
> Supplementary water by its nature is opportunistic water. It is implicit in the title 'planned environmental water' that this water is not opportunistic—

The Hon. Rick Colless made a similar comment earlier in the debate. The Parliamentary Secretary continued:

> … and will therefore enjoy a higher degree of security than supplementary access licences.
>
> Any cancellation of entitlement from the supplementary pool and its subsequent reallocation to a higher security entitlement will have inevitable impacts on the security and reliability of existing water users. I consider this to be inconsistent with the objectives of the NWI.
>
> I strongly encourage that any provision within the proposed legislation to provide water for the environment should be accompanied by a provision requiring that any water held by the Minister that is reallocated to the environment must retain the original security characteristics of the source licence. That is, if a volume of water held as supplementary access licence is reallocated to the environment, then the environment's allocation will have the same security characteristics as supplementary water.
>
> This is consistent with the NWI both in terms of preserving the integrity of existing entitlements and encouraging the use of water markets to facilitate the reallocation of water from consumptive to environmental uses.
>
> Yours sincerely
> Gary Nairn

The letter has today's date, and I know that a copy was sent to the Minister. The Minister nods to indicate that he has received it.

The Hon. Ian Macdonald: And I have read it.

The Hon. DUNCAN GAY: And he has read it. I will not go into further detail at this stage. Suffice it to say that, following receipt of the letter and in light of our concerns, we drafted an amendment in conjunction with Doug Miell from the New South Wales Irrigators Council to address the issues. I gave a copy of the amendment to one of the Minister's principal staff, who took it to the Minister. I wanted to know whether the Government would support the amendment and make the bill reflect the Federal Government's view of the national water initiative. However, before I came to the Chamber this afternoon I learned that the Government does not intend to support the amendment.

So what do we do now? If we move the foreshadowed amendment in the knowledge that the Committee will probably reject it, we cannot then move our other amendment, which would remove the section and allow further discussion and negotiation when Parliament returns for the autumn session. On balance, we have decided not to move the amendment that reflects the Federal Government's view but move to amend the bill to remove the entire section and permit further discussion about it. We are saying not that we believe it is definitely a problem but that there is enough concern about the matter to have it put aside for further consideration. Many of the principal players have differing views. These people have much more knowledge about such matters than I or even than my wise colleague the Hon. Rick Colless. That is enough reason for us to say: Let us hasten slowly. We should put aside that matter and the local government issue—we support the proposal but have some concerns in that regard—to allow all sides to examine those matters immediately when Parliament sits next year. That is what will happen in Committee.

Proposed sections 8B to 8E allow for water to be committed as adaptive environmental water by the conditions of access licences for specified environmental purposes at specific times or circumstances. Adaptive environmental water can be created through an individual licence holder committing all or part of his licence as a result of government funding of on-farm or other water efficiency measures or via system delivery improvements funded by governments. This water will be licensed and become adaptive environmental water, with the licence held by the Minister, the catchment management authority, other public bodies or the licence holder. The amendments provide for the granting of these licences and cover implementation aspects, such as the way the water will be accounted for and how the licences will be held and administered. They will require the holder to prepare a plan approved by the Minister specifying how the adaptive environmental water will be used and traded. The amendments are not contentious and simply allow for the administration of water in the environmental account.

In relation to the risk assignment framework under national water initiative proposed sections 43A, 46 and 87AA, the national water initiative requires legislative effect to be given to a framework for the sharing of costs between licence holders and the State and Commonwealth governments for changes to a water sharing plan. This framework recognises three factors for such a change: those arising from a change in natural conditions, with impacts to be borne by the licence holder; those arising from a change in government policy, with costs to be compensated by the State Government; and those arising from changes in science or knowledge. The first 3 per cent is to be borne by licence holders and the rest will be shared between the State and Commonwealth governments. As per the national water initiative, the amendments provide for this framework to be applied in New South Wales for all second-term plans from 2014. Existing compensation provisions of the Act will prevail until that time. If the Natural Resources Commission recommends to the Government that a plan should be amended for its second or subsequent term, the commission will also specify the factor driving the change.

Although the industry has not been appropriately consulted on this amendment, it is familiar with and supports the risk assignment principles of the national water initiative. However, the New South Wales Irrigators Council seeks clarification of the extended role of the Natural Resources Commission and how it is proposed to "specify the factor responsible for any change and the impact on a licence holder's water availability" in particular, it seeks clarification of clause 3 (c) of the initiative.

In relation to the removal of barriers to trade out of irrigation corporation areas as referred to in schedule 2, the national water initiative requires the five irrigations corporations in New South Wales to allow, if applied for by their shareholders or members, up to 4 per cent of their tradeable entitlement to be permanently traded out of their areas. The aim of the threshold is to free up water within New South Wales and between States. The amendments to the Act will allow civil penalties to be imposed on the irrigation corporations.

Pursuant to sessional orders business interrupted. The House continued to sit.

The Hon. DUNCAN GAY: To support the irrigation corporations in the implementation of this requirement, provision is made for water supply contracts to be amended by notice to members and by removing the opportunity to be made in respect of their actions. These rules are in line with the national water initiative and already agreed to, although some concerns have been raised as to the heavy-handed nature of the civil penalties. The New South Wales Irrigators Council sought to have the maximum penalty of $100,000 reduced to just $10,000. But I am assured that the penalty is in line with the national water initiative but it seems to me to be excessive.

Under current legislation a co-holder of an access licence can only exit or trade out of his or her holding by subdivision and transfer of the licence with the agreement of all the other co-holders. Proposed sections 72A and 74 and schedule 1B to the Act provides for a new dealing that requires only majority consent for the exit. If consent is not given, then the parties may apply to the Supreme Court to allow the trade, and the court must take into account the effect of the remaining co-holders. Stakeholders are concerned that this amendment seeks to impose conditions on irrigator, shareholders or members of a joint scheme, private irrigation districts and/or other amalgamations of water without prior consultation with those who will be affected and a full analysis of the implications involved.

This is strictly contrary to the principles of the national water initiative. Irrigation corporations have not been afforded the option of majority consent of their members for a trade to occur. This is a significant difference with the national water initiative principles and consultation of this amendment is certainly lacking. It is important for the Minister to address in his reply or in Committee the details of the number of schemes affected, the number of irrigators or licensed entitlement holders affected, the location of each of the licences that will be impacted by this amendment, the management of stranded assets, the application and calculation of exit fees, the management of the cost of the change to these small schemes, the impact on the viability of the effected schemes, and details of any impact analysis undertaken on the cost or benefit that will occur subsequent to the introduction of this amendment. It is appalling that those details have not been provided.

The Opposition asks the Government to clarify how it intends to manage those issues. Macquarie Food and Fibre—which represents more than 600 surface and ground water irrigators in the Macquarie Valley, contributes more than $300 million to the local economy, and directly employs more than 1,000 people across the valley—has major concerns about these amendments. The group wrote:

> 40 per cent of the water access licence in the Macquarie is held by off river schemes. These schemes were set up in the 60s and 70s as a collective of entitlement holders to socialise the losses experienced in delivering water over distance. This allowed them to more efficiently deliver stock and domestic water to landholders that are a considerable distance from the river and with no access to groundwater, and to share the cost of building and maintaining the system of channels as the costs were too great for a single entitlement holder. These entitlement holders were aware of the e benefits they were receiving for handing over their individual right to the collective. We believe that the amendments proposed in Schedule 1B and Section 74 are in response to the National Water Initiative impetus to reduce barriers to trade but have had no consultation or clarification and without consultation or clarification, we are unable to assess the impact of this section of the amendments on: the impact on the water efficiency of the schemes as losses are socialised over few participants in the joint agreements, the legal costs of changing constitutions to allow a smaller majority of shareholders to agree to an exit (most are current 85 per cent)m, the ongoing delivery of Stock and Domestic entitlements and the impact of local economies (jobs, economic input) if the schemes bill become unviable. Murray River Food and Fibre seeks an immediate adjournment to the passage of this section of the bill until schedule 1B can be worked through via consultation.

It is clear that this amendment needs further consideration of its implications by the Government. I urge the Government to consider revisiting this issue in March 2006 when the industry has had time to be consulted about its concerns, which I urge the Minister to address. Proposed section 58 deals with the changing priority for reducing allocations. Under the current provisions of the Act, in times of restricted supply allocation for utilities must be reduced at a lesser rate than allocation by other licence holders. The Greater Sydney water sharing plan will require the Sydney Catchment Authority, by far the major water user in the system, to operate within a benchmark extraction level. The amendments allow for a management plan to provide for a different rule of priority in order to accommodate the requirements of the Sydney water sharing plan. The New South Wales Irrigators Council has advised me that it supports this amendment.

Proposed sections 66 and 78 deal with the review and adjustment of the entitlements of local water utilities. The Minister has said that there will be an amendment in relation to this matter so I will put it aside. All members appreciate that local government and water utilities need an allocation for now and for the future. This bill is silent about that and about who will pay for it and what it will cost. I know the Minister shares the view of the Opposition that the sections should be revisited in March, but no later than March. Proposed sections 71N,

71S, 71W and 71Z include measures to allow term transfers of licences to be extended, to allow for tagging or accounting of water extracted in different water sources, and to allow an auction or tender of the right to transfer a licence into a water source or zone that has a limit on the quantity of licences within in it.

The Opposition has concerns with proposed section 71S, which relates to the extraction component of access licences. This appears to have no purpose, and I ask the Government to consider its removal. The New South Wales Irrigators Council supports its omission. Proposed section 100 allows for any agreed cold water pollution measures to be applied through the approvals for the dam issued under the Water Management Act and removes these measures from the offence provision of the Environment Protection Authority. During initial consultation the Irrigators Council indicated major concerns with proposed section 87 and amendments in items [9] and [10], which deal with the prevention of claims for compensation changes to plans that have not commenced and entitlements under replacement water access licences. But concerns relating to groundwater have been addressed because, as it is now known, the matter will be progressed through the Groundwater Adjustment Advisory Committee. The Government has agreed that consultation on the inclusion of floodplain harvesting in water sharing plans referred to in item [12] will be undertaken with the New South Wales Irrigators Council on the further development of the State's floodplain harvesting policy.

In his contribution to the second reading debate on this bill in the other place the honourable member for Heathcote said, incorrectly, that the bill had been subject to considerable and extensive consultation. That is one of the great urban myths of the century. Frankly, it is a lie. The honourable member said that a briefing was provided to the Irrigators Council prior to the completion of the bill. Fewer than two weeks to consult on and review complex legislation such as this is not good enough. That the Government believes such a situation to be acceptable is farcical. The honourable member also indicated that the New South Wales Farmers Association supported the changes to the bill. That too was a mistruth. A letter dated 24 November clearly states otherwise. It reads:

> The NSW Farmers' Association would like to bring to your attention our concerns with several proposed amendments to the Water Management Act 2000. These concerns include:
>
> 1. Future adjustment of entitlement of local water utilities (section 66 & 78) and
>
> 2. Prevention of claims for compensation in relation to groundwater sharing plans that have not yet commenced (section 87 & item [9])
>
> The Association is seeking clarification from the Minister of how water utilities may require an increase in volume entitlements in the future. Any amendment that allows local utilities to gain entitlement 'free of charge' from the opening water market will undermine the security and commercial certainty of entitlement holders. A key objective of the Intergovernmental Agreement on the National Water Initiative (NWI) is for 'clarity around the assignment of risk arising from future changes in the availability of water for the consumptive pool'.
>
> The proposed amendment in relation to local water utilities appears to be contrary to this NWI objective, and as such, would not be associated by the Association. The Association would also oppose any amendment that prevents groundwater entitlement holders (notably 'late-developers') from claiming compensation for losses suffered because of a change in government policy on the method of entitlement reduction.

The honourable member for Heathcote deliberately misled the House. Its is quite clear that at that stage—and I suspect it is still the case—the New South Wales Farmers Association did not fully support the bill. In a letter I received this week the Environment Liaison Office indicated its extreme uneasiness with the Government's lack of consultation. I too have not had a chance to meet with them, but members of my staff have. The letter states:

> The peak environment groups of NSW are strongly opposed to the Water Management Amendment Bill and seek your urgent action to protect our water resources now and into the future. We ask you to oppose the bill as currently drafted. The Bill backtracked on a commitment the Government made in 2000 to guarantee water for the environment of NSW. It is a major step back for the environment, the people and the current Government of NSW.
>
> Parts of the Bill relate to implementation of the National Water Initiative intergovernmental agreement, and other parts do not. The NWI requirement is to be amended by January next year. However, there is no urgency on the other highly controversial parts of the Bill. These parts have been tacked onto the Bill in an effort to have been passed without proper consultation or debate. The Government fails to consult with key stakeholders on the Bill, and by doing so have failed to comply with the provisions of the NWI, which reads: (93) parties agree that the outcome is to engage in water users and other stakeholders in achieving objectives of this Agreement by: Improving certainty and building confidence in reform processes, transparency in decision making and ensuring sound information is available to all sectors at key decision points.

Clearly, the Government has failed in all areas. Not only are the users, the Irrigators Council, the New South Wales Farmers Association, Macquarie River and Food and Fibre off side; the environment groups are off side as well. They cannot all be wrong. The clear message is lack of consultation—a message we hear day after day. The Opposition is extremely concerned about the lack of consultation. We realise that the amendments relating

to New South Wales comply with the national water initiative, but in respect of other amendments the Government has failed to consult the industry and go outside the national water initiative. The bill must be delayed until March 2006, by which time the Government will have had a chance to consult properly with the industry. The Opposition believes firmly that parts of the bill must be delayed for further consultation. However, we will not oppose it.

Debate adjourned on motion by the Hon. Peter Primrose.

CAREEL BAY MARINA PROPOSAL

Production of Documents: Return to Order

The Clerk tabled, pursuant to the resolution of 17 November 2005, documents relating to the marina development at Careel Bay received on 1 December 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.

JAMES HARDIE FORMER SUBSIDIARIES (WINDING UP AND ADMINISTRATION) BILL

JAMES HARDIE (CIVIL LIABILITY) BILL

JAMES HARDIE (CIVIL PENALTY COMPENSATION RELEASE) BILL

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

Motion by the Hon. John Della Bosca agreed to:

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

Second 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) [5.19 p.m.]: I move:

That these bills be now read a second time.

Earlier today the Premier signed the historic 40-year agreement with James Hardie Industries NV to secure $4.5 billion in compensation for the victims of James Hardie's asbestos. The final funding agreement implements the non-binding heads of agreement, which were signed last December by James Hardie, the Government, the Australian Council of Trade Unions [ACTU], Unions NSW, and Mr Bernie Banton on behalf of asbestos victims groups. I refer honourable members to the remarks the Premier made in the other place today. This is truly a historic agreement, for which Bernie Banton received a historic standing ovation in question time.

A lot has been said about the history of this matter, particularly as revealed by the Jackson Special Commission of Inquiry that was established by the Government in February 2004. The main elements of this history are set out briefly in the explanatory notes to these bills. I do not wish to dwell on this history now, partly because I am conscious that the time for debate on these bills is limited but primarily because these bills are about the future. James Hardie can do nothing that will change the past. But by making good its promise to provide compensation for asbestos victims, James Hardie should now be able to focus on the future success of its business without being held back by the stain of its past conduct.

In turning to the bills, I wish first to address, in clear and unambiguous terms, one of the issues that has been the subject of particular public debate in the course of the last year or so and which is affected by these

bills. That is the issue of the extinguishment of liability in favour of James Hardie and other companies and individuals arising from the events investigated by the Special Commission of Inquiry. The extinguishment is contained in clause 9 of the James Hardie (Civil Liability) Bill and clause 7 of the James Hardie (Civil Penalty Compensation Release) Bill. These clauses provide for the extinguishment of certain liability for protected conduct. Protected conduct is defined to mean conduct in connection with the events investigated by the Special Commission of Inquiry that are listed in the definition. The persons who are to obtain the benefit of this extinguishment of liability are the liable entities—Amaca Pty Ltd, Amaba Pty Ltd and ABN 60 Pty Ltd; the Medical Research and Compensation Foundation; James Hardie Industries NV; all companies in the James Hardie group; and directors and other officers, employees, advisers and agents of those companies.

Under the James Hardie (Civil Liability) Bill, civil liability of any kind that is incurred by the specified persons in respect of any of the protected conduct is extinguished. This includes civil liability arising at general law, or by or under any legislation. Under the James Hardie (Civil Penalty Compensation Release) Bill, liability to pay compensation for loss or damage resulting from conduct that is capable of being the subject of a penalty order of a civil nature, imposed by or under legislation, is extinguished. There has been some debate between James Hardie and the Government in relation to the scope of this extinguishment of liability. There has also been some debate as to the extent of the New South Wales Parliament's power to legislate to extinguish liability for civil penalties imposed under Commonwealth legislation, including the Commonwealth Corporations Act.

The Government's legal advice is to the effect that the New South Wales Parliament has power to enact the extinguishment of liability by these bills. While the effectiveness of the extinguishment might be tested and ultimately determined in the courts, I want to make it very clear to honourable members what is intended by the extinguishment in relation to civil penalty orders. The bills are intended to extinguish liability for civil penalty orders to pay compensation. The Government's legal advice suggests that the James Hardie (Civil Liability) Bill would not be effective to extinguish liability for civil penalty orders to pay compensation. The James Hardie (Civil Penalty Compensation Release) Bill, accordingly, attempts to extinguish this liability in terms which the Government's advice suggests are more likely to be effective.

The Government accepts, however, that the law in this area is extremely complex and largely untested. The Government is very clear that liability for civil penalty orders to pay compensation should be extinguished. Whether that occurs only under the James Hardie (Civil Penalty Compensation Release) Bill or whether the James Hardie (Civil Penalty) Bill is, in fact, sufficient to achieve this intention is not important. The important point is that the Government intends, by these bills, to extinguish civil liability and liability to pay compensation which should be the subject of a civil penalty order for the events investigated by the Special Commission of Inquiry for the benefit of James Hardie and the other specified companies and individuals.

The extinguishment of liability is part of the price the Government, the ACTU and the victims' groups are willing to pay to secure James Hardie's agreement to fund compensation for victims of the asbestos products of its former subsidiaries. Importantly, the extinguishment of liability is intended to assist James Hardie to put the events investigated by the Special Commission of Inquiry behind it and to concentrate on being a successful business. Under the final funding agreement, this will be for the benefit not only of James Hardie shareholders, but also for the benefit of persons who have been injured by James Hardie's asbestos.

I will also make some brief comments on the liability that the Government is not intending to extinguish by these bills. These bills do not in any way affect any criminal liability, whether under the Corporations Act or otherwise. James Hardie has not sought the extinguishment of criminal liability in the final funding agreement, and the Government would not consider attempting to extinguish criminal liability. The heads of agreement entitled James Hardie and its executives to the extinguishment of civil liability without expressly dealing with civil penalty orders. The Government considers that civil penalty orders requiring the payment of compensation are in substance indistinguishable from civil liability. That is why these bills are intended to extinguish liability for such compensatory civil penalty orders.

However, the Government considers that all other civil penalty orders, including orders imposing fines and orders to ban persons from being directors, are more akin to criminal liability, although they are, of course, subject to the civil standard of proof. These bills are not intended to extinguish liability for any civil penalty orders other than compensatory civil penalty orders. They are not intended to extinguish liability for fines or to prevent the imposition of orders banning persons from being directors. The Government understands that the Australian Securities and Investments Commission [ASIC] would have preferred that no extinguishment be given in respect of civil penalty orders. The Government also understands, however, that ASIC accepts that the extinguishment of civil penalty orders for compensation is of less concern than ASIC's primary concern, which

is, as the Government understands it, that the bills must not prevent ASIC from seeking any criminal penalties, or any civil penalty orders other than for compensation which might arise from its investigation into James Hardie. It is certainly the Government's intention by these bills to achieve that outcome.

There are three other matters I wish to mention briefly in relation to the James Hardie (Civil Liability) Bill. The first is the extinguishment of claims for pure economic loss. The Government has made a clear choice to favour persons suffering personal injury. No pure economic loss claim can compare to the suffering involved in asbestos personal injury claims. The Government wants to make sure that the funding James Hardie provides is available for personal injury claimants, their estates and their dependant relatives. The second point to note is that the extinguished liability can be revived if James Hardie is in breach of its key obligations under the final funding agreement. The Government believes that James Hardie is committed to implementing this agreement and making it work and we do not expect to have to use this power to withdraw the releases. It is important, however, to note that it is there.

Third, the bill imposes liability on Amaca Pty Ltd as a defendant of last resort for claims against Marlew Mining arising from exposure to asbestos in the Baryulgil community. In April James Hardie announced that it had agreed to extend the funding arrangements for the benefit of people exposed to asbestos in Baryulgil who would otherwise be uncompensated. The Government congratulated James Hardie for this decision at the time and it deserves credit for that again. Baryulgil claims were never part of James Hardie's restructuring in 2001 because it had long since sold the company that operated the mine at Baryulgil. However, that company has gone into administration under its current owners and it seems that it does not have any material assets.

Until James Hardie agreed to include these claims under the final funding agreement there was clearly some doubt as to whether people at Baryulgil who developed asbestos diseases would be able to recover compensation. I am pleased to say that the lung checks done by the New South Wales Dust Diseases Board suggest that there are very few cases of asbestos diseases in the Baryulgil community. However, it is important that the community has the certainty of knowing that compensation will be available for those of its members who are unfortunate enough to develop an asbestos disease.

I now turn to the main bill, the James Hardie Former Subsidiaries (Winding up and Administration) Bill. The bill implements and supports some of the important structural elements of the final funding agreement. Part 2 of the bill supports the establishment by James Hardie of the trust fund contemplated by the final funding agreement and called the Special Purpose Fund [SPF] in the bill. The SPF will receive the funding payments from the James Hardie group and will use the funding to pay payable liabilities of the liable entities. The SPF will also manage and resolve claims against the liable entities. Part 2 of the bill overcomes any doubt as to whether the SPF will be a valid charitable trust. It also ensures that the trustee of the fund must be a company that is taken, under the Corporations Act, to be registered in New South Wales.

Part 2 of the bill also modifies some aspects of the Charitable Trusts Act 1993 as they apply to the SPF. This will ensure that the SPF can operate as envisaged under the final funding agreement and the remaining provisions of the bill. Part 3 of the bill continues and expands a number of restrictions that were placed on the liable entities and the companies that own shares in them under the James Hardie Former Subsidiaries (Special Provisions) Act. Honourable members will recall that this legislation was enacted at the end of the budget session to preserve the structure of the liable entities and to ensure that they remain subject to New South Wales law. These provisions continue in this bill, in an expanded form. The liable entities will continue with their current structure and status until the structural arrangements under the final funding agreement are to be implemented. At that stage the liable entities will be transferred to the SPF.

Part 4 of the bill will replace the New South Wales external administration of the liable entities established under the James Hardie Former Subsidiaries (Special Provisions) Act. The bill instead places the liable entities into New South Wales winding-up and external administration. This is proposed to be a very long-term winding up, to ensure that the liable entities remain in place so that asbestos-related personal injury claims can continue to be made against them. The SPF will manage the winding up and external administration of the liable entities, under the general supervision of the Minister and the Supreme Court.

Clause 35 of the bill makes provision for the Supreme Court to approve an approved payment scheme. This will permit rationing if it appears reasonably likely that, for a period of time, there will be insufficient funds to pay all claims. The modelling carried out to assess the adequacy of the funding arrangements first agreed to in the heads of agreement last December showed that if James Hardie performs as well as expected

and the number of claims are as predicted, there will be sufficient funding to meet all asbestos personal injury claims against the liable entities. There is, however, inherent uncertainty in these sorts of calculations. Whether there is sufficient funding will depend on the success of James Hardie's global business and the total number of claims. Both of those factors involve some uncertainty, particularly over a period as long as 40 years. The provision to enable the Supreme Court to approve a temporary rationing scheme will ensure the available funding is shared fairly between claimants, with no discrimination between claimants by reference to the nature or extent of their injuries.

Finally, in part 5 of the bill, clause 64 requires the Minister to table the final funding agreement and the related agreements in both Houses of Parliament. This is required to be done as soon as James Hardie sends out information to its shareholders seeking formal shareholder approval of the agreement. The Government recognises the need for the orderly disclosure of information to the market to ensure that the market is properly informed. The final funding agreement and the related agreements will be tabled in Parliament under clause 64 of the bill as soon as James Hardie issues its shareholder approval documentation.

The enormous contributions of Greg Combet and Bernie Banton, who have campaigned over many years for justice in this matter and who are present in the President's Gallery today, have been rightly acknowledged, including by the House in question time today. On my own behalf and on behalf of other members of the Government, I extend the Government's thanks to those persons who have negotiated the final funding agreement on the Government's behalf over the past 11 months. I acknowledge in particular the work of Leigh Sanderson, Deputy Director-General of the Cabinet Office, who has been tireless and accurate in her advice for the entire duration of these matters. Brian Wilson, Managing Director of Lazard, has provided the Government's financial advice. He has been instrumental in finding a way through the commercial tensions inherent in such long-term and complex arrangements that can meet the needs of both sides. The deal could not have been done without him.

Gilbert and Tobin have provided superb service as the Government's Australian lawyers, as well as co-ordinating complex foreign legal input. I particularly wish to single out and thank Stephen Menzies and Paul Lam Po Tang for their contributions. I also acknowledge Ken Fowlie of Slater and Gordon, who advised Greg Combet and Bernie Banton throughout the negotiations. Ken Fowlie's involvement has given the Government team direct access to someone who represents claimants in the asbestos compensation system on a daily basis. The Government has not, of course, spent the past 11 months negotiating with itself. It is important that we acknowledge James Hardie's negotiating team. It was led by James Hardie's chief financial officer, Russell Chenu, with financial advice from Peter Hunt and Michael Harrison of Caliburn Partnership and legal advice primarily from John Atanaskovic and Mark Wilson of Atanaskovic Hartnell.

Finally, I extend particular thanks to John Ledda, senior legislative drafting officer in the Parliamentary Counsel's Office. He has drafted far more bills in relation to James Hardie than anyone should be asked to draft, including these three bills before the House. Today has truly been an historic occasion with an agreement concluded between the Government and James Hardie to provide funding for long-term compensation for asbestos victims.

The passage of these bills will fulfil one of the conditions to the full commencement of the final funding agreement. The bills are a vital step towards James Hardie making the first payment of funding. I thank honourable members for agreeing to deal with these bills on an urgent basis. The Government could not introduce the bills any earlier, as many people would understand, because the agreement was literally not signed until earlier this afternoon. The Government acknowledges that honourable members have not had a lot of time to consider the bills in detail. However, all honourable members can draw great comfort from the fact that the bills have been endorsed by Bernie Banton and Greg Combet, other senior officials of the Labor movement, the Government's advisors and James Hardie.

It would be remiss of me not to remark—and I do so in a multi-partisan fashion—that at the top end of all those deals and arrangements, in addition to everyone's hard work, a commitment has been required by the two Premiers, the leaders of the New South Wales Government, during the time of these negotiations. I have great personal admiration for both former Premier Bob Carr and Premier Morris Iemma. They have been absolutely unflinching, and prepared to give thought and action where appropriate to support the negotiating team and to make some very difficult calls, especially in the past five or six days. I acknowledge the work of all the people who negotiated this arrangement and the leadership of Bob Carr and Premier Iemma in bringing these bills to the Parliament. I commend the bills to the House.

[*Debate interrupted.*]

DISTINGUISHED VISITORS

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): I acknowledge the presence in the President's Gallery of Bernie Banton, AO, from the Asbestos Diseases Foundation, and some of his family members and supporters.

JAMES HARDIE FORMER SUBSIDIARIES (WINDING UP AND ADMINISTRATION) BILL

JAMES HARDIE (CIVIL LIABILITY) BILL

JAMES HARDIE (CIVIL PENALTY COMPENSATION RELEASE) BILL

Second Reading

[*Debate resumed.*]

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.37 p.m.]: Earlier this week the House came together, irrespective of political views, to mark the outstanding contribution by John Ducker to the society in which we live. Honourable members had an opportunity to speak about his life, , the contributions he made and the role he played in fighting for the rights and benefits of workers in this State and, indeed, this country. No doubt John Ducker will be viewed historically as a fighter for the battlers. To follow on from the comments of the Special Minister of State, we are honoured to have with us today yet another fighter, another person who is prepared to get stuck in and remain focused on a cause. It is a pleasure to have Bernie Banton in the President's Gallery this afternoon as this legislation passes through the House, I hope fairly quickly, to bring the parliamentary process of this matter to conclusion.

As a member of a political party I move around the community fairly frequently. I am continually confronted with community demands to put politics aside, to come together with other parties and do the right thing by the community on any given issue. Quite often we do that during the legislative process in this House, but that process is not often viewed by the public. The process of this legislation is yet another example of the political parties in this State—the Liberal-Nationals Coalition and the Government—working together to ensure that a matter was finalised as quickly as possible.

It is extremely important to note the Government's request for this matter to be declared urgent. There was never a doubt about it being urgent—that was a given. I acknowledge the Minister's request for members to draw comfort from the fact that the Government has worked on these conclusions together with the participants. The challenge for the Coalition is that we received the three bills only as the Minister stood to speak. He spoke non-stop for 20 minutes. It is fair to say that apart from a number of members of the Government and Mr Banton and others who are present in the President's Gallery, virtually no-one in this Chamber has had an opportunity to look at the legislation and understand its full impact.

It is interesting to note, in conjunction with the comment I have made, that when the community calls for parliamentarians to work together, we work in good faith with the Government to ensure that that which is wrong is righted as quickly as possible. I have not had the opportunity to look at length at the legislation, which consists of just under 100 pages. It is fairly clear, however, that it deals with company law. I am not being political on this issue, but I am instructed that despite the protestations of the Premier in the past that company law was a Federal matter—a slow, drawn-out process about which nothing could be done—this legislation proves that public pressure can be successful in forcing a government to act to resolve an issue.

It is unfortunate that the legislation has been put to us in this way in the few remaining hours of the 2005 sittings. Perhaps if we had had an opportunity to look at it we may have been able to make a more learned and considered contribution in regard to its specific impacts. We have listened to the Minister's quite lengthy second reading speech, but we have not been able to digest and consider it in the light of the legislation. We must, therefore, trust the Government. There is no doubt that we trust the considered view of Bernie Banton in allowing this legislation to pass through this process. It most certainly builds on trust from all members of the Legislative Council.

The Government assures us that everything is fine and that we should not fear that what it is telling us is untrue. But the Opposition has been told that during the 1950s, 1960s and 1970s tens of thousands of people were working within State Rail and the Electricity Commission. The Deputy Leader of the Opposition

interjected during the Minister's second reading speech, and said, "Don't forget the Elcom workers". I also note the constant focus by the honourable member for Gosford, Chris Hartcher, on this very issue. During the 1950s, 1960s and 1970s tens of thousands of people worked for the Government and were directly involved in the Electricity Commission and State Rail, both of which were big users of asbestos. We have yet to hear the Government acknowledge its own huge liability in that regard. We will continue to pursue that issue until we cease to be concerned about it.

The success of this legislation will depend on the financial viability of the James Hardie companies. It is extremely important that these companies remain viable, and I am heartened by James Hardie's positive role and participation, albeit somewhat begrudgingly earlier, in this process. It is extremely important to the success of this legislation for the workers affected by asbestos-related diseases that we continue to ensure the financial viability of the companies. The legislation will play an important role in providing necessary safety and security for workers affected by these conditions and, probably more importantly, to the families who remain. The Opposition supports the legislation.

Reverend the Hon. FRED NILE [5.45 p.m.]: On behalf of the Christian Democratic Party I express our total support for the bills. We have been involved in a long, drawn-out process in working with the victims of asbestos and seeking to ensure that they get justice. I am also pleased to congratulate the Premier, the Hon. Morris Iemma, and the Special Minister of State, on pursuing the difficult task on behalf of the Government of getting the final agreement and the legislation before the House. There has been some criticism that we have had only limited time to study the legislation, and we all know the background to that. We are at the end of the session and the final meeting of the James Hardie board occurred only within the last day. In the short time since then the Government, through the Parliamentary Counsel, has been able to successfully produce the bills we are now debating, which will pass through the House today.

I congratulate Mr and Mrs Bernie Banton, who are in the President's Gallery. I thank Bernie in particular for his courageous leadership. It is one thing to be a professor or an academic speaking on these issues, but it is another to be a victim and to carry the load and the leadership over many years. I am sure other members of the House join with me in congratulating him on his leadership, which I believe has been significant in influencing James Hardie and the community to see what it is we are talking about. Bernie has acted as a spokesman and has spearheaded this campaign. The unions, with whom we have met on many occasions, have been very active in supporting him and have played a major role in ensuring the finalisation of these negotiations.

Without being critical of James Hardie, it would be aware of the union muscle, and if it had persisted in blocking any arrangements for compensation for asbestos victims its company would be on the front line of a big battle. In fact, James Hardie would have ceased to exist if it had persisted in trying to block this agreement. If that had not been a factor, perhaps James Hardie may not have been brought screaming to the bargaining or agreement table. Transferring its companies to Holland seemed to be part of a premeditated decision to avoid having to pay compensation. That may have been the advice the company received from its lawyers and others. However, that plan was not successful and, thankfully, James Hardie and the various subsidiaries to James Hardie Industries NV, are now responsible for setting up a special purpose trust fund to provide funding for the liable entities under the final funding agreement.

This legislation will protect the rights of future claimants. It is estimated that at least 9,000 Australians will develop asbestos diseases over the next 40 years as a result of exposure to James Hardie's asbestos products. In other words, many people in the community do not yet know that they will be victims. Those people will now benefit from the arrangements that have been put in place, from the agreements that have been signed and from this legislation, which we hope will be passed unanimously. A great deal of discussion was required to bring about this happy conclusion. Discussions commenced back in February 2004, when the Government established a Special Commission of Inquiry into the Medical Research and Compensation Foundation to investigate claims of underfunding of compensation for victims of asbestos-related diseases caused by products manufactured by companies in the James Hardie group. In September 2004 the commissioner found that insufficient funding had been set aside and there was a moral obligation on James Hardie to provide additional compensation.

As I said earlier, the Australian Council of Trade Unions led by Greg Combet, Unions NSW led by John Robertson, the Asbestos Diseases Foundation of Australia led by Bernie Banton and the New South Wales Government reached heads of agreement with James Hardie in December 2004 for James Hardie to provide $1.5 billion in today's dollars over 40 years in additional compensation. James Hardie has only just signed that

agreement. The James Hardie (Civil Liability) Bill and the James Hardie (Civil Penalty Compensation Release) Bill are cognate with the James Hardie Former Subsidiaries (Winding up and Administration) Bill, which has as its principal objects:

> (a) to enable James Hardie Industries NV to set up a special purpose trust fund... to provide funding to the liable entities until the Final Funding Agreement, and
>
> (b) to set up a State scheme for the winding up and other external administration over an extended period of the liable entities, and
>
> (c) to ensure that not only present, but also future, liabilities of the liable entities in respect of personal injury or death of persons arising from exposure to any asbestos or asbestos products that were mined, manufactured, sold, distributed or used by those entities are dealt with:
>
> (i) in accordance with the Final Funding Agreement, and
>
> (ii) so that preference is given to those claims over other claims which are deferred to the future, and
>
> (iii) in a manner that recognises that exposure to such asbestos or asbestos products, or personal injury or death arising from such exposure, may occur for an extended period into the future, and
>
> (d) to repeal as a consequence the provisions of the *James Hardie Former Subsidiaries (Special Provisions) Act 2005*.

The Christian Democratic Party fully supports those objects. Despite the short time that has been available to us, these detailed pieces of legislation are now before the House. After this legislation has been implemented certain minor areas might need to be changed or amended. I am sure that the Government will monitor those issues carefully. It is obviously within the power of this House, when required, to pass any further amending legislation. It could be argued that we need more time to debate this legislation but I believe it should be passed. It could also be said that we are passing this legislation by faith, which is true. However, we should have confidence in it because of the all the work that has been done.

We will carefully observe the implementation of this legislation. The agreement provides limited releases for James Hardie. These releases will protect directors from civil liability and from civil orders for compensation, as compensation is already being paid through the deal, but it will not protect directors from banning orders, fines or any other criminal charges. The tax treatment of compensation payments is a matter for the Commonwealth. I have been involved with Legislative Council committees that have dealt with motor vehicle compensation and industrial compensation for accidents in the workplace. Those committees argued strongly that there should be special tax provisions in those areas.

Our inquiries showed that in the United States of America and in the United Kingdom special tax arrangements were in place to ensure that the maximum amount would be paid to victims. The Federal Treasurer, the Hon. Peter Costello, has made some strong, even belligerent, statements. I hope he reconsiders his position and concludes that this is the best possible deal for asbestos victims. The Commonwealth Government should spend some time to urgently resolve any outstanding tax issues. I gained the impression, after reading James Hardie's statements, that it was anticipating these tax arrangements. They must have been at the back of its mind when it signed the agreement. If the Commonwealth were adamant in its attitude about these tax measures James Hardie might say it has to reconsider the agreement.

When I asked the Government's advisers what would happen if that were to occur I was told that this legislation was stage one and that the tax measures were stage two. Both stages have to be successful to prevent the undermining of this legislation. I am sure the Government is putting pressure on the Federal Government and the Federal Treasurer to reach agreement on these tax issues. I look forward to the Government urgently resolving those issues. As I said earlier, the Christian Democratic Party is pleased to support these bills.

Ms LEE RHIANNON [5.57 p.m.]: The James Hardie Former Subsidiaries (Winding up and Administration) Bill, the James Hardie (Civil Liability) Bill and the James Hardie (Civil Penalty Compensation Release) Bill represent the end of a long process to deliver some measure of justice to asbestos victims. At the outset I extend congratulations to all those who contributed to this result—asbestos victims and their families, led ably by Bernie Banton; the Australian Council of Trade Unions; the Construction, Forestry, Mining and Energy Union; the Australian Manufacturing Workers Union and other unions; Barry Robson and other members of the Asbestos Diseases Foundation; the Australian Plaintiff Lawyers Association; the New South Wales Government's negotiating team and those within the Labor Party who pushed for this result.

The ink on the agreement is barely dry and we have had access to this bill for only a short time, so I cannot vouch for its details. We have had assurances from the Government and the deal has the support of victims and unions. The Greens are prepared to accept those assurances. The Greens hope that it works out as well as it can for the victims. Although the deal is probably not perfect in every respect we should not lose sight of the significance of the achievement. There was a likelihood that James Hardie could have escaped part or all of its future liability to its victims. Let us remember how we felt when we heard the news that James Hardie had moved overseas. Many thought that James Hardie had escaped its responsibilities, but we know that it worked out differently. It was an inspired campaign that turned the situation around and saved the day. There are few parallels in history for this deal and for the extent to which a corporate giant has been held accountable. Let us remember that that is due to the hard work of so many people. But the outstanding work has very much been the work of the victims, workers and their unions. There is a common misconception that the problem of asbestos-related disease has peaked.

The Hon. Dr Arthur Chesterfield-Evans: Asbestos-caused disease.

Ms LEE RHIANNON: Yes. Unfortunately, that is not the case. There are thousands of cases yet to come. People who are living their lives today in good health will develop asbestos-caused diseases in due course. Those victims would have lost out the most without this deal. When James Hardie restructured and relocated to the Netherlands they could have been left with no compensation. Of course, there is relief and joy that this deal has been concluded and that the victims will receive compensation. But let us not forgive or forget the evil that caused this situation. James Hardie moved overseas in an attempt to escape liability; but it did not. It has had to face the music. James Hardie's behaviour was one of the most immoral actions in Australian history.

Compensation is certainly wonderful. We have fought hard for it, as other honourable members have noted. A combined effort has delivered the outcome that we are celebrating today. The compensation makes a big difference but nothing can compensate for the loss of life or good health. We should take a moment to remember those who have died and those who are yet to die. We should think of them in our work in Parliament. I congratulate all those involved in resolving the asbestos tragedy that has brought hardship and death to so many.

Mr IAN COHEN [6.01 p.m.]: I lead for the Greens on this important occasion in the debate on the James Hardie Former Subsidiaries (Winding up and Administration) Bill, the James Hardie (Civil Liability) Bill and the James Hardie (Civil Penalty Compensation Release) Bill. I congratulate Bernie Banton and his family, Barry Robson and many others in the union movement who have done a fantastic job during a very difficult campaign. I will not repeat the comments of previous members, but the campaigners have been an inspiration. I have had the opportunity to work with Bernie on this and other issues and he is a most inspiring leader. It has been an honour to know and work with him. Bernie Banton has done a great service for the entire Australian community.

Asbestos is a substance that has been mined extensively and processed for many commercial applications throughout the world. It is commonly known in its various forms as blue, brown or white asbestos. All types are unsafe to humans, a fact that is only belatedly being disseminated to the general population. The resistance of asbestos to fire and chemical breakdown and its fibrous structure have made it attractive for use in many products. James Hardie knew that asbestos was not safe for humans. But this did not stop the company making solid profits by selling deadly asbestos products to Australians for almost 80 years. James Hardie sold the product that causes a form of cancer that kills within 12 months of diagnosis and for which there is no cure. Mesothelioma has already killed 7,500 Australians and is expected to kill 18,000 Australians by 2020. This sort of corporate irresponsibility should be abhorred. James Hardie has the deaths of thousands of Australians on its hands.

One community that has been shattered by the legacy of asbestos is Baryulgil, in the State's north. James Hardie established an asbestos mine there in 1944, which was operational for more than 30 years. Many of the community's men worked in the mine but asbestos has affected many more than just those employed directly by James Hardie. The main road was build of asbestos tailings and the people walked on it barefoot. Asbestos was dumped in the playground instead of sand and children literally played in asbestos—we can only imagine the implications of that. Asbestos tailings were used to augment the ceilings and floors of houses in the community. Empty asbestos sacks were used as blankets. These people lived surrounded by asbestos. They came into daily contact with it; they breathed it. The legacy is tragic.

Asbestos-caused disease affects multiple generations of families. One family in Baryulgil had eight sons, all of whom died well before the age of 50 except for one who moved away when he was still a young child. The indigenous community at Baryulgil has waited 60 years for justice. Each time it has put its claim it has been ignored or pushed to the back of the line. The community has borne all the responsibility while James Hardie has taken all the profits. It is time for justice. It is time for James Hardie to take responsibility and it is also time for the State Government to act on this issue that is slowly tearing families apart. The people of Baryulgil have been forgotten until now. I understand that under the deal that has just been struck James Hardie has said that there will be no cap on individual claims to proven claimants and there will be special compensation arrangements for the Baryulgil community for claims relating to the former mine. I have yet to see the details of the agreement as it is so recent but I sincerely hope that it is a just one for the people of Baryulgil.

It is interesting to note that a Canadian construction union leader threatened to ban James Hardie products if the company did not settle an agreement to compensate victims of asbestos-related diseases by the end of the week. He said that James Hardie could miss out on $86 billion worth of construction work in the province in the lead-up to the 2010 Winter Olympic Games. Canada is the world's second largest exporter of white asbestos. The Canadian Government claims it is safe but it is not. Canada continues to mine and export asbestos, much of it to developing nations. Other major producers of asbestos are Russia, Kazakhstan, China and Brazil.

I was in Sri Lanka after the tsunami, and the amount of asbestos products in buildings there was unnerving. When I returned to Australia I communicated with the Department of Foreign Affairs and Trade and Alexander Downer has given me a written assurance that asbestos products will not be used in any Australian aid projects. That is a small step in the right direction but we still have a long way to go. It is a major problem. I hope that union leaders in Canada will put a blanket ban on the export of asbestos, which is still used as a major building material throughout Asia and in Third World countries.

It is now 20 years since the United Kingdom banned brown and blue asbestos. Mesothelioma still kills five people every day and asbestos-related lung cancer probably kills considerably more. White asbestos was banned in the United Kingdom only in 1999. It is probable that the majority of asbestos-related deaths in the United Kingdom over the next 40 years will be as a result of exposure to white asbestos. Even in Sweden, where almost all asbestos use was banned 30 years ago, there is no apparent decrease in asbestos-related mesothelioma. That illustrates how the asbestos currently in use will continue to kill for at least a generation. It is crucial that countries like Canada stop mining and exporting asbestos, which is leaving a legacy of disease and death for generations to come.

These bills are the product of lengthy negotiations. The stakeholders have all agreed that they should be passed. Of course, there has been no time to examine these lengthy bills because they were introduced only this afternoon so, like other members, I will have to accept the Government's assurance that they are adequate. I am happy to commend the bills to the House. I wish the individuals and communities who have suffered all the best. This is the endgame of this terrible legacy.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.07 p.m.]: The Australian Democrats support the James Hardie Former Subsidiaries (Winding up and Administration) Bill, the James Hardie (Civil Liability) Bill and the James Hardie (Civil Penalty Compensation Release) Bill. These bills represent the end point of negotiations between the Government, the unions, the Asbestos Diseases Foundation of Australia [ADFA] and the James Hardie company. James Hardie was under pressure to act as I gather legislation was about to be passed to attempt to get money from the company and its subsidiaries. Unions and victims groups world wide also applied a good deal of pressure. It must be noted that James Hardie tried to restructure the company and exit to the Netherlands. It established the Medical Research and Compensation Foundation but did not fund it adequately to deal with the compensation liabilities calculated by actuaries. Indeed, the foundation was fast running out of money.

The Australian Securities and Investments Commission appeared to be fooled by the establishment of the foundation but ADFA refused to endorse it. It was suspicious and unsure that it would be adequate. Those suspicions were realised when the fund began to run out of money. For some time it was assumed that the restructuring would succeed and that no money would have had to be paid. In a sense, James Hardie Industries has been a lesson for world governments: just as corporations can go overseas, so can the indignation and pressure from the union movements and consumer boycotts. They can act as a discipline in the absence of world governance. Of course, corporations move to some countries to avoid paying tax. Clearly, there is a limit to which they can escape public criticism in a co-ordinated campaign. The importance of that campaign cannot be over-stated.

Some people—I count myself among them—want world regimes in relation to tax and corporate behaviour. In the absence of such regimes, the issue of what public pressure and influence can be mustered arises. In this case, enough influence was mustered to get a far better outcome than was thought possible. Negotiations have achieved agreement and I hope that there is enough money in the kitty. As has been pointed out by epidemiologists and honourable members, the number of people affected by asbestos-caused diseases has not peaked. Asbestos is used in many industries. It is in many government and private houses in New South Wales. I recognise that we have to hope that this negotiated agreement provides enough money, because it cannot be varied. I recognise that these bills cannot be amended because of the agreement reached by the Government and the James Hardie group worldwide.

I note that Bernie Banton, his wife, family and supporters are in the gallery. I congratulate him on his good work and courage, despite his physical weakness, and on negotiating the cause of asbestos victims. As normally happens, cases such as this throw up heroic people who fight on for the good under enormous stresses. People such as Bernie Banton give the lie to the idea that one person cannot make a difference in this world. The agreement assumes that James Hardie will remain viable, and its profits will be channelled into support of victims. That is important because companies that are disaggregated to limit their liabilities will not be able to escape. The only other similar agreement is one with John Mansville, the asbestos company in the United States of America that was wound up. Its assets and ongoing stream were taken over to meet its liabilities. This agreement assumes that James Hardie is an ongoing viable company infinitely and, as such, is different. I believe it is a highly significant model.

The behaviour of James Hardie was inspired by the tobacco industry, which has spun off all its non-tobacco interests. While cashed up, it bought huge numbers of food companies, mainly junk food companies, and other businesses. It has now spun those off. I believe the industry will eventually try to wind up its tobacco interests while delaying any liability for its products. This model is extremely important. A government has taken on a miscreant industry, played hardball, negotiated with it, put all its assets into one bundle—although it has tried to unbundle them at corporate and national registration levels—and insisted that it meet its obligations to compensate the harm caused by its nefarious behaviour and to pay systematic compensation to victims of those nefarious activities.

The fact that compensation will occur in a 40-year time frame—assuming the company remains viable—is highly significant. A challenge to the Government, and all governments in the world, is to make a similar deal with the tobacco industry and its spin-off companies. I hope they take up that challenge because of the harm done by the tobacco industry, which is the same as the asbestos industry, come to the negotiating table and pay for the harm it has done. I hope the corporate entities of the tobacco industry are linked in such way that they bear responsibility for that harm. This is ground-breaking legislation. I believe it is a world first and a model that we have to follow to get justice for the millions of people who have suffered from the effects of tobacco.

I do not refer to tobacco to belittle the importance of asbestos. Asbestos victims are, and will always be, a very important and disadvantaged group that is suffering greatly because of corporate misbehaviour. Asbestos victims have been the pioneers of very important legislation. The fact that this Parliament got behind them is very significant. I hope that one day this Parliament, and other parliaments that look so benignly on the tobacco industry, will use this model for the good of humanity and for corporate responsibility at a worldwide level.

The Hon. IAN WEST [6.15 p.m.]: I am honoured to say a couple of words about the historic act that is being performed by the State Parliament today. I acknowledge the presence in the gallery of the President of the Asbestos Diseases Foundation of Australia, Barry Robson, and the Secretary, Elaine Day. It is an honour to have them in the gallery, along with Bernie and Karen Banton and their son Dean. In 2000 submissions were made to the Jackson inquiry. At that time Bernie Banton, Ella Sweeney, Barry Robson, Reg Stephenson and Paul Bastian made a combined submission to the Jackson inquiry which got this whole affair up and running. At that time $294 million was actuarially worked out as being adequate to compensate victims of this insidious product.

We now know that actuaries have adjusted the figures incrementally over a period of some four years from $294 million, to $400 million, to $800 million and now to something like $4 billion over a possibly 40 to 50 years. This is an important occasion historically. However, it is far from a settlement of this matter. It is an incremental step along the way in a fight that started long before the Jackson inquiry; it goes back many years. In the late 1950s and early 1960s the Miscellaneous Workers Union looked at asbestos and at James Hardie. In the late 1960s and early 1970s Bernie Banton was a delegate for the Miscellaneous Workers Union employees of James Hardie.

The James Hardie Former Subsidiaries (Winding up and Administration) Bill, the James Hardie (Civil Liability) Bill and the James Hardie (Civil Penalty Compensation Release) Bill have been looked at in great detail. I do not propose to go through them in any detail. However, I make reference to the Baryulgil claim against the Marlew mining company, a former James Hardie subsidiary. As we know, the company went into liquidation. For too long the corporate veil has been used to demonise those who were attempting to represent victims of insidious products, such as asbestos, by portraying them as trying to restrain trade and as terrible people who should be locked up. The trade union movement has been extremely successful in its campaigns in many parts of the democratic structure of our great nation. That is particularly so in relation to this insidious product, asbestos. I am pleased and proud to see indigenous representatives in the gallery. I commend the bills to the House.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [6.20 p.m.], in reply: I thank everyone in the community, the Government, the union movement and both Houses of Parliament who were involved in bringing this matter to a conclusion. I thank honourable members for their contributions to the debate and I commend the bills to the House.

Motion agreed to.

Bills read a second time and passed through remaining stages.

[*The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.22 p.m. The House resumed at 8.00 p.m.*]

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

The Hon. JON JENKINS [8.00 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business Item No. 188 outside the Order of Precedence, relating to an order for papers regarding the grey nurse shark, be called on forthwith.

I would like to obtain some scientific documents. This motion was to be moved this morning, and I do not propose to say any more about the issue. The question can be put to the House immediately.

Motion agreed to.

Order of Business

Motion by the Hon. Jon Jenkins agreed to:

That Private Members' Business item No. 188 outside the Order of Precedence be called on forthwith.

GREY NURSE SHARK PROTECTION

Production of Documents: Order

The Hon. JON JENKINS [8.03 p.m.]: I move:

1. That, under standing order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution all documents in the possession, custody or control of the Minister for the Environment, the Department of Environment and Conservation, the Minister for Primary Industries, the Department of Primary Industries, the Department of Natural Resources, the Minister for Tourism and Sport and Recreation, the Department of Tourism, Sport and Recreation and the Cabinet Office, created since 1 January 2003, and not previously provided with the return to the order of the House of 24 February 2005, relating to the grey nurse shark population, habitat and protection, including:

   (a) any audio-visual material, including video-tape, showing grey nurse shark populations,

   (b) any review of grey nurse shark protection prepared by Dr John Steven,

   (c) any social and economic study of the grey nurse shark in critical habitats, prepared by Hassall and Associates,

   (d) all documents associated with the commissioning and analysis of the documents referred to in paragraphs (b) and (c), and

(e) any other studies, reviews or reports concerning the grey nurse shark population, habitat or protection prepared since 1 January 2003.

2. That, if any document falling within the scope of this order is not produced as part of the return to order on the grounds that it formed part of a Cabinet minute, or was held for consideration as part of Cabinet deliberations, a return be prepared showing the date of creation of the document, a description of the document, the author of the document and the reasons why the production of the document would "disclose the deliberations of Cabinet" as discussed by the Court of Appeal in Egan v Chadwick [1999] NSWCA 176.

3. That any document which records or refers to the production of documents, or preparation of a return, as a result of this order of the House be laid upon the table of the House with the return to order.

I would like some scientific papers in respect to grey nurse shark numbers, which I have requested today from the Government.

Motion agreed to.

WATER MANAGEMENT AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. PETER PRIMROSE [8.05 p.m.]: I commend the bill to the House.

Mr IAN COHEN [8.05 p.m.]: The Greens largely oppose the bill and believe it should be withdrawn for further consultation. The Water Management Act 2000 was a step forward in the recognition of the need for water for the environment and the health of our river systems. Last year's changes to this Act took several steps backwards, with the introduction of perpetual water licences leading to ever-increasing overallocation of our already stressed river systems. The bill goes even further, potentially putting the last nails in the coffin of our rivers and wetlands. The bill overturns the original intent of the 2000 Act by changing the definition of environmental water to put the needs of the rivers last, not first. The bill deals with matters relating to the implementation of the national water initiative, including water tagging licence provisions. Under the legislation the environment may only get "the water remaining after the commitments to basic landholder rights and for extraction have been met". In other words, after irrigators and other landholders have taken their allocations scraps may be left over for the environment.

If that is the way the Government believes that river and wetlands health will be achieved, it is an absolute joke. It completely turns the intent of the original legislation on its head, even though the Government claims that water for the environment still has priority. Section 8 (2) of the Water Management Act requires a management plan to provide rules for the identification, establishment and maintenance of planned environmental water, which is that water that is committed for fundamental ecosystem health or other specified environmental purposes. The other major problem with the change is that, together with another provision in the bill, it is aimed at thwarting a High Court challenge that is looming in several weeks. In the case of the *Nature Conservation Council of New South Wales Inc. v Minister Administering the Water Management Act 2000*, the Gwydir case, the Court of Appeal made the following comments about the requirements of section 8 (2) of the Act:

> Environmental water rules under s8 (2) require the 'identification, establishment and maintenance' of 'water that is committed' for the stated purpose and which may not be used for any other purpose. The idea of 'commitment' is inconsistent with any abstract or theoretical concept of water. What must be identified is actual water. The words 'establish' and 'maintain' are not suggestive of anything other than actual water.
>
> What is required is water that is constantly provided for and which, absent acute drought conditions, will be available to protect 'fundamental ecosystem health'. To the extent water is present at all, priority is to be given to fundamental ecosystem health.

Those comments were made in rebuttal of the Minister's argument that it was sufficient for a water- sharing plan to deal with an abstract concept of water. It is utterly ridiculous that water-sharing plans could be thought to refer to abstract or virtual water. I do not know how the Minister thinks that rivers and wetlands can survive in theoretical water. On the one hand, the Premier last night promised $105 million for river health.

The Hon. Rick Colless: $150,000.

Mr IAN COHEN: I have $105 million noted, but it is a great deal of money for river health, and that is to be commended. On the other hand, the bill turns the intent of the Act on its head and allows for a

commitment of water to the environment to be abstract theoretical water. From the second reading speech it is clear that the purpose of the bill is to extend the definition of environmental water in the Act to provide a more practical definition, and one that reflects how water access is managed on a daily and long-term basis. The amendments are also intended to clarify the findings of the Court of Appeal that I mentioned earlier. In this respect the second reading speech notes:

> The amendments will allow clarification of two aspects: first, that environmental water can be expressed by reference to extractive requirements for water, and second, that it does not have to be provided at all times.

The Greens do not support the insertion of the proposed section 8 (1A) into the Act. It is inconsistent with the intent of the legislation and the operation of the water management and water-sharing principles. Section 8 (2) of the Act already makes it clear that the environmental water rules relating to a water source do not need to specify that a minimum quantity of water is required to be present in the water source at all times. The amendment proposed by the bill does not seek to clarify the intent of the statutory scheme but to subvert it. Furthermore, it does not overcome the requirement in the Act for the bulk access regime to be developed having regard to the environmental water rules.

The Government has continuously blamed the drought for the fact that our wetlands are sick and dying. That is simply not the case. Wetlands are wet by their very nature, even in droughts. The reason they are in that stressed condition is that irrigators are receiving over and above their allocations, leaving little or no water for the health of the wetlands and marshes. We need to put water use in perspective. A recent article in the *Guardian* by David Flicking explores how agriculture is drinking Australia dry. I would like to quote an extract from that article:

> Of course, Australia needs agriculture as much as any other country does. But the amount of water used on the country's farms is out of all proportion to their social, environmental or economic value.

The Hon. Rick Colless: Wetlands use more water than agriculture.

Mr IAN COHEN: That is the idea of wetlands being a natural environment. It has been ripped off by the agricultural industry.

The Hon. Rick Colless: What nonsense!

Mr IAN COHEN: I acknowledge the interjection by the Hon. Rick Colless, who can say little more than that, even though the western regions of New South Wales are in such dire circumstances. I have seen it, he has seen it, but he cannot seem to recognise what he has seen. All he can do is call it nonsense. I will persist with my nonsense: agricultural production in the west of New South Wales is bleeding the area dry. The article goes on to state:

> Vast amounts of the dry continent's precious water supply goes not towards growing the country's food supply but supporting politically sensitive industries. Take sugar. Travel up the east coast from northern New South Wales to the far north of Queensland and you pass endless stands of sugar cane.
>
> Thousands of hectares of coastal forest were pulled down to make way for the cane farms that now dot a string of marginal electoral seats along the country's east coast.

I am talking about the politics, which The Nationals know very well, of supporting unsustainable industries. The article goes on:

> A century ago, sugar was a profitable industry - not least because most of the workers were indentured labourers from Melanesia, living in conditions one rung above slavery. Nowadays, a global oversupply has made the cane industry so uneconomic that Canberra—

The Hon. Rick Colless: Point of order: I fail to see what indentured slavery has to do with the Water Management Amendment Bill. Will you please bring the member back to the bill.

Mr IAN COHEN: To the point of order: It seems the honourable member is sensitive to what is generally recognised as robust debate in this House. When an industry is subsidised—by a financial subsidy, a water subsidy or, historically, by a virtual slave labour subsidy—I am pointing to the fact that it is not an industry that has been sustainable in either an environmental or a social context. I suggest this is a reasonable part of the debate. I am not impugning any other member, unless they happen to have forebears closely associated with the industry. I am purely stating the poor history of the industry.

The Hon. Duncan Gay: To the point of order: Indentured slavery happened well before Federation. What is before us is a national water initiative that comes from the Commonwealth Government and happened a long time after Federation. What the member is talking about in another one of his flights of fancy is well outside the leave of this bill.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! I remind Mr Ian Cohen to keep his remarks relevant to the bill.

Mr IAN COHEN: I will. Cane is not the worst culprit. One way of measuring the efficiency of water usage is to work out how much of the resource is needed for a dollar's worth of finished product. On that measure, health care and education use seven litres of water for each Australian dollar, banking uses nine litres, and most manufacturing comes in at less than 50 litres.

The Hon. Rick Colless: How about growing hemp?

Mr IAN COHEN: I acknowledge the interjection by the Hon. Rick Colless. Hemp is a significant user of water. It uses a lot of water to grow successfully.

The Hon. Rick Colless: Is it more or less than cotton?

Mr IAN COHEN: I am not discussing hemp production, although any member of The Nationals worth his salt would recognise the value of hemp production. Irrigated agriculture consumes water on scales of magnitude. It takes 1,200 litres to make a dollar's worth of sugar and 1,500 litres to make dairy products or cotton of the same value. The thirstiest crop is rice, which consumes 7,500 litres of water for every dollar of value. One might not have thought that a place as dry as Australia would be in the rice business, but dotted along the Murray River valley, the continent's only major river, there are dozens of farms that collectively use almost as much water to grow rice as Australia's 20 million people use for all household purposes.

The Murray River has a pivotal role in Australian geography and history. Aborigines once built fish farms and Europeans floated paddle steamers along it. Its floodplain cuts a fertile swathe through south-eastern Australia, supporting unique flora and fauna. Adelaide would be a desert without it. But, like its American counterpart, the Colorado River, the Murray's flow is declining. Salinity is making the land surrounding it barren, and only rarely does water issue from its mouth. Upstream, on the farms of Victoria, New South Wales and Queensland, there is water aplenty; rarely does any of it meet the sea. The Murray is dying so that Australia can export rice to China.

The Hon. Duncan Gay: What about the South Australian barrier?

Mr IAN COHEN: I acknowledge the interjection by the Deputy Leader of the Opposition. It has been many years, I think perhaps since 1981, since we have seen the Murray opening to the ocean. I would contend that to a great extent that is due to the lack of environmental flow. The export of rice is no idle claim. An exhaustive scientific report last year concluded that the degradation of the river could only be arrested by returning 1,500 gigalitres to the river a year. Local farmers have even squealed at a more modest agreement to return 500 gigalitres. But rice on its own uses 2,000 gigalitres of the Murray each year and Australia's 800 cotton growers, who are also mainly based around the Murray, use 2,900 gigalitres of water each year.

The Hon. Duncan Gay: Where have you sourced these figures from?

Mr IAN COHEN: Was the member paying attention at the beginning? I said I was quoting from an article in the *Guardian* by David Flicking, and I am referring to this article at this point in time. He might have had the opportunity to undertake some sort of defamation class action against the *Guardian*, but that is where this information has come from. It was effectively sourced. I am condemned if I say things in the House and I am condemned if I quote from major mass media sources. It seems, if I dare to say, that we are using our water resource in a profligate way in putting so much investment into the rice growing industry, which is a completely unnatural industry in the Australian context, somehow I am reduced to being on the fringe.

The Hon. Rick Colless: What industry is natural?

Mr IAN COHEN: I acknowledge the interjection by the Hon. Rick Colless. Certainly there are industries that use far greater amounts of water for what is produced and others have less impact. One of the

interesting aspects of the Australian context is that somehow we have never accepted and adapted culturally to the Australian environment, and that is something that The Nationals seem to pretend to ignore in this debate and in many other debates in this House.

The Hon. Duncan Gay: This is really bad.

The Hon. Rick Colless: It is all bad.

The Hon. Duncan Gay: This is the really, really bad stuff.

Mr IAN COHEN: I applaud the sensitivity of the members that is revealed by their interjections.

The Hon. Rick Colless: Put on your white coat and we will call you Santa Claus—you have your red shirt on.

Mr IAN COHEN: I find endless entertainment in the members opposite—those great conservationists in the agrarian socialist tradition. I must say that I always find it interesting when both major parties join forces and vote together when the House is dealing with the use of water in New South Wales.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! I remind members that interjections are disorderly at all times.

Mr IAN COHEN: David Flicking also stated in the article in the *Guardian*:

> Some farming is also necessary to support the population, nutritionally and economically, but a dry continent, such as Australia, should be concentrating on cereal crops, fruit and vegetables and livestock rather than cotton, rice, and sugar, which together account for more than one-third of the country's agricultural water usage.

Last year in debate on the most recent round of changes to the Water Management Act I recounted numerous horror stories of people who were affected by the overallocation of water to irrigators. The stories involved farmers and people living in rural areas whose health was being affected by deteriorating water quality, such as those whose bores were being affected by irrigation extraction. Importantly, it included indigenous people for whom water and river health are crucial issues. Indigenous groups consider the health of river systems as integral to the health of their people and their communities.

Recently I attended a conference at Barmah-Millewah, where I spoke to indigenous people about their views on our river systems, in particular the Murray. They were collectively and unanimously concerned about the health of the river and the state of the environment because they reflect directly on their culture and health. They relate to the rivers as the veins and arteries of their bodies and they relate to the wetlands as the kidneys that filter the river systems. They also mentioned that when the rivers were flowing, when fishing was good and when the billabongs were full, the young people would go to the billabongs and waterways to enjoy themselves in the traditional ways.

But when those waterways dried up because of the greedy use and misuse of water resources and when the waterways no longer flowed and were in an unhealthy condition, the young people no longer swam there because they knew if they did they would finish up with various skin conditions and would not be well. Consequently the use and misuse of water resources has impacted directly on country towns because young people who are unable to enjoy recreational pursuits associated with river systems resorted to antisocial forms of recreation.

[*Interruption*]

I was not talking about a particular river; I was referring to a conference I attended in the Barmah-Millewah area of the Murray River. I must ask what consultation has been undertaken with Aboriginal groups in relation to this bill. Last month it was announced that the iconic Macquarie Marshes in the central west of New South Wales would receive their first flow in two years. This occurred only after significant rainfall had filled the Burrendong Dam upstream. The Macquarie Marshes are large wetlands covering approximately 200,000 hectares. A small portion of the wetlands is managed by the National Parks and Wildlife Service and the rest is privately owned. Part of the wetlands is listed as internationally important wetlands under the Ramsar Convention on Wetlands. The area provides habitat for migratory waterbird species listed under both the Japan-Australia Migratory Bird Agreement [JAMBA] and the China-Australia Migratory Bird Agreement [CAMBA]. But there has not been a bird breeding season there for four years because of a lack of water.

It is pleasing that water has finally been released into the marshes, but one has to wonder at what irreversible damage may already have been done. Some birds that use the area as a breeding ground have a lifespan of only 8 to 10 years, so what does it mean to them when there has been no breeding season there for four years? The economic viability of the marshes for purposes such as cattle grazing is also threatened by the declining health of the marshlands. Native grasses die off and are replaced by noxious weeds, such as lippia.

While iconic areas such as the Macquarie Marshes are usually discussed when talking about water allocation, it is important to note that smaller components of water systems also are crucial to river systems and to the health of ecosystems. Withholding water from the environment will result in long-term detriment to sustainability. We need to sustain whole river systems, not just iconic areas. Billabongs and creeks are also important to the environment. The Government got us into this mess by handing out water licences without taking into account how many might actually be viable and sustainable. The Government has not put in place metering to determine baseline information about how much water is actually being extracted, and how much is present.

Many of the State's unregulated rivers do not have reliable flow-monitoring equipment. This means that water-sharing plans for those rivers are simply a matter of guesswork. The bill proposes amendments that deal with the validity of management plans. It proposes to insert a new part 5 into schedule 9 of the Act in an attempt to make water-sharing plans that might otherwise be found to be invalid, because they invert the intention of the Act, into valid plans under the Act regardless. This retrospective validation is of grave concern to the Greens. The clear intention of clause 71 is to overcome any possibility of a successful legal challenge in the High Court in the Gwydir case. If the High Court found that the Gwydir water-sharing plan was invalid, many other water-sharing plans would have to be revisited.

This bill is an inappropriate use of the parliamentary process. The Greens oppose it in the strongest possible terms. This is not the first time that the New South Wales Executive has sought to rush through legislation to overcome or avoid an unfavourable court decision. Other examples include the 1982 proceedings that were on foot before Justice Stein concerning a proposal to develop an old bus depot at Pagewood into a Westfield shopping complex. Prior to the court's determination the State Government introduced the Botany and Randwick Sites Development Act 1982, which effectively approved the shopping centre development. Any proceedings before the court covered by that Act, which included the case involving the relevant parties, were terminated.

In the following year the State Government again intervened, this time passing the Cumberland Oval (Amendment) Act 1983. That Act circumvented the court's ruling that a development consent permitting a stadium at Parramatta Park was null and void. In 1985 the Blue Mountains Land Development (Special Provisions) Act granted development consents to the Fairmont Resort in the Blue Mountains and terminated proceedings in the Land and Environment Court. What a beautiful view that was! I was there when the bulldozers came through. There is now a golf course and the Fairmont Resort, which The Nationals probably think is spectacular. It just shows the difference in cultural perspective between what I saw of that site prior to the development and what members opposite see as an improvement. They see a wonderful resort on the escarpment of the Blue Mountains World Heritage area where they can belt a golf ball around. I suppose that shows the vast difference between us.

The Hon. Rick Colless: What do you have against golf?

Mr IAN COHEN: The Hon. Rick Colless should not start me off. I could talk all night on the subject of golf courses being built on very sensitive environmental areas. I suggest that members of the Opposition examine some of the history of golf, particularly in South-east Asia, where massive areas of very sensitive environment have been used for golf courses. Often traditionally owned lands are cleared and converted to golf courses that are used by tourists, and that has a significantly detrimental effect.

Reverend the Hon. Dr Gordon Moyes: Back to the Water Management Amendment Bill.

Mr IAN COHEN: Golf courses are extremely large users of water, so that is the relevance of this discussion.

The Hon. Rick Colless: You should take up golf, because it is a good game.

Mr IAN COHEN: I have played golf. I am not a bad golfer, but I have not played at Fairmont. I do not like golf courses; the game does not appeal to me.

The Hon. Christine Robertson: Point of order: Mr Ian Cohen and the interjectors are most definitely not discussing the issue at hand.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! Once again I remind members that interjections are disorderly at all times. The member with the call should adhere to the rules of debate relating to relevance.

Mr IAN COHEN: The Fairmont Resort is an example of the State Government sanctioning environmental vandalism, and I stand by that comment. I suggest that honourable members visit that resort, look at the other escarpment, the World Heritage areas and consider why that resort is outstanding for all the wrong reasons. In *Rosemount Estates Pty Limited v Minister for Urban Affairs and Planning*, the Land and Environment Court held in March 1996 that State environmental planning policy [SEPP] 45, Permissibility of Mining, was invalid.

The Government passed the State Environmental Planning (Permissible Mining) Act 1996, which had the effect of validating SEPP 45 from its introduction. I was in the Parliament when the Government defeated the people of Rosemount Estate. The Opposition at the time supported the Rosemount Estate winery against the Government. The Kooragang Coal Terminal (Special Provisions) Act 1997 declared the validity of a development consent in connection with the expansion of Newcastle's Kooragang coal terminal.

In 1997 the Government passed the Port Kembla Development (Special Provisions) Act. The Act was designed to block a legal challenge by a member of the Illawarra Residents Against Toxic Environments against the reopening of the Port Kembla copper smelter. The Act effectively extinguished all legal rights of appeal against the granting of the consent. Those people were dyed-in-the-wool, salt of the earth, Labor voters from Port Kembla. This Government destroyed their ideals, their right to go to court, and the quality of their environment. They sought to get rid of the smelter and the Government was equally determined to replace it with another copper smelter. The old, polluting copper smelter that created many cancer clusters for the working-class people was sold to the suburbs of Istanbul. The same filthy copper smelter that was rejected in New South Wales is now functioning in Istanbul.

In 1999 the National Trust challenged development approvals concerning the proposed development of Finger Wharf 7 and Wharf 7 at Walsh Bay. During the appeal before the Land and Environment Court the Government announced its intention to legislate to approve the development and the hearing was adjourned. Shortly after that the Government passed the Walsh Bay Development (Special Provisions) Act 1999—another part of New South Wales harbour heritage bites the water. In December 2003 the Government passed the Clyde Waste Transfer Terminal (Special Provisions) Act 2003 to overturn the decision of Justice Bignold refusing development consent to the Clyde Waste Transfer Terminal in *Drake and Ors; Auburn Council v Minister for Planning and Anor; Collex Pty Ltd*. In 2004 the Filming Approval Act 2004 was passed to provide certainty to the film industry after Justice Lloyd found that an approval to film in the Grose Wilderness Area of the Blue Mountains National Park and World Heritage area was invalid. I took part in a blockade protest on that occasion. Despite the fact that the Carr Government passed this regressive, and retrospective, legislation it was stopped. The filming was moved to another area. This was a classic case of the Carr Labor Government losing its green gloss.

Most recently, the Environmental Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005 introduced provisions to enable major projects and critical infrastructure to be developed even if prohibited by environmental planning instruments. This demonstrates a litany of examples of the Labor Government supporting sectional interests and big business over the concerns for the environment and massive numbers of people in the general community. It is entirely inappropriate for the Government to legislate in order to prevent a potential outcome of a court case. It is a complete abuse of power.

The High Court deemed that the case concerning the Gwydir is of sufficient merit to be heard by the highest appellate court in Australia. The court hears fewer than one in 10 applications, yet it has decided that this case is important enough to be heard before the Full Bench. That hearing has been set down for December. Ramming the legislation through this week in order to prevent a potential adverse finding in the case—with the result that the case would not go ahead—is a subversion of a legitimate process of judicial review. Justice Stein stated:

> Whenever the Parliament seeks to reverse Court decisions, or stifle court proceedings, the delicate balance between the legislature, executive and judiciary, inherent in the Westminster system, is damaged.

> Whilst legislation circumventing planning laws and the Courts is within the power of the Legislature, members of parliament and the public need to realise that the delicate balance in our system of Government is disturbed, as is the concept of equal access and obedience to the rule of Law.

The Legislation Review Committee had a concern in relation to the retrospective validation of water-sharing plans. The Legislation Review Digest states:

> **Validation of management plans: Schedule 1 [50]**
>
> The second reading speech indicates that this provision is aimed at ensuring the validity of five groundwater plans that have been amended following appeals being made against plans as gazetted …
>
> However, the validating provision is in general terms and applies to any management plans and any amendment to the management plan that was published in the gazette before the commencement of the validating provision, including any plan or amendment gazetted after the Act is passed and before commencement.
>
> The Act provides a judicial review period of three months during which the validity of a management plan or an amendment to a plan may be challenged in the Land and Environment Court. The Bill appears to remove this right of review for any management plan or amendment in the judicial review period at the commencement of the provision.
>
> The Committee notes that a purpose of validating all water management plans at the commencement of schedule 1 [50] is to validate certain plans whose commencement was deferred and which were subject to appeal and consequent amendment.
>
> The Committee notes that this validating provision would remove the right to appeal the validity of any management plan or amendment of a management plan that was in its judicial review period at the commencement of the provision.
>
> The Committee refers to Parliament the question of whether schedule 1 [50] unduly trespasses on the right to review management plans and amendments to management plans.

Another concern that the Greens have with the bill is the protection of the Crown from financial liability in respect of certain conduct. The bill proposes amendments dealing with compensation provisions intended to address the sharing of risk relating to reductions in the availability of water under future management plans. These amendments reflect the National Water Initiative. However, the bill also seeks to restrict compensation payable by the Crown as a result of relevant conduct by the Crown in relation to a management plan. This includes "any act or omission, whether unconscionable, misleading, deceptive or otherwise".

I find it absolutely outrageous that this provision should protect the Crown from financial liability as a result of it or its officers engaging in unconscionable, misleading or deceptive conduct. This would allow government agencies to act without accountability for their actions, without having to worry about recourse. If anything, government agencies should have to abide by higher standards of ethics and conduct, due to the public trust placed in them. To have them protected from financial liability in circumstances where there has been unconscionable, misleading or deceptive conduct is quite reprehensible.

The Greens also have concerns about provisions dealing with local water utilities. I understand that the Government will move an amendment to omit that part of the bill so that it can be considered at a later stage. I had planned to move amendments dealing with local water utilities, but will no longer do so. However, I will make some general comments with regard to the proposed provisions so that they may be taken on board when any new amendments dealing with local water utilities arise. The bill, as currently drafted, amends the circumstances in which local water utilities can increase their entitlements to water under access licences and treats those utilities in a manner similar to major water utilities when it comes to penalties.

Local water utilities now hold access licences that rank as the highest priority of entitlement. But that entitlement is fixed in accordance with the sharing of water under the relevant water-sharing plan. If a utility needs more water to meet demands of a growing population, for example, it must convince the Minister to vary its licence. However, there does not seem to be a provision for altering the water licence if the population decreases. In some circumstances rural populations do become smaller for one reason or another.

The Hon. Duncan Gay: Mostly the Greens. Will you acknowledge that?

Mr IAN COHEN: I will acknowledge that interjection, which deserves no comment. There should be a provision for the winding down of water allocations to adjust for population decline, just as there is for population growth. The bill, as currently drafted, does not make it clear where additional water would come from when demand for water is on the increase and the licence is to be varied by the Minister. The Greens feel very strongly that this additional water should not be sourced at the expense of water for the environment. If additional water is required, it should be found through adjustments to bulk access regimes, through decreasing

share entitlements for other licence categories. The environment should have first priority. In the second reading speech in the other place, the Parliamentary Secretary, Ms Linda Burney, said:

> It is important to point out that the entitlement granted to a local water utility under the Act is already relatively generous and any increase will impact on the water available to the environment and other users in the water system.

I seek an assurance from the Minister that any increases for local water utilities would not be sourced at the expense of the environment. Another amendment the bill makes in relation to local water utilities relates to associated commercial activities. The change includes food and fibre processing as an activity that could be used to justify seeking an increase in water entitlements. The Greens oppose this amendment. Food and fibre processing industries should have to apply for water licences in the same way that other industries are required to do. This is an equity issue, which lets these industries off the hook. The review process of local water utility licences should be open to public consultation, with a public notification of review and submission period. This would make the process more accountable to the public and allow for participation and transparency.

It would be appropriate for the Minister to have to take into consideration any public submissions when undertaking a review of a licence. An amendment to the Act provides a framework in which the Minister can direct large dam operators to improve their practices to avoid cold water pollution. This is not controversial. However, the bill also amends the Protection of the Environment Operations (General) Regulation 1998, which would exclude certain cold water pollution events from the offence of water pollution under the Act. I understand that a cold water pollution policy is in the process of being developed. I will move amendments in Committee to ensure that time frames are set for the investigation and implementation of programs to mitigate cold water pollution.

Another aspect of the bill with which the Greens are concerned is flood plain harvesting. When the interim cap on the Murray-Darling, which applies to four States, was introduced, flood plain harvesting was meant to be restricted as part of that cap. Restriction on flood plain harvesting needs to be tight and clear. New South Wales is under an obligation to its neighbours and should not rip them off with flood plain harvesting. Recent water policy initiatives in New South Wales have not yet addressed the issue of flood plain harvesting and works on flood plains. Harvesting of overland flow has huge implications for river flows and downstream users and must be addressed immediately to provide greater certainty and fairness to rural users and the environment. Such flows are particularly important for the environment as they will lead to river flows that more accurately reflect natural variability and enhance the connectivity of flood plains with river channels.

Policies must be developed that refer to all flood works so that their implications for catchment management can be assessed. It is also essential so that flood plain harvesting is accountable and adequately managed. As with river flow and overland flow, extraction is meant to be under the Murray-Darling Basin cap. In the speech in reply in the other place, the Parliamentary Secretary, Mr Paul McLeay, said:

> Despite concern from conservation groups, the primacy of environmental water under the Water Management Act 2000 is not changed through these amendments to the Act. The priority of environmental water remains as stated in the water management principles of the Act: that in any sharing of water from a water source, the water and its dependent ecosystems must be protected.

I seek an assurance from the Minister that that is the case. Water for the environment must be paramount. This bill should be withdrawn. It continues to wind back the promise made in the 2000 Act of water for the environment and for healthy river and wetland systems. The bill has been sprung on us and rushed through with no adequate consultation with stakeholder groups. Environment groups were invited to a briefing at 4.00 p.m. the day before the bill was introduced. That is a fait accompli, not consultation. Consultation with stakeholder groups is supposed to be mandatory under the National Water Initiative. The Government has patently failed in its obligation to do so. The Greens do not support the bill. It is symptomatic of the Government and the Minister, who has gone from being a strident left-winger to a secretive apologist for the Government and vested interests in the agricultural sector. The Greens very strongly oppose the bill.

Reverend the Hon. Dr GORDON MOYES [8.49 p.m.]: The Christian Democratic Party supports the Water Management Amendment Bill, but I will raise a number of issues about it. The aim of the bill is to strengthen and improve the Water Management Act 2000 through the introduction of myriad amendments and to align the provisions of the Water Management Act 2000 with the National Water Initiative framework as agreed to by the Council of Australian Governments [COAG]. It is said that 80 per cent of water extracted in New South Wales is managed through water-sharing plans. In July 2004, 31 water-sharing plans commenced under the Water Management Act 2000. According to the Minister's second reading speech, these plans have been responsible for returning some 200,000 million litres to the environment.

Water-sharing plans are set up on the precept that conditions must attach to the usage of water so that the interaction between water users and the environment is sustainable. Of course, a balance must be struck between ensuring resource security for water users and ensuring that the integrity of the environment from which water is taken is not unnecessarily jeopardised. Biodiversity is severely compromised when water is removed from the equation. The health and livelihood of communities is eroded when the availability of water wanes. Sustainable practices must ensue to bring about a healthy environment. Water-sharing plans endeavour to establish a sustainable relationship between water users and the environment by regulating their interaction and also ensuring that water flows to those areas of the environment that need it.

The definition of the rights of water users under water-sharing plans has been the foundation for a market-driven system in water. The opening up of a market in water licences, based on the fact that water is now considered a commodity, no longer a communal resource, has had massive implications for irrigators and farmers, among many others. If water in and of itself is property, that means that rights to water may be sold, transferred, assigned and divested, as rights to land are commonly treated. Last year the Government legislated for perpetual water licences and water title, meaning that water rights may be used as security for loans. Thus, water rights may now be viewed as an investment, allowing certainty and security for potential investors in the water industry. Part and parcel of property rights is the notion that compensation must be afforded to the property owner if those rights are diminished in any way. In June last year COAG agreed to improve the current compensation arrangements through what is known as a risk assignment framework.

This framework delineates when and how the costs of future reductions in water availability should be shared between licence holders and governments. This framework identifies that water rights may be revised downwards in a number of situations: through natural events, such as climate change; through improvements in knowledge; and through shifts in government policy. The risk assignment framework is to be implemented in two stages: one that goes from now until 2014, and the other post 2014. According to the second reading speech in the other place, the first part of the framework is already in place. Compensation is afforded to licence holders by the Government if the Government makes changes to the water-sharing plan which are not provided for in the plan, irrespective of the factors driving the change.

Under the post-2014 arrangements, however, risk will be dispersed according to the factor that drives the change. When shifts in government policy bring about reductions in water for licence holders the Government will bear the compensation burden of these changes. This is currently the status quo where government policy is concerned. However, the status quo is affected where climate change and improvements in knowledge are concerned. Where changes in the natural environment ensue, the COAG framework requires the licence holder to be assigned the risk. The second reading speech emphasises that government compensation should be excluded for factors that are outside the government's control. However, it may also be said that climatic changes are outside the control of licence holders as well.

It may be noted that the Government is in a better position than a licence holder to foot the compensation bill when climatic changes ensue, but this situation has been agreed to within the COAG framework. Further, in situations where there have been improvements in knowledge or science, risk will be apportioned between licence holders and the State and Federal governments. The first 3 per cent of any change will be borne by licence holders. Compensation for a reduction under the licence between 3 per cent and 6 per cent will be borne by both the State and Australian governments—one-third paid by the State and two-thirds by the Australian Government. The State and Australian governments will share reductions above 6 per cent equally.

The risk assignment framework applies to water-sharing plans that are amended and implemented after 2014; thus water-sharing plans that are currently in place will not be affected by this framework. Although I understand that arrangements may need to be established for this risk assignment framework in order to give stakeholders time to take into consideration the new arrangements in their future planning and investment decisions, I think that the Government may be acting hastily in bringing these particular amendments to the fore. Although the New South Wales Irrigators Council is familiar with and supports the risk assignment principles of the National Water Initiative, the council has indicated that it may not have been informed of this amendment. This legislation will not take effect for another nine years or so. I cannot comprehend why it has been given such high priority tonight, given its prospective commencement. In the second reading speech the Minister indicated that the Natural Resources Commission will be given an extended role and that:

> … the commission will now also be asked to specify the factor responsible for any change and the impact on a licence holder's water availability when it makes recommendations to the Minister responsible for the Water Management Act 2003.

It would be worthwhile finding out what will be the scope of the extended role of the commission and how its deliberations will outwork themselves. One aspect of the National Water Initiative is the achievement of an open water trading market. A particular focus of this initiative is the removal of trading restrictions imposed by irrigation corporations on their members. Currently there are five private irrigation corporations in New South Wales: Murray Irrigation, Western Murray Irrigation, Murrumbidgee Irrigation, Coleambally Irrigation and Jemalong Irrigation. The irrigation corporations hold the water licences on behalf of their members or shareholders, and their entitlements can represent the majority of water in a valley. In order to induce trade, the initiative requires irrigation corporations to permit permanent trade out of their areas up to an interim threshold level of 4 per cent per annum of their total water entitlement that is available for irrigation.

Though the irrigation corporations have agreed in principle to allow trade up to the threshold level, the bill amends the Water Management Act to allow for civil penalties if the constitution of an irrigation corporation prevents trade up to the threshold. Of course, the bill will not prevent an irrigation corporation from having barriers to transfer of a member's water entitlement in circumstances where the transfer would reduce the share component of the corporation's access licence by more than 4 per cent. According to the second reading speech, New South Wales is required to have this legislation in place by January 2006.

Under the bill, the amount of civil penalty that may be imposed is not to exceed $500,000 and there is provision for a further amount not exceeding $20,000 for each day that the circumstances giving rise to the initial civil penalty continue. The Irrigators Council has negotiated on this policy, and has concerns about the maximum penalty prescribed. The reasons behind setting the maximum penalty at the level that has been established are not clearly elucidated. I ask the Minister to give us the reasons for the $500,000 maximum penalty. The Irrigators Council is also concerned that shareholder members of irrigation corporations are being discriminated against because they are not afforded the option of majority consent of their members for a trade to occur.

As previous speakers have said, on 2 September 2005 the High Court granted the Nature Conservation Council special leave to appeal the decision of the New South Wales Court of Appeal in relation to the validity of the water-sharing plan for the Gwydir River. The Court of Appeal, in *Nature Conservation Council of New South Wales v Minister Administering the Water Management Act 2000*, held that the water-sharing plan was valid, notwithstanding the failure to provide for environmental health water in accordance with the Water Management Act 2000. It has been argued by environmental groups that the insertion by this bill of a new part 5 into Schedule 9 of the Act, which attempts to make water-sharing plans that might otherwise be found to be invalid into valid plans under the Act, is an attempt simply to circumvent a finding in favour of the Nature Conservation Council of New South Wales in the High Court. If the High Court, which hears only cases of legitimate importance and cases that raise themes that are in the public interest, has granted special leave for the appeal to be heard, then the court should be left to arbitrate the matter without legislative intervention. Paul Stein, JA, noted:

> Whenever the Parliament seeks to reverse Court decisions, or stifle court proceedings, the delicate balance between the Legislature, executive and judiciary, inherent in the Westminster system, is damaged. Whilst legislation circumventing planning laws and the Courts is within the power of the Legislature, members of Parliament and the public need to realise that the delicate balance in our system of government is disturbed, as is the concept of equal access and obedience to the rule of Law.

That is an extremely important statement. It is a good point and should be more seriously considered by the Government. The bill also extends the definition of "environmental water". In effect, the bill creates a definition of what it means for a management plan to commit water as "planned environmental water". The bill will allow the amount of water available for fundamental ecosystem health and supplementary environmental purposes to be determined by reference first to the extractive requirements for water. Clearly, then, the environment will be guaranteed the water that is left over after extraction by other users. I believe that this is a good balance, taking into account the needs of irrigators, farmers and others. One objective of the Water Management Act is to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity, and water quality. This may be done by committing water for environmental purposes.

It is highly arguable that the spirit and terms of the Water Management Act place the utmost priority on ensuring water flows to the environment. It is of interest to note that the Irrigators Council has not been briefed on the basis for the amendment. Lack of consultation by the Government on the specific terms of the provisions sought to be introduced today undermines the very arrangement that guides the Government in its actions, that is, the National Water Initiative. The terms of the initiative provide:

> States and Territories agree to ensure open and timely consultation with all stakeholders in relation to significant decisions that may affect the security of water access entitlements or the sustainability of water use.

It is a matter of absolute agreement of those key people, such as the Irrigators Council, that this has not happened. It is also stated that parties to the initiative agree that the outcome is to engage water users and other stakeholders in achieving the objectives of this agreement by providing certainty and building confidence in the reform processes, by providing transparency in decision making and by ensuring that sound information is available to all sectors at key decision points. It would seem from what we have heard in the arguments tonight that the Government has failed at this point. I refer the Minister to the front page of today's *Land* entitled "Water shock", which states:

> In a shock move, the NSW Parliament is set to legislate to protect the Government from legal challenges if it cuts irrigator water allocations without compensation.
>
> The bill will protect the Government even if irrigators have been misled by past departmental advice.
>
> The legislation pushed into parliament this week, could also threaten irrigator water security just 18 months after most water sharing plans became active.

The article continues:

> The Water Management Amendment Bill has smacked irrigators from left field, arriving in parliament with absolutely no consultation or any hint of several fundamental changes being made to the existing Water Management Act 2000.

I look forward to hearing the Minister, in his reply, refute these charges in today's edition of the *Land*. The article continues:

> The ramifications are set [up] to be felt in all NSW irrigation regions.
>
> Irrigators are alarmed by the haste of the bill's introduction and the lack of consultation [with them].

I conclude by reading the final paragraph of the article:

> The NSW Irrigators Council was first briefed on [this] bill on Monday afternoon, despite being read in parliament twice, and introduced into the Legislative Council on Tuesday night.
>
> Unless the State Opposition can force an eleventh hour adjournment on the amendments, the bill will be rushed through parliament today before the Government breaks for its three-month summer recess.

Why the rush? The commencement of five inland alluvial ground water sharing plans was deferred to allow a review of the methodology underpinning these plans because it was considered that there was an overallocation of water to these systems. Schedule 9 to the bill will ensure that these plans, once amended, are still valid. The Government will pay the costs of those who appealed against the original plans on the basis of the previous entitlement reduction method. We support the aspect of the provision that provides for the Government to pay the costs of those who appealed against the plan. The bill includes amendments to the compensation section of the Act, clarifying that compensation is not payable for financial loss arising out of the development of a plan and so on. The bill also makes a number of amendments relating to the adaptive environmental water regime, including the granting of licences, the conversion process, the accounting process, and reporting requirements and conditions.

I will not go into detail on any of these things considering the lateness of the hour. Within this context, the New South Wales Irrigators Council has voiced its concern that it will not support the upgrading of any licensed entitlement to a higher level of environmental water, notwithstanding that it supports the innovative use of adaptive environmental water that maximises the benefits of its application to the environment. When I consulted with the New South Wales Irrigators Council in the last couple of days it was clear about its concerns on this point. I refer to supplementary water, a lower priority water within the hierarchy of water uses. Industry voices have indicated that the removal of supplementary water would expose general security irrigators earlier to reductions in their annual allocations if total extractions increase. In situations where the supplementary water licences are sold to the Government, it is only right for the licence holders to be appropriately compensated through receiving a market sale price for their licence.

I refer to local water utility entitlements. First, the Act is unclear about where any additional water would come from to meet increases in water entitlements for local water utilities. It would either need to be purchased or the bulk access regime would need to be varied. This needs to be clarified by the Government. Second, given the general exodus of people from rural areas, and the concomitant reduced demand for water, local water utilities would need to have their entitlements revised downwards. The bill removes the requirement for the automatic five-year review of local water utility entitlements and thus reviews will occur only when the

town is experiencing population growth or at the request of the local water utility. I doubt that we would have a situation where local water utilities would request water entitlements to be revised downwards.

Finally, the bill amends the Protection of the Environment Operations (General) Regulation 1998 to exempt a person releasing cold water in accordance with conditions referred to above. It becomes an offence of polluting waters under the Protection of the Environment Operations Act 1997. Many people do not understand what we mean by "releasing cold water". Generally speaking, we are referring to the release of large amounts of cold water. For example, water from the lower levels of a dam can have a devastating impact on sensitive elements of the environment. For example, fish stock have the ability to cope with only a small change in water temperature.

There are a number of merits to this bill. I urge the Government to consider more fully some of the more controversial provisions, where stakeholders have held the view that they have not been thoroughly consulted. Statements in the other place about stakeholder consultation are just not true. Both the Deputy Leader of the Opposition and the Hon. Rick Colless have adequately illustrated the lack of consultation with the New South Wales Farmers Association and the New South Wales Irrigators Council. With those reservations, in the light of the need for good management of water, the Christian Democratic Party commends the bill to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.06 p.m.]: The Australian Democrats do not support the Water Management Amendment Bill. The bill is the State Government's backflip on a commitment to ensure water to prevent our inland rivers from drying altogether in the landmark principle Act of 2000. In a fashion typical of this Government, yet another nasty piece of legislation is being rushed through the House at the eleventh hour, just before the Christmas break. It gives the Minister a lot of discretionary powers. This bill is a classic example of this Government's the Minister-may legislation. It is the syndrome of using legislation to overrule a case before the courts or a decision from the courts. We have seen this in relation to Walsh Bay, the Collex waste decision and the National Competition Council. The other objective of the bill is to elevate food and fibre processing industries to the local water utilities priority allocations.

This bill does not address the insidious effect of channel irrigation agriculture that leads to the increased salinisation of previously fertile agricultural land due to a rise in the water table. The State Government should be aiming to decrease the amount of water that is used in irrigation rather than to maintain it. This should occur in the natural environment. We should also ensure economically sustainable agriculture in the long term. The further liberalisation of water licence trading provided under this bill only considers market forces and does not weigh the social effects a co-operative water licence may have on a region. It is the triumph of politics and economics over agricultural and ecological science.

I turn to the details of bill. The bill gives complete discretion to the Minister to determine principles and rules of licences and to remove adaptive environmental flows at his sole discretion under proposed section 10. However, there is no requirement in this section that the Minister has to provide a justification or a reason to change a management plan. I have consulted the State's peak environment groups and they are strongly opposed to the Water Management Amendment Bill. Parts of the bill relate to the Government's obligations in implementing the National Water Initiative [NWI] intergovernmental agreement. However, other parts of the bill—about which environment groups are seriously concerned—do not. The NWI requirements need to be implemented by January next year. However, there is no urgency with the other highly controversial parts of the bill. These parts have been tacked on to the bill in an effort to have them passed without proper consultation or debate. I have heard from irrigators and from conservationists that the Government has failed to consult with key stakeholders on the bill. By doing so it has failed to comply with clause 93 of the National Water Initiative, which states:

> Parties agree that the outcome is to engage water users and other stakeholders in achieving the objectives of this Agreement by:
>
> i) improving certainty and building confidence in reform processes;
>
> ii) transparency in decision making; and
>
> iii) ensuring sound information is available to all sectors at key decision points.

The National Water Initiative provides in clause 95:

> States and Territories agree to ensure open and timely consultation with all stakeholders in relation to …
>
> iii) other significant decisions that may affect the security of water access entitlements or the sustainability of water use.

This bill subverts the intent of the Water Management Act 2000 through the use of two legislative techniques. Both of these provisions in the bill are aimed at overcoming the possibility of a successful legal challenge, which is due to be heard by the High Court of Australia on 13 December. These clauses are an inappropriate use of the legislative process. I oppose the Government's attempt to usurp the judiciary. Schedule 1 [1], amends section 8 of the Act so as to specify the ways in which a management plan may commit water as planned environmental water. The proposed definition essentially undercuts the original intent of the Act, which was to prioritise water for the environment before allocating to users to protect water sources. The Environmental Defenders Office notes that in the absence of any direction as to how water is to be committed there is an assumption that planned environmental water will, as the Court of Appeal noted, refer to actual water and not some theoretical or abstract concept. Such an approach should be preferred.

Section 8 (2) of the Act provides that the water does not need to be present in the system at all times. Provided actual water is committed—that is, a volume or percentage of available water to be used for fundamental ecosystem health and supplementary purposes—the statutory intent of the Act can be fulfilled. Abstract water in the form of long-term averages and leftover or residual water does not provide any clear direction as to how the needs of a water source can be met or any guarantee that they will be met. The proposed section undermines and is inconsistent with the intent of the legislation and the operation of the water management and water-sharing principles. If the Government is intent upon clarifying the meaning of the word "commitment" it should be clear that what is required is a commitment of actual water for environmental flows. The bill creates a definition of "commitment" which, in effect, puts the environment last. Is this really the great legacy of Bob Carr, the green Premier? It is a bad joke!

The Hon. Rick Colless: What comes first: humans or the environment?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is the sort of silly question the Hon. Rick Colless would ask. The idea that one can forget the environment and put humans first is a short-term solution. It allows the amount of water available for fundamental ecosystem health and supplementary environmental purposes—planned environmental water—to be determined by reference first to extractive requirements for water. In other words, the environment will be guaranteed water only after extraction by other users. Most of the existing regulated river water sharing plans allocate water for the environment in a similar way. Earlier this year the Court of Appeal held in *Nature Conservation Council of NSW v Minister Administering the Water Management Act 2000* [2005] NSWCA 9—the Gwydir case—that such a process is contrary to the intent of the Act, which requires environmental water to be given priority over water for extractive uses. This amendment does not seek to clarify the intent of the Act; rather to subvert it and legitimise water sharing plans that invert the intent of the Act. The changes threaten the integrity of the water source. This has implications not only for the environment but also for all other users of the water source now and in the future.

Schedule 1 inserts proposed part 5 into schedule 9 to the principal Act and attempts to make water sharing plans that might otherwise be found to be invalid—because they invert the intent of the Act—into valid plans under the Act regardless. It seems the Government is intent on overcoming the possibility of a successful legal challenge of the Gwydir case in the High Court. The ELO states:

> Through this amendment, the Government is evading the real issues of national importance raised by the case and merely employing legislation to create a legal loophole.
>
> The Government is pushing this bill through the Parliament not less than 2 weeks before the High Court is due to hear the appeal!

The Nature Conservations Council's serious concerns with this approach are shared by members of the judiciary. For example, the Hon. Paul Stein, JA, has noted:

> Whenever the Parliament seeks to reverse Court decisions, or stifle court proceedings, the delicate balance between the Legislature, executive and judiciary, inherent in the Westminster system, is damaged. Whilst legislation circumventing planning laws and the Courts is within the power of the Legislature, members of parliament and the public need to realise that the delicate balance in our system of government is disturbed, as is the concept of equal access and obedience to the rule of Law.

The peak environment groups want us to oppose the provision in the bill that creates this legal loophole through an inappropriate use of the parliamentary process. In this regard, I refer to proposed section 71 in schedule 9 to the Act. Proposed section 66 amends the circumstances in which local water utilities can increase their entitlements to water under access licences and treats those utilities in a manner similar to major water utilities when it comes to penalties. Local water utilities currently hold access licences that rank as the highest priority of water entitlement. However, the share entitlement held by the utility is fixed in accordance with the sharing of water under the relevant water-sharing plan. If a water utility requires more or less water to meet demand arising

from a variation in population and associated commercial activities it must convince the Minister to vary its licence. The ELO commented:

> The proposed amendment to section 66 in the bill (Clause 16, Schedule 1) makes it clear that the Minister's review of a licence can result in an increase in the entitlement to water. However, it remains unclear where the water required to meet any increase would come from. The priorities for water sharing require the environment to have first priority in available water in a water source except in extreme drought conditions. If local water utilities require additional water, that water should be found through adjustments to the bulk access regime by decreasing share entitlements for other licence categories.

An amendment will be moved clarifying that any augmentation of local water utility entitlements must come from the bulk access regime and not at the expense of environmental water. Proposed section 66 includes food and fibre processing in the definition of "associated commercial activities" for local water utilities. This means that local water utilities will be able to seek an increase in their entitlements based on the needs of the food and fibre processing industry. There is no justification for allowing these industries to reflect the amount of water that local water utilities are entitled to. They are separate commercial industries and therefore should apply for water licences in the same way as other industries.

Proposed section 66 changes the regime for the review of licences for local government water utilities. Whilst there are merits in the new regime for local water utilities that require an integrated water cycle management plan, there needs to be a clear framework for guaranteed regular public review of such licences. However, this is absent from the bill. The bill amends the Protection of the Environment Operations (General Regulation) 1998 to create an exemption from the definition of "water pollution" as set out in the Protection of the Environment Operations Act. It proposes that cold water pollution no longer be considered an offence under the Protection of the Environment Operations Act, where the water has been discharged pursuant to an approval under the Water Management Act that contains conditions intended to avoid cold water pollution. Such polluters will gain an indemnity from prosecution without being required to meet any deadlines on conditions. This approach creates a carrot for dealing with cold water pollution, but no stick to penalise operators who do not comply with conditions. An amendment should be put forward providing for a time frame to be set for fulfilling conditions imposed by the Minister under proposed section 100 (3).

The Hon. JON JENKINS [9.20 p.m.]: This bill is indicative of a problem across the environmental spectrum. The environment has become political rather than scientific. At the risk of annoying people, because I realise it is late and people want to get home, I think it is important to put an example of this on the record. The problem with fundamentalist creeds is that they have this adherence to a predetermined agenda and they do not tolerate new information, irrespective of the weight or significance of particular scientific evidence. The bill is indicative of that problem. The Government has been poorly advised by extremist conservation organisations rather than influenced by good, hard science.

I use an example that was referred to earlier relating to the dying Murray—the classic example that is used to describe many of these problems. The Murray-Darling Basin is home to approximately two million people, give or take a few hundred thousand, and it also supports about 75 per cent of the irrigated agriculture in Australia, which is a significant amount. Agricultural production from the basin represents 41 per cent of the national output from rural industries. Agriculture has been a feature of this region for a significant period. The Murray River also has the Snowy Mountains Hydro Electric Scheme. Water was diverted into the Murray, supposedly drought-proofing it.

The Hon. Rick Colless: Only 1,200 gigalitres.

The Hon. JON JENKINS: Only 1,200 gigalitres, but that supposedly drought-proofed it. There is a plethora of stories in the media about the dying Murray. I would like to refer to a few of them. Some time ago one was recorded as an epic voyage. From that story a whole plethora of stories and books evolved with titles such as "It's time to rescue our sacred river" and "Saving the Murray". However, all those stories have a problem. There is an obvious disconnection between the beautiful images, the words that are used to describe the vistas before the cameras, and the attempts to describe them in words, but they do not gel with what we have been told in pseudo scientific literature about the dying Murray. The two things are not connected. We are told that the river is in a terrible crisis and that it is dying, yet we are presented with these two images. They both cannot be right. We have to try to resolve which one of these stories is right. In one of the stories there was an article by an Australian journalist. As the story comes to an end one can almost hear her internal contradictions. She states:

> It is almost impossible to stand on the pristine sands that form the gateway to the white-capped Southern Ocean and declare the Murray is a river in crisis.

There are even contradictions within these stories. Much of the damage that has been inflicted on this life source appears not to be able to be viewed from the water. I have spent some time around the Murray River. If the damage is not evident from these readily external signs, presumably some sort of published research will show it. If it is not visible to the naked eye or to the average casual observer it must be in the scientific evidence. At some point we have to look at the key environmental indicators for the river, for example the salinity of the surrounding countryside, the biodiversity of the system, the amount of water we are taking out of the system, and things like fish stocks and other natural systems occurring around the river.

So we go looking for this scientific data. When we read articles in the popular media we find that they simply do not quote the scientific data; they just say something as though it is an assumed fact. I suppose we would not expect to find scientific data in the popular media, but when we start to do some background research and we ask journalists for a briefing paper or for some scientific information to back up what they are saying, we do not get it.

The Hon. Duncan Gay: So your figures are not from the *Guardian*, like Mr Ian Cohen's?

The Hon. JON JENKINS: My figures are from the Murray-Darling Basin Commission and a few other authorities. There is a dichotomy between the popular media and the scientific literature, and they should overlap somewhere. The environmental movement is expert at manipulating the media. As an example of what happens, a survey of public attitudes that was carried out some years ago showed that across four States—and this was in the major cities of Australia—Australians believed that the health of the Murray-Darling was the nation's most important environmental issue. Obviously that was before they got onto global warming. These sorts of dry land salinity issues were identified as key issues.

We have reached the ridiculous stage where the Northern Territory has banned cotton farming because it perceived that to have damaged the Murray River. That official statement is to be found on its web site, which is quite interesting. The effect on the nation's water policy was to remove $1.8 billion of water from the Murray-Darling Basin economy. Effectively, that is not moving that much money from the economy; that is the amount of water that has been removed from the water economy. When I speak in debates in this place I refer to science and try to establish some sort of scientific backing for these things.

Although the popular press does not take much notice of my press releases I have challenged former Premier Bob Carr and current Premier Morris Iemma on scientific issues because, with all due respect to them, some of the things they have said are rubbish. I give as a classic example yesterday's launch by the Premier of this Government's environmental policy when he talked about the unfreezing of peat bogs. Do honourable members know how peat bogs are formed? Forests used to grow in those areas and that is what makes peat. At one time it was not just frozen; it was actually a growing forest. They are the sorts of emotive things that people say.

I started to go through the evidence to establish why the Murray-Darling system was in some sort of serious decline. I will focus on a few of those key indicators, such as river health, and examine some of the organisations that might have data that can be obtained on this supposedly dying Murray. I will look, first, at river salinity. The two primary organisations are the Commonwealth Scientific and Industrial Research Organisation [CSIRO] and the Murray-Darling Basin Commission. The CSIRO does not have any data on salt in the Murray River. The Murray-Darling Basin Commission has salt data right back to about the 1930s or thereabouts.

The Hon. Rick Colless: It goes back to 1938.

The Hon. JON JENKINS: There is graph on the web but I cannot refer in this Chamber to a graph showing salt levels in the Murray River. The Hon. Rick Colless probably has a graph that shows that the salt level in the Murray River is about half what it was in the post-war years. So, in other words, salinity in the Murray River has decreased over the past few decades. Honourable members can have a look later at the graph the Hon. Rick Colless has. However, that does not gel with what we have been told about increasing salinity levels.

I will not go into all the data, but there are four key water quality indicators—nitrogen, phosphorous, sediments, turbidity and salinity. The Murray-Darling, Basin Commission and the CSIRO have conducted studies into those indicators at some key sites along the river. Some of the data is available but not the data for salt. These key indicators show that, at the very least, the condition of the Murray-Darling River is stable. In some cases it is improving but in some cases it is not.

The Hon. Dr Arthur Chesterfield-Evans: The Murray or the Darling?

The Hon. JON JENKINS: The Murray-Darling rivers. The Darling is slightly worse off: the Murray is slightly better.

The Hon. Dr Arthur Chesterfield-Evans: It does not flow, mostly.

The Hon. JON JENKINS: That is probably right. This is the thing that really gets me mad as a scientist.

Mr Ian Cohen: As a scientist?

The Hon. JON JENKINS: I acknowledge the comment from Mr Ian Cohen. Yes, as a scientist. The text and the reports that were on the CSIRO web site have been removed. In other words, the CSIRO has been gagged. Its scientists were prevented from speaking about this issue. Why were the CSIRO scientists gagged and why was the information removed from the web site? Because it is characteristic of what has happened throughout the scientific community and how the whole of the scientific issue has been politicised. Even today I had to extract—I still might not have it—information on grey nurse shark numbers, scientific reports that should be freely available.

The Hon. Duncan Gay: Who is hiding them?

The Hon. JON JENKINS: The New South Wales Government is hiding them.

The Hon. Rick Colless: The fisheries Minister?

The Hon. JON JENKINS: We will see what I get. This is the problem with the environment now: it has been politicised to the point where scientific information is hidden from the public and even from other scientists. They cannot make valid, scientifically good decisions because the information is withheld from them. The disconnection between the rhetoric in the popular media and on some of the television shows and the scientific data, as I have just indicated, is immense.

Let us look quickly at one more indicator, fish. Murray cod was listed as a threatened species under the Environment Protection and Biodiversity Conservation Act in 2003. A press release from the Minister for Environment and Heritage gave the reason for the listing as the decline in fish numbers. I looked for the scientific backing for the decline in fish numbers in the Murray River. The fisheries Minister knows about this study, the 1995-96 study of Murray cod. The fisheries research people could not catch any fish. Therefore there were no fish! During the same period and in the same section of river where the fisheries people could not catch fish, commercial fishermen took out 26 or 27 tonnes of Murray cod. Funny that!

Reverend the Hon. Fred Nile: They used the wrong bait.

The Hon. JON JENKINS: No bait. The point I am making is that science is being corrupted. Science has become politicised to the point where it is not serving its function. I have several pages of notes on the issue but I will short-circuit my speech. The same situation exists for red gums: it is claimed that red gums are dying along the Murray River. They are not. Reports from the Murray Darling Basin scientists who have done the studies show this. The same applies with dry land salinity and various other indicators along the Murray River. I urge the Minister to get good scientific advice.

Reverend the Hon. FRED NILE [9.33 p.m.]: The Christian Democratic Party supports the Water Management Amendment Bill. Concerns have been expressed about new part 5 and I would appreciate it if during the speech in reply the Minister could indicate the impact on 31 water sharing plans, the impact on irrigators and farmers, if the legal challenge in the High Court is successful on legal technicalities.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.34 p.m.], in reply: I thank all honourable members for their contribution to the debate. The bill covers a range of amendments from those required for New South Wales to implement the National Water Initiative, to a clearer definition of environmental water, improved trading and licensing arrangements and a strengthened process that subjects local water utilities to greater efficiencies in their water supply and use.

I firstly reiterate that, despite concerns from conservation groups, the primacy of environmental water under the Water Management Act 2000 is not changed through these amendments to the Act. The priority of environmental water remains as stated in the water management principles of the Act—that sharing of water from a water source must protect the water and its dependent ecosystems. Indeed the Wentworth Group of Concerned Scientists produced a "Blueprint for a National Water Plan" in 2003. In that plan it was proposed that a first principle in water management be to ensure that "the environmental needs of our river systems have first call on the water required to keep them healthy, protecting both their environmental values and ability to meet human needs into the future". I feel confident that the measures that New South Wales has in place are actively striving to achieve precisely that. The Government in this State has, more than any other, committed substantial volumes of water to the environment and is continuing to look at ways of finding additional water for the environment through water savings and other measures. The amendments do not change or lessen these commitments in any way.

New South Wales is currently over 1,600 gigalitres, the volume equivalent of more than three Sydney harbours, below the limit set in the 1994 Murray Darling Basin cap. Our water-sharing plans have been responsible for delivering over 200 gigalitres more water to the environment than it would have received before the plans were created. But even these statistics understate manyfold the effectiveness of the plans and the environment share. In one of our plans we have increased the frequency of critical environmental floods from 30 per cent to 75 per cent of their natural occurrence.

Also, many do not understand or simply refuse to accept that the consumptive pool is far less than the environmental pool. For example, in the northern regulated stream, the engine room of the cotton industry, the consumptive pool is around thirty percent, with 70 per cent remaining in the environment. Indeed, the vast majority of the water in New South Wales rivers is dedicated to the environment. The overwhelming tool to protect that water is to limit the level of extractions.

As a result all water above this extraction limit is retained for the environment. This results in the following levels of water remaining in the key river systems of New South Wales: Gwydir, 66 per cent; Namoi, 73 per cent; Hunter, 79 per cent; Macquarie, 73 per cent; Lachlan, 75 per cent; and the Murrumbidgee, 56 per cent. But this rises to in excess of 60 per cent when Snowy flows are included in the calculations.

The Hon. Rick Colless: Whose figures are they?

The Hon. IAN MACDONALD: They are in the report.

The Hon. Rick Colless: Those figures a different from those of the Murray-Darling Basin Commission.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Minister should address his remarks through the Chair and not engage in a conversation across the table.

The Hon. IAN MACDONALD: I will back my figures. These statistics clearly demonstrate the Government's recognition of the importance of the environment and prove that the environment is certainly not running a distant second after extraction. The purpose of the proposed changes is simply to allow for a more practical definition of "environmental water" as it is exercised through the water-sharing plans, a definition that recognises that environmental water is provided in two ways: firstly, through the environmental rules in the plan which target specific environmental requirements such as passing natural high flows into wetlands or, secondly, by making specific releases for environmental purposes.

I would like to make this clear. This clarification of a definition provides security to both the environment and the irrigators. It confirms the premise on which water-sharing plans in New South Wales are based, and it guarantees the respective entitlement levels. Furthermore, the amendments give increased certainty to irrigators by ensuring that entitlements cannot be reduced at the end of the 10-year plan period without compensation being provided when the changes are due to Government policy.

Much has also been said about the level of consultation on the bill. Indeed, the Deputy Leader of the Opposition asked me a question in that regard earlier today. Let me state that while the exact details of this bill are new, and have indeed only been available for two weeks, the concepts contained therein are definitely not. Extensive consultation was held with all stakeholders throughout 2004 in the lead-up to the signing of the National Water Initiative, including farmers, irrigators, environmental groups and all peak bodies. Almost all the

provisions in the bill give effect to the national water initiative or allow for negotiated changes that have occurred since its signing. To suggest that they are new is quite erroneous. The Department of Natural Resources has met with water users, irrigation corporations and environmental groups and catchment management authorities on a regular basis over the past year and a half to discuss these issues.

Testimony to this fact was provided by the New South Wales Farmers Association when it was consulted about the proposed changes. Whilst I make it absolutely clear that the association has subsequently expressed concern, the initial response from its representatives received by the department was that they had anticipated such changes. In addition, a briefing was provided to all key stakeholders before the drafting of the bill was completed, and the bill was actively distributed as soon as it was completed. I must state also that the Government would have liked more time to discuss the proposed changes. The overarching reason for insisting on getting the bill through in this parliamentary session is to ensure that we keep pace with the strict timelines set down under the national water initiative. It is of note that those timelines have already been extended with regard to trading. In future, however, I will be seeking an even more inclusive and extensive approach to consultation at all stages of the process.

Of particular interest to the environmental groups has been the Government's commitment to mitigating cold water releases from major storages and the timetable for this program. A detailed schedule of works from 2004 to 2009 has been developed. Some of these are already under way, such as a trial of specific works at Burrendong Dam, as well as works scheduled for Keepit Dam, Tallowa Dam, Jindabyne Dam and improvements to operating protocols at a number of other major storages across the State. In 2009 a report will be prepared on the effectiveness of these measures and then, based on this report, a longer-term program of measures will be developed. The amendments to the Act will ensure that these measures can be implemented through the approvals for the storages.

The honourable member for Murrumbidgee has made much in the media about the so-called effect of our provisions to allow conversion of supplementary water licences to planned environmental water. The problem is that he did not do his homework—unfortunately, he is not particularly well known for doing his homework—but I will come back to that shortly. I point out that this is only one of the options available to the Government. The Government's preferred approach is to fund water savings works and commit the saved water to the environment. This is clearly demonstrated by the fact that the Government is contributing $115 million to fund water savings works as part of the Living Murray initiative and $150 million to fund water savings works as part of the Snowy River initiative.

However, the purchase of licences may be the best approach in some cases. For example, the purchase of supplementary water and its conversion to rules-based water is being investigated as a means of topping up critical environmental allocations to the Macquarie Marshes, and some irrigators have already expressed interest in selling all or part of their supplementary licences. The sales would be on a voluntary basis and the licence holder would be paid the market value for the licence. Interestingly, the Government has never suggested that the purchase would be conducted on anything other than a voluntary basis. I am also proud to say that New South Wales already has a fully developed, transparent water market. In that regard we lead all States. It is definitely the Government's intention to use this market for supplementary water trades, as with all trades.

Section 8A as drafted applies only to the category of supplementary water access licences. Supplementary water is water that occurs from dam spills or from tributary inflows that cannot be regulated and, therefore, represents the lowest value water for irrigators. These flows cannot be converted into water held in storage because they come from fundamentally different sources. Any water that is purchased in this way will retain its original characteristics, namely, it will be opportunistic in nature and is, therefore, entirely consistent with the national water initiative. Supplementary water licences exist only in those water sources where the water-sharing plan specifically makes provision for such licences. As set out in clauses 22 to 28 of the Water Management (General) Regulation 2004, these are the regulated river water sources—Gwydir, Hunter, Lower Darling, Lower Namoi, Macquarie and Cudgegong, Murray and Murrumbidgee.

The principle being followed is that purchased licences have no more or less access to water than any other access licence of the same type. The issue is that environmental supplementary licences may need to be turned into supplementary rules-based water to protect it from being taken from the river by pumpers. Such rules may include changes to threshold levels or any other factor that would ensure that both the irrigators' share, taken as extraction, and the environment's share, taken as water remaining in the river, are protected. Management will occur by changing the rules as to when and how much supplementary water can be accessed. Commence-to-pump rules or other rules as necessary in the relevant water-sharing plan will be adjusted to

ensure that its original characteristics are maintained. This will ensure that such water purchases do not affect the security of other types of water. These changes will be carried out only following consultation and negotiation with relevant interest groups. Since the conversion of supplementary water licence to supplementary rules would require a plan change, ample opportunity will exist for the parties to negotiate the rules to give the outcomes expected by all parties. Only when a satisfactory arrangement is met will I approve of the plan change.

It is certainly not the Government's intention to shut out other legitimate licence holders. On the contrary, the Government is seeking the confidence of the community that the environment will compete on an equal footing with any other purchaser of water. The challenge we face is to ensure that a holder of a licence wishing to keep his or her water in the river has the same rights as a holder wishing to take his or her water out of the river. Concern in this regard has been expressed by many organisations and, every time they have sought clarification, they have received it. The New South Wales Irrigators Council has expressed strong concerns regarding this section of the bill and has contacted my office. As recently as this afternoon, the Irrigators Council wrote to my office stating:

> Thanks for this briefing, it clarifies our concerns with regard to the management of supplementary water.

Similarly, Macquarie Food and Fibre, one of the organisations concerned about the amendment, wrote to me stating:

> Irrigators in the Macquarie had sought clarification about Section 8A and received assurances that the water purchased will retain its original characteristics and that the Government will not act in such a way as to disadvantage other licence holders or unbalance the shares. We appreciate the clarification from the Minister and DNR.

If only the shadow Minister for Natural Resources had decided to seek clarification on the matter rather than issuing grossly inaccurate press releases. There was no intention to try to make water appear mystically in a dam, and the Government has been quite consistent in communicating that message. To reiterate, water purchased as a supplementary licence and converted to planned environmental water will retain its original characteristics and cannot be converted to stored water. Nothing else was ever planned or contained in the bill.

I would like to refer to the comments of the Hon. Rick Colless and the Hon. Duncan Gay in regard to private irrigation trusts and the possibility of stranded assets. As I am sure many honourable members will be aware, access licences can be held by a single person or by multiple persons. The exit dealing provisions in proposed section 74 apply only when multiple persons hold one licence. Hence, and in contrast to what was suggested by the honourable member, the section does not apply to an irrigation corporation, private irrigation board, private water trust or any other grouping where the licence is held by the single governing entity. I refer honourable members to sections 118, 141 and 222. It applies only when one licence is held jointly by several persons.

Under the current Act one co-holder can already exit from the access licence if all the other co-holders consent, by subdivision of the licence under section 71P and then its transfer under section 71M. Proposed section 74 provides a mechanism to overcome a stalemate, which exists if one or more of the co-holders do not consent. The section is considered to be necessary to overcome possible claims of restrictions on trading and to bring New South Wales in line with the national water initiative. I believe also that it is fundamental to allowing individuals the freedom to match their water needs to their enterprise. Importantly, however, this amendment does not change the water supply work approval or its nomination as the work through which water may be taken under the resulting licences. This is specifically set out in a separate schedule 1B, clause 6. The section does not affect in any way existing private arrangements between the holders in relation to that work. All the holders of the work approval will have to apply to change the nominated work. Accordingly, there is no possibility that a section 74 dealing will result in the stranding of assets.

The Supreme Court will have the power to make an order to resolve an exit dealing stalemate. However, the court is specifically required to consider the likely effect on the use of the water supply work and the co-holders who have the benefit of it. In short, this provision will enable co-holders to dispense with their water entitlements without allowing them to abrogate their financial responsibilities to their other co-holders. The Hon. Duncan Gay also made much of the lack of consultation with bodies other than irrigation corporations on the opening up of trade barriers with section 71ZA. There is one simple reason for this: the provisions contained in the bill simply do not apply to them.

Interestingly, my staff canvassed this very issue with Macquarie Food and Fibre. As was explained to them, schedule 1 to the Act clearly defines who the irrigation corporations are. They number only five and they

have been consulted with extensively on this issue. With regard to the risk assignment framework the Hon. Rick Colless quite rightly noted that the proposed amendments do not allow for an increase in entitlements. That is correct, because the fundamental purpose of the risk assignment is to deal with compensation for reductions in entitlement. Obviously, it is entirely inappropriate for compensation to be payable if an increase in entitlement does occur.

Another area of the bill that has generated a lot of interest is the process for increasing the entitlement of a local water utility based on population growth and associated commercial activities. I should point out that the amendments provide for much stricter requirements than exist in the legislation as it now stands. A local water utility must demonstrate that it has implemented best practice management guidelines, that is, it must demonstrate that it is using water efficiently and has implemented demand management practices. The bill also includes penalties if a local water utility breaches its licence conditions, bringing it on par with major utility licence holders.

Although the amendments allow food and fibre processing to be considered as part of a local water utility's associated commercial activities, it is not intended that this be extended to include high-water-using industries such as pulp mills. The intention is limited to commercial activities normally requiring potable water and associated with an increased population. I have received numerous representations on this aspect of the bill from a wide variety of environmental groups and I intend to make further comment on this as a result of a proposed Government amendment. The New South Wales Irrigators Council and the New South Wales Farmers Association have indicated that they oppose entitlement simply being granted to local water utilities. Instead they believe the utility should have to buy any additional water it requires from the market.

It should be pointed out that the favoured position of local water utility supply was extensively debated when the Act was originally introduced in 2000. At that time it was acknowledged that irrigation use in New South Wales far exceeds the requirements of towns, particularly in inland New South Wales. The agreed position was that local water utility as well as major utility and domestic and stock access licences would have priority over other licences. This is stated in the Act and is recognised through the water-sharing plans and, therefore, is not a compensatable change to a plan as provided for under the existing compensation arrangements of the Act, nor those under the risk assignment framework of the national water initiative. Nonetheless, while the amendments do not alter the priority of town water supply, they do substantially tighten the criteria for the consideration of an increase.

The amendments also allow additional conditions to be imposed on a local water utility’s licence when an increase is granted. Further, although local water utility has priority in supply, this does not mean that it can automatically expect an increased entitlement from its current supply if it is already highly committed. It may be required to source alternative supplies or, in the case of unregulated rivers, build off-river storages to access high flows when there is less demand from other users. At all times an application for an increased entitlement will be considered in the light of the economic and environmental impact.

Finally, there has been some concern about the removal of the potential to seek compensation for decisions based on a gazetted plan that is changed prior to commencement. It is important to note that compensation has never been payable for changes made on the commencement of the first water-sharing plan. This has been the case since the introduction of the Water Management Act 2000, and all 31 completed water-sharing plans were done on this basis. Compensation provisions are clearly outlined in section 87 (2) (a). Under the current bill this will not change. Compensation is payable during the first plan under section 87 and under extended or subsequent plans under proposed section 87AA. This amendment was required as a result of subsequent changes that are now being made to the five inland alluvial ground water plans to account for the changed approach to reducing entitlements in these aquifers. The New South Wales Farmers Association has argued that it would oppose any amendment that prevents ground water entitlement holders from claiming compensation for losses suffered because of a change in the method of entitlement reduction. The problem is that this is in complete contrast to what producers themselves have asked for.

This issue dates back to October 2003, when Craig Knowles, the former Minister for Natural Resources, John Anderson, the former Deputy Prime Minister, and a group of farmers were brought together around the kitchen table of the mayor of Gunnedah, Gae Swain, at Gunnedah. From that meeting it was agreed that there was much work to be done on ground water. As a consequence the New South Wales Government has deferred the commencement of ground water sharing plans for the Upper and Lower Namoi, Lower Gwydir, Lower Macquarie, Lower Lachlan and Lower Murrumbidgee systems until 1 July 2006. The deferred commencement of these plans will allow time for catchment management authorities, in collaboration with both governments, to consult with local communities.

This project will reduce ground water entitlements in these five systems and also the Lower Murray system to the sustainable yield over the 10-year period of the water-sharing plans. Financial assistance will be provided to affected ground water entitlement holders to help them adjust to the new levels of entitlement. Earlier this year, the Australian Government finally agreed to contribute $55 million dollars in matching funds to the structural adjustment package to be paid to affected ground water irrigators and communities. While some people may have bought a ground water licence on the basis of the entitlement reduction specified in the gazetted plan, the purchaser is entitled to structural adjustment assistance under the new package. It is essential to be clear that there will be no opportunity for double dipping.

The amendments clarify that compensation is not payable in respect of the development and consultation phases and any amendments to a water-sharing plan before it actually commences. The Government is working with the ground water irrigators to provide a fair assessment of their level of development and use on which the assistance payments will be based. The reason for the conversion from across-the-board cuts to a policy of history of use, was not to deprive people but to ensure that water stayed in the hands of those who needed it most. The change in emphasis will simply mean that those who rely on their water will retain it in a larger proportion whilst those who are not as dependent —that is, those who do not have the same level of history of use—will face larger reductions and, consequently, larger structural adjustment packages.

It is worthy of note that payments under this program are ex gratia and are not being made under any particular legislation. A validating provision has been included to ensure that all existing plans are valid. As three legal appeals to the ground water plans have been held over to 5 December 2005 awaiting the changes to entitlement reduction methods, the Government will now pay the court costs of these appeals. I am confident that the Water Management Amendment Bill takes a fair and balanced approach.

A number of matters were raised by honourable members after the dinner break. Mr Ian Cohen referred to the Gwydir case. Much has been said about that case but he dutifully omitted to mention the result of that case. In fact, the Court of Appeal held that, notwithstanding how it was expressed, a substantial amount of water had been committed to the environment and as a consequence the plans were deemed valid. The honourable member also commented on the condition of wetlands. While I do not pretend to be an ecologist, my firm understanding is that wetlands require a sequence of both wetting and drying to maintain their ecological health. I would strongly suggest that a qualified ecologist should make some remarks in relation to the problem. So far as I understand it, we have had drought for the past three or four years, which is cyclical and has occurred many times in Australian history.

The honourable member referred to the definition of environmental water. The amendment in the bill arises from the problem that exists in trying to prescribe what the environment needs at all locations and at all times. Indeed, the conditions that wetlands require would certainly indicate that. If one were to attempt that it would result in excess water being available for extraction. That would make it impossible to confine water users to a specific and measurable share of resources. Conversely, it could result in more water, rather than less, being extracted. Indeed, the strength of this approach is that during higher level flows the environment receives an unquantified amount of water, while commercial users are still constrained. I commend the bill to the House.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 24

Ms Burnswoods	Mr Kelly	Mr Ryan
Mr Catanzariti	Mr Lynn	Ms Sharpe
Mr Clarke	Mr Macdonald	Mr Tsang
Mr Colless	Reverend Dr Moyes	Mr West
Mr Donnelly	Reverend Nile	
Ms Fazio	Mr Obeid	
Miss Gardiner	Ms Parker	*Tellers,*
Mr Gay	Mrs Pavey	Mr Harwin
Mr Jenkins	Ms Robertson	Mr Primrose

Noes, 5

Dr Chesterfield-Evans
Mr Cohen
Ms Rhiannon
Tellers,
Mr Breen
Ms Hale

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

The CHAIR: Australian Democrats amendment No. 1, Government amendment No. 1 and Greens amendment No. 1 are in conflict. I propose that they be moved in that order.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [10.10 p.m.]: I move Australian Democrats amendment No. 1:

Page 3, schedule 1 [1], lines 4-15. Omit all words on those lines.

The proposed inclusion of subsection (1A) in section 8 does not affect the legislative intent of the objects of the Act, the water management principles, or the regime for determining priorities between the principles of water sharing in the Act. However, legal advice from the Environmental Defender's Office is that the section enables an extractive regime to set the amount of water available for fundamental ecosystem health and supplementary environmental purposes. Unless a management plan includes a rule that allocates actual water in accordance with subsection (1A) (a)—which is not guaranteed—in any one year the environment will only be guaranteed water left over after extraction limits are set or requirements under basic landholder and other extraction rights have been met.

The practical operation of the proposed amendment is that the priorities intended to exist under the Act will not be fulfilled by management plans developed using the formula in proposed subsection (1A) (b) or (c). Almost all the regulated river water sharing plans developed in New South Wales to date use a formula for determining rules for planned environmental water that allocates the water volume in excess of the long-term extraction limit to the environment. In most instances an extraction limit has been developed using the integrated quantity and quality model having regard to existing extractions and water use in a water source. The appropriate mechanism for setting environmental rules for the environment should be based on best available science, and once it is ensured that fundamental ecosystem health requirements and supplementary purposes can be met, what is then left over can be allocated to extractive users.

Such an approach would have reflected the intent of the Act. Instead, the water sharing plans have inverted this process. The Court of Appeal recognised the inversion of the statutory process but decided nevertheless that the *Water Sharing Plan for the Gwydir Regulated River Water Source 2003* was valid because the practical effect of the rules was that approximately 56 per cent of water in the water source would be available for the environment. It is this aspect of the judgment that the National Competition Council has appealed against in the High Court.

Proposed subsection (1A) seeks to legitimise the process by which management plans have developed environmental water rules and to allow, in conjunction with the amendments to schedule 9 of the Act, plans that would have been tainted by an adverse finding against the Minister in the High Court to continue to operate. The proposed provision as currently drafted undermines and is inconsistent with the intent of legislation and the operation of the water management and water sharing principles. Hence, the amendment removes this section from the bill. I commend it to the Committee.

Mr IAN COHEN [10.13 p.m.]: The Greens support the Australian Democrats amendment to the Water Management Amendment Bill. The amendment seeks to delete proposed subsection (1A) from the bill. The

section undermines and is inconsistent with the intent of the legislation. The definition of commitment of water for the environment without referring to the actual physical presence of water is simply farcical. Moreover, under the definition the environment will only be guaranteed water that is left over after extra action by irrigators. This is completely against the intention of the Act, which is for environmental water to be a priority. Proposed subsection (1A) should be deleted from the bill. I therefore commend the Democrats amendment.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.14 p.m.]: Australian Democrats amendment No. 1 would lead to uncertainty with regard to the ways in which environmental water may be committed. Plans already made, and those currently under preparation, will be left vulnerable to the same type of technical legal challenge as has been the case in the past. This would detract from the interests of the environment, and therefore the Government rejects the amendment. I move Government amendment No. 1:

No. 1 Page 3, schedule 1 [1], line 13. Omit "remaining". Insert instead "that is not committed".

The amendment has come as a direct result of listening to concerns that many shareholders have voiced to me and other Government members. Indeed, I would like to make particular mention of the representations received by John Williams and Peter Cullen. The Act makes it very clear that under the existing water sharing rules the environment is required to have a first priority in available water, except in extreme drought conditions. This commitment remains unchanged. Whilst obviously definitions may vary greatly, it is the end result that truly matters.

As I outlined earlier, I feel that New South Wales is well on the way to ensuring vibrant and healthy river systems by a positive and significant commitment to environmental flows. This amendment serves to reinforce the Government's commitment to the environment. The figures I outlined earlier show that the majority of natural flows remain in our rivers. It is not a question of the scraps remaining but, rather, the vast majority of the water. I commend Government amendment No. 1 to the Committee.

Mr IAN COHEN [10.16 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1 [1], lines 6–15. Omit all words on those lines. Insert instead:

(1A) A management plan is to commit water as planned environmental water in both of the following ways:

(a) by reference to the commitment of the physical presence of water in the water source,

(b) by reference to the long-term average annual commitment of water as planned environmental water or to the water remaining after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

Greens amendment No. 1 seeks to ensure that water committed for the environment must be defined by reference to the physical presence of water. It changes proposed subsection (1A) of section 8 so commitment is defined by reference to both the physical presence of water and either the long-term average annual commitment of water or the water remaining after the commitments to basic landholder rights have been met. The Greens do not support the insertion of proposed section 8 (1A) into the Act. The proposed provision as currently drafted undermines and is inconsistent with the intent of the legislation and the operation of the water management and water sharing principles.

If the Government is intent upon clarifying the meaning of the word "commitment" it should be clear that what is required is a commitment of actual water. In this regard, the commitment of the physical presence of water in the water source referred to in paragraph (a) must be mandatory—even if used in conjunction with water allocated on a long-term average or residual basis. Unless a management plan includes a rule that allocates actual water in accordance with section 8 (1A) (a)—which is not guaranteed—in any one year the environment will only be guaranteed water left over after extraction limits are set or requirements under basic landholder and other extraction rights have been met. The practical operation of the proposed amendment is that the priorities intended to exist under the Act will not be fulfilled by a management plans developed using the formula in section 8 (1A) (b) or (c). I commend Greens amendment No. 1 to the Committee.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.17 p.m.]: The Government rejects Greens amendment No. 1. The bill allows for water sharing plans to include environmental water defined in at least two of three ways. The amendment has the effect of limiting the definition to two ways only. The amendment demonstrates a lack of

appreciation of the sophistication of the planned environmental water rules. Some will be of a single type, A, B or C. Some are a combination of B and C; some are a combination of A and C. further, the amendment makes reference to physical pressure of water and ignores the natural drying cycle. This may not be possible to give the best outcomes in all water sources. The prescription of environmental needs requires flexibility. The proposed amendment reduces flexibility and will not benefit the environment.

The Hon. RICK COLLESS [10.18 p.m.]: The Opposition will not support the Australian Democrats amendment or the Greens amendment. However, we do support the Government amendment. The concern we have about environmental water having precedence over water that is essentially a matter for use by humans is a concern when drought conditions persist. The Government's amendment will ensure that human resources will have access to water during times of extremely low flows in the river system.

Australian Democrats amendment No. 1 negatived.

Government amendment No. 1 agreed to.

Greens amendment No. 1 negatived.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.20 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [2], proposed section 8A, lines 18-30. Omit all words on those lines.

No. 2 Pages 27 and 28, schedule 1 [59], proposed Part 2 of schedule 12, line 1 on page 27 to line 19 on page 28. Omit all words on those lines.

If the amendments are agreed to, and even if they are not, I will be precluded from moving Opposition amendments on sheet C-057. The amendments on sheet C-057 reflect the contents of the letter I received from the Hon. Gary Nairn, Parliamentary Secretary to the Prime Minister. As I said in the second reading debate, initially irrigators, farmers, Food and Fibre and many in the community were concerned about the Government changing this water from one category to another. During the past couple of days when we have had access to this information, people in the industry have been convinced, unconvinced, convinced and unconvinced, as to whether it should be a concern. That in itself is a reason why we should put aside this measure in the bill until we come back in the autumn session—the end of February or early March.

This part of the bill is not essential for the National Water Initiative and it is not essential for the National Competition Council. It is something the Government put in place. When we talk to the Minister, people in his office, and people in the irrigation community there is confusion about this measure. The advice the Minister's office gave to the irrigators today and which they signed off on may well be correct. But I would prefer to err on the side of caution and come back to it in March, as we will do with another measure, and address it properly then. If one had those lingering concerns and then received this letter from the Parliamentary Secretary to the Prime Minister, Gary Nairn, who has responsibility for this matter in the Federal Government, one would be concerned. I will read the letter again because it relates directly to the amendment I moved:

> I write in relation to proposed amendments in the Water Management Amendment Bill 2005, currently before the NSW Legislative Council.
>
> The amendments have largely been justified on the basis that they are required to comply with the National Water Initiative (NWI)

That is why we and many others support it. The letter continues:

> While much has been achieved toward achieving the objectives of the NWI, I am concerned that some of the proposed amendments are inconsistent with the intent of the NWI.
>
> My principal concern is the proposed amendments to section 8 of the Principal Act relating to the cancellation of supplementary licences and their subsequent reallocation as planned environmental water.
>
> The Explanatory Note in the Water Management Amendment Bill 2005 provides that:
>
> > *Proposed section 8A enables the Minister to cancel a supplementary access licence or a licence of a prescribed category or subcategory that is held by the Minister and commit an equivalent amount of water as planned environmental water in the relevant water source.*

The quote from the bill continues:

> A key principle of the National Water Initiative is the establishment of secure access entitlements for all users, including the environment, and the implementation of management regimes that protect the integrity of those entitlements.
>
> The intent of the proposed amendment appears to enable a licence that is held by the Minister, such as a supplementary access licence, to be cancelled and then reallocated to the environment with modified licence characteristics in the form of 'planned environmental water'.
>
> Supplementary water by its nature is opportunistic water. It is implicit in the title 'planned environmental water' that this water is not opportunistic and will therefore enjoy a higher degree of security than supplementary access licences.

The Hon. Rick Colless: They've put it in the wrong category.

The Hon. DUNCAN GAY: As my colleague said, they have put it in the wrong category. They have taken in from one category and put it into another category, which flies in the face of the legislation. It is a real concern, and I do not know why they are fighting our putting it aside to be examined in March. The letter continues:

> Any cancellation of entitlement from the supplementary bill and its subsequent reallocation to a high security entitlement will have inevitable impacts on the security and reliability of existing water users. I consider this to be inconsistent with the objectives of the NWI.
>
> I strongly encourage that any provision within the proposed legislation to provide water for the environment should be accompanied by a provision requiring that any water held by the Minister that is reallocated to the environment must retain the original security characteristics of the source of licence.

That is what my colleague the Hon. Rick Colless said in his contribution to the second reading debate. The letter continues:

> That is, if a volume of water held as a supplementary access licence is reallocated to the environment, then the environment's allocation will have the same security characteristics as supplementary water.

Not a different characteristic, as the Minister is trying to achieve. The letter concludes:

> This is consistent with the NWI both in terms of preserving the integrity of existing entitlements and encouraging use of water markets to facilitate the reallocation of water from consumptive to environmental uses.

I congratulate the Parliamentary Secretary to the Prime Minister on getting it right. Members of the State Liberal Party and The Nationals support the stance taken by the Federal Government. They were involved in signing off on the licences. We are suggesting not that it be removed forever but that it be removed and brought back in March so we can test whether the Minister's office is right or whether it is up to its usual smoke and mirrors trick. Let us have it examined carefully and come back to it. If our concerns are wrong, we will be more than happy to support this aspect of the bill when it comes before the House in March. We will not have a problem supporting it if our concerns are unfounded.

Mr IAN COHEN [10.30 p.m.]: The Greens oppose Opposition amendments No. 1 and 2. Opposition amendment No. 1 deletes new section 8A, which allows the Minister to cancel supplementary or other licences prescribed by the regulations that are held by the Minister and commit an equivalent amount of water as determined by a management plan as planned environmental water. Planned environmental water is water that is committed for fundamental ecosystem health or other specified environmental purposes; it has priority over all other water in a water source. As we understand it, the rationale for the Opposition's amendment relates to a view that if water from access licences is reassigned it should retain the same priority as the category of licence that was cancelled. Supplementary access licences have the lowest priority in the licensing hierarchy.

If the proposed section is deleted and the provision were to be redrafted to reflect this view, the reassignment would have little, if any, practical effect on the health of ecosystems, as water would rarely be available to meet environmental needs. Amendment No. 2 deletes part 2 of schedule 12. This part allows for water-sharing plans to be amended to provide rules for the circumstances in which water is to be recovered and managed in accordance with proposed section 8A. These provisions are necessary to give effect to proposed section 8A. The Greens do not support these amendments.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.30 p.m.]: The Government does not support the amendments. In relation to amendment No. 1, without the provision to convert supplementary water to rules-based water we will have no way of protecting the environmental share remaining in the river from being extracted by other water users. Amendment No. 2 proposes not to amend the existing plans if they become compliable with the bill. That is not in the interests of the environment and, as a consequence, the Government rejects the amendment.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 15

Mr Clarke	Mr Lynn	Mr Ryan
Ms Cusack	Reverend Dr Moyes	
Mr Gallacher	Reverend Nile	
Miss Gardiner	Mr Oldfield	*Tellers,*
Mr Gay	Ms Parker	Mr Colless
Mr Jenkins	Mrs Pavey	Mr Harwin

Noes, 20

Mr Breen	Mr Donnelly	Ms Robertson
Ms Burnswoods	Ms Griffin	Mr Roozendaal
Mr Catanzariti	Ms Hale	Ms Sharpe
Dr Chesterfield-Evans	Mr Hatzistergos	Mr Tsang
Mr Cohen	Mr Macdonald	*Tellers,*
Mr Costa	Mr Obeid	Mr Primrose
Mr Della Bosca	Ms Rhiannon	Mr West

Pairs

Dr Burgmann	Mrs Forsythe
Mr Kelly	Mr Pearce

Question resolved in the negative.

Amendments negatived.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.38 p.m.]: I move Government amendment No. 2:

No. 2 Pages 9 and 10, schedule 1 [16], line 12 on page 9 to line 32 on page 10. Omit all words on those lines

As I said earlier, the provisions in this bill that relate to water utilities have generated considerable concern from environmental groups and the Irrigators Council. I have already discussed at length the purpose of these amendments, so I shall not do so again. Environmental groups have expressed their concern that there is a capacity for these provisions to detract from environmental flows, whereas the Opposition is concerned about the effect that this may have on the security of irrigators' water. As a consequence, this is one of the few amendments, if not the only amendment, that does not relate to the National Water Initiative. It is the Government's intention to omit this provision until further discussions can be held. I will bring it back before the Parliament in the autumn session next year.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.39 p.m.]: The Opposition supports the Government's action in this regard. It is a pity the Government did not support our previous amendment, which was similar to this amendment in relation to another part of the bill. Everyone acknowledges that we need to identify secure water for our municipalities, not only for the present but also for the future. I hope that many of our rural towns and cities will grow in size and stature—the Coalition is determined to make that a reality—and they may well need extra water. However, many people are concerned that this amendment should properly reflect that aspiration. Indeed, it is similar to the amendment moved during debate on the Water Management Act 2000 by the late Hon. Doug Moppett and supported by me. At that time, I took the opportunity to take a swipe at a fairly incompetent Government backbencher: one Ian Macdonald. I have a sense of déjà vu because the same thing is happening. However, on this occasion, the Opposition applauds what he is doing in relation to this amendment.

The amendment should be reintroduced as soon as possible in the new year. It is essential that we address this issue. We need to identify where the water is coming from, who is paying for it and who is losing out. At one stage, I suggested to the Minister and his staff that they should examine a trading system between

local government areas. In one of Mr Ian Cohen's rare lucid moments during debate on this bill he indicated that some country towns might become smaller. Some may become smaller and others may reach excess capacity. Provided those towns were on the same system, a transfer could take place between the areas. I do not pretend that this is an instant answer. I merely suggest that it is a possibility that should be examined, among others. The water has to come from somewhere. We have to work out who pays for it, who is the winner and who is the loser. Above all, we need to protect a resource that is vital for the future of our State. The Opposition congratulates the Government on removing the amendments. The Opposition supports that action.

Mr IAN COHEN [10.42 p.m.]: The Greens do not support this amendment. The provisions dealing with local water utilities are, on the whole, quite positive. I intended moving amendments regarding the local water utilities to strengthen them, especially in regard to public consultation. I believe that these parts of the bill should be retained. The Greens oppose the amendment.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.42 p.m.]: With the Committee's indulgence, I mention an important matter. A unique problem faces some utilities of local government that makes this bill difficult. For example, the Peel community in the area surrounding Tamworth paid, for the most part, for the development of the Chaffey Dam. I am sure that many other local government areas provided infrastructure that is now part of the National Water Initiative. This is not a simple matter. We will need to recognise the contribution that has been made by ratepayers—for example, those who live along the Peel River and in Tamworth. I am sure there are many other examples of that throughout the State.

Mr IAN COHEN [10.43 p.m.]: Further to the Government's amendment, the Minister has suggested that he was anticipating putting off the decision on the utilities—something that was worthy of support. Perhaps the Minister will enlighten me on this point, but I have a concern that in the long term the provision may come back worse than it is now.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.44 p.m.]: I think further consultation is a reasonable thing, is it not?

Amendment agreed to.

Mr IAN COHEN [10.45 p.m.], by leave: I move Greens amendment Nos 7, 8 and 10 in globo:

No. 7 Page 18, schedule 1 [38], lines 14–33. Omit all words on those lines. Insert instead:

[38] Section 100 Conditions of approval generally

Insert "or by a provision of this Act" after "Minister's plan" in section 100 (1) (a).

[39] Section 100 (3) and (4)

Insert after section 100 (2) (and before the note to the section):

(3) The Minister is to include conditions relating to all of the following matters on any water management work approval that authorises the use of a water supply work for the release of water that is more than 2 degrees colder than the water into which it is discharged:

(a) the undertaking, within 3 years after the imposition of the condition, of an investigation of the environmental impact of cold water releases and the options for mitigation of that impact,

(b) the preparation of a program, within 5 years after the imposition of the condition, to mitigate the impact of cold water releases and the obtaining of approval to the program from the Minister,

(c) the implementation of the program,

(d) the monitoring and reporting on actions taken to implement the program and the impact of those actions on the environment,

(e) the carrying out of new works or the making of alterations to existing works, or both,

(f) the method of operation of water management works.

(4) Subsection (3) does not limit the types of conditions relating to the protection of the environment that the Minister may impose under this section on a water management work approval.

No. 8 Page 18, schedule 1. Insert after line 36:

[40] Section 102 (3)

Insert "or to a provision of this Act that requires the imposition of the condition" after "relevant management plan".

No. 10 Page 34, schedule 3, lines 13 and 14. Omit all words on those lines. Insert instead "that contains conditions relating to the work that are required to be imposed under section 100 (3) of that Act."

These amendments deal with cold water pollution. Amendment No. 7 makes it mandatory for the Minister to include conditions relating to all matters listed in the amendment when authorising the release of water that is two degrees colder than the water into which it is discharged. This includes a time frame whereby an investigation into the environmental impacts of cold water releases must be conducted within three years, and a program to mitigate the impacts of the release must be prepared within five years. Amendment No. 8 is consequential upon amendment No. 7 being passed, as a result of the requirement to impose the conditions set out. Amendment No. 10 is also consequential upon amendment No. 7 in relation to exemptions from cold water pollution offences under the Protection of the Environment Operations (General) Regulation 1998. I commend the three amendments to the Committee.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.47 p.m.]: The Government rejects each of these amendments. Amendment No. 7 relates to approvals. The Act differentiates between mandatory conditions required by the water sharing plans and discretionary conditions that the Minister can apply. This amendment seeks to blend and confuse these two types of conditions and would have ramifications for the rights of appeal of those affected. There are currently no mandatory conditions under the Act. The Government does not intend to remove the Minister's discretion to apply conditions of such a kind as it determines to be necessary.

As is the case with amendment No. 7, amendment No. 8 seeks to have the Act do the work of the plan. The plan is the correct instrument as it alone can take into account local issues. Greens amendment No. 10 relates to Greens amendment No. 7, which deals with cold water pollution. The Government recommends that Greens amendment No. 7 be rejected. Therefore, we recommend that amendment No. 10, which seeks a consequential amendment to the Protection of the Environment Operations (General) Regulation 1998, also be rejected.

Amendments negatived.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.49 p.m.]: I seek clarification and answers in relation to subsections (1) and (2) of proposed section 72A. I asked these questions during my contribution to the second reading debate. These questions have also been asked by Reverend the Hon. Fred Nile, Reverend the Hon. Dr Gordon Moyes and other members. The questions deal with these special provisions relating to co-holdings in access licences. Earlier I gave a copy of these questions to the Minister's advisers, so notice has been given. The New South Wales Irrigators Council needs to know the number of irrigators or licensed entitlement holders affected, the location of each of the licences that will be impacted by the amendment.

We want to know the ones that are going to be affected so that people who are not going to be affected can rest easy. I have asked this question several times over the last few days and we are yet to get a definitive answer. Once again in the Committee stage I seek a definitive answer for the relevant people—the management of stranded assets, the application and calculation of exit fees, the management of the cost of change to these small schemes, the impact on the viability of the affected scheme and details of any impact analysis undertaken on the cost or benefit that will occur subsequent to the introduction of this amendment. I note that the most important one is the location of each of the licences that will be impacted by the amendment.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.51 p.m.]: The "exit dealing" provisions in section 74 apply only where there are multiple persons holding one licence. Hence, in contrast to what was suggested by the Hon. Rick Colless, the section does not apply to an irrigation corporation, private irrigation board, private board of trust or any other grouping where the licence is held by the single governing entity—sections 118, 141 and 222.

The Hon. Duncan Gay: I accept that.

The Hon. IAN MACDONALD: It applies only where one licence is jointly held by several persons. Under the current Act one co-holder can exit from the access licence if all the other co-holders consent. I said that in my reply.

The Hon. Duncan Gay: It does not answer any of the questions that I asked.

The Hon. IAN MACDONALD: You want to know each and every licence that is affected and I do not have that information. We could certainly supply that.

The Hon. Duncan Gay: We have been asking for this for several days.

The Hon. IAN MACDONALD: We can supply that at a later date.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [10.53 p.m.]: The people who are not affected would like to know. We are asking the easier question. You are telling us very few people are affected. It is the major ones. We are asking for a definitive list of the people who are affected so that the people who are not affected can rest easy. It is a pretty simple request. This request was put in from day one. The Minister should look at the correspondence from the Irrigators Council on day one and consider the meetings that the Hon. Rick Colless and I had with him and his staff, and the meeting he have had with Doug Miell. The people involved need to know whether they are affected. It is not enough just to say very few will be affected. We need to know who will be affected.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.54 p.m.]: As I have said, the section does not apply to an irrigation corporation, private irrigation board, private water trust or any other grouping where the licence is held by a single governing entity. I do not have the specific details to hand. I will supply the members with them in due course.

The Hon. Duncan Gay: Can you indicate to the Committee what "in due course" means? What time span?

The Hon. IAN MACDONALD: It means in due course.

The Hon. Duncan Gay: How long?

The Hon. IAN MACDONALD: When I get the information.

The Hon. Duncan Gay: We have been asking for three days for this. Can you give us a commitment whether it is going to be less than a week?

The Hon. IAN MACDONALD: Yes, it will be a short period of time.

Mr IAN COHEN [10.55 p.m.]: I move Greens amendment No. 9:

No. 9 Page 23, schedule 1 [50], lines 12–33. Omit all words on those lines.

The bill proposes to insert a new part into schedule 9 of the Act, which attempts to make water sharing plans that might otherwise be found to be invalid, because they invert the intent of the Act, into valid plans under the Act regardless. The clear intention of this amendment is to overcome the possibility of a successful legal challenge in the High Court through the Gwydir case. Through this amendment the Government is evading real issues of national importance that are raised by the case and merely employing a legislative technique to create a legal loophole. This is an inappropriate use of the parliamentary process and should be opposed in the strongest possible terms. The Greens amendment seeks to omit this proposed retrospective validation of water sharing plans. I commend the amendment to the Committee.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.56 p.m.]: This amendment removes the clause that would validate existing water sharing plans. This clause is necessary because the Nature Conservation Council [NCC] has persisted, despite two court losses, with challenges to the Gwydir regulated river water sharing plan. The Court of Appeal earlier this year concluded the plan makes provision, as required by the Act, for environmental water. The argument now simply is that the wording was incorrect. The Government will not stand by and watch sound water sharing plans thrown into disarray on a technicality pursued by the NCC. Accordingly, the Government rejects the amendment.

Mr IAN COHEN [10.57 p.m.]: The Minister has given the impression that the action by the Nature Conservation Council [NCC] has been frivolous. It has been given legal support by way of legal aid.

The Hon. DUNCAN GAY: It is funded by the State Government.

Mr IAN COHEN: It did receive funding from Legal Aid, which is independent of the State Government. It is not the State Government at all. Legal aid can be granted to provide assistance in environmental matters that raise matters of substantial public concern. The action being undertaken by the NCC is of substantial public concern and is a very serious legal matter. Therefore, it is appropriate for me to raise that matter. The NCC passed a significant number of merit tests in order to be granted legal aid. Legal Aid New South Wales takes into account "matters that include, but are not limited to, the nature and extent of any benefit that may accrue to the applicant by providing legal aid or of any detriment that the applicant may suffer if legal aid is refused, and whether the applicant has reasonable prospects of success in the proceedings". It was decided that not only was this a case with merit but that it had reasonable prospects.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.58 p.m.]: I wish to correct Mr Ian Cohen's mischievous statement. I did not describe the action by the Nature Conservation Council as frivolous. I pointed out what happened in the courts. It was thrown out twice on a technicality. We are not going to stand by and watch all the work that has been done on the water sharing plans over two years, at a cost of around $30 million, thrown out.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 6

Mr Breen
Dr Chesterfield-Evans
Mr Cohen
Ms Hale
Tellers,
Mr Oldfield
Ms Rhiannon

Noes, 24

Ms Burnswoods	Ms Griffin	Ms Robertson
Mr Catanzariti	Mr Jenkins	Ms Sharpe
Mr Clarke	Mr Lynn	Mr Tsang
Mr Colless	Mr Macdonald	Mr West
Mr Costa	Reverend Dr Moyes	
Ms Cusack	Reverend Nile	
Mr Donnelly	Mr Obeid	*Tellers,*
Miss Gardiner	Ms Parker	Mr Harwin
Mr Gay	Mrs Pavey	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Schedule 1 as amended agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

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

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Government Response to Report

The Hon. Ian Macdonald tabled the Government's response to report No. 19, entitled "Operation of Mona Vale Hospital", dated 26 May 2005.

Ordered to be printed.

TUNNEL VENTILATION SYSTEMS

Production of Documents: Reassessment of Privileged Documents

Motion, by leave, by Ms Lee Rhiannon agreed to:

1. That, in view of the continuing public interest in matters concerning tunnel ventilation and emissions relating to the M5 East, the Cross City Tunnel and the Lane Cove Tunnel, this House:

   (a) notes the findings of the reports of the Independent Legal Arbiter, Sir Laurence Street, dated 4 November 2003 on the disputed claim of privilege on papers regarding M5 East tunnel ventilation and 26 August 2004 on the disputed claim of privilege on papers regarding Tunnel Ventilation Systems, and

   (b) authorises the Clerk to release those privileged documents to an independent legal arbiter to reassess and report on the claims of privilege in relation to all of the privileged documents.

2. That this House notes that an independent legal arbiter has been appointed by the President to evaluate and report on a disputed claim of privilege in relation to claims of privilege on papers regarding the following:

   (a) Road tunnel filtration tabled in the House on 22 March 2005,

   (b) Tunnel air quality tabled in the House on 21 June 2005,

   (c) Lane Cove Tunnel tabled in the House on 13 September 2005.

3. That if the House is not sitting when the report of the independent legal arbiter is lodged with the Clerk the report is:

   (a) on presentation and for all purposes deemed to have been laid before the House, and

   (b) for all purposes deemed to be a document published by order or authority of the House.

4. That any document considered by the independent legal arbiter not to be privileged is authorised to be published by the Clerk by order or under the authority of the House.

5. That should the independent legal arbiter recommend that certain portions of documents be masked before being made public, the Clerk is authorised to return the document to the relevant department for appropriate action before it is made public.

6. That the report of the independent legal arbiter and any documents considered not to be privileged be laid on the table of the House by the Clerk at the next sitting of the House.

SPECIAL ADJOURNMENT

Seasonal Felicitations

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [11.10 p.m.]: I move:

That this House at its rising today do adjourn until Tuesday 28 February 2006 at 2.30 p.m.

As yet another parliamentary year draws to a close, I extend my best wishes to everyone in this Chamber for Christmas and the new year. On behalf of my ministerial and Government colleagues I express my sincerest thanks to everyone who has contributed to the efficient operation of the Legislative Council throughout 2005. This has come about through the dedicated work of all those responsible for its day-to-day functions in this the oldest Australian parliament. I thank Madam President for the manner in which she has let the Chamber undertake its work and debate the issues before it. She has maintained the order and dignity of the Chamber and kept the House focussed on its proper business. I thank her and her staff.

I thank the Clerk of the Parliament, John Evans, and his staff for their unfailing dedication to duty and the timely advice they provide to all members. The Parliamentary Counsel, Don Colagiuri, and his staff are to be thanked for their fine work in producing bills and amendments in a timely and thorough manner. I record the appreciation of Government members to the attendants who provide faultless service at all times. I greatly appreciate the long hours put in by the Hansard staff, who manage to accurately record our words of wisdom and indeed sometimes make the most mundane speech seem a little more eloquent. We are fortunate to be served by an excellent library staff who provide a wonderful service to all members of this House.

I acknowledge the important work of the parliamentary archives, the education and community services staff, the information and technology staff and the security services, as well as the committee staff. Of course, all of us are reliant on the parliamentary dining room and catering staff, who sustain us through our long hours of work. We also appreciate the cleaners, various staff members and outdoor staff who help clean up the mess from time to time. I thank my personal staff and all the staff of my ministerial colleagues, Opposition members and crossbench members for their efficient and hard work, and their contribution to our democracy. They put in long hours, often under considerable pressure, and I commend their loyalty and dedication. Finally, if anyone doubts the important matters we as a Parliament contemplate, we need look no further than the significance of some of the bills we have debated this week. I thank all members for their contributions to those debates. On behalf of the Government I wish all members of the House and the staff of the Parliament, and their families, best wishes for a safe and happy Christmas season.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.13 p.m.]: On behalf of the Opposition I too extend best wishes to all members of the House for the Christmas season and into the New Year. It has been a tough year all round. The amount of legislation, some of the issues, as well as matters outside the Chamber, have made it a challenging year. All members of the House have put in the hard yards. In particular I thank my Coalition colleagues, who have done an excellent job this year as we continue to build on our role as the Opposition in this place in the lead-up to the 2007 State election. I also thank the Legislative Council staff, particularly those who attend to us here. I thank John Evans and his staff for their patience and assistance during the year; the attendants for their hard work and the assistance they give us both in the Chamber and outside; and the security personnel.

As we enter a different world, as we continue to see this world evolve, more pressure is placed on security personnel to deliver ever-increasing vigilance. They will say that it does not necessarily result in an ever-increasing budget. They do the best they can, to maintain a safe workplace for us all. I wish them and their families all the best for Christmas and the New Year. All the parliamentary staff, whether they be from the library, catering or administration, continue to perform an excellent job, enabling us to do the job that the people of New South Wales expect.

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.15 p.m.]: I thank not only all the parliamentary staff but all members of the House for their help during the year. As Leader of the House it is often difficult to arrange the business, but all members have co-operated with my staff to ensure that the business of the House has been completed in a reasonable manner. I hope that that continues next year. It is a great change not to be making these felicitations at 6.30 a.m. We have got through an enormous amount of business this year, and all of us have acted in a very professional way. Thank you.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.16 p.m.]: On behalf of The Nationals I join with previous speakers in thanking the Clerks, who quietly make this place happen; as has been indicated, the Hansard staff, who make us all sound terrific; the attendants, who get intemperate demands from us and who always smile—goodness knows what they say behind closed doors, but who would blame them? We thank the library staff and all the staff of the Parliament, who make this place tick over fantastically. We have been here too long this year. I look forward to not seeing any members of the House for quite a while. I suspect that most members are looking forward to not seeing me for some time. We lost Michael Egan this year—that was good and bad. It has been a bittersweet year for many of us. We lost Michael, as well as others, on good terms. Sadly, we lost one of our most brilliant and brightest, John Brodgen. Sometimes the best burn the brightest but burn out early. He will certainly be missed.

I thank Mike and the Liberals for their support. It is not easy to run a couple of parties together. The Liberals have been great. We do not always agree but we do 98 per cent of the time. I would rather be in here with the Liberals than with some, indeed most, Government members. I thank my personal staff, Jane and Emily; the staff of The Nationals generally have been fantastic. I thank the Nationals whip, the Hon. Rick Colless. I thank in particular our deputy leader, the Hon. Jennifer Gardiner, and our powerful new member, the Hon. Melinda Pavey, who are standing for preselection during the break. When the House resumes they will have been preselected for The Nationals, with my support and that of the Hon. Rick Colless. There are few parties in this Parliament in which colleagues support and work with a member facing preselection. We want them back, and they will be back. There are only two more Christmases before we have a change of government. Stay safe, stay well, and I will see you next year.

Reverend the Hon. Dr GORDON MOYES [11.19 p.m.]: Reverend the Hon. Fred Nile and I wish everyone God's richest blessing at Christmas. The first Christmas carol sung by the angels on the night of Jesus'

birth was "Glory to God in the highest, and on earth peace and goodwill to men". That is the wish we have for you. We join in appreciating all who were mentioned by the Hon. John Della Bosca in some detail and wish you all God's richest blessing for Christmas and the New Year.

Mr IAN COHEN [11.20 p.m.]: Madam Deputy-President—

The Hon. Eddie Obeid: No green Christmas.

Mr IAN COHEN: That is exactly what I was going to say. I thank the Hon. Eddie Obeid for reminding me that it is my turn and my pleasure, on behalf of the Greens, to thank all members of the House for what has been an entertaining but sometimes fruitful, sometimes difficult year. On behalf of the Greens I thank the Clerks; the staff; the attendants, who have been very patient with all our demands; Hansard, who have laboured under difficult circumstances—obviously sometimes due to the Greens discussing things in this House; the dining room staff and the security staff, who have been excellent, patient and always open and friendly to us as members of a minor party. Reverend the Hon. Dr Gordon Moyes based his felicitations on a Christian holiday. I would like to put forward my felicitations for a fecund, productive and enjoyable Christmas break. The green Christmas, the Christmas before Christianity, before the period of the patriarchal religions—

The Hon. John Della Bosca: Common era.

Mr IAN COHEN: I thank the Minister for his prompting on that. The original Santa Claus was a green man, a symbol of regeneration that came around with the first budding of spring in the northern hemisphere. He developed from St Nicholas in what were ancient and pagan times when the world was much greener and there was a lifestyle closely in touch with nature. He developed through St Nicholas to a green Santa Claus who carried on those traditions of renewal to the point where change came with the era of the patriarchal, great religions of the world. He remained as a green Santa Claus with reference back to those times past, times of great environmental balance and harmony, until a point in the 1930s when Santa Claus went from green to red, when Coca-Cola took over the Santa Claus logo and converted him to the man in red and white as a representative of corporate entities, and so we have the Santa Claus of today. Originally Santa Claus was green. I wish you all a merry and green New Year.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.23 p.m.]: On behalf of the Democrats I thank the honourable members who have been helpful and productive in this Chamber and wish a merry Christmas even to those who were not. I thank the Hansard staff, who have done a wonderful job and who go out of the way to correct things like quotes that are wrong and make things run much better. I thank Patricia, who keeps the room nice and tidy; the Clerks, who help us through the procedural minefield—John, David and their team; the committee staff, particularly Rachel Simpson, who has done a lot of good work on the committees I have been on; the attendants, who are ever cheerful; the dining room and cafeteria staff; and Nicky, with her astute politics, as we go through the checkout. I wish everyone well for Christmas. To those whose New Year's resolution is to quit, good luck and please have a healthy New Year.

The Hon. PETER BREEN [11.24 p.m.]: I express my gratitude to the parliamentary staff for the support and guidance I and my office have received over the past 12 months. In particular, I single out John Evans, Lyn Lovelock and David Blunt for the high standard of their advice and the consistent support they have given me. The Hon. Meredith Burgmann is also worthy of mention for her difficult job and the good way she performs that role. I personally have been a source of some aggravation to her over the past 12 months and if that is ongoing I apologise and regret it.

The rest of the parliamentary staff do a wonderful job—the security people, the food and beverage people, the cleaners who wander into my office when they need translations, particularly older South American languages. I have got to know all them. I thank my parliamentary colleagues for their congenial and friendly company over the past 12 months. Today is an historic day in many ways, given that six of us on the crossbench signed a protest over the preventative detention laws that were passed early this morning. We did that in the Clerk's office today with some fanfare. It is an unusual procedure but it has been around since 1857. We have a photograph and we will put it on the wall during the week. For those who supported the idea of changing the Magna Carta, one day you will understand how important preventative detention is, even though you might have to wait until you are in a nursing home. Preventative detention goes to the heart of all of us and we will all experience it at some stage during our lives. To the extent we have now introduced it into our laws is, in many ways, a historic but sad day.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): On behalf of the President I thank all members of the staff of Parliament, in particular the staff of the Legislative Council, from the Clerks through to the attendants. I particularly thank Hansard. I thank all honourable members and their staff for their co-operation in the efficient running of the Chamber and Parliament during the past 12 months. I also wish everyone a very merry Christmas. If you are not of the Christmas persuasion, season's greetings. I wish everyone a safe and happy New Year and, in the spirit of a green Christmas, I urge you all to recycle your Christmas wrappings and Christmas cards.

Motion agreed to.

ADJOURNMENT

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [11.31 p.m.]: I move:

That this House do now adjourn.

CROSS-CITY TUNNEL AND EMERGENCY SERVICES DELIVERY

Ms LEE RHIANNON [11.31 p.m.]: The cross-city tunnel could well be the most disastrous public-private partnership contract that this Government has signed. While many of the myriad difficulties associated with the cross-city tunnel have been discussed over the past months one serious concern has not been adequately explored by the Government or the media, that is, the impact of the many road closures and other street changes on the delivery of emergency services in Sydney. I have received representations from many residents that fire services and ambulance services will be hampered in delivering services and in undertaking their work. Many disasters could occur anywhere, from Woollahra to Pyrmont, leading to tragic consequences because of road closures and narrowing designed to funnel traffic into the cross-city tunnel.

Response times for emergency vehicles could be exacerbated by the increase in traffic on the few remaining open streets in the area. People suffering major health problems may be forced to wait if ambulances are held up. A major fire could get out of control due to the slow response by fire engines stranded in traffic. Many residents in eastern Sydney have contacted me about this potentially serious problem. Darlinghurst residents have told me that they have discussed this matter with local firefighters. Firefighters have expressed great concern about street changes in eastern Sydney. However, they are not allowed to discuss their fears publicly. That has led residents to believe that their concerns about the response times of fire engines might not be recognised until there is a major disaster.

These residents have told me that the firefighters to whom they have spoken are especially worried about a closure of the tunnel for an extended time due to a major accident in the tunnel or some other event. All the vehicles that would normally use the tunnel would then be forced onto the remaining open streets. How would emergency services cope with these gridlock streets? This scenario, which is worrying, should be of deep concern to all. I fear that events with potentially tragic consequences could occur. Let us remember that emergency vehicles face these delays because the New South Wales Government has closed streets and narrowed streets to force traffic into the tunnel for the financial gain of a large internationally owned consortium.

I urge the Minister for Emergency Services to address the concerns of local residents to alleviate what could be a pending disaster. The operation of fire engines and ambulances working in eastern Sydney should not be hampered by the street changes that have been forced on us because of the cross-city tunnel contract. It appears that fire brigade and ambulance representatives have not been consulted about the impact of the above-ground road changes on the response time of emergency vehicles. I urge the Minister to take action now. If he does not, a tragic accident could be the catalyst for the change that is clearly needed.

HIV-AIDS TREATMENT AND PREVENTION

The Hon. PENNY SHARPE [11.34 p.m.]: Today is World AIDS Day and the face of the global pandemic cannot be ignored. Over 40 million people are now living with HIV-AIDS—five million more than the year before. Last year another three million people died from an AIDS-related condition. That works out to another person being infected with HIV every seven seconds and another death every 11 seconds. So 1,600

people will die from AIDS in the time it takes me to make this speech. AIDS does not discriminate. Globally, around half of all people living with HIV are women. Young people aged 15 to 24 years now account for one-third of all adults living with HIV. The number of people living with HIV has been rising in every region, with the steepest increases occurring in East Asia, Eastern Europe and Central America. The number in East Asia rose by almost 50 per cent between 2002 and 2004. Sub-Saharan Africa remains by far the worst affected region, with 25.4 million people living with HIV. But it is estimated that Asia will become the epicentre of the epidemic by 2010. In those countries few of those with HIV have access to lifesaving anti-retroviral treatment.

But the situation in Australia stands in stark contrast: it has one of the lowest HIV rates of any country in the world. By the end of 2004 there had been 21,400 recorded cases of HIV in Australia and 6,590 deaths from AIDS. Today there are 14,840 people living with HIV in Australia, with around 60 per cent of them living in New South Wales. After a period of relatively low rates of transmission in Australia rates of HIV unfortunately began increasing in 2002, and in 2004 another 820 Australians received an HIV-positive diagnosis.

On the positive side, however, far fewer people are now dying from AIDS in Australia. I want to draw the attention of the House to two things about the HIV-AIDS epidemic in Australia and New South Wales. In the face of prejudice, fear and ignorance, brave bipartisan leadership at the Federal level, in particular from Neil Blewett and Peter Baume, meant that Australia put in place a response to the AIDS crisis that is now the envy of the world. It is important to note that the incredible success in responding to the HIV-AIDS epidemic in this State is not an accident; it is the result of the very successful collaboration of all sides of government, NSW Health, scientists, researchers, doctors and community organisations such as the AIDS Council of New South Wales [ACON].

It is this collaboration that has led to a situation in which the epidemic has largely been confined to gay men, with 86 per cent of new infections resulting from male-to-male sex. It is not, as some would say, because it is a gay disease but rather because we have been so successful at stopping HIV from spreading further within the community. After more than 20 years of the HIV-AIDS epidemic less than 1 per cent of sex workers or injecting drug users are HIV-positive. Given the statistics of other nations, this is an extraordinary achievement. Our very success brings with it new challenges. Fewer people dying from AIDS means more people living with HIV and needing access to information, treatment, care and support services.

I recognise the ongoing and vital work of organisations such as ACON, People Living with HIV-AIDS, the Luncheon Club and the Bobby Goldsmith Foundation in providing this support. Twenty years is a long time to expect people to use a condom every single time they have sex. And yet, more people living with HIV means that the one time you do not use a condom it is now more likely to be with someone who is HIV positive, especially if you are a gay man in Sydney. The challenges of HIV prevention work in 2005 are far more complex than they were in 1982 when the first person was diagnosed with AIDS in Australia. The theme for the 2005 World AIDS Day is "HIV-AIDS: Let's Talk About It"'. I was pleased to hear the Minister for Health make his statement today in the House for World AIDS day. I hope that we have done our small part by talking about HIV-AIDS in this House today.

GENERAL GEORGES SADA, NATIONAL SECURITY ADVISER TO THE IRAQI GOVERNMENT

The Hon. CHARLIE LYNN [11.38 p.m.]: Today I had the great privilege of hosting a visit by Air Vice Marshal Georges Sada, a senior adviser to the National Security Council of Iraq in the Office of the Prime Minister, at this Parliament. Air Vice Marshal Sada is Executive Secretary of the Iraqi Institute for Peace; a Director of World Compassion in Iraq; a Director of the International Centre for Reconciliation and Peace in Iraq; and a Director of the Holy Land Trust in Iraq. He is a recipient of the International Peace Prize of Coventry, England. Air Vice Marshal Sada is Assyrian, a devout Christian and a man vested with great courage—both moral and physical.

Prior to the liberation of Iraq by the United States leading a coalition of the willing, Air Vice Marshal Sada was the senior air force adviser to the Iraqi dictator Saddam Hussein for eight years. He was a senior test pilot for the Iraqi air force and was vested with the responsibility of a budget in excess of four billion dollars for the purchase of fighter aircraft. Although Air Vice Marshal Sada is a Christian, Saddam Hussein selected him for the position he held because of his knowledge and expertise. He was never sure of his personal safety, however, because he was well aware of Saddam Hussein's unpredictable nature. Saddam was a paranoid despot. Air Vice Marshal Sada said of Saddam, "If he loves you it's bad! If he hates you it's bad." He recalled an occasion when Saddam called seven senior generals for a meeting and executed them all by hanging them.

As a result of his position he was in contact with Saddam Hussein's two sons—Qusay and Uday. They were much more unpredictable than Saddam, and more cruel and sadistic in their treatment of their victims. He advised that whenever Qusay entered a function the building was immediately sealed off and nobody allowed to leave until he and his party left. He recalled the chilling story of the time he was in a restaurant beside a table with an eminent Iraqi doctor, his wife and young daughter. Qusay sent one of his secret service emissaries to advise the daughter that he would like to dance with her. She advised that she could not dance and he left. Another person came to the table and her father, the doctor, went to Qusay 's table to advise that his daughter could not dance. He was taken outside and was never seen again. Eventually the mother went to the table to check the whereabouts of her husband. She was taken outside and was never seen again. The daughter was beside herself with fear. She eventually went to Qusay 's table and was forced to leave with him. She was then raped by him. After the rape Qusay proceeded to burn her breasts with his cigar. She has been permanently disfigured. On another occasion he went to a wedding and demanded he take the bride before her husband. The bride committed suicide.

Air Vice Marshal Sada recalled another occasion when the senior ranks were summoned by Saddam, who advised that he was going to launch a pre-emptive chemical and biological attack against Israel. He was advised that they did not have the military capacity to succeed in such an attack and it did not proceed. This reinforced the unpredictability of Saddam's despotic nature. Air Vice Marshal Sada advised that Saddam Hussein was stockpiling chemical and biological agents to develop weapons of mass destruction. He said that these have been relocated easily to neighbouring Arab Islamic states. He also has no doubt that Saddam would have used them for pre-emptive strikes against his political opponents if he had had them at his disposal. According to Air Vice Marshal Sada, the insurgency in Iraq is made up of Ba'athists and foreigners from the Islamic states of Syria, Iran, Jordan, Saudi Arabia and Afghanistan. The insurgency movement is made up of the most radical of all Muslims, the Wahabi sect of Islam. This sect is engaged in a desperate insurgency movement to prevent a government majority of Shi'ahs, who make up the majority of the Iraqi population.

Air Vice Marshal Sada gave a chilling warning about the new strategy of Islamic fundamentalists from the Arab world for achieving their global objective of replacing Western democracies with Islamic states. He refers to it as a "demographic time bomb" strategy based on immigration from Islamic states; the growth of large families heavily subsidised by generous welfare systems; the establishment of exclusive Islamic schools preaching hate; the exploitation of freedom; the rejection of the patriotic values of their adopted country; and the reliance on left-wing radicals who have a deep hatred of America.

After listening to the debate on the Terrorism (Police Powers) Amendment (Preventative Detention) Bill last night, I can see the start of a radical anti-American movement based on the Vietnam experience. The doctors' wives, the chardonnay set, the Whitlamites, the bleeding hearts, the do-gooders—call them what you like—are just waiting for a cause to give them some sort of relevance again. The political Howard haters in the Greens, the Australian Democrats, the Unity party and their political sycophants—the Dr Wongs of this world—are working on their social guilt complexes to get them back on the streets, in the naïve belief that the fundamental Islamic terrorists in our midst are just misguided or misunderstood in the pursuit of their religious and political objectives.

We have a duty to heed the warnings given by our Assyrian friends and others, such as the Egyptian Copts, who have lived under repressive regimes, to ensure that our will to protect our hard-earned democratic Australian society is not destroyed. I congratulate Air Vice Marshal Georges Sada on his courage and his commitment to democracy in the free world.

TRIBUTE TO MR ROD DONALD

Mr IAN COHEN [11.42 p.m.]: Tonight I pay tribute to one of the great Green activists from New Zealand. Like so many others, I was shocked and saddened by the sudden death of New Zealand Greens co-leader Rod Donald a few weeks ago. Rod was known to many in New South Wales for his frequent visits promoting a fairer voting system, imploring us to follow the New Zealand lead by introducing proportional representation in our lower House as well as our upper House. I shall quote extensively from a powerful speech given by Bob Brown, the Greens Federal parliamentary leader, at the funeral and celebration of Rod Donald in Christchurch on 10 November 2005. He said:

> Your Excellency. Prime Minister.
>
> Nicola, Holly, Emma, and Zoe: the thousands here and beyond this hallowed hall, put our collective arms around you and return to you just a little of the love and caring which Rod gave us and the world over so many years.

> Rod was such a Green—the co-leader, with Jeanette Fitzsimmons, of New Zealand's Greens Party—but also a global identity, particularly well-known in Australia, where we loved his intelligent campaigning, his zeal, and commonsense advocacy of democracy.
>
> The Australian Senate passed this motion unanimously:
>
> 'Noting the death of Rod Donald, the co-leader of the New Zealand Greens Party, and recognising his key role in the campaign for a fairer voting system and in fostering humanitarian and ecological politics in New Zealand and abroad, the Senate expresses its condolences to Mr Donald's family, and to the parliament and people of New Zealand.'
>
> In the Tasmanian parliament, the Greens leader, Peg Putt, paid tribute to Rod, remembering his visits to help save our forests as well as our democratic voting system. Of course, she also reminded the House of his sense of fun and his colourful braces, used to hold up his shorts as well as his longs. By the way, Bishop, it was almost counterintuitive for us to respond, so near to Rod, when you asked us all to turn off our cell phones. On the flight over here from Sydney, Senator Kerry Nettle told me of being at Rod's house after breakfast: there he was with a recycled bike tube held by a staple around his head holding his cell phone as he washed up while communicating with the world at large.
>
> Adriane Carr, Leader of the Green Party of British Columbia has also sent a message which hits the mark for all of us from beyond these shores, from Beijing to Brussels:
>
> "My heart is with you all in mourning the loss of Rod Donald. He is a hero of British Columbian Greens. When we put out the call for help in pursuing electoral reform, he answered, hosted my husband Paul and I in New Zealand, set us up with lots of educational meetings, then gave up his holiday time to come to BC, travelled from town to town in the cramped back seat of our car, spoke to thousands of people and charmed our media. His convincing speeches in the end helped us collect 98,000 signatures on a petition for the MMP which then led to our government embarking on the electoral reform path. When we finally get proportional representation—we're voting again in a referendum in 2008—we will thank Rod. I am so grateful to have known him and will remember his honour, dedication to democracy and incredible joie de vivre."
>
> At the first Global Greens conference in Canberra in 2001—and Rod helped make sure that New Zealand had by far the largest international contingent there—he outlined the Greens global role by telling us: "People can no longer ignore the social and ecological crises we face and it is only the Green movement that has the answers and the commitment to address these big-picture problems."

Indeed I think it was when he was on a trip to Australia that I have my fondest memories of spending time with Rod. He travelled up to Byron Bay, my home town, and took the opportunity to attend the swearing in of Australia's first popularly elected Green mayor: Byron Bay Mayor Jan Barham. At the same time he came with me and swam across the bay. He was a healthy man and swam well. He enjoyed the environment and we shared something very special in that swim across the bay early in the morning. Bob Brown's speech continued:

> This year Rod was back in Australia spurring along a congress of social advocates on the need for parliamentary representation: "Enough talk. Now it's time to get our hands on the ball instead of shouting advice from the sidelines." And with his enormous generosity of spirit and optimism in this world of trouble, he added: "Sanity will prevail in the end. We can change the world," Rod said, "by making our passions our causes, and by working together to turn our dreams into reality.
>
> Recently, in a more self-reflective moment, Rod Donald told a journalist, "I don't want to die wondering whether I'd be a good minister." Well mate, none of us Greens is wondering. You are and always will be our good minister.
>
> You have wonderfully weighted the scales in favour of compassion, humanity, and security for our wild and beautiful planet. Your devoted and loving life is a light to the path ahead for our growing Greens movement.
>
> Thank you, Rod Donald, global Green, noble New Zealander.

OXLEY HIGH SCHOOL

The Hon. CHRISTINE ROBERTSON [11.46 p.m.]: Tonight I want to speak about the State public school system and just how important it is to the people of Country New South Wales. This relates to the quality of education itself, the life experience it gives to students in country New South Wales and the assurance of equity that our education system offers. Because of the work of individual teachers, school communities, the education department and the Minister for Education and Training in the State Labor Government, good and productive education experiences are available to all. One year 12 student, Amos Young, from Oxley High in Tamworth, tells this story of excellence in an article he wrote for the November *Oxley Logbook*, the Oxley High School newsletter. He wrote:

> Year 12, 2005, has left the Oxley community. During our six years at Oxley, we earned our reputation among staff and students as the "unlucky year" because we missed out on a number of privileges. We didn't have a Year 7 Welcome Disco or a Lake Keepit Camp. We didn't get a day at Dreamworld. We didn't get a senior study room, or a new computer system. Despite this, we still managed to be the most successful year Oxley has ever seen, as happens with every graduating class.
>
> Nevertheless, as we stand on this threshold of change, staring forward yet at the same time looking back, we find ourselves forgetting all these non-events and rather nostalgically appreciating the numerous opportunities that we did receive. The time has come to set the record straight. Oxley gives its students a multitude of opportunities. Oxley offers the largest range of subjects of

> any school in Western New South Wales. From Software Design to Economics, from Classical Studies to Languages, from Textiles to the Sciences and everything in between, Oxley students consistently are given the opportunity to and do perform among the State's best and brightest.
>
> Students at Oxley enjoy unparalleled relationships with faculty. The teaching staff bring their academic excellence and invaluable experience to the classroom, inspiring students with intellectual debate and challenging students to widen their depth of perception, preparing them for any possible route in life. Most importantly, students come to perceive their teachers as friends, furthering the efforts of both student and teacher.
>
> Oxley is also lucky enough to have as part of its staff Careers Adviser Mrs Jacquie Gahan. All senior students understand and value her tireless work and she is most deserving of profound thanks.
>
> Similarly, the support staff at Oxley work behind the scenes to operate one of the largest organisations in rural New South Wales, catering for around 1,450 people. These miracle workers do their job so well that they go largely unnoticed by the majority of the school community, but have also earned our thanks.
>
> Oxley also gives its students opportunities to be involved in student exchange; subject acceleration; debating, chess and mock trial competitions; United Nations forums; leadership camps and tutorials; work placement, solar engineering; media and communications development; vocal and musical groups; Shakespeare performances; touring science shows; the Duke of Edinburgh Award, mentoring programs and community service and many more.
>
> On the sporting field, Oxley consistently performs among the best in the State in a multitude of sports. From football and rugby union to squash and tennis, from water polo and swimming to netball and hockey, athletics to showjumping and everything in between. Oxley offers them all.
>
> People seek to criticise public schools, highlighting their relatively sparse funding and facilities when compared with wealthy metropolitan private schools. I propose that in our case, the absence of extravagant facilities has in fact been an advantage, as it has enabled us to realise what it is that makes the Oxley experience truly fulfilling—the strong feeling of belonging, the experience and passion of teaching staff, the profound sense of integrity; and the unlimited opportunities for discovery and progress.
>
> As a member of the class of 2005, I urge you to make the most of the opportunities that Oxley High School offers you. We have not been unlucky. Rather, we have been lucky, we have been fortunate, we have been privileged to be a part of Oxley High School and the Oxley community.

That was written at a time when young people often feel somewhat bitter about their school experience, but Amos Young does not. There are schools of the calibre of Oxley High School all over the State of New South Wales. That does not happen by accident. It happens because policies are in place that allow it to happen. It also happens because equal access to education and a valuable education experience are the aim of this State Government. It happens because support structures are in place for our teachers to provide the best of learning experience using current best practice knowledge. I congratulate both Oxley High School in Tamworth and their recent student Amos Young.

NORTH-WEST SYDNEY TRANSPORT INFRASTRUCTURE

The Hon. DAVID CLARKE [11.51 p.m.]: I want to say something about the continuing betrayal of the people of New South Wales through the Government's sorry saga of broken promises—so many are their number that it is hard to keep count. Through spin and hype, smoke and mirrors, Labor has hoodwinked the New South Wales public on so many issues and backtracked on so many promises, and no more so than with transport relief and infrastructure. The usual ploy of the Government has been to announce grandiose plans for relief, a new motorway here, or a new rail link there. The usual pattern is that announcements are made with great fanfare and then nothing happens unless it is to announce some sort of penny-and-dime preliminary impact study, if indeed that. The plan is then buried and after a couple of years resurrected, revamped with a few touch-ups, and re-released once again to great fanfare.

This smoke and mirror modus operandi has worn rather thin—very thin indeed, as far as the residents of north-west Sydney are concerned. In December 1998 the Government promised a north-west Sydney rail link, and well it should have, given the area's rapid growth in population and the proliferation of new suburbs. The then Minister for Transport, Carl Scully—thankfully since dumped from that portfolio—announced with great fanfare a new north-west rail link as part of his Action for Transport 2010. Cruelly, as has now become apparent, it was subtitled "A Brighter Future for Western Sydney". Part of the announced 10-year construction plan included a rail link from Epping to Castle Hill and one from Parramatta to Chatswood. Since the plan was announced, the Parramatta to Chatswood line has been gutted to become an Epping to Chatswood line.

And what has happened to the promised and much touted Epping to Castle Hill rail link? Well, the answer is nothing at all. The proposal disappeared into oblivion, then after a further lapse of time Bob Carr re-announced it, but then once again it lapsed. The next chapter in this saga is the appearance of a news release

from the Minister for Transport, John Watkins, dated 10 November 2005, with yet another recycled launch of a north-west rail link—this time running from Epping to Rouse Hill via Castle Hill—which he brags will include a 16-kilometre tunnel and plans to extend to Vineyard, all of which will be supposedly delivered over the next 15 years.

This is touted by him as part of "the biggest expansion of Sydney's rail network since the 1930s". He said it will cost $8 billion, and then he said he is providing the grand total of $5 million to kick-start the whole program. A little seed capital, one might say. Big deal! How much of a rail link can one build with $5 million? Who does he think he is kidding? We all know that this is one of those stunts—yet another crutch to carry the Government over the line at the next State election. But I want to tell the Minister for Transport that the residents of north-west Sydney are not going to be sucked in any more. Their patience is exhausted. The truth is that rail coverage in the area is actually declining. For instance, train services to Carlingford, the only train station in the Baulkham Hills shire, have been cut.

For at least seven years the Labor Government has been peddling various forms of its transport vision splendid for the area, but nothing ever happens. The last major transport infrastructure was when a Coalition government initiated the M2 project. Australian Labor Party members fought this proposal tooth and nail. They did not want it. They voted against it. But the Coalition persevered. Had it not got this project up and running, north-west Sydney would have even more catastrophic problems than it has now. When the official opening of the M2 took place in 1997, what did the ALP do? It boycotted the opening.

Since Labor came to power it has shuffled north-west Sydney to the bottom of the list—even though the area has one of the highest growth rates in the Sydney metropolitan area. The area's population has mushroomed by scores of thousands of new residents, and new suburbs are springing up at a quickening pace. The response of the Government has been media hype trumpeting recycled proposals that never eventuate and bandaid solutions. Families who have moved to the region and purchased properties on Government promises of new transport infrastructure have been sold out. They have been lied to; they have been taken for a big ride. But their patience has now run out.

Just as they showed their hostility to the Government's agenda to impose green zones haphazardly upon residents and caused the Government to humiliatingly back down, so they will show their hostility when they send this Labor Government packing at the next election. That day will be 24 March 2007. Whilst that day will be a melancholy one for Labor, for the people of north-west Sydney, and indeed the people of New South Wales as a whole, it will be a day of celebration—celebration of Labor's defeat and of the new Liberal-National Coalition government in New South Wales.

TRIBUTE TO DR HUGH HARVEY CHESTERFIELD-EVANS

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.56 p.m.]: Harvey Chesterfield-Evans, MB BS (Syd.), Fellow of the Royal College of Surgeons [FRACS], Fellow of the Royal Australasian College of Surgeons, and a founding member and former president, in 1978, of the Provincial Surgeons of Australia [PSA], died on 15 September 2005. He was aged 83. An original thinker, Harvey was many things to many people, both as a surgeon and as a person. He was born in North Korea on 19 January 1922 to an Australian mother and a New Zealand father, who was working there for a United States mining company. He was educated at a missionary school, which left him with a marked distrust of organised religion. Before returning to Australia as a 16-year-old, he had already assisted in operations and anaesthetics for the only doctor in the district. He had also witnessed the destructive Japanese occupation of Northern Korea, travelled widely, and absorbed Eastern cultures and philosophies, which encouraged a broader diagnostic approach in his later career.

Harvey attended Sydney Grammar School and entered Sydney University's Faculty of Medicine, graduating with second-class honours. He married his wife, Enid, and became a general practitioner in Brisbane. Together with their first child, Arthur, Harvey and Enid went to the United Kingdom for Harvey to study for his surgical fellowship, which he attained in 1955. The couple returned to Australia with Arthur, plus Deirdre and Nigel. Three years after their return, they had Jan. Harvey established himself in a surgical practice in Wollongong. Later he was to continue his education in 1968, travelling to Edinburgh to study neurosurgery under Professor John Gillingham. This greatly benefited his Wollongong practice, as there was no neurosurgeon closer than Sydney at the time. He completed his FRACS in 1969.

Harvey dealt with an extremely wide variety of surgical problems. The Port Kembla steelworks and the local mines were a constant source of accident and injury, in addition to the usual car accidents and elective

surgery. As one of four honoraries at Wollongong Hospital, he was on call for 48 hours non-stop every fourth weekend. The honorary system allowed specialists the right to admit private patients to hospital, on condition that pensioners or those who could not afford it were treated free of charge. This paternalistic system before Medicare ensured that anyone who needed emergency surgery, whether as a public or private patient, would not go untreated. He believed in this system and treated everyone equally.

Perhaps because of his upbringing in Korea and introduction to grassroots surgery in the 1920s and 30s, Harvey was always inventive and lateral in his approach to surgical problems. As a senior surgeon in Wollongong for some years, he was known as "the piles doctor" because his patients were out of hospital after their haemorrhoid operations within four days, when other surgeons' patients stayed in hospital for 10. In concert with a physiotherapist friend, Peter Swan, he developed a revolutionary post-operative recovery system for operations on hand injuries. A strong believer in the "prevention is better than cure" approach, he would refuse to operate on overweight people because of the inherent risks, and would tell them to "stop smoking and come back when you've lost three stone". It did not help his popularity with some, but it did help his success rate.

Harvey supported the Road Trauma Committee of the FRACS, which conducted research into the causes of accidents, the results of which culminated in Australia being the first country in the world to make seat belts compulsory. He was also a strong advocate of random breath testing. In addition, Harvey was an active member of the South Eastern Medical Association, a local affiliate of the AMA, but as one of the founders in 1965 he put his heart and soul into the development of the Provincial Surgeons Association. The PSA was initiated in 1965 in response to a number of scenarios presenting themselves in Australia at the time. In the 1950s, with the influx of post World War II migration and, later, the "ten pound" immigrants, there was an increasing need for experienced surgeons to work in the country regions of Australia. As occurs today, city-trained Australian doctors were reluctant to go bush. At the same time, many United Kingdom-trained surgeons were emigrating to Australia and finding that positions in the city were simply not available.

In addition, these people were not products of the Royal Australasian College of Surgeons and as such did not have any industry affiliations or associations in Australia, except with each other. Working in a country town, perhaps some hundreds of kilometres from the capital, the rural surgeon was undoubtedly isolated and had very few opportunities for discussion with other surgeons for mutual problem solving. Surgeons faced everything from elective surgery to acute traumas, many of which they had never seen during training: head injuries requiring decompression, caesareans and multiple fractures. And so the PSA was formed. It quickly became not merely a fraternity, but a forum for brainstorming. At meetings, surgeons discussed their successes, their failures and their ideas. They invented self-made instruments to do a job where none existed and brought these instruments to meetings to be exhibited, discussed and finetuned. They rang each other when faced with a perplexing problem, or one that they knew another member had encountered. Sometimes they shared a textbook via the phone to help each other. Lateral thinking was encouraged and, indeed, vital to the work of PSA members.

At the time of its inception the PSA was the only forum, medical or political, for rural surgeons because until 1982 the Royal Australasian College of Surgeons did not embrace the PSA or its members. Now, thanks to the PSA, the college is specifically training general surgeons for work in rural areas. Most Australians may not know much about the PSA, but in the twenty-first century they can take for granted many things that have been achieved for their benefit. As a founding member and past president, Harvey was hugely involved in all aspects of the PSA. He worked tirelessly to extend the membership opportunity to a far-flung fraternity, he facilitated communications between members, he organised and hosted meetings, he maintained records of the PSA and the surgical breakthroughs it witnessed, and he wrote a history of it called *A Mantle of Care.*

And through it all he managed a huge commitment to community service through West Wollongong Rotary, raised four kids and read voraciously. The books were always fact, never fiction, because he believed in constantly educating himself. Harvey gave up his practice in 1984 after the re-introduction of Medicare. Having completed his Fellow of the Royal College of Surgeons under Britain's National Health Service, he was disgusted that Australia could encompass what he perceived to be an inferior system of care for the patient. He feared bureaucratic interference. He was a man who had espoused capitalism all his life, but actually practised socialism in his attitude to people. But the Howard Government's recent industrial relations reforms proved to be the straw that broke the camel's back.

After many years as a card-carrying Liberal, a week before his death Harvey drafted a letter resigning his membership of the Liberal Party in utter disgust at what it had become. In the two years prior to his death

Harvey would have liked to be an advocate for voluntary euthanasia, but he simply did not have the strength. His demise was long and agonising, protracted by a system that he said has no mercy. He would have liked assisted suicide, but recognised that he could not have it, and so suffered a great deal. His mind remained active until very close to the end. He had his last Sunday dinner with his family and announced he would not leave his bed again. He had a last beer with a few friends before losing consciousness under the care of the palliative care team.

VAN TUONG NGUYEN CLEMENCY PLEA

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): I express regret that the call for clemency for Van Tuong Nguyen from this Parliament and other parliaments in Australia has not been heeded by the Government of Singapore.

Motion agreed to.

The House adjourned at 12.01 a.m. on Friday 2 December 2005 until Tuesday 28 February 2006 at 2.30 p.m.