

# LEGISLATIVE COUNCIL

Tuesday 28 March 2006

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

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

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

## ASSENT TO BILLS

Assent to the following bills reported:

Industrial Relations Amendment Bill  
 Public Sector Employment Legislation Amendment Bill  
 Governor General's Residence (Grant) Amendment Bill  
 Property, Stock and Business Agents Amendment Bill  
 Transport Administration Amendment (Public Transport Ticketing Corporation) Bill

## INDUSTRIAL RELATIONS AMENDMENT BILL

**Message received from the Legislative Assembly agreeing to the Legislative Council's amendment.**

## TABLING OF PAPERS NOT ORDERED TO BE PRINTED

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

## GENERAL PURPOSE STANDING COMMITTEE NO. 2

### Government Response to Report

**The Clerk** announced the receipt of the Government's response to report No. 20, entitled "Inquiry into Post School Programs for Young Adults with a Disability—Getting a Fair Go".

**The Clerk** announced further that it had been authorised that the response be printed.

## AUDITOR-GENERAL'S REPORT

**The Clerk** announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a report entitled "Financial Reports: Volume One 2006", dated March 2006.

**The Clerk** announced further that it had been authorised that the report be printed.

## AUDIT OFFICE

**The Clerk** announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Auditor-General entitled "Agencies Working Together to Improve Services", dated March 2006.

**The Clerk** announced further that it had been authorised that the report be printed.

## LEGISLATION REVIEW COMMITTEE

### Report

**The Clerk** announced the receipt, pursuant to the Legislation Review Act 1987, of a report entitled "Legislation Review Digest No. 3 of 2006", dated 24 March 2006.

**The Clerk** announced further that it had been authorised that the report be printed.

**AUDIT OF EXPENDITURE AND ASSETS****Production of Documents: Return to Order**

**The Clerk** tabled, pursuant to resolution of 1 March 2006, documents received on 15, 16 and 22 March 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

**Production of Documents: Claim of Privilege**

**The Clerk** tabled a return identifying documents received on 16 March 2006 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.

**FIREARMS SAFETY AWARENESS TRAINING****Production of Documents: Return to Order**

**The Clerk** tabled, pursuant to resolution of 8 March 2006, documents received on 22 and 23 March 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

**Production of Documents: Claim of Privilege**

**The Clerk** tabled returns identifying documents 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.

**AUSTRALIAN TARGET SHOOTERS CLUB APPROVAL NUMBER****Production of Documents: Return to Order**

**The Clerk** tabled, pursuant to resolution of 8 March 2006, documents received on 22 March 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

**LANE COVE TUNNEL****Production of Documents: Further Return to Order**

**The Clerk** tabled, pursuant to resolution of 8 March 2006, documents received on 22 March 2006 from the Director General of the Premier's Department, together with an indexed list of documents.

**Production of Documents: Claim of Privilege**

**The Clerk** tabled returns identifying documents received on 22 March 2006 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.

**TUNNEL VENTILATION SYSTEMS****Production of Documents: Tabling of Documents Reported to be Not Privileged**

**The Clerk** tabled, pursuant to resolution of 1 December 2005, documents received on Wednesday 15 March 2006 from the Director General of the Premier's Department that were masked and returned in response to recommendations of the Independent Legal Arbitrator.

**GREY NURSE SHARK PROTECTION****Production of Documents: Dispute of Claim of Privilege and Report of Independent Legal Arbitrator**

**The PRESIDENT:** I inform the House that on 9 March 2006 the Clerk received from Mr Jon Jenkins a written dispute as to the validity of a claim of privilege on documents lodged with the Clerk on 15 December

2005 relating to a further order for papers regarding the grey nurse shark. According to standing orders, Sir Laurence Street, being a retired Supreme Court Judge, was appointed as an independent arbiter to evaluate and report as to the validity of the claims of privilege. I inform the House that, according to the recommendations in the report of the Independent Legal Arbiter, the documents remain privileged. The report is available for inspection by members of the Legislative Council only.

## SELECT COMMITTEE ON TOBACCO SMOKING

### Chair

**The PRESIDENT:** I inform the House that on 9 March 2006 Mr Richard Torbay, MP, was elected chair of the Joint Select Committee on Tobacco Smoking.

## PETITIONS

### Tallowa Dam

Petition opposing the construction of a pipeline from Tallowa Dam north and the raising of the dam wall, received from **Mr Ian Cohen**.

### 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**.

### Crown Land Leases

Petition requesting the withdrawal of changes to the rental structure of Crown land leases, particularly enclosed road permits, received from **the Hon. Melinda Pavey**.

## BUSINESS OF THE HOUSE

### Routine of Business

*[During notices of motion]*

**The PRESIDENT:** Order! I call the Treasurer to order.

## BUSINESS OF THE HOUSE

### Withdrawal of Business

**Private Members' Business item No. 116 in the Order of Precedence withdrawn by Reverend the Hon. Fred Nile.**

## M5 EAST TUNNEL AIR POLLUTION

### Adjournment (Standing Order 201)

**The PRESIDENT:** I have received from the Hon. Melinda Pavey a notice under Standing Order 201 of her desire to move the adjournment of the House to discuss the following matter of urgency:

The failure of the Iemma Government to protect the people of New South Wales from exposure to pollution in the M5 East tunnel.

**The Hon. MELINDA PAVEY** [2.47 p.m.]: On behalf of the people of New South Wales, particularly the people of south-western Sydney, I seek the support of this Chamber in expressing the Coalition's concern about the threat to motorists using the M5 East tunnel because of the failure by the Government to act in the interests of public safety and public health. Three inquiries have been held into this issue by General Purpose Standing Committee No. 5, the membership of which included Government members the Hon. Amanda Fazio, the Hon. Jan Burnswoods and the Hon. Peter Primrose. However, eminently sensible recommendations of the

committee have been ignored by the Government. In particular, I refer to recommendation No. 6 that appropriate signs be posted at the entrance to the M5 East tunnel to warn motorists of the dangers associated with travelling in the tunnel. That recommendation, which was made three years ago to the then Minister for Health, Morris Iemma—who is now the Premier—has been ignored.

This matter is urgent because the Government is supposed to manage the State in the interests of everyone in New South Wales. The Treasurer and the Minister for Roads and their right-wing faction brother the Premier make the decisions, which are overseen by the Hon. Eddie Obeid. They are not making decisions in the true interests of the health and wellbeing of the people of Sydney and New South Wales. The tunnel is almost gridlocked. The ventilation system was constructed to accommodate 70,000 vehicle movements a day but there are now up to 110,000 vehicles movements a day. The reason for that is twofold. First, there is no plan to divert heavy freight from trucks to rail; the Government has no intermodal plan to move heavy freight off our roads and on to rail.

[*Interruption*]

It is about moving it to rail, but there is no plan because this Government has not developed one. The other major problem is the community's lack of confidence in the public transport system. That has resulted in millions of potential commuters choosing to drive rather than travel on buses and trains. A tunnel that was built for the movement of 70,000 vehicles a day is now experiencing up to 110,000 movements every day.

[*Interruption*]

I note the interjections of the Hon. Christine Robertson. She dares me to raise an issue of importance not only to Sydney but also to people throughout New South Wales. I have had representations from people in country New South Wales who are concerned about the congestion and their health and wellbeing as a result of travelling through that tunnel. I agree with the honourable member that there has been neglect in country New South Wales, in the M5 tunnel and everywhere else, and the reason for that is that this Government does not have a plan. It put this person in charge of the Roads portfolio.

**The Hon. Amanda Fazio:** Point of order: The honourable member knows very well that it is not in accordance with standing orders to refer a Minister across the table as "this person". If she wants to refer to the Minister, she should do so using his proper title.

**The PRESIDENT:** Order! Although there is a convention of fairly robust debate in this House, the member is reminded that she should behave in a parliamentary fashion.

**The Hon. MELINDA PAVEY:** Madam President, I defer to your ruling, and it is very fair. However, it is a very difficult ruling to make in front of that person. The Hon. John Hatzistergos, who is one of the brothers in control of New South Wales, says he has not received a briefing about the M5. When was that comment made? The day after he became Health Minister? No. Two months after he became Health Minister? No, it was made only 12 days ago—on 16 March. He said that he had not had a briefing about the tunnel and that nothing had been brought to his attention, so he was not in a position to make a comment.

**The Hon. Duncan Gay:** Morris used to have a briefing.

**The Hon. MELINDA PAVEY:** I note the Hon. Duncan Gay's interjection. All roads lead back to the Premier. The Premier of New South Wales has been up to his eyeballs in this problem, denying its existence—

**The Hon. Michael Gallacher:** Is that the new line?

**The Hon. MELINDA PAVEY:** Is it the new line? Are you good at lines, John? Do you think it is a good line? It is a line that the people of New South Wales will not forget: All roads lead back to Morris. Morris is responsible for the fact that no decisions have been made to erect health safety warnings for commuters travelling on that section of road. I note that the only contribution made by the Hon. Eric Roozendaal has been through a spokesperson quoted in, I think, the *Sunday Telegraph*. He said that people should just use their commonsense. If we were relying on the Minister's commonsense—

**The Hon. Duncan Gay:** Wind the windows up!

**The Hon. MELINDA PAVEY:** Yes, wind the windows up.

[*Interruption*]

What is the Minister's excuse for not listening to recommendations from NSW Health about the erection of signs—

**The Hon. John Della Bosca:** Why is this matter urgent? That is what you should be debating.

**The Hon. Michael Gallacher:** It is only a substantial matter!

**The Hon. MELINDA PAVEY:** It is a very substantial matter. It is a shame that the Hon. John Della Bosca is not the Minister responsible for this. If he were, we probably would not be here debating it. However, because we have the likes of the Hon. Eric Roozendaal in charge, we have chaos. Before the Hon. Eric Roozendaal we had the Hon. Joe Tripodi, before him the Hon. Michael Costa, and before him the Hon. Carl Scully. We have had four Roads Ministers in two years, and that has resulted in this crisis about which we are seeking an urgent debate. The crisis permeates the Roads and Traffic Authority. We have crisis after crisis on the Pacific Highway because either no decisions or bad decisions have been made. We do not even have a plan for a road across the Blue Mountains. This public health and safety issue is not only about the M5; it is of particular relevance to the people of south-western Sydney. I raise this issue on their behalf because I am a New South Wales resident, not just a country resident. I will not be silenced about raising issues that relate to the entire State. I seek the support of the House to bring on this motion so that we can debate the issue more fully in the interests of the people of south-western Sydney and the rest of the State.

**The Hon. Duncan Gay:** And south-western New South Wales.

**The Hon. MELINDA PAVEY:** Yes, and south-western New South Wales. We all know about the difficulties motorists experience when travelling through that tunnel. Because the traffic movements are up to 110,000 a day instead of the 70,000 a day planned for, three important inquiries have been conducted by General Purpose Standing Committee No. 5, and they have brought forward some excellent recommendations. But those recommendations have been ignored by four successive Roads Ministers over the past two years. This issue is urgent and we should discuss it thoroughly. Let us hope that the new Minister with training wheels can examine *Hansard* of the debate and make appropriate decisions on behalf of the people of New South Wales.

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [2.57 p.m.]: Where is the urgency in this issue? Surely the Treasurers' meeting on Friday to discuss the GST cut for New South Wales is a matter of urgency that the Coalition might like to discuss. Apparently not. Surely the fact that WorkChoices is devastating the lives of workers in this State is a matter of urgency. Apparently it is not. When she was flying from Coffs Harbour to Sydney, the Hon. Melinda Pavey opened the *Sunday Telegraph* and stumbled across an old story—it has been around since 2003—and she is now attempting to beat it up into some great conspiracy and matter of urgency. What a sad day for this Parliament! Even her city colleagues—as few as there are—did not have the guts to contribute to this debate because they know it is such a pathetic issue on which to claim urgency. They had to wheel out poor Melinda to have a swing. What a compelling argument she put! She said that her motion should be debated as a matter of urgency so that we can have a discussion.

The Hon. Melinda Pavey does not want to talk about the GST because she is ashamed. She does not want to talk about the Federal Government swimming in a \$13 billion surplus and starving this State of money deliberately. She does not want to talk about that because she is ashamed. She does not want to talk about WorkChoices because she is ashamed. Instead, she wants to talk about the haze in the M5 East. What a sad effort! I appeal to the crossbenchers. This issue has been around since 2003. It has been on Channel 7; it has been in the *Daily Telegraph*. This is an old story being rehashed. It is being rehashed because the Opposition has nothing better to do. This is the Opposition's opening spin for the first day of this session. What a sad effort!

**Question—That the matter is urgent—put.**

**The House divided.**

**Ayes, 22**

Dr Chesterfield-Evans	Ms Hale	Ms Rhiannon
Mr Clarke	Mr Lynn	Mr Ryan
Mr Cohen	Reverend Dr Moyes	Mr Tingle
Ms Cusack	Reverend Nile	Dr Wong
Mrs Forsythe	Mr Oldfield	
Mr Gallacher	Ms Parker	<i>Tellers,</i>
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Harwin

**Noes, 18**

Mr Breen	Ms Griffin	Ms Sharpe
Ms Burnswoods	Mr Hatzistergos	Mr Tsang
Mr Catanzariti	Mr Kelly	
Mr Costa	Mr Macdonald	
Mr Della Bosca	Mr Obeid	<i>Tellers,</i>
Mr Donnelly	Ms Robertson	Mr Primrose
Ms Fazio	Mr Roozendaal	Mr West

**Question resolved in the affirmative.**

**Urgency agreed to.**

**The Hon. MELINDA PAVEY** [3.10 p.m.]: I move:

That this House do now adjourn to discuss the following matter of urgency:

The failure of the Iemma Government to protect the people of New South Wales from exposure to pollution in the M5 East tunnel.

I thank the House for its support in allowing me to bring on this urgent debate to discuss the pollution levels in the M5 East tunnel and the exposure of the people from south-western Sydney who travel through the M5 East tunnel and all commuters who use this vital piece of public infrastructure. It is relevant that there have been three very important general purpose standing committee inquiries into the issue. I was reading the committee's reports this morning. There were some excellent recommendations from those inquiries. The Minister is not even listening to a word I am saying. He is desperately ringing his office seeking a briefing note, seeking information, because he has no idea what is going on and he is clearly embarrassed by it. I would be embarrassed too. His response to the urgency debate was completely woeful. He did not discuss the issue of traffic; he did not discuss the issue of pollution.

**The Hon. Eric Roozendaal:** It is coming up, don't worry.

**The Hon. MELINDA PAVEY:** It is coming up because staff are running around the office trying to find it. They are trying to find the briefing note. That is the shame of it, that a Minister of the Crown, the Minister for Roads, on such an important public health and public infrastructure issue has no comprehension and no understanding of the very difficult circumstances surrounding the tunnel and the filtration, that you have to wait for a briefing note to discuss this issue.

**The Hon. Duncan Gay:** The Minister would have been better off not speaking.

**The Hon. MELINDA PAVEY:** Yes, the Minister would have been better off not speaking on the matter. The people of south-western Sydney will be very interested to read his response to this matter of urgency and see that he did not even raise the issue of the tunnel.

**The Hon. Eric Roozendaal:** Blah, blah, blah.

**The Hon. MELINDA PAVEY:** You can sit there and say to me, "Blah, blah, blah"—

**The Hon. Eric Roozendaal:** It was not a matter of urgency, Melinda.

**The Hon. MELINDA PAVEY:** It is urgent. Your Government has not acted; it has not done a thing.

**The Hon. Eric Roozendaal:** Rubbish! Get on with your speech. If you have something to say, get on with it.

**The Hon. MELINDA PAVEY:** I will get on with my speech and I ask you to have the courtesy to listen to it so that you may learn something.

**The Hon. Eric Roozendaal:** Say something worth listening to.

**The Hon. MELINDA PAVEY:** I have and I will. If you stop interjecting, I will get to the main thrust of the speech. At the outset I highlight the fact that the Minister had so little knowledge, so little concern about this vital issue—

**The Hon. Eric Roozendaal:** It has been three minutes: say something.

**The Hon. John Ryan:** Point of order: Madam Deputy-President, I ask you to call the Minister for Roads to order. He is just chanting the same line over and over again, interrupting the member and interjecting. He knows that interjections are disorderly. I would like to hear the honourable member's speech.

**The Hon. Eric Roozendaal:** To the point of order: If the Hon. Melinda Pavey had said something of interest perhaps, I would focus a bit more, but she just feels the need to direct personal attacks at me. I am not sure what her motivation is but I am very disappointed because I have been waiting attentively to hear her say something about the issue. Three minutes into the speech she has not said anything at all about the issue.

**The Hon. Amanda Fazio:** To the point of order: The point of order was against the Minister for Roads for interjecting, but I ask that you take into consideration when ruling on this matter the fact that the Hon. Melinda Pavey was not directing her comments through the chair to the other members in the Chamber; she was directing her comments specifically to the Minister for Roads. Therefore, she was inviting interjections. I ask that you dismiss the point of order.

**The Hon. Jan Burnswoods:** To the point of order: I was trying desperately to listen to the Hon. Melinda Pavey, but I am afraid I could not hear a word she said over the loud conversation by the Deputy Leader of the Opposition, who is sitting on the Government benches. A point of order needs to be taken about that.

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! I remind all members, including the Minister for Roads, that interjections are disorderly at all times. When contributing to debate members should address their remarks through the Chair. Other members should listen to the debate in silence. Members wishing to engage in conversation should leave the Chamber.

**The Hon. MELINDA PAVEY:** The Minister for Roads may be interested to know that in 2002 the Hon. Richard Jones, as chairman of General Purpose Standing Committee No. 5—and that committee included the Hon. Jan Burnswoods, the Hon. Amanda Fazio and the Hon. Peter Primrose—made about 16 recommendations. Recommendation No. 6 was that the Roads and Traffic Authority [RTA] should erect signage to advise motorists that they should close their windows and air vents prior to entering the tunnel. Keep in mind this was in 2002—four years ago—well before the 110,000 vehicle journeys every day that we have reached in recent times. So I would be interested in the Minister's comments as to why this very important recommendation has not been picked up by him, by the Hon. Joe Tripodi, by the Hon. Michael Costa or the Hon. Carl Scully—the four roads Ministers in the past two years. I look forward to the Minister's contribution in relation to that.

Three years ago the Minister for Health at the time, the Hon. Morris Iemma, wrote to the Hon. Carl Scully concerning signage warning about air pollution in road tunnels. He advised that the NSW Health report "M5 East Tunnels Air Quality Monitoring Project, July 2003" demonstrated that exposure to pollutants in the tunnel can be significantly reduced by closing vehicle windows and vents. The current Minister for Roads has said to the media that he has picked up on that advice. The former Minister for Health stated:

I believe that this simple measure should be encouraged to reduce population exposure to air pollutants in road tunnels, and to decrease the risk of adverse effects in people with asthma. This could be effectively implemented by placing advisory signage at the entrance to road tunnels.

Minister Iemma went on to say there would be a working party group on this and that a lady in his office would be in contact to arrange a suitable time. We are now in 2006 and have nothing. All we have is the Minister for Roads saying it is commonsense to put the signs up. I would like to have it on the record during the Minister's response—he has 15 minutes to find out—why four roads Ministers in two years have denied the recommendations of General Purpose Standing Committee No. 5 and a recommendation put by NSW Health through the then health Minister, Morris Iemma, to put the signs up. South-western Sydney, and maybe the whole of New South Wales, would be interested. I look forward to that.

I implore the Minister to address this important point during his contribution, considering he made no relevant comments in relation to the tunnel and the tunnel's health during the 10 minutes he had to discuss this

during the earlier urgency debate. He just made personal attacks against me. It is important for his integrity to address this. It is also important for the Minister to debate why the RTA and he as Minister continue to flout safety standards when the Department of Infrastructure, Planning and Natural Resources, in charge of monitoring air quality in the tunnel, has found the RTA is breaching pollution standards. That finding was made in 2005—another very important point. The Minister now has his back to me. I find that offensive. I also find it very sad because some important issues are being raised here. We have potential threats to the health of motorists, and concerns of nearby residents should not be allowed to continue to be swept under the carpet. That is why we have brought this motion on today. It is urgent. Some very important issues need to be addressed.

**The Hon. Eric Roozendaal:** Point of order: Madam Deputy-President, I understood you made a ruling earlier that the honourable member should direct all comments through you as the Chair. I am not sure why the Hon. Melinda Pavey feels it necessary for me to stare at her when she speaks, but it is quite appropriate while I am sitting here to consult other members on this important issue as points are made. I ask you to direct the Hon. Melinda Pavey to direct all of her comments through you as the Chair.

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! I uphold the point of order. I remind the Hon. Melinda Pavey that she should direct her comments through the Chair and not to other members in the Chamber.

**The Hon. MELINDA PAVEY:** It is important to consider the 2005 Audit Report, which showed that the Government knowingly allowed those guidelines to be breached on a regular basis. It is also important that the Minister inform the House how many times the tunnel has been closed to traffic because of pollution problems. The community deserves an answer to that very important question because he has the information at his fingertips. The department reported that the tunnel has been closed once every 2.8 million vehicle journeys over the past 12 months, but that does not answer the question. On the one hand, the Minister asserts that all is well; on the other, the tunnel is closed on average every 2.8 million vehicle journeys, according to information provided by the department, so that matter needs to be addressed.

The CSIRO has stated that the number far exceeds the number for which the tunnel was designed. It was designed for 70,000 vehicle movements a day, yet 110,000 vehicles now use the tunnel on a daily basis. Independent analysis by Tyco Environmental Systems found that air samples within the tunnel showed unsafe levels of nitrogen dioxide 50 per cent higher than that reported in a 2003 New South Wales Health Department study.

**The Hon. Eric Roozendaal:** That was in the *Sunday Telegraph*.

**The Hon. MELINDA PAVEY:** That is right. Unlike the Minister, I do not have at my disposal personal staff of 13 or 14 people, a driver, an appointment secretary, a press secretary, a policy adviser Labor Party apparatchik, as well as a department of 2,000 people, so I will seek advice from anybody who is willing to contribute to the debate. To this point the Minister has failed to address safety concerns with respect to the M5 East tunnel. That demonstrates a complete disregard for the people of south-western Sydney, who use this important tunnel to get to and from work. This brings me to another important point that I hope the Minister will address, that is, the number of people who are not using public transport and the steps the Minister and the Minister for Transport are taking to rectify this urgent problem. In the past six years the carrying capacity of CityRail has decreased by 3 per cent.

**The Hon. Amanda Fazio:** Point of order: My point of order is relevance. My understanding is that the motion for urgency relates to the lack of signage in the M5 East tunnel. I do not know how that ties into this dissertation on the number of rail journeys that may or may not be taken. I ask you to direct the member to speak to the motion.

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! The Hon. Melinda Pavey has strayed from debating the matter of urgency, to which I ask her to return.

**The Hon. MELINDA PAVEY:** As I have only 12 seconds left, I make the point that there are 2,390,000 journeys being undertaken by car, not rail, and 5,203,000 bus movements that are now vehicle movements, which is why Sydney is so congested. [*Time expired.*]

**The Hon. CHARLIE LYNN** [3.25 p.m.]: I congratulate the Hon. Melinda Pavey on moving this urgency motion. It is interesting that the Minister for Roads regards debate on the GST, which took place years

ago, as more important than debate about people in 100,000 cars every day being slowly poisoned. This is an important health issue for those who use the tunnel. Of course, the Minister sits in the back of his ministerial car, with its tinted windows and airconditioning. As the car enters the tunnel he simply says, "Driver, seal the vehicle off". That is his solution: Wind up the windows. How do I wind up the windows on my motorbike when I am stuck in the middle of traffic every day as I ride in and out of this city?

**The Hon. Eric Roozendaal:** And I am sure you stay in your lane and do not weave!

**The Hon. CHARLIE LYNN:** I acknowledge that interjection. Riders cannot do anything in that tunnel; there is not enough room and no provision has been made for motorcyclists. They have to sit and breathe in toxins in a tunnel described by one world health expert as representing world's worst practice. He referred to it as a "tunnel of toxins". Motorcyclists, in particular, have to breathe that in for up to 15 to 20 minutes, knowing that every mouthful they take will have a long-term impact on their health. That fact will be sheeted home to this Government.

The Government was elected on a lie to lift the tolls on the M4 and the M5. It manipulated that lie with the cash-back con, nevertheless, the basis of the legitimacy of this Government was a promise to scrap the tolls; a promise they could never keep. The construction of the M5 East has seen a continuation of that lie in that we have been continually misled in this Chamber. I have asked 41 questions about the M5 since it was opened and every one has been shunted off. It is clear that the Government has no solutions to the transport problems. Everything the Government does is about short-term political gain; to hell with the long-term consequences.

Last year I spoke with the former Federal Minister for Transport, Peter Nixon, who designated land for transport corridors in Sydney. He had the foresight to plan for future development and transport needs, but Neville Wran came to office and sold off those corridors, again for short-term political gain. I think he referred to it as finding money up hollow logs, which was great media spin, but it consigned Western Sydney to a lifetime of traffic jams. Honourable members are aware of Western Sydney's population growth and the hundreds of thousands of people who used to commute daily to work up Newbridge Road and along the Hume Highway, inch by inch, traffic light by traffic light, hoping that when the M5 and the M5 East were built they would have ready access to the city.

When the M5 was opened with great fanfare, the traffic flow was all right until Labor came to government, broke its promise and the cash-back scheme prevented the project from reaching its potential because money was unable to be reinvested. The M5 East was originally designed as a surface road, but a tunnel was then proposed to save the remnant bushland of the Wolli Valley—undoubtedly to get the Green vote. After several changes in plan, a tunnel was designed with three stacks located at the tops of the hills above the tunnel. This was the design used in the environmental impact statement and it probably would have worked well.

However, there were strong public objections to the location of the stacks in people's backyards and fear that the seat of Rockdale would be lost to the Government. This is what I mean when I talk about short-term political gains all the time. So it was decided, in secret—most of the Government's decisions are made in secret—that the stacks should be relocated on to an industrial area next to Turrella station. This location is at the bottom of a valley, and the top of the stack is below the top of the hills to both the north and the south. No environmental impact statement was carried out for that change.

The change in design added \$30 million to the cost in 1999, and involved an 800-metre air tunnel from the tunnel to the stack. This significantly increased the cost of running the ventilation system. But the main problem was that the new design limited the amount of air that could be extracted from the tunnel. The unexpected sudden blast of air going to the stack from inside the east-bound tunnel can endanger motorcyclists and blow loads off the back of trucks. I experience that every time I ride a bike through the tunnel. A whoosh of air comes through. These problems limit the maximum volume of air that can be used for ventilation to 900 to 920 cubic metres per second. The cost of electricity to run the ventilation system alone is about \$3 million a year.

The ventilation system is very complicated. No air is supposed to be emitted from the portals—that is, the ends of the tunnel—to protect those living close to those areas at Bexley North and Marsh Street, Arncliffe. The tunnel probably needs about an extra 400 to 500 cubic metres of air to maintain relatively acceptable conditions. There have been a number of times when carbon monoxide levels have become dangerously high. There is no control limit on the amount of smoke or nitrogen dioxide in the tunnel. There are problems both inside and outside the tunnel. Local residents complain of smells, sore eyes and asthma. Some have had to sell

their houses. There are regular complaints about the smell inside the tunnel, sore eyes and headaches, and there have been a number of reports of people with severe asthmatic responses. These impacts are caused by particles and nitrogen dioxide, not carbon dioxide.

When the air quality inside the tunnel becomes bad it is supposed to be controlled by traffic management. Basically, there are three stages to this management. First, the speed limit outside the tunnel is lowered and the traffic lights at Marsh Street are rephased or turned to red to limit traffic entering the tunnel. If this does not work, stage two involves the closing of lanes in the tunnel by turning on the red lights above one lane and the "merge lane" sign as though there were an accident. If the pollution still cannot be controlled, the tunnel must be closed, which is stage three. Between July 2003 and April 2004, a fault in the monitoring system made it look as though the carbon monoxide levels were high. The Roads and Traffic Authority [RTA] operator responded not with traffic management but by using portal emissions—that is, pumping polluted air out of the tunnel ends. This is against the conditions of approval because it is harmful to those living close to the tunnel ends. Normally, all air is recycled to the centre of the tunnel and blown out of the stack.

The tunnel needs more air to make it safe. During the portal emissions tests the RTA demonstrated that this could be done by blowing out some air and introducing fresh air at the portals. It also prepared a plan to install filtration at the portals, but that did not go ahead. To do this safely, the emissions from the ends of the tunnel would have to be filtered for particles and nitrogen dioxide. The M5 East is an absolute planning disaster—a disaster that will have long-term impacts for a future government, probably to the same extent that asbestos is now causing problems—because of ignorance. This Government's legacy will be the long-term health compensation claims because of its short-term approach to problems. The Government has foisted on the residents of Western Sydney 100,000 vehicle movements a day—the tunnel was built for 70,000 vehicles a day—and traffic jams for the rest of their lives. These residents get up earlier and get home later, which means that they cannot spend quality time with their kids. There is no suitable public transport alternative. This Government was elected on the lie of the M4 and the M5. It should be thrown out at next year's election based on the lie of the M5 East.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.34 p.m.]: I get tired of Opposition members coming in here and blithering. The Opposition was slow to get on board this issue, which has been going on for three years. I was at the first meeting about this issue. When the Residents Against Polluting Stacks [RAPS] group was formed I was there. The Greens came on board shortly afterwards, and the crossbench has been very active on this issue. The Liberals eventually came on board. The RAPS campaign, which has been an excellent campaign, has drawn attention to this appalling tunnel. Basically, the Opposition has moved this motion as a matter of urgency because I have given notice of a motion to disallow a regulation under the Smoke-free Environment Act. Members opposite do not want to be seen sitting with the Government in support of hotels and tobacco companies, although they know that tobacco does immense harm to people's health. They are happy to talk about a tunnel to delay my disallowance motion. It is typical of the Opposition to come late to an issue and deliberately try to delay the business of the House. That is what this is about.

**The Hon. Amanda Fazio**: Point of order: Madam Deputy-President, I draw your attention to the fact that two or more people in the public gallery are smoking. They should be ejected.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS**: Somebody in the gallery seems to be smoking. Gosh! If we were in a pub it would be all right. Suddenly the Liberals are concerned about the M5 tunnel, but they are not concerned about smoking in pubs throughout this State. Everyone knows that RAPS have run a good campaign. Everyone knows that nitrous oxides, sulphur dioxides and carbon monoxides in this tunnel are harmful. The M5 East tunnel is a story of ineptitude, and government ineptitude. Neville Wran sold off the freeway corridors for a quick buck. He was the first of the spin doctors and the quick-buck merchants who characterised the Labor Party. The then Labor Government did nothing to create rail tunnels or a serious rail network for Sydney. Even as tunnelling has become cheaper this Government has no serious plans for a rail network. Neither does the Opposition.

In the sad duopoly in this country, with a rigged electoral system that only allows one of the two old parties to do anything, no-one has any serious plans that would benefit this city. In this case Labor made a big mess. The Labor Government decided that it needed road tunnels and it wanted a public-private partnership to do that. It had a design that included four vents along the ridges, which was sensible. But, no, silly Scully, the Minister for train crashes, backed off because there were protests and Labor thought it might lose the seat of Rockdale. So the tunnel's ventilation was a stack in the middle of a valley. The height of the stack was limited as it was close to the airport's flight path. The stack could not be higher than the top of the valley. So we had a

stack that was not as high as the top of the valley and that seemed to be a long way from anywhere in terms of voters. However, it is not far at all as the crow flies, and the top of the stack is below the top of the valley.

The Government had to install long tunnels, which cost an extra \$30 million or so. However, those tunnels could not move the air as efficiently as the four shorter tunnels that were originally suggested, and they cost a great deal more to run from an electricity point of view because of the amount of air shifted, the angle at which it must be shifted and the distance it has to be shifted. There was a huge increase in running costs. This was Scully policy on the run, as usual. There is huge pollution for local residents. The Government tried to deny that; it said there was less pollution overall, but that is the way it is done. Belatedly, NSW Health managed to secure funding to try to find out the effects of the pollution on residents. There was co-operation with local general practitioners to find out how much residents were being harmed.

What can be done about the issue is a tricky question because the tunnel has been built, the ventilation is totally inadequate and it is all now at a point source. Even with regard to these studies, the Government did not want to do the job properly. It did not want to measure any levels; it wanted to use questionnaires and various spurious and cheaper methodologies. If that were not enough, the arrogant Roads and Traffic Authority [RTA] declined to take the advice of NSW Health to erect signage advising motorists to wind up their car windows.

One of the features of this Government is its total lack of planning, but the RTA has a plan. It wants to build masses of roads. It has a bunch of engineers and quite skilful lobbyists, and a plan to build roads everywhere. The RTA builds a road up to the point where it becomes a bottleneck and then fixes that bottleneck, which in turn creates another bottleneck. It systematically lobbies to build more and more roads, thereby extending its network. The RTA takes no notice of any environmental concerns and appears to be able to skip over the planning department. As Sam Haddad of the Department of Planning told me during the course of the cross-city tunnel committee inquiry, "No. We do not have an overall plan. Our job is to assess plans put to us and approve or reject them."

That, of course, is how we ended up with the shambles of the cross-city tunnel and why there is no rail. The Government has no overall plan and there is no promise from the Opposition that it will ever have one, because that might interfere with the wishes of the private-public partnership [PPP] proponents or the developers. Of course, the Government does not want to offend them; they are a policy-free zone in the lead-up to the election. The Australian public is disillusioned with the political process because the two major parties are captives of vested interests. I support the motion because I have always supported RAPS but, frankly, the timing of it is appalling and draws attention to the Government's failings—failings shared by the Opposition in that, although it complains about this issue, it has not put proposed one single idea to improve the situation.

**The Hon. John Ryan:** We proposed filtration of the tunnel.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I acknowledge the interjection. There has been a suggestion in relation to filtration of the tunnel, but that would be an expensive option. The Hon. Charlie Lynn's suggestion that we reinstall the original short ventilation stacks would obviously be unpopular, but it would at least disperse the smoke. I think filtration is now necessary because of this Government's ineptitude, but it is a difficult question. Obviously, the real solution is to have a public transport plan that does not involve motorists travelling through long tunnels. That is something that the Government does not want to do because it can award these highly lucrative PPPs to Macquarie Bank and its other mates.

**The Hon. AMANDA FAZIO** [3.42 p.m.]: I remind the House of the motion we are debating—this so-called motion of urgency—which reads, "The failure of the Iemma Government to protect the people of New South Wales from exposure to pollution in the M5 East tunnel." I listened with great care when the Hon. Melinda Pavey commenced her contribution. As far as I could tell, the only issue that she brought forward during her magnificent hand-wringing performance was to complain that the Government has not implemented a recommendation from a general purpose standing committee in 2002 to the effect that signage should be posted at the M5 East to tell motorists to wind up their car windows and to close their air vents. That is the matter that the Hon. Melinda Pavey claims is of such urgency. The honourable member did not have much else to say about the issue, apart from the fact that if fewer people drove cars there would be less air pollution, but this is not happening because the State Government is not doing anything to improve public transport.

I would like to put on the record what the Government is doing to improve public transport, which will, hopefully, reduce emissions from cars and heavy trucks. In relation to rail, the Government has 600 transit

officers who have helped to drive down crime on the CityRail network by 31 per cent since they were employed in 2002. They have contributed to a marked reduction in robberies, thefts and assaults, making the travelling public feel more secure about using the rail service. People have been using rail services more often. The Government has had to balance that increased usage by putting in place extra counter-terrorism measures. We are well aware of what has happened overseas, where public transport has been targeted by terrorists. The Government has had to spend millions of dollars from its record \$3 billion transport budget for the 2005-06 year to put these counter-terrorism measures into effect to ensure that the travelling public feels even more secure about using rail services in Sydney.

Honourable members will recall the initiative announced by the former Minister in relation to rail clearways. The Government is spending more than \$1 billion on rail clearways to improve capacity and reliability on the CityRail network. The Government is building more tracks, platforms and turn-backs. It is removing bottlenecks in junctions to increase capacity, ease congestion and reduce delays so that a delay on one line does not mean that all the other Sydney lines are delayed. This will encourage and entice more people off roads and onto public transport. There have been easy-access upgrades. In Summer Hill, where I live, we campaigned for many years to get easy access for the railway station to ensure that people with disabilities, the frail aged and women with prams could access trains. These sorts of initiatives mean that more people can take advantage of rail travel. The Government will spend \$2.5 billion on new rolling stock. The Government's has fast tracked the replacement of 498 non-airconditioned train carriages at a cost of approximately \$1.5 billion.

I do not like to use rail. I prefer to use buses. I am lucky because I live in the inner west and we have a very good bus service. In relation to bus reforms, the Government is delivering fairer fares and more user-friendly routes. The reforms are almost complete in metropolitan Sydney, with 97 per cent of the industry now signed up to new contracts. Passengers are already benefiting, with equal fares for State Transit and private passengers, and an extension of the pensioner excursion ticket. That means that there is more incentive for people to use buses rather than private vehicles. It means that, no matter where people are in Sydney or what bus they use, they will pay the same fare over the same distance. The Government has introduced the Liverpool to Parramatta T-way, which has carried more than three million passengers since the service began in February 2003. There has been a 248 per cent growth in patronage since the first full month of service.

We have a new north-west T-way construction. It will consist of two T-ways, one between Parramatta and Rous Hill and the other between Blacktown and Parklea. The T-ways will take people on buses mainly to the industrial parks where they work so that they do not have to use their cars. This will reduce air pollution and petrol consumption. People who work in those areas will be able to travel to work more cheaply than would be the case if they travelled by car, which was formerly the only way they could get to those industrial areas. The Government is also introducing a new bus fleet in Sydney and other areas where there are government buses. It has announced a tender for 505 new buses for the State Transit Authority. The buses will be fully airconditioned, have low floors to allow for wheelchair access and be suitable for operation in the metropolitan area. In the past two financial years the Government has spent a total of \$130 million to provide 180 new standard and articulated buses to the following depots: Ryde, Port Botany, Waverley, Brookvale, Mona Vale and Newcastle.

The Government is providing public transport alternatives to encourage people to refrain from using their private vehicles. The Government is showing a great commitment to public transport and to improving the air quality in the Sydney Basin. However, the Hon. Melinda Pavey did not raise these sorts of issues in her contribution. She made only a passing reference to public transport. She claimed that a number of rail passenger journeys and bus passenger journeys were not being undertaken because of the state of public transport. That was her only comment in regard to public transport. What astounded me most about this motion of urgency was the claim that the people of New South Wales will be exposed to pollution in the M5 East tunnel. The people of New South Wales used to think that they were represented in this Parliament by the National Party. It rebadged itself as The Nationals to sound more trendy, but it has not helped.

The Nationals do not represent the people of regional and rural New South Wales. Instead, they have moved a motion relating to the M5 East tunnel. Is the Hon. Melinda Pavey talking about a matter of urgency dealing with the state of country roads? No! Is she moving an urgent motion relating to the Pacific Highway, the Princes Highway, the Bruxner Highway or the Newell Highway or any other highway in our road network? No! She is complaining about an issue that affects, in the main, the people of south-western and inner Sydney, who travel backwards and forwards through the M5 East tunnel; the people who may live near the tunnel ventilation stack or at either end of the tunnel; and people who claim that they are affected by the vehicle emissions that emanate from the tunnel. If the people of country New South Wales thought that by voting for The Nationals they would have members in this House who would speak on their behalf on country issues they were wrong.

**The Hon. John Ryan:** Point of order: Whether a member represents the country does not have anything to do with the motion before the House. The Hon. Amanda Fazio says that the Hon. Melinda Pavey, as a member of The Nationals, should talk only about country New South Wales. The Hon. Melinda Pavey is the Parliamentary Secretary to the Leader of the Nationals, who is the shadow Minister for Roads. She is entitled to raise any matter on roads, just as a Minister would raise matters that affect both the city and the country. It is not relevant to this motion to say that the Hon. Melinda Pavey should speak only on issues that relate to country New South Wales. The Government's response to this motion is the relevant issue.

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! Members should confine their remarks to debating the urgency of a matter relating to the M5 East tunnel. I uphold the point of order.

**The Hon. AMANDA FAZIO:** At least when the Hon. Charlie Lynn spoke on the urgency motion he was consistent about his concerns as a motorbike rider driving through the M5 East tunnel. We heard a history of the tunnel and its development, according to the Hon. Charlie Lynn. He has done his homework, unlike the Hon. Melinda Pavey, who uttered a lot of platitudes and indulged in hand-wringing and moaning about what was wrong with the world in general. She was not specific about the M5 East tunnel and the history and development of the ventilation. The Hon. Charlie Lynn and the Hon. Dr Arthur Chesterfield-Evans were correct: At the outset the proposal was that the M5 East tunnel would have more than one ventilation stack, but the local community complained that they did not want multiple stacks. After a period of community consultation, the plans were changed and we ended up with one ventilation stack. People now complain that they do not like the one stack. Governments can be accused of not listening to the public and not acting. In this case, the Government has listened and acted, and people still complain.

I urge all honourable members to consider whether this matter is urgent and should take up the time of the House, which is scheduled to deal with Government business. All members know in their heart of hearts, no matter how they vote on party lines, that this motion is not urgent. The matter raised in the motion should not be dealt with urgently. The case for it to be dealt with as an urgent or serious motion has not been made by the Hon. Melinda Pavey. I urge all honourable members to bear that in mind when considering this motion and to vote against it. It does not deserve the support of the House. Nothing has been done to win our support.

**The Hon. JOHN RYAN** [3.52 p.m.]: This matter is urgent because it demonstrates the abject neglect of the Iemma Government, in particular, the Premier in his role as the former Minister for Health. I refer to correspondence that was uncovered as a result of an order for papers. The letter was a motivating factor in moving this motion today. In a draft letter, the then Minister for Health was urged by experts within the Department of Health to request the Roads and Traffic Authority to place signposts at either end of the M5 East tunnel. What did then health Minister Iemma do in response to the request by experts within his department to pursue such action? Nothing. The letter was ignored and returned unsigned to the department. There could be no greater abrogation of a Minister's responsibility than to ignore an issue of public safety. Today we are discussing public safety.

The Department of Health raised with then health Minister Iemma the issue of public safety and he ignored it. His response is sufficient reason for him not to be Premier when the public eventually gets the opportunity to pass judgement on this Government. The fact that the then health Minister, who is now Premier, was prepared to ignore an issue of public safety makes this a matter that should be dealt with urgently by the House. I use the M5 East tunnel at least every other day, sometimes every day of the week. It is obvious from a visual inspection inside the tunnel that it does not work properly. Within one or two kilometres of the entrance of the tunnel, traffic passes through a most amazing blue haze of toxic smoke. Motorists have been passing through this haze unwarned of the dangers. If their windows are wound down or the vents are open, the pollutants are carried in the cabin of their cars for some minutes outside the tunnel.

**The Hon. Amanda Fazio:** Point of order: I cannot hear the comments of the Hon. John Ryan. A private conversation between the Leader of the Opposition and a visitor from the Legislative Assembly that is taking place in the gallery is drowning out the honourable member.

**The PRESIDENT:** Order! I remind all members that whilst some leniency is extended to members engaging in conversations in the Chamber, noise should not emanate from the gallery.

**The Hon. JOHN RYAN:** I was a member of a couple of committees that examined the ventilation stacks on the M5 East tunnel. It was eventually conceded by the then Department of Planning that so much

effort had been made by the department on the placement of the ventilation stack, the Government completely missed the issue of in-tunnel ventilation. Sam Haddad admitted to me that the issue had not been addressed and was ignored. The Government is on the record promising in-tunnel ventilation, or to at least trial it. No tunnel would be more deserving of in-tunnel ventilation than the M5 East tunnel. The Minister for Roads, when speaking to this motion, should inform the House of the Government's intention on its promise to trial in-tunnel ventilation systems. Clearly, the M5 East tunnel deserves a trial of in-house ventilation. For the benefit of honourable members, I will read the letter given to the Premier when he was the Minister for Health to sign, which he ignored. The letter is drafted:

Dear Mr Scully—

his colleague, the then Minister for Roads—

I am writing to you concerning signage warning about air pollution in road tunnels.

I am advised that investigations undertaken by the Department of Health, and more recently through an interagency working group by the Roads and Traffic Authority, have demonstrated that while air pollution concentrations in the M5 East road tunnels comply with international standards, the pollutant nitrogen dioxide is at times at a level representing a potential increased risk to sensitive people, such as those with asthma. Significantly higher concentrations of other toxic air pollutants, such as fine particles and benzene, are also found inside the tunnel compared to other places open to the general public.

The NSW Health report "*M5 East Tunnels Air Quality Monitoring Project, July 2003*" demonstrated that exposure to pollutants in the tunnel can be significantly reduced by closing vehicle windows and vents. I believe that this simple measure should be encouraged to reduce population exposure to air pollutants in road tunnels, and to decrease the risk of adverse effects in people with asthma. This could be effectively implemented by placing advisory signage at the entrance to road tunnels.

The letter continues:

I would like to convene a meeting with you and the Ministers for Planning and Environment, and relevant senior officers, to reach an agreement on providing warning signage at road tunnels.

Attached to the briefing is an indication for the wording of the road signage. It states that motorists would be advised to close all windows and vents, to switch on the radio for tunnel information and that there would be 24-hour surveillance. It also indicates, in part, that some of the existing signage that is currently available around the M5 East tunnel would be used. The attachment also included advice to the then Minister for Health, stating:

There are no appropriate guidelines for NO<sub>2</sub> exposure in a setting such as this [the tunnel]. However, NO<sub>2</sub> levels in open vehicles were similar to those previously shown to be associated with health effects on asthmatics exposed for fifteen to thirty minutes. This study has highlighted the need to better understand and manage NO<sub>2</sub> in road tunnels. We recommend that NSW government agencies with a role in the management of road tunnels collaborate to investigate international advances in this area and develop appropriate NO<sub>2</sub> guidelines for tunnels.

Pending these investigations, we would advise motorists in open vehicles and motorcyclists, to avoid using the tunnels when transits are likely to be prolonged, particularly if they suffer from asthma.

That advice was given to the New South Wales Government—and it did nothing, zip.

**The Hon. Eric Roozendaal:** It was a draft.

**The Hon. JOHN RYAN:** The advice that I just read is not a draft. It indicates that the tunnel is not safe for people to use unless they are enclosed in their vehicles and have proper ventilation. The tunnel is certainly not safe for motorcyclists. The Government was advised to place signs outside the tunnel. What answer will the Minister for Roads give as to why the New South Wales Government, when confronted with this health safety risk, ignored advice? It did not go to the public and indicate that it had received such advice and give good reason as to why it ignored it. It did not react to the advice; it simply dismissed the file.

Frankly, in his reply the Minister for Roads should explain to this House the disgraceful dereliction of duty on the part of the former Minister for Health, now Premier Morris Iemma. He should also explain his disgraceful dereliction of duty now that it has been drawn to his attention that he is doing nothing. He should also explain the current Minister for Health's dereliction of duty. He clearly has this advice but he, too, has done nothing about it. This is a Government devoted to spin rather than substance. If there was one issue that demonstrates its devotion to spin rather than substance, this is it. This Government wants to hide this public health issue rather than address it. It is interested in the headlines, not the substantive issues.

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

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### PUBLIC SCHOOLS POLICING

**The Hon. MICHAEL GALLACHER:** I direct my question to the Treasurer. Can the Treasurer inform the House how much money is being allocated to fund the Premier's commitment to put a squad of 40 police officers into New South Wales public schools? Will he be providing additional moneys in the budget to fund this proposal? Given his comments in 2002 that the idea of putting police officers into schools was farfetched and defeatist and that schools were "amongst the safest places for children in our society" and "I know what I'd do with my kids—I'd remove 'em", does the funding for this project now indicate that he has changed his mind?

**The Hon. MICHAEL COSTA:** As the honourable member should know, we have a State budget and it will be handed down in the coming months. I do not intend to comment on matters relating to it before it is handed down.

### NEW SOUTH WALES FIRE BRIGADES ROAD SAFETY EDUCATION INITIATIVE

**The Hon. GREG DONNELLY:** I direct my question to the Minister for Emergency Services. Will the Minister inform honourable members about a New South Wales Fire Brigades initiative to protect young drivers on our roads?

**The Hon. TONY KELLY:** I thank the honourable member for his question. Every day our emergency services personnel see first-hand the deaths, injury and destruction road accidents can cause. In 2004-05, NSW Fire Brigades attended about 2,500 motor vehicle rescues to free the victims, frequently critically injured and, sadly, often deceased, from the wreckage. It is a terrible and traumatic experience for everyone involved. Somehow it seems worse when those victims are young people killed or injured as a result of speeding, peer pressure or lack of experience. People under 26 years of age represent just 15 per cent of drivers but are involved in 36 per cent of all road deaths. Roads and Traffic Authority statistics show that from 1999 to 2003 a total of 1,017 people died in accidents involving drivers under 26 years of age.

In a commendable effort to help reduce the road toll among our State's youth, NSW Fire Brigades has developed a new road safety education initiative called RescuEd. My colleague the Minister for Western Sydney recently launched RescuEd at Kingswood High School in Penrith. She was joined by the honourable member for Penrith, senior members of NSW Fire Brigades, firefighters from Penrith Fire Station and Penrith Volunteer Rescue Association members. I understand that the students responded thoughtfully to the sobering message.

The aim of RescuEd is to reduce the number of young people injured and killed on New South Wales roads by encouraging respect for the road and responsible behaviour behind the wheel. The program is targeted at years 9 and 10 students to help them learn about the reality of horrific accidents before they get behind the wheel. It is designed to impress on students that people their age frequently die in road accidents, but that they can avoid becoming a statistic themselves. NSW Fire Brigades believes that hearing first-hand from firefighters who have had to cut young people out of car wrecks will have a powerful impact on our teenagers.

RescuEd has been rolled out to 165 rescue-accredited NSW Fire Brigades stations throughout metropolitan and regional New South Wales. Parents and teachers can be assured that the program was developed in consultation with the Department of Education and Training. It is based on Queensland's Road Accident Awareness Program, which is believed to have contributed, along with other road safety initiatives, to a 30 per cent decrease in road accident injuries and deaths. The RescuEd program, which runs over one-and-a-half hours, features the video, "Tim's Story", about wheelchair-bound accident victim Tim Rafton—the son of a NSW Fire Brigades firefighter—who was injured in a serious accident when he was 17, firefighters demonstrating a motor vehicle rescue, and a discussion between students and firefighters about the causes and consequences of road accidents and the steps students can take to reduce the chance of being involved in one. I encourage school principals around the State to contact their local NSW Fire Brigades station to ensure their students can take part in RescuEd. Any effort to help save our young people from death and injury on the roads is commendable, and I congratulate the NSW Fire Brigades on this great initiative.

**DUBBO DIABETES AND DIALYSIS SERVICES**

**The Hon. DUNCAN GAY:** I direct my question to the Minister for Health. Does the Minister recall that he has finally honoured his commitment to provide the Dubbo Dialysis/Diabetes Working Group with a much-needed \$300,000 matching funding grant after five long years? Can he now understand the group's concern that this funding is to come from rural grants funding and not from capital works? Can he inform the House which rural towns will be missing out on funding because of this decision? Will it be Narromine, Lithgow, Forbes, Parkes or Wellington? Which rural town will be missing the \$300,000?

**The Hon. Michael Costa:** That is not a question; it is a statement.

**The Hon. DUNCAN GAY:** Show me where it is not a question.

**The Hon. JOHN HATZISTERGOS:** The honourable member is quite delusional. I have canvassed this issue on a previous occasion when I fully outlined the process involved to the House. I met with Mr Semmler, who is the chairman of the fundraising group.

**The Hon. Duncan Gay:** Where is the funding coming from?

**The Hon. JOHN HATZISTERGOS:** It is coming from minor works, capital works; it is not coming out of anything else.

**The Hon. Duncan Gay:** It is coming out of the rural fund.

**The Hon. JOHN HATZISTERGOS:** We have a budget for rural minor works, capital works.

**The Hon. Duncan Gay:** And you are taking it away. Who is going to miss out?

**The Hon. Michael Costa:** That is what it is for.

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

**The Hon. JOHN HATZISTERGOS:** Every year there is a capital works budget for rural minor works. Applications come from around the State, they are assessed and funding is allocated. There is no other pot of money out there that we use for these sorts of things. We have to use a capital works budget.

**The Hon. Duncan Gay:** You are taking it from another town.

**The Hon. JOHN HATZISTERGOS:** That is a load of nonsense!

**The Hon. Duncan Gay:** Yes you are.

**The Hon. JOHN HATZISTERGOS:** I know that the Deputy Leader of the Opposition went there the other day and tried to make himself relevant in the debate. However, the reality is that Dawn Fardell, the very capable honourable member for Dubbo, met with me and Mr Semmler and we agreed on a process whereby the area—

**The Hon. Duncan Gay:** Five years!

**The Hon. JOHN HATZISTERGOS:** Just a moment. It was determined that the area and the fundraisers would agree on a project. They would submit it to me—

**The Hon. Duncan Gay:** You stole the money for five years.

**The Hon. JOHN HATZISTERGOS:** The honourable member says that the Government stole the money. It was allocated to the area and was used to expand the service by providing more chairs and more recurrent funding. I want the Deputy Leader of the Opposition to go to those people who have been dialysed using the extra chairs and tell them that they have stolen the money. That is what he is saying to these people who now do not have to travel outside Dubbo. He is saying that they have stolen the money.

## DRINK SPIKING

**Reverend the Hon. Dr GORDON MOYES:** I direct my question to the Minister representing the Attorney General. Is the Minister aware that on the night after her victory one of the gold medal winners at the recent Commonwealth Games was the subject of drink spiking? Is the Minister aware of the alarming prevalence of date-rape drugs, including GHB, being used in New South Wales? Will the Minister be introducing more specific drink-spiking legislation to empower police in their work in capturing and prosecuting individuals who try to sexually violate others using illegal and legal drugs? Will the Minister include the most prevalent date-rape drug—that is, alcohol—in this proposed legislation when it is used to spike a drink or plied to an intoxicated person prior to rape or sexual assault? Will the Minister consider developing a register of incidents to allow police to focus their efforts on high-risk venues?

**The Hon. JOHN DELLA BOSCA:** Reverend the Hon. Dr Gordon Moyes has asked a question about an extremely vexed matter. With regard to the allegation about one of the Commonwealth Games athletes, I think that complaint was some time later withdrawn. I am relying on the media for that advice, and I assume it to be correct. Reverend the Hon. Dr Gordon Moyes may do well to refer to a number of recent, celebrated, successful prosecutions by NSW Police of individuals who have now been convicted of crimes in relation to sexual assaults and the doping of their victims, an issue that was canvassed in considerable detail in the popular media last week. There is also a very regrettable incident still before the Coroner alleging the same kind of completely inappropriate behaviour on the part of a group of men in relation to a series of sexual assaults against a person allegedly using alcohol and/or other drugs.

This matter has been the subject of considerable discussion both within the Government and in this Parliament. One of the views that has been formed, as the recent successful prosecutions of some criminals in regard to this behaviour would tend to indicate, is that the current laws in relation to the criminal behaviour that might be described as date rape—I think that is probably an inappropriate description of it—are quite sufficient for police to make successful prosecutions.

The matter raised by Reverend the Hon. Dr Gordon Moyes in the second part of his question—that is, the role of alcohol and the lawful use of alcohol in cases of sexual assault—relates to a matter of policy that would be best addressed by the Attorney General. Therefore I will refer that component of the honourable member's question to the Attorney General. I indicate to the honourable member, as I said, that the matter of the application of illicit substances for the purposes of so-called date rape or sexual assault has been well canvassed. At this stage the Government has formed the view, based on reliable advice from NSW Police and the Attorney General, that the current powers for police are sufficient and that the current laws allow the courts to find guilty verdicts. I refer the honourable member to the fairly public prosecution and conviction only a week and a half or so ago. Nonetheless, I will obtain an answer from the Attorney General as to the second part of the honourable member's question.

## CANNABIS USE

**The Hon. CHRISTINE ROBERTSON:** My question is addressed to the Minister for Health. What is the latest information on what the Government is doing to combat cannabis use?

**The Hon. JOHN HATZISTERGOS:** On 19 March I was pleased to visit the site of the Southern Sydney Cannabis Clinic, to be located in the new community health centre at Sutherland hospital. I was pleased to be joined by three local members—the honourable member for Heathcote, the honourable member for Miranda and the honourable member for Menai. The clinic will see its first patients next month and will operate out of Sylvania Community Health Centre until its permanent home at Sutherland is completed. The clinic will assist users to get counselling and treatment for their addiction. It will provide clinical intervention for cannabis users and also assist their families. There will be practical treatment, individual and group counselling programs, and outpatient care.

The key target groups for these services include young people, people with mental health issues, users who have previously failed to get treatment, and the families of people using the drug. More than 400 cannabis users a year are expected to attend the clinic. Counselling services will also be available at Engadine, Menai and Sutherland hospital. Three cannabis clinics currently operate at Parramatta, the Central Coast and Orange as part of the State Government's \$2.65 million commitment to the scheme. I take this opportunity to recognise the excellent work done on this issue by my colleague the Hon. John Della Bosca as the then Special Minister of State. Preliminary results from the first clinic, which opened at Parramatta in 2003, showed that 60 per cent of people who had received treatment quit using cannabis, while 38 per cent reduced use to once a week.

While at Sutherland hospital I released the findings of a review of research undertaken by NSW Health on the physical and mental health risks associated with cannabis use. The research highlighted the extremely dangerous impact cannabis use can have. It showed that cannabis use can lead to psychosis, depression, anxiety, and increased suicide risk; detrimental effects on the cardiovascular, respiratory and immune systems; premature ageing of the brain, responsible for short-term memory; and slow brain development at a young age.

Cannabis is the most widely used illicit drug in Australia. With the incidence of mental illness among cannabis users on the rise, it is now more important than ever to take action. Cannabis is also often part of a wider pattern of substance abuse, including cigarettes, alcohol and other drugs. Its long-term use can lead to both physical and psychological dependence. Indeed, the Premier raised the issue at the Council of Australian Governments meeting held in February. Cannabis is a dangerous drug that impacts on a user's physical and mental health.

The New South Wales Government has a comprehensive and co-ordinated response targeting cannabis use across the areas of prevention, education, treatment and law enforcement. We have provided more programs to turn lives around, help families, and give communities the resources to tackle the drug problem. Since the 1999 Drug Summit, the Government has allocated more than \$434 million in additional funds for drug programs. For example, we have initiated a comprehensive youth anti-cannabis campaign aimed at helping to stop young people using cannabis. We have introduced an early intervention counselling program for students with cannabis problems, and trained teachers. We have funded new resources for teaching about cannabis, and on drugs and alcohol in a multicultural setting. We have introduced a range of new legislation to provide police and the courts with greater powers to tackle drug crime, including new powers with regard to drug premises, cannabis houses, manufacture and street dealing.

Psychiatric emergency care centres have been established at Nepean, Liverpool and St Vincent's hospitals, to service those with co-occurring mental health and drug and alcohol problems. Additional centres will be established in five regional and metropolitan centres across the State later this year. A 24-hour telephone help service, the Alcohol and Drug Information Service, provides advice, counselling and treatment referral by trained drug and alcohol workers. The message is clear: Anyone who thinks cannabis is a soft drug should come to visit a psychiatric unit to see its devastating effect. The New South Wales Government has a comprehensive and co-ordinated response targeting cannabis use across the areas of prevention, education, treatment and law enforcement. [*Time expired.*]

#### **DEATH OF MS DIANNE BRIMBLE**

**Reverend the Hon. FRED NILE:** I ask the Minister for Roads, representing the Minister for Police, a question without notice. With regard to the brutal death of Dianne Brimble, have some serious issues been raised by the Coroner in relation to the handling of the case? Has the New South Wales Commissioner of Police been subpoenaed for more information on the Adelaide men associated with the case? Is it a fact that NSW Police has yet to produce the required information but has stated that it is working with the Deputy Coroner "in relation to those documents"? Can the Minister clarify in what capacity NSW Police is working with the Deputy Coroner? Will the Government ensure that the Minister and NSW Police take every action possible to assist the Deputy Coroner, Jacqueline Milledge, in her investigation?

**The Hon. ERIC ROOZENDAAL:** I thank Reverend the Hon. Fred Nile for his question and will refer it to the Minister for Police for a response.

#### **THE CENTRE, BANKSTOWN**

**The Hon. JOHN RYAN:** My question is addressed to the Minister for Disability Services. Can the Minister update the House about the outcomes of the departmental review into the agency called The Centre, which operates in the Bankstown area, formerly known as the Bankstown Handicapped Children's Centre? Was the Chief Executive of The Centre recently found guilty of uttering a false document, and was the Chief Executive placed on a good behaviour bond because of this conviction? Is the Minister aware that the Australian Services Union has recently published a bulletin making adverse comments about The Centre's inability to pay its employees on time? Has the Minister or the department requested The Centre to complete a financial acquittal recently, and is the Minister concerned about The Centre's ongoing financial viability? Does the Minister have confidence in the current management of The Centre?

**The Hon. JOHN DELLA BOSCA:** As the Hon. John Ryan is well and truly aware, the matters he has raised have been the subject of some public comment by both him and, on previous occasions, me. In fact, we discussed this matter in the House on a number of occasions some months ago. In relation to the specific matters raised in his question, the appropriate way for me to deal with them, given the gravity of the matters he has drawn to my attention, is to take them on notice and obtain an answer as soon as practicable. In a general sense, I am aware of a considerable number of complaints by various parties regarding the organisation known as The Centre. As I said, as to the balance of the honourable member's question I will obtain an answer as soon as practicable.

### **DISABILITY SERVICES FOR YOUNG PEOPLE**

**The Hon. AMANDA FAZIO:** My question is directed to the Minister for Disability Services. Will the Minister outline recent initiatives the Government has introduced to assist children and young people with a disability and their families?

**The Hon. JOHN DELLA BOSCA:** This financial year the Department of Ageing, Disability and Home Care will implement four new services to assist children and young people with a disability and their families. They are practical solutions to assist families who need our help. The first of these initiatives is the introduction of 15 intensive family support services. These are short, intensive, flexible in-home services. They assist families of children with a disability at risk of family breakdown to address their immediate situation and develop sustainable routines and supports. The service works closely with families under severe stress to assist them to achieve what they need to safely care for their child and family. As part of the development of these new services, three services will be specifically established for Aboriginal communities.

Secondly, 20 casework consultants for children and young people are currently being recruited. This will improve the quality of services provided to children and young people. The role of these caseworkers will be to work with other caseworkers and front-line staff who are working with children and young people with a disability to ensure that their practice is in line with the Living in the Community: Putting Children First policy and the Children's Standards in Action guidelines. The caseworkers will work across all the department's regions, and will work on improving the responsiveness of services in specialist areas, such as children from Aboriginal and culturally and linguistically diverse communities. The casework consultants will also work with community groups and other government and non-government agencies to develop and implement projects relating to the provision of services for children and young people.

A new Family Assistance Fund will provide small amounts of discretionary funding to assist families to buy services and equipment that cannot be accessed in other ways. This will make a long-term difference to families in caring for their children with a disability. Finally, the Leaving Care Program will assist young people with a disability who are leaving the long-term care of the Minister for Community Services. These initiatives were made possible by the Government's commitment of an additional \$30.6 million over four years to benefit children and young people with a disability and their families. A further \$7.5 million has been allocated to assist young people leaving care. The Government is in touch with families and people with disabilities and we are endeavouring to provide improved access to services to meet their needs. For the benefit of the giggling Gerties on the other side of the Chamber: it is not cash.

### **MINE SAFETY REVIEW**

**Ms LEE RHIANNON:** I direct my question to the Minister for Mineral Resources. Considering the Wran Mine Safety Review was received by the Minister's predecessor more than a year ago, how many of the review's 32 recommendations have been implemented, and when will the recommendations that have not been implemented be adopted? Why has it taken more than one year for the Government to act on those recommendations?

**The Hon. IAN MACDONALD:** The honourable member is quite right: the Wran report had about 32 recommendations. I have already implemented a number of them. If members look through the report they will see that the issue of the mine safety levy has been addressed, and the recommendation in relation to an advisory council is in train to be implemented. I had a meeting with one of the stakeholders recently concerning the appointment of a chairman. I met a number of people who were proposed as Chairs, and that appointment will be made very shortly. The advisory council, which is the major body, will then be put in place. We will also carry out the extra review that is being finalised at the moment. We have worked very closely on the recommendation in relation to the advisory council with the key stakeholders, including the Construction, Forestry, Mining and Energy Union, to reach conclusions on it.

The inquiry also dealt with enforcement policy and the processes to implement that policy. It carried out a review of the bonus payments and incentive schemes, and looked at improvements in databases and improvements in contractor management. We have been looking at these issues and they are very much on the agenda. In the end, all stakeholders endorsed the levy and it will greatly improve the mine safety regime in this State. Up until recently I have had discussions with the key stakeholders to find a candidate suitable to all sides in the debate. I think I have achieved that now and I will be taking that to Cabinet.

**Ms LEE RHIANNON:** I ask the Minister a supplementary question. Will the Minister tell us which recommendations have been adopted and which recommendations have not been adopted?

**The Hon. IAN MACDONALD:** I will take that on notice and give the member the details in due course.

#### **CAMDEN BYPASS AND CAMDEN VALLEY WAY LINK ROAD**

**The Hon. GREG PEARCE:** My question is directed to the Minister for Roads. Is the Minister aware of the importance of the proposed link road between the Camden Bypass and Camden Valley Way in the Elderslie development in south-western Sydney? Is the Minister aware that the link road, to be known as Liz Kernohan Drive, is an essential component of the development, which is a prelude to the development proposed by the Government through its metropolitan strategy? Is the Minister also aware that the development has currently stalled because of the failure of the Roads and Traffic Authority [RTA] to make a determination of the access between Liz Kernohan Drive and the Camden Bypass and to provide the funding required for the upgrade of the Camden Bypass? When will the RTA resolve this matter and when will the funding be provided?

**The PRESIDENT:** Order! There is far too much noise. I cannot hear a word that is being said. The Minister has the call.

**The Hon. ERIC ROOZENDAAL:** I thank the Hon. Greg Pearce for his question on this very important matter. Unfortunately, it was a bit hard to hear the honourable member because there was so much noise coming from the Opposition benches. I believe it is such an important question that I will take it on notice so I can come back with a comprehensive reply. It is an important issue and I want to make sure that we get it clearly explained. I will come back with a comprehensive explanation.

**The PRESIDENT:** Order! I call the Leader of the Opposition to order for the first time.

#### **FRANK BAXTER JUVENILE JUSTICE CENTRE PROGRAMS**

**The Hon. PENNY SHARPE:** My question is directed to the Minister for Juvenile Justice. What information can the Minister provide to the House about programs at the Frank Baxter Juvenile Justice Centre that are helping young offenders lead more positive lives?

**The Hon. TONY KELLY:** I am pleased to inform members of the House that the Frank Baxter Juvenile Justice Centre has started a new program that will give young detainees the inspiration and support to follow their sporting dreams. The centre has joined with Country Rugby League [CRL] to establish and operate a football academy for selected detainees who show an interest in pursuing a career in rugby league. The academy will advance detainees' skills in the game as well as provide professional guidance. While physical training is a big part of this program, participants will also attend lessons on sports psychology, nutrition, drugs in sport, and movement.

The Baxter program is an extension of the already established CRL academy, which runs programs for talented 15 to 17-year-olds. The first academy training day was held at Baxter recently and coaching staff were impressed with the detainees' level of competency, enthusiasm and talent. The program is giving them a rare opportunity to excel in football and is promoting team participation, good health, and a sense of achievement. It is hoped that participants will now have the inspiration to pursue their football ambitions when they leave the centre. The Frank Baxter Centre and County Rugby League deserve high praise for their enterprise and for helping young people who may not otherwise have had an opportunity to succeed.

In addition to the visit by the Country Rugby League Academy, representatives of Bulldogs first grade football club, Sonny Bill Williams and Mark O'Meley, recently visited the centre to support the Pacific Islanders cultural day. Visits from high-profile sportspeople such as Sonny Bill and Mark will hopefully give these young offenders inspiration to achieve great things. These sorts of programs are very positive for both the guests and the detainees.

Honourable members would recall that last year I told Parliament of a successful Aboriginal Role Model Day held at the Cobham Juvenile Justice Centre. It drew National Rugby League players Preston Campbell, Nathan Merritt and Joe Williams, as well as boxing champion Anthony Mundine. Many of these 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. An effective way of accomplishing this is to invite achievers in all fields to impart their knowledge and inspiration to these young people.

Last week I had the pleasure of launching the 2006 Life Skills Program at the Keelong Juvenile Justice Centre at Wollongong. Life Skills is a partnership between the centre and the Anglican Church. Through this program, in the past five years church members have invested much time and effort to reach out in a meaningful way to the troubled young people who are held there. Church-organised visitors to the centre concentrate on sports and outdoor activities. The program has also supported visits of high-profile sportsmen and given practical assistance such as a homework support group. Wollongong Hawk basketballer John Philip joined us at the launch, showing his wares on the basketball court. The State Government recognises the importance of role models in helping to instil hope, discipline, respect and responsibility in young offenders.

### PORT MACQUARIE RADIATION ONCOLOGY UNIT

**The Hon. JOHN TINGLE:** My question without notice is addressed to the Minister for Health. Is the Minister aware of media reports that the Port Macquarie community will be asked to contribute more than \$800,000 towards the cost of machinery for the integrated radiation oncology unit due to be opened at Port Macquarie next year? Are these reports true? Does this mean that the oncology unit will not be fully funded by the Government? If so, what will be funded by the proposed community contribution?

**The Hon. JOHN HATZISTERGOS:** I am not aware of the reports that the honourable member has referred to, so I will get some advice in relation to that. Last week I visited both Port Macquarie and Coffs Harbour.

**The Hon. Melinda Pavey:** On Friday.

**The Hon. JOHN HATZISTERGOS:** Yes, it was actually, and I was disappointed that the Hon. Melinda Pavey did not come out to greet me, notwithstanding all the media attention that my visit managed to get. I would have thought that she would have dropped whatever it was she was doing and flocked to my press conference. However, I have been insulted by professionals! Just last week I announced that Reed Construction Australia had been awarded the contract to build the centre—a \$39 million project for two centres at Port Macquarie and Coffs Harbour, including radiation oncology, medical oncology and BreastScreen facilities on networked sites on the mid North Coast.

**The PRESIDENT:** Order! I call the Leader of the Opposition to order for the second time.

**The Hon. JOHN HATZISTERGOS:** The project will employ 64 extra staff divided equally amongst the two sites. The networked North Coast Cancer Institute will treat about 825 people per year with radiotherapy, with an average of 19 treatments per patient—about 15,700 treatments will be delivered from 2007-08. This will dramatically improve cancer treatment services for the people of Port Macquarie and Coffs Harbour. Equipment plans for the first stage of the institute, which will be fully funded by the Government, includes the linear accelerator, treatment planning, patient information and image management, CT scanner, radiotherapy equipment, breast screening equipment, and general equipment and information technology equipment.

**The Hon. Melinda Pavey:** You did have an answer after all.

**The Hon. JOHN HATZISTERGOS:** No, the Hon. John Tingle asked me about a reported \$800,000 worth of community funding, of which I do not have any details. A second linear accelerator unit is planned at both sites, with a second machine to be added at each centre as required.

### POLICE WATER CANNON USE

**The Hon. CATHERINE CUSACK:** My question without notice is directed to the Minister for Justice, Minister for Juvenile Justice. What consultation was undertaken with the Minister in his role as Minister for

Justice, and Minister for Juvenile Justice regarding the potential use of a police water cannon to quell riots in prisons or detention centres? Has the Minister ruled the use of a water cannon in or out? Are there any circumstances in which he believes its use would be appropriate? If the answer is "yes" or "maybe", what are those circumstances? Is a working party addressing these urgent issues, and has the Minister entered into any memoranda of understanding with police?

**The Hon. TONY KELLY:** The use of water cannons is obviously relatively new policy. We are developing a protocol to enable Corrective Services officers to go into juvenile justice centres when needed, and Corrective Services does not have a water cannon.

### **BARWON-DARLING RIVER WATER AGREEMENT**

**The Hon. HENRY TSANG:** My question is addressed to the Minister for Natural Resources. Can the Minister please provide the House with information about yesterday's agreement between the State Labor Government and stakeholders in the Barwon-Darling region?

**The Hon. IAN MACDONALD:** Yesterday's agreement between the Iemma Labor Government and irrigators and other stakeholders on a cap strategy for the Barwon-Darling river system was an historic milestone for New South Wales. For the first time, all the major irrigation rivers in this State will comply with the Murray-Darling Basin cap on diversions, which was set by the Murray-Darling Ministerial Council in 1995. For some years now there has been uncertainty in the Barwon-Darling about how the cap strategy should be implemented in this region. This insecurity, combined with the most severe drought in our State's history, has had a crippling effect on local producers, who have been unable to plan effectively and confidently for the future. I am pleased to inform the House that this cloud of uncertainty has now been lifted. Following yesterday's agreement, a new cap management strategy will be introduced, which will provide a transparent, practical process for limiting water extraction levels along the Barwon-Darling river system.

**The Hon. Melinda Pavey:** What size will that be?

**The Hon. IAN MACDONALD:** I will deal with that in a second. The cap will be implemented from 1 July this year, with a nominal extraction limit of 173 gigalitres per year. However, after listening to the concerns of stakeholders the State Government has agreed to carry out an immediate review of the existing figures for the Barwon-Darling to gain a more accurate picture of flow levels and current extractions.

**The Hon. Melinda Pavey:** It is good that you have finally listened to the people.

**The Hon. IAN MACDONALD:** That is right. This Government listens to the concerns of people in the bush, unlike members opposite, who are completely out of touch with families and communities in the north-west of the State.

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

**The Hon. IAN MACDONALD:** Despite the noise they make, Opposition members are utterly incapable of developing coherent policies that actually address difficult problems. There has been broad agreement that a cap was necessary, but also that the information we had on the river system could be vastly improved. Honourable members should ask Coalition colleagues at the Federal level about whether they want a cap. As a result, new state-of-the-art meters will be installed right along the Barwon-Darling. These are ultrasonic metering systems.

**The Hon. Melinda Pavey:** Ultrasound?

**The Hon. IAN MACDONALD:** Ultrasonic, yes. This will help us gain more accurate data and recalibrate the model as required. I have announced also the immediate establishment of a special working group that will immediately begin reviewing the existing Barwon-Darling cap model and volume figures. This group includes an independent hydrologist, a nominee from the Mungindi-Menindee Advisory Council, and a representative from the Department of Natural Resources.

**The Hon. Rick Colless:** Who is that?

**The Hon. IAN MACDONALD:** I will announce that in due course. The final review will have to be accredited by the Murray-Darling Basin Commission, but at this stage we anticipate the long-term cap to be in

the range of 173 to 250 gegalitres. As part of the agreement, the distribution of the cap will be weighted towards active licences. It is not about making random decisions about water allocations but, rather, making sure that we have a fair and accurate picture of levels of extraction back in 1993-94.

This agreement will ensure that the people of Bourke are treated in exactly the same way as others in every other river system in New South Wales. It will also protect the rights of downstream users, by preventing excessive extraction levels and maintaining environmental flows for the long-term health of the river system. The Government is proud of its outstanding record in water reform, with New South Wales leading the way in meeting the objectives of both the national water initiative and the Living Murray agreement. Unlike The Nationals, we believe in working with our communities, including environmental groups, primary producers and industry, to achieve the best possible results for our rivers and our regions.

This agreement is yet another example that our approach is benefiting all stakeholders by limiting and properly managing water use, while ensuring our regional towns and cities will continue to prosper. It is a practical solution, reached after months of hard work between the Government and the various stakeholder groups. It has been warmly welcomed by the community, the Mayor of Bourke, Wayne O'Malley, the New South Wales Irrigators Council, and Ian Cole from the Mungindi-Menindee Advisory Council.

### ELDER ABUSE

**The Hon. Dr PETER WONG:** My question without notice is directed to the Minister for Ageing. Given recent discussion in the media about the merits of mandatory reporting for elder abuse, and given that half the Federal expert advisory committee is adamantly against mandatory reporting, will the Minister state the Government's policy in terms of whether people who fail to report crimes against the elderly to police should be treated as accessories after the fact or should be charged with harbouring a criminal and obstructing a police investigation?

**The Hon. JOHN DELLA BOSCA:** The ABC's *Lateline* program on 20 February ran a story on elder abuse in nursing homes. No doubt members of the Chamber have seen that program or, if not, they have heard about it. The program showed that there have been a number of cases of specific elder abuse, and contained allegations that elder abuse is much more widespread across a range of health and related facilities for older people. This has caused significant community reaction and discussion about introducing so-called mandatory reporting of abuse, to which the member's question referred. Obviously the New South Wales Government considers the abuse of older people to be a major issue of community concern wherever it occurs, whether in residential aged care or in private homes, as sometimes occurs.

With regard to residential aged care, the Commonwealth controls the quality of care and sets the standards for nursing homes across Australia, and is responsible for ensuring that older residents are safe, secure and free from abuse at all times. Physical and sexual assaults, whether they occur in a residential home or a private home, are criminal matters and should always be reported to the police. Elder abuse can take many forms. Financial and emotional abuse may be complicated by interdependencies within families, and difficulties are created when a person may have dementia and be losing the capacity to recall or to make his or her own decisions. In these situations action may be required through the Guardianship Tribunal, which is part of my administration, to ensure that the interests of older people are properly protected.

Since 1995 the New South Wales Government has had a cross-agency protocol in place to assist older people who are being subjected to abuse or older people whom a care agency or community member suspects may be being abused. This protocol includes NSW Police, NSW Health, and the Department of Ageing, Disability and Home Care. A wide range of community support agencies were trained in the use of the cross-agency protocol and the actions to take when an older person is being abused or where there are reasons to suspect cases of abuse. Recently the Department of Ageing, Disability and Home Care established a working group to review the effectiveness of the protocol.

We want to strengthen the ongoing training requirements of agency staff, especially frontline staff, who could come across elder abuse; re-examine the reporting requirements—I expect to have discussions about this with the Federal Minister, Santo Santoro, in the near future; co-ordinate a quick and appropriate response when an instance of abuse is reported; and ensure that agencies' training, policies and support initiatives are co-ordinated and consistent. This work will be completed by June 2006. As I said, we anticipate further developments. Honourable members need to be reminded—and I intend to remind the Federal Minister—that the issue of mandatory reporting itself will not be a solution. Indeed, it may lead to complications because of issues involving other forms of elder abuse, such as financial and emotional abuse and the complications of interdependencies within families.

**LANE COVE TUNNEL**

**The Hon. DAVID CLARKE:** My question without notice is directed to the Minister for Roads. Will the Minister be officiating at the opening of stage one of the Lane Cove tunnel, which is scheduled to occur in September this year?

**The Hon. ERIC ROOZENDAAL:** I am impressed that the honourable member has taken time out from his branch stacking tasks to craft a question on policy, for once. He already carries—

**The Hon. John Ryan:** Point of order: I am not sure where the Minister thinks he is, but the Legislative Council's standing orders prevent Ministers from debating questions and making smart-alec remarks such as the one the Minister for Roads just made. I ask you to bring the Minister to order.

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

**The Hon. ERIC ROOZENDAAL:** I am impressed by the Hon. John Ryan's defence of the branch stacking efforts of the Hon. David Clarke. I find that valiant in view of his preselection woes. In relation to the Lane Cove tunnel—

**The Hon. John Ryan:** Point of order: The question has been asked because we want an answer to it. The Minister is avoiding the answer by meandering through issues that are irrelevant. Will you call him to order again?

**The Hon. Amanda Fazio:** To the point of order: I believe you should rule against that point of order because the Hon. John Ryan has not established a point of order. He has made yet another puerile attempt to make debating points in the guise of points of order, which he does time and time again. I ask you not to uphold the point of order and allow the Minister to answer the question.

**The Hon. Dr Arthur Chesterfield-Evans:** Madam President—

**The PRESIDENT:** Is the Hon. Dr Arthur Chesterfield-Evans taking a point of order on the Hon. Amanda Fazio?

**The Hon. Dr Arthur Chesterfield-Evans:** No, I am speaking to the Hon. John Ryan's point of order.

**The PRESIDENT:** I have spoken previously about members leaping up before another member has finished speaking. Unless the member is taking a point of order on the Hon. Amanda Fazio, he must wait until the Hon. Amanda Fazio has finished and then he may speak to the point of order.

**The Hon. Dr Arthur Chesterfield-Evans:** I apologise, I thought the Hon. Amanda Fazio had concluded her point at the time I sought the call. With regard to the point of order, I put it to you that the Minister, in responding to the Hon. John Ryan, was inherently flaunting your ruling because he abused the member who took the point of order in exactly the same way as he abused the Hon. David Clarke. Effectively, it demeans the House when Ministers use answers to questions to abuse the members asking the questions, and that is against the standing orders. I believe the Hon. John Ryan's point of order should be upheld.

**The PRESIDENT:** Order! I uphold the point made by the Hon. Dr Arthur Chesterfield-Evans. The Minister must not abuse Opposition members, and if Ministers attempt to answer questions by merely abusing the Opposition, I will continue to rule them out of order.

**The Hon. ERIC ROOZENDAAL:** As honourable members would well know, the Lane Cove tunnel is proceeding very well. The operators have yet to set a date for the opening of the tunnel, and they have not invited me to the opening. Once they set the date for the opening I will be more than happy to attend. The Lane Cove tunnel is the missing link in the Sydney orbital system, and will join the M2 to the harbour crossings. For more than a decade the local community has campaigned for the tunnel as a vital piece of road infrastructure. I look forward to the opening of the Lane Cove tunnel, the expansion of the Gore Hill freeway, which is a key element of the project, and additional access by the Falcon Street ramps. This is yet another demonstration of the New South Wales Government's commitment to improving road infrastructure in this State. Completing the Sydney orbital system follows the success of the M7, which is another successful part of the Sydney orbital system, and demonstrates the Government's commitment to safe and efficient roads for the motorists and community of this State.

**The Hon. DAVID CLARKE:** I ask a supplementary question. Will the Minister expand on his answer in relation to stage one of the Lane Cove tunnel?

**The Hon. ERIC ROOZENDAAL:** The basis of the question is flawed. The operators and builders of the tunnel have not yet set a date for any opening of any aspect of it, as the honourable member well knows and as I said publicly only this week. In terms of the Lane Cove tunnel and the expansion of the Gore Hill freeway, I welcome the announcement by the operators this week of a one-month toll-free period. It is a good sign to the community that the Lane Cove tunnel operators are anticipating heavy use of the tunnel. They have certainly taken the right approach to integrating the Lane Cove tunnel into the community of New South Wales. As I said, the Lane Cove tunnel is the missing link in the Sydney orbital system and will greatly benefit the motorists and community of New South Wales. A number of prominent Liberals, such as Kerry Chikarovski and Peter Collins, have supported the Lane Cove tunnel since its inception, and the present member for Lane Cove has been an outspoken supporter of the tunnel. I look forward to the opening of the Lane Cove tunnel.

#### LOCAL COUNCILS INDUSTRIAL RELATIONS ARRANGEMENTS

**The Hon. KAYEE GRIFFIN:** My question is addressed to the Minister for Industrial relations. What measures has the Government taken to assist New South Wales councils with their industrial relations arrangements?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for her question and commend her for her ongoing interest in local government matters and industrial affairs. The Iemma Government has advised councils they should wait at least until the 1,388-page WorkChoices legislation has been tested in the High Court. We also think the 400 pages of complex regulations and 500 pages of explanatory notes should be properly examined. A system that relies on dismissal as its method of resolving disputes will not be effective when managing large work forces delivering essential services. I note that the Local Government and Shires Associations at its annual conference voted to oppose the Commonwealth's unbalanced WorkChoices package. Mind you, so did the 60 per cent of delegates to the Liberal Party's Federal Council meeting, not that it seemed to be able to stop this arrogant Commonwealth Government and its misguided Minister.

The Commonwealth's reliance upon the corporations powers of the Australian Constitution does not provide certainty as to which employers fall under the WorkChoices legislation. This uncertainty is of particular relevance to local government. Ultimately, the question will be a matter for the High Court to determine on an organisation-by-organisation basis. Any move to shift employees into the WorkChoices maze could be premature and expensive. Ratepayers and local communities need to have confidence that they are getting the best possible services and that local governments are using public funds wisely. Until the WorkChoices legislation has been constitutionally examined there can be no certainty as to whether it is legally valid. In the meantime, councils would be wise to remain with the Local Government (State) Award, which has for many decades provided them with certainty and continuity and a harmonious relationship with their employees.

Honourable members will be aware that the New South Wales Government is spearheading the States' High Court challenge to the Commonwealth's takeover, beginning on 4 May. This Government has already passed legislation to protect public sector nurses, ambulance officers, bus drivers and other front-line personnel. We have also expanded the powers of the New South Wales Industrial Relations Commission to enable employers and employees to continue to use its dispute settling powers. The Iemma Government is working hard to protect New South Wales' families—in stark contrast to the New South Wales Opposition, which has refused to stand up for New South Wales' families, front-line workers or small business. The WorkChoices legislation is an attack on the wages, conditions and living standards of Australians. It removes the safety net of the award system, it removes the independent umpire and it removes rights and entitlements that define the Australian concept of a fair go.

The New South Wales Government supports an industrial system that is based on the right of employers, unions and employees to make industrial arrangements without a Commonwealth government—or, for that matter, a State government—dictating what can and cannot be agreed upon; a fair minimum wage set by a truly independent tribunal, after a public hearing; an up-to-date and comprehensive safety net for all workers, preferably one written in plain English; an independent umpire with broad dispute-settling powers, including disputes about dismissal; and special protections for vulnerable workers, including protection from exploitative contracting arrangements. Media reports today show that the Federal Minister was forced to admit that employees can be dismissed under WorkChoices "if the boss doesn't like them", using kindergarten-style behaviour to deal with a modern problem. WorkChoices is not a fair system; it is a recipe for conflict, and for lower levels of productivity, lower wages and a disaster for New South Wales local government.

### SEX OFFENDERS PRISON SENTENCES

**The Hon. PETER BREEN:** My question without notice is directed to the Minister for Justice. Is the Minister aware that proposals to extend prison sentences of serious sex offenders contravenes the principle that prisoners should be released when their sentences have been served? Is the Minister also aware that the proposals lend themselves to retribution against particular offenders who have caused problems for the Department of Corrective Services? What safeguards does the Minister intend to put in place to ensure that the proposals to extend prison sentences of serious sex offenders will not be used unfairly to target prisoners who are doing their best to reform and rehabilitate themselves?

**The Hon. TONY KELLY:** This is a matter that the Government proposes to bring forward in a bill to be introduced in this House at a later date. The bill will provide for significant controls to protect people. The recommendation of the commissioner for an extension of either continuing detention orders or supervision orders will first come to me. If convinced, I will pass it on to the Attorney General. The Attorney General, of course, would have to be convinced of the need for continuing detention orders or extended supervision orders. The Attorney General would then apply to the Supreme Court, which will have very strict rules and will have to be sure that these offenders have a high risk of reoffending. There will be significant controls and there will also be appeal processes.

### DARLING RIVER WATER ALLOCATIONS

**The Hon. RICK COLLESS:** My question is directed to the Minister for Primary Industries, and Minister for Natural Resources. Following his announcement of a review of the extraction levels for the Darling River between Mungindi and Menindee, as called for by The Nationals, the industry and the national water initiative, what action will the Minister take to ensure that active water within the revised cap remains allocated to active licences? Will he consider buying back the remaining undeveloped and unused licences and reallocating those licences to licence holders who have developed their businesses and fully utilised their allocations in creating jobs and security for the irrigation communities along the river?

**The Hon. IAN MACDONALD:** The honourable member is obviously a bit wrong-footed by the fact that we have an agreement with stakeholders. As I have said before, we have a weighting of 2.25:1 in relation to the active licences. Trade will be open, and it is for businesses to determine what they will do in relation to their trade.

### NORTHERN TABLELANDS ROADS

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Roads. Will the Minister update the House with the latest information about roads in the State's Northern Tablelands?

**The Hon. ERIC ROOZENDAAL:** I thank the honourable member for his question and commend him for his ongoing interest in Country Labor matters. Last week I had the pleasure to officially open the Inverell to Yetman Road at Rocky Dam, north of Inverell. This road is the most direct route between Goondiwindi and Inverell and one on which the local community relies heavily. Approximately 92 kilometres long, it included a 23 kilometre section of unsealed road. Thanks to a special grant of \$2 million from the New South Wales Government, the road was fully sealed. The State Government provided the money to Inverell Council on the basis it would match the funds. This combined funding is a great example of State and local governments working together for the community.

The official opening was suggested to me by the honourable member for Northern Tablelands, Richard Torbay, a member of Parliament who works tirelessly for his constituents. Communities and towns that are separated by large distances rely upon roads—roads are central to their way of life—for communication and trade. I had the opportunity at the opening ceremony to meet those who will benefit the most from the upgrade of this road, people such as Gillian Taylor and her husband, Terry, who run Gillian's Olive Grove at Yetman. I must tell honourable members, they produce a very nice virgin olive oil there. Terry told the assembly how the newly resurfaced road made a tremendous difference to the cost of his business and travel times into Inverell.

People were happy with the way the New South Wales Government and their local member, Richard Torbay, had worked co-operatively with the local council to achieve such a successful outcome. I was told how proud the engineers and road workers who built the road were, believing it to be their best yet. Having driven along it myself I can see why. That day I met road workers Max Morris, Bob Watson, Terry Graham and

Angelo Putzulo, and engineers Richard Jane and Greg Moran, and I congratulate them on their efforts. I also extend my thanks and congratulations to the Mayor of Inverell Shire Council, Barry Johnson, and General Manager, Paul Henry. Incidentally, I stopped off at the pub in Graham on my way back from the ceremony for a refreshing soft drink.

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

**The Hon. ERIC ROOZENDAAL:** There I ran into the President of the New South Wales Live Stock and Bulk Carriers' Association, Robert Cavanagh, who was out on one of his runs. We had a good yarn. I wonder when the Hon. Richard Colless last had a drink at that hotel?

*[Interruption]*

He interjects right on schedule. This, of course, is the same Rick Colless who was campaign manager for the local Nationals candidate for the Northern Tablelands. And what do honourable members think The Nationals vote was in Inverell, the hometown of the Hon. Rick Colless?

**The Hon. Don Harwin:** Point of order: The excursion by the Minister for Roads into psephology is not relevant to the question that was asked. The Minister should be reminded to keep his answer relevant.

**The PRESIDENT:** Order! I confess that the subject of the question has escaped me for the moment. However, I am sure the comments by the Minister for Roads were not relevant. I remind the Minister that his answer must be relevant.

**The Hon. ERIC ROOZENDAAL:** The Nationals vote was 8.5 per cent at Inverell, the hometown of the Hon. Rick Colless. What a great campaigner! Mr Richard Torbay works tirelessly for his local community.

**The Hon. Dr Arthur Chesterfield-Evans:** Point of order: The Minister for Roads is flouting your ruling. The point of order taken by the Hon. Don Harwin related to the Minister's comments on psephology. The ruling was that the Minister's answer should be relevant to the question. He has returned to the subject of psephology and continued in the same vein. I ask that action be taken against him.

**The PRESIDENT:** Order! Psephology is not as offensive as abuse of the Opposition. The time allowed for the Minister for Roads to answer has expired.

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

**Questions without notice concluded.**

## **M5 EAST TUNNEL AIR POLLUTION**

### **Adjournment (Standing Order 201)**

**Debate resumed from an earlier hour.**

**The Hon. JOHN RYAN** [5.01 p.m.]: When he was Minister for Health, the Premier ignored the advice from his department because the Government had endured an enormous amount of public resistance and criticism about the M5 East tunnel and its failure to control the toxic fumes that built up within the tunnel. The last thing the Government wanted was to place at either end of the tunnel physical evidence that what it had been telling the public was rubbish and that it was necessary to warn motorists that the tunnel was a hazardous area and a danger to people's health. The Government did not want to admit that. Therefore, the advice it had been given by the Department of Health was dismissed for political reasons. The Government's dismissal of advice on public safety for political reasons is a disgraceful act and proves that the then Minister for Health is unfit to hold the office of Premier.

The Hon. Dr Arthur Chesterfield-Evans made the remarkable comment that the Opposition does not have a response to the tunnel issues. The Opposition has been on board all along in addressing air quality. We have supported and vigorously participated in every inquiry into the M5 East ventilation stack. We have a policy

to ventilate any road tunnels that are built by a future Coalition government and we will investigate the possibility of ventilating the M5 East tunnel. Residents Against Polluting Stacks is a fine organisation. I am sure I have attended as many of that organisation's evening meetings as has the Hon. Dr Arthur Chesterfield-Evans. I think I met him on numerous occasions at those meetings. This is not an issue on which one would make partisan political comment. The Opposition has supported the residents against the Government's position on the M5 East tunnel. [*Time expired.*]

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [5.03 p.m.]: In response to comments made by previous speakers, I begin by expressing my great disappointment with the level of debate so far. The Opposition has ignored all the real issues relating to the tunnel and the Sydney road system. The Opposition is in complete denial as to the benefits generated by the M5 East tunnel. It is a deliberate strategy by an Opposition that will say or do anything to win political votes. The M5 East tunnel is a great success. That success is demonstrated by the tens of thousands of vehicles, sometimes more than 100,000, that use the tunnel every day. People have voted with their wheels. They use it on a daily basis because it is a great benefit to motorists and the communities of this State. It is a great benefit in a number of ways, and it is worthwhile that I refer to those benefits. The Opposition has failed to explain the decrease in pollution and greenhouse gases as a result of motorists using the tunnel and not the surface roads. There has been a reduction in stop-start traffic on King Georges Road, Stoney Creek Road and Forest Road.

I can hear the yapping of Ms Lee Rhiannon, who has always been anti-car but in the next breath is anti-public transport when it suits her. The tunnel is a great success, as shown by the use of the tunnel by motorists. People have voted with their wheels. There is no question that the volume of traffic puts pressure on the tunnel and there is a haze in the tunnel. But it is a quantum leap to say, as did the Hon. Charlie Lynn, that there is haze in the tunnel, therefore we are poisoning motorists. That ridiculous claim, which is a complete and utter exaggeration, has been pursued by the Opposition and by other minority irrelevant parties who try to raise their profile by campaigning on populist issues. They know that not a single motorist who has been through the M5 East tunnel has had his or her health put in jeopardy. They will not say that the tunnel is monitored continuously, day in and day out, using very sophisticated monitoring equipment.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! I call the Hon. John Ryan to order.

**The Hon. ERIC ROOZENDAAL:** Not only is the tunnel monitored continuously, the ambient air outside the tunnel is monitored. It is another deliberate lie by the Opposition to misrepresent the operation of the tunnel. I am astounded that the Opposition would attack such a successful piece of infrastructure. The large volume of vehicles using the tunnel shows how successful it is. One of the major problems is the number of trucks that use the tunnel. Some of the trucks are very dirty. The growth in the New South Wales economy under this Government has generated increased traffic out of the airport and port precincts. Trucks are a particular problem because of the design of the tunnel and its ventilation system and the 8 per cent gradient in the tunnel.

The Hon. Melinda Pavey commented on pollution monitoring and the closure of the tunnel. Breakdowns, accidents and congestion occur and sometimes bank-ups can delay traffic. Traffic modulating strategies are in place to vary the traffic. Of paramount importance to the New South Wales Government is ensuring that motorists' health is never under threat. That is why we have continuous pollution monitoring. The standards in the tunnel are independently set, as the Opposition is well aware. The standards are not set by the New South Wales Government. The Opposition will not say that the standards are listed on the Roads and Traffic Authority web site and available to the public. The Opposition comes out with some great lines, but the information is all there in publicly available documents. The health review 2003 audit is on the Department of Health web site. There are no secrets. It is all out in the public domain.

As I have said publicly on a number of occasions, despite what the Hon. Melinda Pavey says, if motorists are driving into a tunnel with a bit of haze or sitting in heavy traffic, it is commonsense for them to wind up their windows. That seems to be a revelation to the Opposition. Sydney is an international city with major growth in vehicle registrations of more than 25 per cent in the past 10 years. What does one do in heavy traffic? One winds up the windows. I suspect that some members of the Opposition wind them down and take big breaths. It may improve their performance in this House. However, the average person who sees an emission haze will wind up the car windows. How hard is that? This is the great furphy of the Opposition's campaign to scare people.

**The Hon. John Ryan:** Some of these emissions are invisible.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! I call the Hon. John Ryan to order for the second time.

**The Hon. ERIC ROOZENDAAL:** It is all about scaring the people of Sydney and trying to convince them that it is some sort of death trap. The Hon. Charlie Lynn claimed that numerous people have suffered adverse health effects as a result of travelling through the tunnel.

**The Hon. Charlie Lynn:** They have.

**The Hon. ERIC ROOZENDAAL:** I challenge the honourable member to produce some of those cases. Where are they? They do not exist because he made them up. This is simply following on from the economic idiot who leads the Liberal Party in saying anything or doing anything to scare the voters of this State. The Opposition is a policy-free zone when it comes to any real action except when it comes to spend, spend, spend. It is worthwhile asking the Hon. John Ryan, the Hon. Charlie Lynn or the Hon. Melinda Pavey which country roads will not be funded after they sack the 29,000 front-line public servants they are committed to sacking. Which country roads will not be dealt with while they fund their \$1 billion proposal to filter all the tunnels? That is what is the Leader of the Opposition said.

The Hon. John Ryan should learn that there is a difference between ventilation and filtration. All the tunnels are already ventilated. He should at least get the basics right before he puts on theatrical performances in this place in an attempt to get his preselection in order. Everyone knows that the tunnel is continuously monitored. Everyone knows that independent standards have been set for the tunnel and that they are monitored. In the event that a risk emerges, traffic-calming measures are implemented to slow down the traffic or to channel vehicles into one lane to protect motorists' health at all times. This is the critical issue that honourable members should be aware of, not the Opposition's exaggeration or its attempts to scare the people of New South Wales.

Of course, the problem facing the Opposition is funding its \$22 billion worth of promises. To fund their filtration promises members of the Opposition would have to impose extra tolls. Perhaps they will adopt the Lane Cove council's secret plan, which is to impose a toll on the F3. That could well be the Liberal Party policy. Perhaps it plans to reimpose a toll on the M4 East. Is that what they are planning? That is where they are going. They have made promises that they know cannot be funded and they are fuelling public fears. It is a dishonest and misleading campaign, and it demonstrates why members opposite are not fit to govern this State, nor will they be in the future. Unfortunately, they are led by the honourable member for Vacluse, who is known as "Mr Say Anything, Promise Anything, Do Anything". He was described in the *Sydney Morning Herald* as an economic idiot only a couple of weeks ago. He promises everything and plans to tear up infrastructure contracts to gain a political advantage.

The public is well aware that the M5 East has a haze issue. They see it when they drive through it. I drove through it the other day and I was well aware of it. It takes only a bit of commonsense to wind up the car windows to avoid any threat to one's health. That is what everyone is saying. To argue that this is a matter of urgency is fraudulent, and members opposite know that. The real problem is that the Coalition has no roads policy. Members opposite are simply waiting with bated breath for the Lane Cove tunnel. They all supported its construction. In fact, the last two Leaders of the Opposition have supported it and publicly called for it. The honourable member for Lane Cove and the council also campaigned for it, and now they have suddenly changed their minds.

This Opposition will say anything or do anything to score a political point. Its problem is that the public is waking up to it. People are wondering how the Opposition will fund that \$22 billion worth of promises. I have heard not a word from the honourable member for Vacluse about how he will fund these projects. We know he cannot pay for the filtration of the tunnels without imposing tolls. I am sure that is the Liberal Party's secret plan. There is no question that Lane Cove council has demonstrated that is what it wants.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! I call the Hon. Melinda Pavey to order for the second time.

**The Hon. ERIC ROOZENDAAL:** Massive volumes of fresh air are drawn into the M5 East tunnel to ensure that the conditions of planning approval concerning tunnel air quality are always met. Vehicle fumes are substantially diluted before the bulk of the tunnel air is discharged from the stack. That is well known. The Opposition has attempted to mix the issues relating to the stack and filtering with the haze in the tunnel.

Coalition members know that they are very different issues. Not a single motorist has had his or her health put at risk by the M5 East tunnel because the independently set standards are continuously monitored. The Opposition is well aware of that. If members opposite were honest about it they would praise the tunnel as a great piece of infrastructure that is used by 100,000 vehicles a day. They do not do that because they represent the say-anything, do-anything Opposition. It says and does anything to try to win a cheap political point.

The M5 East is only one aspect of the Sydney road system. Of course, we also have the very successful M7, the M2 and the soon to be opened Lane Cove tunnel. The Lane Cove tunnel will complete the Sydney orbital road system, which will give Sydney a proper ring-road arrangement. That will be a great benefit to the community and motorists of Sydney and will encourage economic growth throughout the State. Unlike the Opposition, this Government has a plan to keep Sydney and the rest of the State moving. That is the big difference between this Government and the whingeing, whining Opposition that is already swimming in \$22 billion worth of unfunded promises. Those unfunded promises mean that if it were elected the Coalition would have to increase taxes and whack tolls on the M3 and the M5 East. That is what honourable members opposite would do. They are a completely dishonest, discredited Opposition.

*[Interruption]*

I note the Hon. John Ryan's interjection. Of course, he does not realise that the Opposition's plans with regard to filtration would cost almost \$1 billion. He has no way to fund that because he is dishonest. The Opposition would not be able fund it if it did not support Lane Cove council's plan to impose a toll on the F3. Or does the honourable member want to impose a toll on the M5 East? Is that his real plan? That is the sort of sinister plan he and the rest of the Coalition would implement to fund the \$22 billion worth of unfunded promises they have made to deliberately mislead the people of this State.

The M5 East is a very successful road project. I advise motorists anywhere that if they are in surface traffic and there are heavy emissions, or if they are in a tunnel, they should wind up their car windows. It is a commonsense way to ensure their health while in a vehicle. The M5 East does have a haze issue, and I will have more to say about that in the near future. These issues can be addressed. The Government is constantly examining ways to improve our roads and infrastructure.

**Ms SYLVIA HALE** [5.18 p.m.]: It is extraordinarily difficult to listen to such a farrago, a tissue of misrepresentation, spin, obfuscation and this avoidance of the points. We have heard from the Minister and Ms Fazio. They both want to blame the victims. Ms Fazio says, "Well, look, we offered them several stacks, but they wanted one." She ignores the extent of community opposition to all stacks, and particularly to the fact that the single stack was to be unfiltered. The Minister said that it is the motorists' fault because they do not wind up their car windows. It could not possibly be the Government's fault. That is tantamount to Marie Antoinette saying, "Let them eat cake." Talk about spin! The Minister talks about haze—

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio)**: Order! There are far too many interjections in the Chamber. I am having difficulty hearing the member with the call. If members persist with interjecting, I will continue to call them to order, and that may have some possible adverse consequences. I also remind Ms Sylvia Hale that if members are not interjecting it is not necessary for her to shout into the microphone.

**Ms SYLVIA HALE**: The Minister talks about haze. What a lovely phrase. Lethal nitrogen dioxides, benzene, carbon monoxide and carcinogenic particulate matter are all ignored; it is simply a question of haze.

**The Hon. John Ryan**: He should call it mist.

**Ms SYLVIA HALE**: I take on board the Hon. John Ryan's interjection that the Minister should call it mist. It would be yet another example of the spin that is characteristic of the Minister's reply. The Minister has the barefaced hide to suggest that not one person's health has been put at risk by using the tunnel. This totally ignores what the Department of Health has had to say about the matter, and the ongoing and extended nature of those concerns. As far back as July 2003, almost three years ago, the Department of Health wrote to the Roads and Traffic Authority [RTA] concerned about its in-tunnel studies of particulates and other pollution that motorists were experiencing in the tunnel.

In May 2004 Dr Greg Stewart sought information from the legal and legislative services branch of the Department of Health as to whether the provisions of the Public Health Act could be used to compel the RTA to comply with the requirement that warning notices be erected. The Department of Health was sufficiently

concerned about the matter that it sought legal advice. The advice received was that there were three possible avenues to explore, sections 5, 9 and 10 of the Public Health Act. The department was told that, for various reasons, sections 9 and 10 of the Public Health Act were the relevant sections. It was suggested that before the Department of Health issue notices to the RTA to comply with the requirements, the department use all possible avenues of persuasion.

What has happened? From 2003 until 2006 we are still waiting. It is not as though the evidence about what is happening in the tunnel has not been exposed consistently since that time. Indeed, in February 2005 the *Daily Telegraph* published a report referring to the fire risks, the problems with the maintenance of essential safety equipment, and the dangerous pollution in the tunnel. The Minister says, "Look, no-one suffers. And isn't the tunnel a good thing, because we have taken all the trucks and cars off the surrounding roads and we have put them into the tunnel." The suggestion is that, somehow, once the cars are in that tunnel they stop emitting polluting gases; they stop being a problem.

The real problems are faced by those who travel in the tunnel and those who live in the vicinity of the tunnel portal. When the management of the tunnel finds that carbon monoxide and other carcinogenic gases exceed the safety levels, what it does to control it, apart from slowing the traffic on occasions, is to vent the gases from the entrances and exits to the tunnel. So the people whose health is consistently affected by this venting from the portals are the poor souls who live near Arncliffe or Earlwood. In the meantime, those who live at Turrella, near the stack, get a consistent plume of unfiltered emissions from the stack, so they suffer all the time.

The Government says, "Well, it is so expensive to install filtration." It conveniently ignores the fact that it was advised to install filtration from the outset. There has been plenty of evidence—in Japan, Norway and other European countries—of the efficacy of filtration systems, but the Government has chosen to ignore it. It has ignored the evidence not only in relation to the M5 East but also in relation to the cross-city tunnel and the Lane Cove tunnel. As one honourable member said earlier, we are storing up for ourselves a whole series of claims for people who have been obliged to use the tunnel consistently and down the track could well find their health adversely affected. Indeed, I understand one of the television crews who used the tunnel on four occasions in one day noted the adverse effects on their breathing and eyes. It gave them headaches, and they became absolutely incensed at what was happening. The Government knows this; it is all on the record. The disastrous effect of the tunnel is well known to everyone.

The Minister says that the tunnel is monitored day in and day out. It is true that the monitoring of the external air is publicly available, that it appears on the appropriate web site. But no reading is available on the in-tunnel air quality; that is kept secret. It is kept secret for a very good reason: if it were made known, people would be alerted to the ongoing, dangerous and deadly nature of what is happening in the tunnel.

The Minister talks about what the Government is doing to deal with the problems of trucks on the road. He conceded that a large source of the problem was the trucks. This is the same Minister who advocated the expansion of Port Botany, an expansion that he knows full well, despite increasing some freight on rail, will result in a 60 per cent increase in trucks entering and leaving the Port Botany area, many of which will use the M5 East tunnel. It will be a disaster for more than 40 communities across Sydney, and it certainly will compound the problems of pollution in the Sydney Basin. To suggest that the solution is for people simply to wind up their windows—

**The Hon. John Ryan:** I am surprised he did not say "shut their eyes".

**Ms SYLVIA HALE:** —or shut their eyes, is an insult to everyone who knows that this is a critical problem. The Government needs to resolve the issue, rather than continue to bury its head in the sand in the hope that somehow it will go away. No wonder the Government is facing defeat at the next election. The people of this State can see what hypocrites Government members are on so many issues. It is not just the M5 East; it is the cross-city tunnel and the Lane Cove tunnel. If anything brings this Government undone, it would be its appalling roads policy. If there is any issue on which the Government deserves to be defeated, it is its roads policy. The Government's policy has been one of inducing more traffic onto the roads because it has failed to provide adequate, appropriate public transport and adequate rail transport. [*Time expired.*]

**Reverend the Hon. FRED NILE** [5.28 p.m.]: As honourable members know, I have had a great concern about the M5 East tunnel since its commencement. I have spoken regularly in the House about the tunnel. I have had regular meetings with members of the local residents committee, who have campaigned about

the tunnel and its pollution problems. Unfortunately, we were not warned that we would be debating this issue today. Therefore, I will make some brief comments in regard to the motion and the M5 East tunnel. I agree with the Minister for Roads, who said that the Coalition has moved this motion as a political measure to try to embarrass the Government. We accept that that is the role of the Opposition. However, the reality is that there is a serious health problem with the M5 East tunnel. That puts us in a difficult position. If we were to vote against the urgency motion, we would appear not to have any concern about health issues, which of course we do. We recognise that we will probably debate this motion all day and perhaps into the evening, depending on how many members wish to speak.

As honourable members know, I suffer from asthma so I am sensitive to any pollution. For example, I was affected by the pollution in the Chamber today when some people were smoking in the public gallery, which is just behind me. I had to move away from my seat because smoke has a rapid effect on my lungs. The Minister stated a couple of times in his response that no-one has been affected by pollution in the M5 East tunnel. I do not believe anyone can state that, because no-one knows. As we know, people can be exposed to pollution for a long time before evidence of harmful effects is made public. For example, it took up to 40 years for a number of men who were exposed to asbestos in their work finally to be diagnosed as having lung problems as a result of it.

The same situation applies to passive smoking. I refer to a recent hearing of the Select Committee on Tobacco Smoking in which two witnesses talked about being in a smoky environment for 20 years and then suffering from lung cancer. I hope and pray that in the future there are no compensation claims from people who regularly use the M5 East tunnel and who can relate their diagnosed health condition to the pollution in the tunnel. For example, a person who is asthmatic or who has other health problems may say that the condition has been aggravated by pollution in the tunnel. I have driven through the tunnel a number of times. However, for health reasons I decided not to use it any more. I have another way of getting from the South Coast to Parliament House by using the main roads. The Minister for Roads said, "It is only haze." It is fog; it is pollution. One can see it as one is driving through it.

The Minister was right when he said that people with commonsense would wind up their windows. I have always done that when approaching the tunnel, because I could see the pollution ahead. People who do not wind up the windows of their vehicles are fools. However, not all cars may be able to do that. People may drive with the roof of the car down, enjoying the sunshine, but then they drive into the tunnel and are suddenly in the haze. Motorbike riders, such as the Hon. Charlie Lynn, would be exposed to the haze. It may be difficult for drivers of older model cars to shut off the vents. I own a late-model Holden. I can just press a button and a little sign comes on indicating that the vents are closed—I hope they are closed. A lot of cars do not have that facility to guarantee that no pollution is entering the car while it is going through the tunnel. Ministerial cars might have that guarantee, older model cars do not.

I acknowledge that there has been a major planning problem with the roads in Sydney to cater for the increasing traffic. However, it should be noted that many years ago, going back maybe 50 or 60 years, previous governments—I assume Labor governments, as they were in government for 24 years—planned highways and freeways to the north, south and west, and those open roadways were reserved. I know that for a fact because the parents of my wife, the Hon. Elaine Nile, had a block of land that they had hoped to use for building, but it was confiscated by the government many, many years ago as part of the government's roadways. However, because of the Greens, the extremists and the environmentalists, the Government reversed the policy of using those roads and sold them off.

We are now in tunnel mode—there are tunnels everywhere: the M5 East tunnel, the cross-city tunnel, the Lane Cove tunnel—and they are seen to be a solution to all the traffic problems. I understand the Lane Cove tunnel, which has not yet opened, will have a traffic jam the day it is opened: it is too small and it does not have sufficient lanes. I understand that the developer offered to provide an extra lane, but the Government and the Roads and Traffic Authority rejected the proposal. The M5 East tunnel is also too small to meet traffic needs. An aboveground four-lane highway was needed. Such a road was originally planned and should have been proceeded with. Alternative measures, such as tunnels, will probably always have problems. Heavy trucks use the M5 East tunnel. Obviously, truck drivers want to get their vehicles from point A to point B, so they decide to use the tunnel. However, heavy trucks emit heavy fumes and pollution, which I believe was never anticipated by the designers of the tunnel or the ventilation system. The tunnel was never meant to cater for such heavy pollution. When the M5 East tunnel was getting under way we said that the Government was cutting corners by putting in a cheaper ventilation system; it was trying to save money.

It would have been far cheaper to install all the correct ventilation systems in the M5 East tunnel when it was being constructed. It is hard to put in ventilation systems and improve them after the tunnel is completed. However, that is what the Government will have to do now. It is not enough to say, "Just wind up your windows and close the vents." The Government will have to go back to the drawing board and say, "We must improve the tunnel environment and eliminate the pollution, both visible and invisible." Sadly, that will cost millions of dollars. At some point, the Government will have to indicate what it estimates that will cost. The problem has to be rectified. The only alternative is to ban heavy trucks from using the M5 East tunnel or to restrict the number of vehicles that use the tunnel. To a degree, the Government is already doing that by controlling the signs that affect the flow of traffic in the tunnel. Even more extreme measures may have to be introduced to make the tunnel a healthy thoroughfare rather than a pollution trap. [*Time expired.*]

**Ms LEE RHIANNON** [5.38 p.m.]: I support the comments of my colleague Ms Sylvia Hale. The Greens support this motion because the Lemma Government clearly has failed to protect the people of New South Wales from pollution in the M5 East tunnel. I have listened to Opposition members speak strongly in the debate. If their words are to have any meaning, they should commit to filtering the M5 East tunnel, not the stack. I look forward to hearing the Hon. Melinda Pavey reiterate that clearly in her reply. The Government will continue to be embarrassed in regard to pollution in the M5 East tunnel. It is a serious problem of its own making, because it has consistently refused to filtrate the tunnel, arguing that the ventilation system was adequate. We all know that is far from true. The project has been mismanaged. In addition to the resultant health consequences, there has been a financial impact. Secret Government documents reveal that Roads and Traffic Authority [RTA] mismanagement of the M5 East motorway has exposed the public to a \$14 million compensation claim due to a massive underestimation of the number of vehicles using the M5 East tunnel.

The tunnel operator, Baulderstone Hornibrook Bilfinger Berger, has claimed compensation for the increased tunnel operating costs because the RTA underestimated daily vehicle use by 23,000 cars. The secret documents reveal that the RTA's consultants, Evans and Peck, advised that Baulderstone Hornibrook Bilfinger Berger was justified in claiming compensation. This is a clear-cut bungle by the Government. The \$14 million compensation claim is actually for 2003-04, which suggests that there could be ongoing compensation claims. The claim covered unbudgeted costs for increased use of electricity and additional fans and monitors to handle the increase in emissions because of the increased traffic.

Other Government documents reveal that the RTA has asked the Department of Planning to allow it to release polluted air through the M5 East entrances in breach of its development consent. Again, this is clear proof of polluted air in the tunnel. Other documents reveal that the RTA is slowing traffic by using lower and variable speed limits and lane restrictions to reduce pollution. This is not a solution to air pollution or traffic congestion. A report prepared for the RTA by Sydney firm Holmes Air Sciences reveals that some motorists are stuck in the tunnel for 22 minutes. Over an entire day the average time spent inside the tunnel is 11 minutes in the evening peak and 4.3 minutes in the morning peak. It is worrying that people are exposed to this toxic air for so long. The Minister for Roads has failed miserably in his portfolio. He has followed his predecessors in misleading the public. Recently he stated that the M5 East is being monitored at all times and that standards are being met. A Department of Planning audit report released at the end of February states:

Monitoring the particulate matter known as PM10 and nitrous oxide bases in the M5 East tunnel has "at times been discontinuous and erroneous".

The matter could not be more clear-cut and the Minister for Roads should have known the contents of the audit report. The report also identified seven occasions on which polluted tunnel air was released at the tunnel entrances, which violates one of the conditions with which the tunnel is obliged to comply. The former Department of Infrastructure, Planning and Natural Resources [DIPNR] conducted a compliance audit of the M5 East tunnel air quality as a result of a 2000 parliamentary inquiry, which resulted from the hard work of Residents Against Polluting Stacks. I acknowledge their consistent work and I believe that this matter is being debated today because the group and the local community were alerted to the dangers of this project.

The report found that the RTA complied with 19 to 22 approval conditions relating to air quality. Other papers show that a 2003 NSW Health study found that pollution exposure from a single trip in the M5 East tunnel was high enough to trigger an asthma attack in sensitive individuals. Despite a request from NSW Health to the RTA that motorists should be made aware of the risks, three years later no action has been taken. The claim by the Minister for Roads that there have been no breaches of conditions may be technically correct but that is only because the conditions are so weak. And they are so weak because the Government and, unfortunately, the Coalition have allowed them to be watered down. NSW Health has attempted to set new standards but the RTA has resisted all the way. There is no environmental licence for the tunnel; only conditions

of approval that have proved unenforceable and enforced by DIPNR. Neither the EPA nor NSW Health has a regulatory role with the tunnel and recommendations that attempt to improve matters, such as having a health study, tunnel warning signs or better standards for in-tunnel pollution levels have been rejected by the RTA. DIPNR has been unwilling or unable to regulate.

Sydney's air in general, not just in the tunnel, is now a major health hazard because successive Coalition and Labor governments have prioritised big motorway projects over public transport upgrades. The only solution to this crisis is to cancel all motorway plans and put the money into public transport. Last summer NSW Health issued 14 health warnings because of dangerous levels of air pollution, which clearly were related to the massive increase in vehicle traffic. A report from the Government's metropolitan strategy reveals that the number of vehicles on our roads has increased by 60 per cent in 20 years.

The Iemma Government and the Coalition must stop backing projects such as the M4 East and the F6 motorway for the inner west and southern suburbs if we are to stem the air pollution problem. All parties should be united in seeking solutions. Coalition members have spoken about their commitment to public transport and cleaning up Sydney's air. If they are to be taken seriously, they need to withdraw support for motorways or, at least, motorway tunnel projects. I acknowledge that will be hard because the Liberal Party has been a strong backer of motorway projects. The Liberal Party built the M2 when Bruce Baird was the Minister for Roads. I understand that at the time Barry O'Farrell was a senior member of his staff and he drove that project to its completion.

**The Hon. Catherine Cusack:** There are no complaints about the M2.

**Ms LEE RHIANNON:** There soon could be. I refer also to the M4 East, which has always been Liberal Party policy. I understand that Mr Carr and Mr Scully were against the M4 East when in opposition, but when Labor came to office they chose to adopt it. Today the Coalition speaks passionately about these problems, but if it were to come to office it would be captured by the motorway lobby once again. This State must stop its addiction to motorways. This problem has arisen in part because the Liberal Party passed planning laws to allow future governments to drive through plans for new roads and tunnels that ignore community and health concerns. The New South Wales Government has unknowingly put public health at risk by failing to install top-class filtration equipment, monitor air quality and respond appropriately when dangers to health are identified in the M5 East tunnel. The Coalition needs to give its commitment to filtering the M5 East tunnel. I call on the Hon. Melinda Pavey to give an unequivocal commitment to filter the M5 East tunnel in her reply.

**The Hon. JAN BURNSWOODS** [5.48 p.m.]: I shall speak briefly about pollution in the M5 East tunnel. Like the Minister for Roads, I am puzzled at the Liberal Party getting a member of The Nationals to move the motion. Part of the answer may lie in the comments just made by the Hon. Lee Rhiannon. I might disagree with much of what she said, but she is spot-on when she said that if the Hon. Melinda Pavey, in moving the motion in place of government business, is fair dinkum rather than just making a lot of noise to cadge a bit of support here and there, in reply she will make a commitment to following through on some of things outlined by Coalition members during the debate. If members opposite think that filtration should be introduced, clearly they will add that to the \$22 million worth of promises they have already made in relation to next year's election. If they have any commitment to public transport then we look forward to them doing the same.

I wanted to speak on this motion mainly because, like a number of members in this House, I have been a member of various committees—mostly General Purpose Standing Committee No. 4 or General Purpose Standing Committee No. 5—that have conducted inquiries into tunnels. In addition to the inquiries conducted by those committees in previous Parliaments, there was also an inquiry into the northside storage tunnel in relation to sewerage. Oddly, many of the same witnesses came along and made similar speeches about gasses, et cetera, in relation to a tunnel designed to store sewerage. The witness I remember best is Mr Ray Kearney, who ended up hanging his hat on a quote from Leviticus, which I think from memory was that it was impossible to clean terracotta pots. That might have been of interest to the gardeners amongst us, but it told us a fair amount about the lack of logic of many of these people.

The difficulty—it happened time and again in the debate today with several speakers; I think Reverend the Hon. Fred Nile and Ms Lee Rhiannon did this—is the continual mixing up of the particulates issue with the gasses issue, and the ventilation issue with the filtration issue. For instance, when people talk about the absence of ventilation to deal with a haze issue and then confuse that with the absence of filtration in stacks, they are talking about two things that have literally no relationship to one another. As I said, I have been involved in three or four committee inquiries into this issue, and I have lost count of the number of times this matter has

come up in estimates hearings. Indeed, it came up once again about a week ago in the estimates hearing of General Purpose Standing Committee No. 4. As has happened time and again in this debate, people continually mix up the issue of gasses such as carbon monoxide with the issue of particulates, and that while ventilation may deal with one filtration it is necessary to deal with the other.

Studies of filtration systems around the world have shown that such systems do not deal adequately with the particulates they are designed to deal with, but, as I said, they have nothing to do with ventilation issues. Another thing that continues to come up in these debates is the utter confusion—this was clear in the latter part of Ms Lee Rhiannon's speech—about whether a tunnel somehow manufactures pollution of whatever kind that would not be there from the same number of cars being on the roads in any case. Again, this issue is used continually to raise scare campaigns. For instance, the health warnings that have been issued, certainly as long as I have been in Sydney, during summer in relation to air quality are issued for a variety of reasons. A large part of the warning is based on what comes from cars; some of it is based on what comes from industry and, indeed, various other kinds of gases, particularly human and bovine. The point is that pollution exists anyway. There is neither more of it, nor less of it, if it is in a tunnel.

Finally, I shall comment about consistency. Time and time again we hear these arguments about the M5 East. In all the committees I have been a member of for probably seven or eight years now, we have never heard a comment about the harbour tunnel and we hardly ever hear a comment about the Eastern Distributor, and we hear the picking and choosing of evidence relating to other States and countries, particularly Japan and Norway. I return to the point I made about Ray Kearney and his comments about the need for filtration in the northside storage tunnel, which stores stormwater after heavy rain. This debate has been predicated on the ability of the Opposition and certain crossbench members to engage continually in scare tactics. However, I am not sure whether they have done that because of a deliberate confusion or an absolute failure to understand some of the scientific issues we are dealing with.

We must learn to separate the issues of various gasses from the issues of particulates. We must separate ventilation issues from filtration issues. Overwhelmingly, we must learn to address the problems of motor vehicles on Sydney roads, or indeed roads anywhere else, as distinct from motor vehicles in tunnels. These motor vehicles are spewing out the same amount of unhealthy things—although what motor vehicles using unleaded petrol and so on spew out is much less unhealthy. Nevertheless, it is the cars and the trucks themselves; it is not the fact that they are in tunnels. Once again I appeal to honourable members not to listen to scare tactics. As I said, I strongly agree with Ms Lee Rhiannon. If the Opposition believes what the Hon. Melinda Pavey said about this urban tunnel, in her reply she should tell us what the Opposition will commit to do about it.

**The Hon. PETER BREEN** [5.56 p.m.]: Originally I did not support urgency for this motion on the basis that the government business that was intended to be debated today was more important. However, that is not to say that I do not think the M5 East tunnel is not important also. I think it is an important issue, and I have been involved since before the tunnel was built. The Hon. Dr Arthur Chesterfield-Evans suggested that the Opposition and the Hon. John Ryan were latecomers to the debate. That is simply not true. The Hon. John Ryan attended all the meetings that I attended at the Earlwood RSL club. He has always been an active supporter of the Residents Against Polluting Stacks lobby group, and he and the Opposition have consistently argued for both ventilation of the fumes inside the tunnel and filtration of the emission stack.

There are two separate issues relating to the air quality in the tunnel and the emission stack. Honourable members will recall that originally the tunnel was designed with three emission stacks. For political reasons, three emission stacks became one emission stack, and it is the one emission stack which concentrates all the pollutants at one point at Turrella that is the problem. For the Hon. Jan Burnswoods to suggest that we are somehow confusing the two issues is misleading because concentrating the pollution into one stack has always been a problem for residents who live in the proximity of Turrella and Earlwood. Those residents have consistently demonstrated that there is a problem. It is a health problem; the pollution is causing adverse effects for the residents and their children. In my opinion, it is only a question of time before they prove conclusively that their health is suffering as a result of the concentration of pollutants in one emission stack.

I recall that when the M5 East was opened the Minister at the time, Carl Scully, assured everyone that the monitoring equipment was set up in such a way as to protect people from the adverse effects of pollution from the emission stack. The monitoring system was built and, almost immediately, its deficiencies became apparent. So much so that the Minister negotiated with the various lobby groups and provided \$100,000 to enable the community groups to be actively involved in the monitoring. Their involvement has demonstrated time and again that there are exceedences, both at the portals—which is outside the terms of the approval for the development—and at the emission stack.

I take this opportunity to mention a couple of matters raised by the Minister for Roads. He assured us that the tunnel is a great success because as many as 100,000 motorists use it each day. He spoke about the stop-start on alternative routes, but he cannot ignore the fact that there is stop-start in the tunnel, and that is the problem; that is the reason that the pollutants are being concentrated, both inside and outside the tunnel. The 100,000 cars is well above what was originally anticipated. I recall that when the project was under construction there was a proposal from the developer to install two extra lanes each way. At that time the cost was comparatively small, given the overall cost of the tunnel, but the Minister rejected that proposal.

The Minister also rejected a proposal that was put to him by the Residents Against Polluting Stacks [RAPS], the Hon. Richard Jones and me: that the cost of filtering the tunnel was much less than the Minister's estimate and the advice that he had received from the Roads and Traffic Authority [RTA]. We were able to demonstrate that the cost of filtering the tunnel at that time was \$8.5 million. I was staggered to hear the Minister say here today that the cost of filtering the tunnel is now \$1 billion. I can only assume that he is referring not just to the M5 East, but also to the Lane Cove and cross-city tunnels. The difference between those tunnels and the M5 East is very simply their lengths. The M5 East is four kilometres long, whereas the other tunnels by comparison do not take the same number of cars and therefore do not generate the same level of pollutants.

There are also other outlets; there are emissions from more than one stack. To suggest, as the Hon. Jan Burnswoods did, that the problem of the M5 East should be repeated elsewhere if it is really a problem is a flawed argument. The Minister also suggested that small parties and individuals who raise the issues of infrastructure, particularly in relation to the M5 East, do it for some base political purpose. That is just not true. What happens is that small lobby groups and community groups are completely ignored by the Government and by the Opposition. On this occasion the Opposition has been supportive of the lobby groups, but in respect of many issues community groups are completely ignored by the major parties and it is left to small parties and Independents to vocalise those issues in the Parliament and to act as a point of reference for people in the community who want to bring their issues to the Parliament. Unless they can do that through the activities of small or minor parties, they are excluded from the debate.

I reject out of hand the Minister's suggestion that this or any other issue involving small community lobby groups is advanced for political purposes. They are advanced in order to enable the arguments to be heard and to enable the people in the community to have their issues properly ventilated. The Minister followed the Hon. Jan Burnswoods' line and suggested that because there was a difference between ventilation and filtration somehow we were misguided in our argument about one and not the other. To my mind this issue of ventilation versus filtration is a furphy. Ventilation means simply pumping air into the tunnel. That happens already. The overhead fans do that.

**The Hon. Melinda Pavey:** They need more air.

**The Hon. PETER BREEN:** As the honourable member pointed out, they need more air to properly ventilate the tunnel. If the tunnel were properly ventilated, there would be no haze. It is very simple. On the other issue, that of pollution, if there were filtration in the emission stack there would not be this problem of emissions being belched out into the areas of Turella, Earlwood and other places in the vicinity of the tunnel. The cost of filtering the tunnel today is, I understand, of the order of \$20 million or \$25 million based on the fact that when the tunnel was built provision was made to retrofit filtration if it became necessary.

The point I make is, how far do we have to go down this track of causing great pollution for those who live in the vicinity of the tunnel without coming to the realisation that it is necessary to filter the tunnel and to take advantage of the design and the way the tunnel was built to install filtration equipment? I suspect that the longer it is delayed, the more expensive it will become. If Carl Scully had done it when he promised to do it, it would have cost \$8.5 million. I remain annoyed by the fact that Carl Scully promised to install filtration equipment if Richard Jones and I could demonstrate that it would cost \$8.5 million. Richard Jones went to Norway and obtained extensive quotes and had plans designed, and he demonstrated comprehensively to the Minister that it could be done for \$8.5 million. The Minister simply rejected all proposals and said, "That was then. This is now. We will not be installing filtration equipment."

Well, the Government is using the same argument in respect of the Lane Cove tunnel and it seems to me that at some point down the track there will be a large demand for compensation by people in the community who can demonstrate conclusively that their health has been adversely affected as a result of the concentration of pollutants caused by these tunnels. The sooner the Government comes to realise that this is a potential

nightmare for it, the sooner, hopefully, it will begin to think about pumping more air into the tunnel firstly to clear the haze, and, secondly, to install filtration in the emission stack—emission stacks, in the case of the Lane Cove tunnel—to ensure that no pollutants in excess of the level of pollution that already exists escape into the atmosphere. I ask honourable members on that basis to support the motion and to support the principle that something needs to be done about the M5 East tunnel.

**Reverend the Hon. Dr GORDON MOYES** [6.06 p.m.]: I speak on behalf of the Christian Democratic Party to this important motion that the Iemma Government has failed to protect the people of New South Wales from pollution in the M5 East tunnel. Ventilation is simply a recirculation of air, and what we really need in respect of these tunnels is not ventilation but elimination of the pollution and the particulates. We have been concerned about the long-running refusal of State Governments to safeguard the health of its citizens near the emission stacks of the M5 East tunnel, and the unwillingness of the former Minister for Roads, Carl Scully, to guarantee proper health investigations and to assure Lane Cove residents that there will be proper filtration in the Lane Cove tunnel.

My esteemed leader, Reverend the Hon. Fred Nile, outlined a number of important points to indicate how, over the years, we have sought to support the citizens in these areas of New South Wales. However, the Government seemed to go very quiet on the report by NSW Health into the health symptoms of citizens living near the exit stacks on the M5 East tunnel. Honourable members may recall that I directed a series of questions over a period of time to the Special Minister of State, representing the then Minister for Health, Morris Iemma, who is now Premier of this State. One of those questions stated in part:

Is the Minister aware of a recent four-week study carried out by NSW Health into the potential health risks of the M5 East stack that claims to show no evidence of an association between the prevalence of eye, nose and throat symptoms and modelled emissions from the stack?

I sought to get the Minister to explain why there was an increase in the incidence of itchy eyes and runny noses, coughs and asthma among residents living near the M5 East stack since the opening of the M5 East tunnel. The Minister was very evasive in his responses. I asked similar questions on notice and the Minister replied:

The Department of Health advises that the pollutant impacts of M5 East tunnel exhaust stack emissions were modelled during the assessment of the M5 East Motorway. Modelling was undertaken by consultants to the Roads and Traffic Authority and the Department of Planning. Results from the modelling predicted that the level of pollutants, such as fine particles and nitrogen dioxide, would be less than national and World Health Organisation guidelines.

Based on the prediction that the emission levels would be below those known to have significant impacts, prospective health monitoring was considered to be unwarranted ...

I am reminded of an answer given by former Victorian Premier Sir Henry Bolte, who, when faced with a very serious pollution issue, replied publicly, "Don't worry about pollution. Pollution will all blow away." Fine particle pollution and the resultant impact on asthma and other respiratory diseases were a major feature of community concern, not only for those who live near the exiting stacks but also for the motorists who drove regularly through the tunnel. All honourable members have seen the resultant pollution within the tunnel. We can no longer accept that nothing will be done. With the opening shortly of the Lane Cove tunnel, we must re-emphasise the importance of the complete elimination of such health hazards.

Premier Iemma's response as the then Minister for Health revealed that results from the modelling predicted that the level of pollutants, such as fine particles and nitrous dioxide, would be less than national and world health organisation guidelines and that was sufficient for nothing to happen. We do not believe that is good enough. That is why we have continually raised this issue. We have also raised the cross-city tunnel and the need for an epidemiological study in order to understand the impact on the health of drivers, particularly taxi drivers and others who use the tunnel frequently during the day. It is not good enough to say that we now live with good standards and nothing needs to be done. I recall saying two years ago, "We are approaching Christmas and we are still waiting for significant health questions to be addressed." Well, we are now approaching Easter 2006 and the same health concerns have not yet been addressed. We join with the Opposition in its motion in condemning the Government on its failures.

**The Hon. Dr PETER WONG** [6.11 p.m.]: I congratulate the Hon. Melinda Pavey on her motion, which I support. As far back as 2002, perhaps earlier, honourable members raised concerns about the air quality in the M5 East tunnel. In September 2000 I introduced the Roads Amendment (M5 East Road Tunnel) Bill, which required the Roads and Traffic Authority to install and maintain air pollution filtration in the M5 East road tunnel, thereby removing particulate matter exiting the M5 East motorway tunnel. As previous speakers

have said, many parliamentary inquiries have been held on this matter. I will not go through all the issues, except to refer to some recent documents.

A letter from the Roads and Traffic Authority to the Department of Planning dated July 2002 discussed what could be done in incidents or emergencies, including in cases of degraded tunnel air quality. It stated that more severe cases would require on-ramps or lanes to be closed, and in the most extreme event the entire tunnel to be closed. The tunnel was not designed properly and is a health risk. Although it is difficult to prove, one could argue that the tunnel poses an immediate health risk. Obviously, pollution is a long-term health risk. No-one would suggest that pollution of this level is safe. If it were safe, the Government would not advise motorists to wind up their windows. But the Government knew the air quality in the tunnel was dangerous. In a report in July 2003 NSW Health advised motorists to wind up their windows and close car vents when driving through the tunnel. Despite repeated calls for such warnings to be posted at the tunnel entrances, the Roads and Traffic Authority has refused to do so. The Government has a public duty to put up signage to warn motorists, one, that they should not travel in the M5 East tunnel during peak hours and, two, if they do travel through the M5 East tunnel at this time they should wind up their windows. As the Hon. Peter Breen said earlier, the Government should spend money on improving ventilation and install filtration as soon as possible.

**Mr IAN COHEN** [6.15 p.m.]: I will speak very briefly on this matter because many members have already spoken. I did not intend to speak on the motion but I do so in support of other Green members and because of the importance of this issue to motorists who drive through the tunnel and the obvious pollution problems. Much has been said about the haze and the refusal by the Hon. Carl Scully when he was Minister for Transport to install filtration on the stacks, despite a great deal of lobbying by various members of the upper House, including the Greens. It is also important to acknowledge that Residents Against Polluting Stacks [RAPS] has done a fantastic job campaigning for many years. They have been respectful and resolute and have undertaken a strong and effective campaign. They deserve better treatment than they get.

Some families who live nearby the stacks are stuck in the area because of financial commitments to their family homes. It is a sad state of affairs, when we consider the health problems associated with the exhaust from the stack. The stack, which is located near Turrella, rises out of the greenery like an absurd caricature. It is a real misfortune for the people who live in the area. Air pollution problems are being regarded as far more important now than they have in the past. From personal experience, I am aware that the tunnel is highly polluted. I would not like to be stuck in a traffic jam in that tunnel under the present circumstances. For people who commute on a daily basis, the tunnel does not provide the through traffic option that it should.

As we have heard time and again, motorways and freeways induce traffic. Parts of the tunnel traffic are starting to become a bottleneck, with gridlocks occurring toward the city on the way to the airport. That situation will only get worse. The problem is that the Government has been poor in its reaction to providing proper public transport systems. The tunnel is causing major problems for people who live in the area. I feel for the residents who have to put up with poor quality air and the respiratory problems that are reflected in the family environment. The problems could have been avoided by adequate filtration systems being installed in this and other tunnels. It may be that the Opposition has moved this motion in part to agitate the Government in the lead-up to the elections next year. Parliament is all about members making contentious statements, and as long as such statements are made on important issues, so be it.

I say bring on the election, because this is one area in which the Government has miserably failed the local people, the people of Sydney and the environment in terms of proper transport infrastructure planning. As a result we have inadequate tunnels polluting traffic systems that impact massively on the local people. I am pleased this motion has been moved and I hope we have more of these types of discussions in the coming months.

**The Hon. MELINDA PAVEY** [6.21 p.m.], in reply: I thank all honourable members who have contributed to this important debate dealing with the unacceptable level of pollution in the M5 East tunnel. Anyone with an interest in public policy, as I do, would say that this public health problem is the result of politics being put ahead of good public policy. Ultimately, following strong public objection to a stack being located in people's backyards and because of fear that the seat of Rockdale would be lost to the Government, it was decided in secret that the stack would be relocated to an industrial area next to Turrella station. Any expert in road infrastructure engineering would confirm the Opposition's position. The Minister said that it was simply haze—another word for mist—that it was very inoffensive, and that it was not really a problem.

Anyone who has the capacity to log on to the NSW Health web site will find that it contains a report produced by the department in 2003. However, honourable members should remember that not everyone is able

to log on to the web site. Old people, people who do not have computers and the computer illiterate are denied access to information provided by NSW Health showing that the level of pollution in the tunnel is dangerous, particularly to asthmatics. I acknowledge the comments of Reverend the Hon. Fred Nile about that condition. Unless people have a driver and a computer with wireless capacity to enable them to access the web in a car they will not be able to read reports detailing the dangers involved in travelling through the M5 East tunnel. Of course, the Minister is probably one of about 17 people in New South Wales who could do that because he enjoys the privilege of a car and a driver.

Most significantly, today's debate has demonstrated that the Premier does not care about the health of people in this State. The Hon. John Ryan and I quoted a letter drafted for the Hon. Morris Iemma by his department. When we did so, the only contribution from the Hon. Eric Roozendaal, the Minister responsible—who, once again, is not present in the Chamber and who does not regard this issue seriously—was "Blah, blah, blah." The point is that the Premier did not sign off on the letter that referred to dangers to public health in the M5 East tunnel. The Minister's interjection in response to my referring to the letter was that it was only a draft. That is the Government's line and spin. The letter that details concerns about public health was produced by bureaucrats.

**The Hon. Catherine Cusack:** The experts.

**The Hon. MELINDA PAVEY:** Yes, the experts. The letter was based on advice from departmental officers who investigated the issue in a non-partisan way in 2003. They had a duty to provide the Minister with the best advice about the best practice. The Minister was given a letter by his department highlighting concerns about signs warning of air pollution in road tunnels. The basis of this urgency motion is that the Government ignored recommendations from General Purpose Standing Committee No. 5 in 2002 that signage should be erected in the tunnel.

**The Hon. Catherine Cusack:** It was a political decision.

**The Hon. MELINDA PAVEY:** It was a political decision made by the then Minister for Health, Morris Iemma, who is now the Premier, to completely ignore departmental advice that signs should be erected warning of the health dangers. The Minister was unable to respond to the issues raised by the Hon. Charlie Lynn about motorcyclists and people driving convertible cars. In fact, the Minister was not able to respond satisfactorily to any issue put to him today. All he could do was to talk about the importance of the M5 East tunnel as a piece of public infrastructure. No-one will argue that. However, one does not get a slap on the back and congratulations for building something that should have been built earlier and better with proper regard for public health.

I specifically asked the Minister about the air filter trial, but he obfuscated and ignored the question. It is relevant to him as the Minister for Roads, but he is clearly not fully across the brief on that issue. It is a familiar sight that right-wing Ministers of the Labor Party and the head office controlled Premier are unable to cope with the issues and responsibilities with which they have been entrusted. They are too busy playing politics to develop good public policy.

Minister Costa announced last March that the Government would spend \$20 million on an air filter trial in one of Sydney's tunnels. He did not say which tunnel. A couple of months later during the budget estimates hearings the new Minister, the Hon. Joe Tripodi, stated that \$500,000 of taxpayers' money had been spent on an air filter trial. He did not know which tunnel, but the Government had spent \$500,000 of taxpayers' money. That was all the information the Minister provided. He again declined to provide more information on that very important issue.

**The Hon. Catherine Cusack:** It is a cover-up.

**The Hon. MELINDA PAVEY:** It is a cover-up. All we have heard are the lousy claims and allegations that the Opposition will spend \$1 billion installing filters in all tunnels in New South Wales. That is the basis of Labor's scare campaign and it is an example of the type of politics played by the New South Wales Labor Right. I remind honourable members of the Hon. Charlie Lynn's point that the Labor Party won office in 1995 on the lie of the cash-back scheme on the M4 and the M5. The toll roads issue was important to the Hon. Peter Primrose. He was successful in moving a motion at the Labor Party conference condemning the Government for not honouring its commitment. It is the politics of lies that has created the problems we are now facing.

**The Hon. Peter Primrose:** Point of order: I am reluctant to stop this diatribe and interrupt the member, but as is so often the case she is misleading the House. While this motion was moved at an outside body by me, it was successfully taken up by the Government. The then Government—the Greiner-Fahey Government—simply introduced tolls on that road and offered nothing back. Residents such as the Hon. John Ryan, the Hon. Charlie Lynn and I, who regularly use that road and, indeed, who regularly use the tunnel, believe that we are now entitled to cash back. I think that is wonderful.

**The Hon. John Ryan:** This is not a point of order; it is a personal explanation.

**The Hon. Peter Primrose:** Is the suggestion from the honourable member that if the Opposition gains government it will actually abolish the cash-back scheme?

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! There is no point of order. The basis of a point of order cannot ever be that a member is misleading the House.

**The Hon. MELINDA PAVEY:** The issue is that there is a flaw in the argument of the Minister for Roads. There are a lot of flaws in the arguments regarding the protection of the people of New South Wales—

**The Hon. Jan Burnswoods:** Point of order: My point of order is that this speech is purporting to be a speech in reply. Ms Lee Rhiannon, in particular, and I urged the Hon. Melinda Pavey to place on record the Opposition's policy in relation to whether the Opposition plans to introduce pollution—

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! There is no point of order. The time for the Hon. Melinda Pavey to speak has expired.

**Pursuant to standing orders motion lapsed.**

## COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

### Membership

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** I report the receipt of the following message from the Legislative Assembly:

Madam PRESIDENT

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

That Malcolm John Kerr be appointed to serve on the Committee on the Independent Commission Against Corruption in place of Andrew Arnold Tink, discharged.

JOHN AQUILINA  
Speaker  
28 March 2006.

*[The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.31 p.m. The House resumed at 8.00 p.m.]*

## NORTHERN TABLELANDS ROADS

### Personal Explanation

**The Hon. RICK COLLESS, by leave:** During question time today Minister Roozendaal asked when was the last time I had a drink at the Graham Hotel. I have never had a drink at the Graham Hotel, principally because no such institution exists between Inverell and Goondiwindi. Nor is there a place called Graham between Inverell and Goondiwindi. If the Minister knew where he was in New South Wales, and if he had done his research, he would have known that the village he was in was Graman, not Graham.

I have had many drinks at the Graman Hotel over the years. While the people of Yetman, Wallangra and Graman are very grateful for the assistance with sealing the road, the Graman people would be most unhappy that the Minister failed to understand the name of their beautiful village, and the people of Yetman and Wallangra would be annoyed that he did not mention their communities in his answer.

I must also point out to the Minister that I was not the campaign manager for The Nationals in Northern Tablelands at the 2003 election. The Minister's statement to that effect is an outright lie and he should withdraw it. The final misconception in the Minister's answer was that The Nationals polled 8.5 per cent in Northern Tablelands at the last election. The Minister failed to provide the rest of the story; that is, that the Australian Labor Party polled just 4.74 per cent, of which just 2.6 per cent was polled in the booths in Inverell—

[*Interruption*]

**The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile):** Order! Leave has been withdrawn. The Hon. Rick Colless will resume his seat.

**The Hon. RICK COLLESS:**—and the ALP certainly has nothing to crow about in Northern Tablelands, having dropped to just 4.74 per cent in an electorate that was once held by Labor stalwart Bill McCarthy with about 45 per cent of the primary vote.

**The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile):** Order! The Hon. Rick Colless is in danger of being in contempt of the Chair.

#### **SMOKE-FREE ENVIRONMENT ACT: DISALLOWANCE OF SMOKE-FREE ENVIRONMENT AMENDMENT (ENCLOSED PLACES) REGULATION 2006**

**The PRESIDENT:** Pursuant to standing orders the question is: That the motion proceed as business of the House.

#### **Question agreed to.**

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.04 p.m.]:** I move:

That under section 41 of the Interpretation Act 1987, this House disallows the Smoke-free Environment Amendment (Enclosed Places) Regulation 2006 published in *Government Gazette* No. 19, dated 10 February 2006, page 763, and tabled in this House on 28 February 2006.

My motion disallows the Smoke-free Environment Amendment (Enclosed Places) Regulation 2006 published in *Government Gazette* No. 19, dated 10 February 2006, page 763, tabled on 28 February 2006. The regulation will allow smoking well past 1 July 2007 in fake outdoor rooms in pubs and clubs throughout the State of New South Wales. Verandas, balconies and covered beer gardens will be the new smoking meccas. The regulation definition to allow areas almost 75 per cent enclosed to be defined as not enclosed—which will allow smoking to continue—will fail to protect workers or patrons, including gamblers, from the well-known, seriously harmful effects of second-hand smoke.

Not one shred of evidence has been produced by the Government, the Australian Hotels Association [AHA] or clubs to show that the levels of smoke in these areas will not be harmful. Indeed, I believe that is because no such evidence exists. Tobacco smoke is harmful. On a dose response curve, the more you get, the more harmful it is; there is no safe dose. The Government, the AHA and the clubs have not even attempted to prove that the dose is lower in these areas. A smoke-free area policy should be clear, unambiguous and uncomplicated. No smoking indoors should mean no smoking indoors.

The regulation as it is will create inconsistency between the Occupational Health and Safety Act and these regulations. It will also create a complicated, confusing and unenforceable set of exemptions depending on complex calculations of wall and ceiling areas, and ratios. It will deny the public what it wants and expects: pubs and clubs to be totally smoke-free indoors, with people who want to smoke having to go outside, as they do in all other workplaces. It will betray New South Wales workers, who have already made considerable compromises, at risk to their health, to work with the long deadline, July 2007, which is conveniently after the election. The regulation will increase the likelihood of expensive legal actions by hospitality employees and patrons harmed by second-hand smoke in workplaces. It will encourage the hotel and club industry to build varying forms of pergolas and structures that all have the aim of making outdoor areas more indoor.

Once pubs and clubs have spent money under this regulation, they will then lobby any government that encouraged this spending so that no area under the new structure can be reclassified as outdoors, and the Labor and Liberal governments will cave in as usual for another decade or so. The regulation will undermine the Occupational Health and Safety Act 2000, which places an absolute legal duty on employers to keep workplaces

safe, and will stop WorkCover NSW from doing its job of consistently enforcing the Act. In contravention of the Commonwealth Disability Discrimination Act, the regulation will perpetuate discrimination in employment and against people with smoke-affected disabilities, including sufferers of heart disease, asthma, cystic fibrosis and diabetes, and pregnant women. Of course, these are the most conspicuously affected groups; everyone's health is affected.

Other jurisdictions in Australia have passed tougher bans and the sky has not fallen. Tasmania has total indoor bans already in force, with outdoor smoking areas that are separate and unserviced. Queensland will have total indoor bans from July 2006, with separate and unserviced outdoor smoking areas. Western Australia will have total indoor bans from July 2006, with outdoor smoking areas to be substantially unenclosed. In the Australian Capital Territory, the indoor smoking ban has the same 75 per cent loophole as New South Wales, but the ban comes into force by the end of 2006. The chief health officer there is believed to be the architect of this appalling scheme. Victoria will go smoke free in July 2007 with the same 75 per cent loophole, but gaming areas will be smoke free.

When the last gaming bill amendment was debated the Government would not agree that gaming areas could not be outdoors. New Zealand, Ireland, Norway, 10 States of the United States of America and nine Canadian provinces have total indoor smoking bans in licensed venues already in force, or they will by April this year, and in the United Kingdom pubs and clubs will be indoor smoke free by mid-2007. Of course, outdoors in the United Kingdom means it will be too cold to smoke for much of the year.

The New South Wales branch of the Australian Medical Association supports the disallowance of this regulation to protect our workers and pub goers and supports the adoption of genuine bans on smoking in all areas with roofs. The Liquor, Hospitality and Miscellaneous Union [LHMU] also wants its members' workplaces to be truly smoke free. When Tasmania went smoke free, the Tasmanian Secretary of the LHMU, Mr David O'Byrne, noted:

Almost two years after their laws were implemented Ireland is reporting very high compliance levels, no adverse economic effects for the industry and overwhelming community support.

From January 1 2006 hospitality workers in Tasmania will now work in a safe, smoke free environment for the first time. This ends the discrimination hospitality workers have suffered for many years, only hospitality workers have been compelled to work in unsafe, dangerous smoke filled environments since lawmakers acknowledge that in all other workplaces smoke filled environments were dangerous and unacceptable.

So why is New South Wales lagging behind? It is because of the lack of political will on the part of the major parties. Why is this Parliament willing to trade off the health of our workers and the general public to second-hand tobacco smoke? In the financial year 2004-05 the New South Wales Liberal Party received a \$44,100 donation from British American Tobacco and \$10,000 from Philip Morris. In the same year, The Nationals received \$5,000 from Philip Morris. As the Liberals and The Nationals are the only political parties in New South Wales that openly accept donations from big tobacco, we all must question whom they truly serve. They received a total of \$49,100 from big tobacco.

What about the Australian Hotels Association? The Opposition is openly courting this lobby group in the lead-up to the State election and has been absolutely gutless on this issue. The New South Wales Liberal Party received \$105,000 and The Nationals received \$26,605—a Coalition total of \$131,605—from the AHA. The New South Wales Labor Party received \$259,704 in the 2004-05 financial year from the AHA.

**The Hon. Rick Colless:** How much did you get?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The Australian Democrats did get some from the AHA in 2003-04, but it did not buy this Democrat like it bought you, mate! The fight with the clubs over the poker machine tax is proving to be a big political obstacle for the Government in the run-up to this year's election, with Clubs NSW threatening an anti-government advertising campaign at National Rugby League games and a full-page newspaper advertising campaign to get the Government to relent on its gambling tax. I believe this regulation is probably part of a compromise to keep the clubs and pubs happy. Interestingly, the issue has not appeared in the Andrew Clennell articles in the *Sydney Morning Herald*. The majority of the population wants pubs and clubs to go completely smoke free right here, right now.

A national survey conducted by Stollznow Research for Pfizer Australia in June 2005 showed that 65 per cent of people surveyed felt that the smoke bans are coming in too slowly, with 43 per cent of New South Wales respondents saying much too slowly. Additionally, 64 per cent say it is unacceptable for up to 75 per cent

of enclosed rooms to be called "outdoor" and to allow smoking in enclosed public spaces. Why should bar staff, gaming room attendants and other hospitality workers in pubs and clubs be exempt from the occupational health and safety standards of other workplaces in New South Wales?

In 2005 a study in the international medical Journal *PLoS Medicine* found that there is "no safe threshold" for tobacco exposure and that it must be "virtually eliminated to protect human health". Passive smoke increases asthma severity and hospitalisation risk. A study reported in the journal *Thorax* links second-hand smoke with increased severity of asthma attacks and a greater risk of hospitalisation. The authors conclude:

These results support efforts to prohibit smoking in public places.

In June 2005 the Air Resources Board, California, which establishes exposure comparable to household levels known to cause death and disease, reported:

Crowded outdoor exposure to second hand tobacco smoke is significant, and harmful.

Worldwide evidence continues to mount that total indoor smoking bans help reduce smoking rates, especially among young people, and that they do not harm the hospitality trade. In the early 1980s, when I was briefly a member of the Liberal Party, I pointed out to a Liberal mentor that the cost of tobacco to the Australian economy was about \$5 billion. This mentor said that Amatil had given \$30,000 to the Liberal Party and I said, "But don't you see the \$5 billion cost to the economy is far more than the \$30,000 given to the Liberal Party?" To which he replied, "Yes, but that is our \$30,000. You won't get far with an attitude like that, sonny". He was dead right: sonny got himself out of the Liberal Party pretty quick smart.

We have not advanced very far. The cost to the New South Wales economy is \$6.6 billion, about 6,500 lives per year and 150 smoking-caused admissions to hospital every day. Yet, for the paltry sums I have mentioned—around half a million dollars—you can buy both political parties in New South Wales and have nothing done about smoking in public places with the attendant effect of pubs and clubs giving smoking socialisation and normalisation as a public habit at immense health costs. As I said, the cost to the New South Wales economy is around \$6.6 billion and 45 per cent of this is avoidable. The costs comprise 58 per cent to individuals, who are the ones who suffer and die from tobacco-caused illnesses; 13 per cent to governments, who pay for the health system in huge numbers, and pay out of consolidated revenue from the taxpayers; and 28 per cent is to business, largely in time lost from work either for sickness or individuals who have not worked for a decade or so and eventually die.

A study of the Quit campaigns conducted by the health department showed that the return on capital of money spent on Quit programs by the New South Wales health department had a cost benefit ratio that was favourable at 49:1. It is extraordinary that today this debate was delayed by the Liberals getting upset about pollution levels in the M5 East tunnel, but they want to do nothing about tobacco in all the pubs of the land. I believe the fact that the Liberal and Labor parties can be bought so cheaply to do so much harm and do so little for public health after so long is nothing short of extraordinary. It is outrageous to pretend that we need a longer phase-in period.

Smoking was shown to cause lung cancer in an article in the *British Medical Journal* that was very clear to read—and it was in 1950, more than 55 years ago. We have been expecting bans since the 1980s. The Surgeon General in the United States of America wrote a report in the early 1960s. He had all the scientists who were to contribute to the report screened by the tobacco industry so they could not say the scientists were biased. The report came out in 1964 strongly against tobacco. The study was conceived and a report brought out by the Surgeon General in the United States in 1964, and also by the Royal College of Physicians in England in 1962, because they were concerned that a whole decade had gone by with no action. Here we are now with 55 years having gone by and this Government is bringing in this sort of regulation.

When I woke this morning I heard on the news that a sweeping ban on smoking came into force in Scotland yesterday. In New South Wales we are not willing to act on smoking and do something about smoking in pubs. We are happy to let people get cancer—knowing that some people have already got cancer and have won compensation cases through the courts—because this Parliament has not got the guts to say no to the AHA and ClubsNSW.

**Reverend the Hon. Dr Gordon Moyes:** Is Scotland the same as Ireland?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, it is. It is an absolute disgrace and members should hang their heads in shame that they have been in Parliament this long and are allowing this sort of regulation to stand. It is an absolute disgrace that the Government has brought in the regulation and the Opposition does not have the guts to disallow it. It shows that the duopoly has power to make cosy little arrangements as it does the bidding of anybody with a little bit of capital or a little bit of political punch, and totally neglects the interests of the citizens of New South Wales. In the lead-up to the election my strategy is to break this sick duopoly.

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

## ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL

### Second Reading

**Debate resumed from 9 March 2006.**

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.19 p.m.], in reply: It is clear that the Environmental Planning and Assessment Amendment Bill will have positive benefits for existing and future residents of New South Wales, particularly in relation to local planning outcomes and the provision of infrastructure to new growth areas. What is unclear, however, is the Opposition's policy position on planning and, in particular, the use of panels. The *Australian Financial Review* of 25 August 2005 stated:

Although some councils already use panels, under Mr Brogden's plans, their decisions on planning could be made compulsory ... Mr Brogden said that after corruption findings at Strathfield Council where the mayor was documented taking bribes from a developer great efforts must be made to establish corruption proof councils.

In a media release dated December 2005 Barry O'Farrell stated:

Complaints about local government planning processes are one of the biggest issues residents raise with me each year ... the complaints cover everything from time delays through to inconsistent treatment of applications.

Last year the Opposition supported independent panels and acknowledged problems in local planning processes, but in the lower House when this bill was debated approximately six months later the Opposition was not quite sure about what its position would be—so unsure that it did not vote on the bill. Now the bill has come before the upper House and the Opposition has decided not to support it, with the Hon. Patricia Forsythe asserting "The bill is a slap in the face for local government and local communities in this State". While the Opposition's policy position on local planning is very unclear and somewhat confusing, I would like now to provide some clarity.

The Minister advises me that he met with numerous organisations prior to introducing the bill, including the five mayors from the lower Hunter region, the mayors and general manager from the growth centres councils, the Property Council of Australia, the Urban Taskforce, the Urban Development Institute of Australia, the Housing Industry Association, and the Local Government and Shires Associations. Most of these stakeholders have since come out stating their respective positions on the bill.

I understand that the contentious areas of the bill relate to the provisions regarding panels and administrators and the provisions dealing with development contributions. With respect to concerns that local government has raised in response to the expanded provisions for panels and administrators, the Minister for Planning has stated that only a handful of local councils are likely to be directly impacted by these new provisions. These councils are the exception rather than the rule; they are councils failing to meet their planning obligations to ratepayers and the broader community.

Unfortunately, these few taint the reputation of local government across the State. These councils are dominated either by zealots, who want to stop everything, or, at the other end of the spectrum, developer-influenced rednecks, who want to approve almost everything without having regard to proper planning considerations. Most councils are in the middle and will not be affected by the bill. The problem is that the councils in the middle have been tainted by the performance of those that operate at the extreme and this is evidenced by the public's view of councils. A number of surveys and reports have been referenced as part of this debate and I will focus on those that were undertaken prior to the bill being introduced.

The survey commissioned as part of the independent Inquiry into the Financial Sustainability of NSW Local Government reports that only 9 per cent of people believe that elected councillors should determine

development applications [DAs]. The inquiry found that "local council planning and the DA process in particular has become discredited". The report also states:

There is an indication that the public is supportive of a role for independent panels and that most would prefer councillors not to exclusively decide on DAs.

I agree with the Minister in that good planning and environmental outcomes do not require interminable process and delay. It needs to be clarified that the bill sets out that panels will determine development applications on their merits; this will be their decision, not the Minister's.

The Independent Commission Against Corruption also flagged the use of independent assessment reports in a report released last December. It found potential benefits included a mechanism for assessing DAs based on procedural fairness, and independent and professional judgments on DAs, which ensures decision making is more transparent and a counterbalance to perceptions of biased decision making by councillors. The combined effects of these two reports make a compelling case for supporting this bill.

In response to concerns raised by the Greens, it needs to be clarified that if a panel or administrator is appointed by the Minister to deal with a planning matter, this does not negate the requirements for public consultation or notification that is usually required under the Environmental Planning and Assessment Act 1979. As part of the Minister's consultation with stakeholders, he has clarified that panels may include representatives from the local community and/or the local mayor. I also understand that as a consequence of the Minister's discussions with local government, the Local Government and Shires Associations will be consulted in developing a performance reporting system for DA assessments and other relevant matters.

This system will acknowledge that while most local development applications should be dealt with within one to two months, some DAs can be controversial or complex and require detailed assessment and considerable consultation. An amendment will be moved in Committee in this regard. The new provisions allow for government intervention in local planning matters in a much more moderate way than is currently available. Honourable members should remember that the current powers allow only for the council to be sacked or to be stripped of its planning powers entirely. This bill allows for targeted intervention to specifically address particular problem areas of a council.

The new provisions relating to special infrastructure contributions are an extension of existing arrangements. Currently, the Minister is able to fund regional infrastructure through environmental planning instruments that require satisfactory arrangements for infrastructure to be reached before the development can proceed. The special infrastructure contributions will be spent on important items, such as public amenities and services, affordable housing, transport and other infrastructure, as well as environmental conservation. I am aware that there has been some concern over the level and nature of this contribution being set by the Minister for Planning and the implications it might have for housing affordability.

I am advised that the bill ensures that infrastructure contributions will be collected only where it is reasonable to impose an additional levy because of the extent and timing of the area's infrastructure requirements. The bill as drafted requires the level of special infrastructure contributions to be reasonable, having regard to the cost of infrastructure required as a result of development. To further ensure that the level and nature of these contributions are reasonable and that the area to which the contribution applies is appropriate, an amendment will be moved in Committee that sets out consultation to be undertaken by the Minister.

The bill enables the Minister to direct a council to make, amend or repeal a contributions plan within a certain period. One of the benefits to local government under the bill is that appeal to the Land and Environment Court against contributions determined under a contributions plan—if that plan is made or amended by, or at the direction of, the Minister—will not be possible. The bill also excludes appeal rights against the process for making, amending or repealing a contributions plan by, or at the direction of, the Minister. This will help secure the certainty of funds so that important infrastructure programs can be implemented. It will also prevent councils being challenged on matters that are beyond their control.

The Environmental Planning and Assessment Amendment Bill comprises a range of practical and reasonable measures designed to improve efficiency, promote consistency and to further streamline planning and development. The Government is a strong defender of the role of local government in this State, but it is broadly accepted that there are problems in local government planning processes. This bill is a practical solution to local government planning issues. It allows for specific, targeted intervention to address outstanding issues in

a handful of councils. The bill will strengthen the Government's ability to deliver infrastructure, amenities and services in new land release areas and other areas where there will be co-ordinated growth and development. This is part of the Government's commitment to ensure that new communities are supported by appropriate and timely services and facilities. I commend the bill to the House.

**Question—That the amendment be agreed to—put.**

**The House divided.**

**Ayes, 6**

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

**Noes, 26**

Ms Burnswoods	Ms Griffin	Ms Robertson
Mr Catanzariti	Mr Kelly	Mr Ryan
Mr Clarke	Mr Lynn	Ms Sharpe
Ms Cusack	Reverend Dr Moyes	Mr Tingle
Mr Donnelly	Reverend Nile	Mr Tsang
Ms Fazio	Mr Oldfield	Mr West
Mrs Forsythe	Ms Parker	<i>Tellers,</i>
Miss Gardiner	Mrs Pavey	Mr Colless
Mr Gay	Mr Pearce	Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 20**

Ms Burnswoods	Mr Kelly	Mr Roozendaal
Mr Catanzariti	Mr Macdonald	Ms Sharpe
Mr Della Bosca	Reverend Dr Moyes	Mr Tingle
Mr Donnelly	Reverend Nile	Mr Tsang
Ms Fazio	Mr Obeid	<i>Tellers,</i>
Ms Griffin	Mr Oldfield	Mr Primrose
Mr Hatzistergos	Ms Robertson	Mr West

**Noes, 18**

Mr Breen	Mr Gay	Mr Ryan
Dr Chesterfield-Evans	Ms Hale	Dr Wong
Mr Clarke	Mr Lynn	
Mr Cohen	Ms Parker	
Ms Cusack	Mrs Pavey	<i>Tellers,</i>
Mr Gallacher	Mr Pearce	Mr Colless
Miss Gardiner	Ms Rhiannon	Mrs Forsythe

**Pair**

Mr Costa

Mr Harwin

**Question resolved in the affirmative.****Motion agreed to.****Bill read a second time.****In Committee****Clauses 1 to 3 agreed to.****Ms SYLVIA HALE** [8.48 p.m.]: I move Greens amendment No. 1:

No. 1 Page 5, schedule 1 [14], lines 1 to 23. Omit all words on those lines.

Essentially, Greens amendment No. 1 deals with council section 94 plans. The Environmental Planning and Assessment Amendment Bill gives the Minister the power to make, amend or repeal a contributions plan. Not only does it give him such powers, there is no room for appeal to the court in relation to any decision made in accordance with any contributions plan that the Minister makes, amends or repeals. Councils are unable to appeal to the court on the impact of a decision to change section 94 plans, even if the impact of the decision is manifestly unreasonable.

Currently, section 94 levies are charged to compensate the community for the impact of additional development. Councils do not pluck a figure out of the blue and say that anyone who has approval for a development application must arbitrarily pay a certain amount of money. A council is required to prepare a section 94 contributions plan, which must outline how and where the council intends to spend the money. It has been asserted that councils have accumulated \$700 million in underspent section 94 funds and that this is an indication of council irresponsibility. As was highlighted by legislation passed in the House last year, the failure of councils to spend much of that money was because they were hobbled by the very legislation surrounding section 94 plans.

Until the Act was amended last year, a plan divided a local government area into various sub-areas, but any contributions that were collected in relation to an area could be spent only in that area. That meant that the various sums of money were dispersed across a whole municipal area. Last year legislation was passed that allowed the funds to be pooled, so that a council may have a sufficient sum of money to put towards a reasonable undertaking, such as the construction of a child care centre or library, or the upgrade of sporting facilities. Only if the contributions from the section 94 plan were pooled together was it possible for councils to realistically spend money on infrastructure in accordance with their plan. Another change in the legislation stipulated that after money had been pooled for one project, over time it would have to be paid back to the area from which the money was raised and then a pooling could take place in relation to that area.

A further change that was brought about by the legislation allowed adjoining councils to pool funds for a project that would benefit both municipalities. In doing so, councils have to, first, propose their plans and, second, put them out for public submission. Only after an extensive period of public submission and consultation would a plan then be considered and adopted by council. I believe all parties consider that to be a reasonable, accountable and transparent process. From the start, the developers know the section 94 contributions for which they may be liable. The process allows a party who believes the contributions to have been incorrectly calculated to appeal to the court. The appeal must be purely on the basis that the contribution has been miscalculated and that the sum of money should be adjusted.

I cannot for the life of me understand how it could be suggested that any of those aspects is unreasonable, unfair or not transparent. Yet the bill provides for the exact reverse. New section 94EAA allows the Minister, without giving any reason and without there being any right of appeal, to repeal or amend a council's section 94 plan or to impose a plan of his own. It is a reversal of how the process should operate. To add insult to injury, the new section denies the right to appeal to the court, either on the grounds of

reasonableness of the levy or on the merits of the levy. A process that is transparent, accountable and open to public critique and submission is being replaced by a course of action that will be imposed at the whim of the Minister.

The Minister may assure the House and local communities that he will act rationally and transparently. How does one know? The Minister is not required to account for his actions, and he will not be answerable for them. I believe it is the basis for a fundamental corruption of the planning system. There will now be two types of levies: the section 94 contributions, which are supposed to provide for local infrastructure, and the special infrastructure contributions. Today I received a letter from the Country Mayors Association indicating that councils are fearful that if the special infrastructure contributions made by developers are lowered, councils' section 94 levies will be hijacked by the Government to make up for the shortfall in the special infrastructure contributions.

Almost every council across the State, particularly country councils, know how strapped for cash it is in light of the Government's refusal to fund it properly or to allow it to set rates at a reasonable level. Rather, the Government caps rates at a level that the Government considers to be electorally acceptable. Rather than pass on a stipulated amount of GST to councils and allow councils to impose realistic rate levels, the Government now proposes to put in place a mechanism that will strip councils of one of the features of the Environmental Planning and Assessment Act that allows developers whose development applications have been approved to contribute to the provision of extra infrastructure. This is wrong and councils are opposed to this aspect of the bill.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.04 p.m.]: The Government does not support this amendment. The Minister must be able to intervene in contributions plans, to co-ordinate and to contain State and local levies and to prevent unreasonable local levies.

**The Hon. PATRICIA FORSYTHE** [9.04 p.m.]: The Opposition also opposes this amendment. However, I must make it clear that the grounds on which the Opposition opposes this and other amendments are perhaps different from the grounds offered by the Government. As I said in the second reading debate, the Opposition believes there is a role for local communities and local councils within the planning hierarchy of New South Wales, just as there is a role for the Minister for Planning and the Department of Planning and the Department of Natural Resources at the State and regional levels. We believe that this bill undermines the traditional planning hierarchy in New South Wales and diminishes the role of local communities and their elected representatives within that regime.

The Opposition opposed this bill at its second reading stage and it will oppose it at its third reading. In addition, it will not support any of the amendments, even if they attempt to make a bad bill better. The section 94 provisions and the Minister's contribution a few moments ago go to the heart of what the Opposition sees as a matter of principle. We do not believe it is the role or the right of the Minister for Planning to intervene in all local council decisions. There must be a clear differentiation between what local communities and councils can decide and the Minister's role. Just because the Minister does not like a local council policy decision or a section 94 decision it is not his place—as would be the case if this amendment were passed—to intervene and to usurp local councils' powers. Therefore, the Opposition opposes the bill. It will not support the Greens amendments, nor will it assist some honourable members to find an excuse to support the bill. It is a bad bill and it should be opposed at every turn.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.05 p.m.]: Today at 12.31 p.m. I, and every other member, I would suggest, received an email from Dubbo City Council. The Mayor of Dubbo, Allan Smith—

**The Hon. Tony Kelly:** A good bloke.

**The Hon. DUNCAN GAY:** The Hon. Tony Kelly says that Allan Smith is a good bloke. I am led to believe that he is a member of the Labor Party. He certainly has a reputation as a good mayor. The email states:

Dear Members

At its meeting held on Monday 27 March 2006 Council gave consideration to the proposed amendments to the Environmental Planning and Assessment Act that are scheduled to go before the Legislative Council of the New South Wales Government today.

Following consideration of this proposal Council resolved to write to you expressing in the strongest possible terms its opposition to the proposed amendments. Council further resolved to request that appropriate consultation with all New South Wales Councils be undertaken prior to consideration of the amendments by the Legislative Council.

Accordingly, on behalf of Dubbo City Council I implore you as a member of the Legislative Council NOT to proceed to consider the amendments to the Act until such time as appropriate consultation with all Local Government Authorities has taken place.

I thank you for considering Council's request.

Allan Smith  
MAYOR

Interestingly, the Minister said that the mayor of Dubbo is a "Good bloke." The Minister—certainly his office—would have received a copy of this email today. When he spoke in this debate the Minister did not represent his good mate and friend from a neighbouring town. So much for Country Labor representing its constituents. A copy of this email was sent to all members of the Legislative Council. Surely the mayor of Dubbo would have considered sending a copy of the email to the local member for Dubbo, who happens to be his former deputy mayor, Dawn Fardell. However, in her contribution to debate on this bill in the other place the member for Dubbo supported a bill that is opposed by the mayor of Dubbo. What can the mayor, the council and the people of Dubbo do about a local member who does not represent their views? They must have their views represented in this place, and I am doing that in this debate.

The bill and this amendment remove a power from the Minister. This Minister's track record would not encourage anyone to support him. Honourable members will recall that in the most recent plan the Minister subsumed the windmill project at Crookwell as State significant. The local council sent him a letter, as I did, on behalf of a constituent who lives in the middle of the planned wind farm. The constituent's small farm, which covers 300 or 400 acres, has been in his family since 1840. No windmills will be erected on his farm, but it will be surrounded by them. He will have to suffer the noise generated by the windmills; it will be difficult to live in his home. If he had plans to sell his property—and he does not—the windmill project would lower its value; the value of the property will be diminished. Because no windmills will be placed on his farm he will not receive any income from them.

Given that the Minister claims to represent local communities, I thought that this letter, which is supported by Upper Lachlan Shire Council, would have pinned his ears back and he would have arranged a meeting with Colin Dooley and his family. But what did I get from Frank Sartor? I got the same as Mundine got: the finger! The Minister would not meet with Mr Dooley. The Minister has classified the project as State significant but he will not meet with Mr Dooley. And the Government wants us to support legislation to give this Minister more power! Come on!

**The Hon. Dr PETER WONG** [9.09 p.m.]: I support the Greens amendment. I, too, share the Hon. Patricia Forsythe's view that this is a terrible bill. I wish to quote the President of the Western Sydney Regional Organisation of Councils, Councillor Tony Hay—another very good Labor member. He summed it up by saying:

This legislation strikes at the heart of local democracy. It gives the Minister unfettered powers with no rights of appeal or review and should be abandoned as it runs contrary to all the principles of good governance that this government so readily espouses. It has all the hallmarks of bad policy done on the run.

I would like to share the view expressed by the Deputy Leader of the Opposition by quoting the Mayor of Gunnedah, Councillor Gae Swain. She said:

The Bill lacks transparency and accountability and has been prepared without meaningful public participation by consulting Local Government or the community it represents.

Indeed, this Parliament's Legislation Review Committee shares our concern about the bill, and I wish to quote some of the committee's comments. It said:

The Bill provides for the Minister to direct a council to approve, amend or repeal a contributions plan in the time and manner specified in the direction [proposed section 94EAA(1)].

It also provides that the Minister may approve, amend or repeal a contributions plan if the council fails to follow the direction, or if the council consents to the Minister making, amending or repealing the plan [proposed section 94EAA(2)].

In each of these cases, the making, amending or repealing of the plan by or at the direction of the Minister cannot be appealed to the Land and Environment Court [proposed section 9EAA(4)].

Obviously, the committee shares the concern of many members of this House that the removal of the right of appeal is inappropriate in a democratic society and should not be supported by the Government. I believe the Government has got it all wrong. In my entire life I have not had so many Labor members and councillors ring me or come to see me. It is a terrible piece of legislation, as the Minister for Lands, and Minister for Rural Affairs must agree. I believe the bill will prove to be a great backlash for the Government in the election. I support the amendment.

**Ms SYLVIA HALE** [9.12 p.m.]: I cannot restrain myself from responding to the remarks of the Deputy Leader of the Opposition and the Hon. Patricia Forsythe. The Deputy Leader of the Opposition quoted a letter from the mayor of Dubbo, imploring members to consult before they go on to consider the bill further. Indeed, members were given the opportunity tonight, with the amendment moved by Mr Ian Cohen, to refer the bill to General Purpose Standing Committee No. 4 in order that public submissions could be entertained and the views of the Local Government Association and the community at large could be determined, but they voted against it. This is spurious opposition. The Hon. Patricia Forsythe said that we cannot make a bad bill better. It simply adds up to Clayton's opposition—the token opposition put up so members can say to their constituency, "It wasn't our fault that it went through; we voted against it", when they know full well that, with what I believe to be the discreditable support of certain members of the crossbench, the bill is bound to pass.

I believe that what the Government and Opposition are conniving in by refusing to support any amendments to this bill, or refusing, as they both did, to send the bill off to General Purpose Standing Committee No. 4, is the complete gutting of any form of community consultation in this State, and they are also gutting local government. If there is one area that local government should be responsible for, it is the determination of development applications that will have an immediate impact on their communities. The bill allows the Minister to step in without any requirement that he give reasons, without any criteria whatsoever for his doing so, and without any right of appeal, to say, "We will amend the section 94 plan, we will impose a section 94 plan, we will institute special infrastructure levies, we will deny the rights of appeal, and we will impose planning administrators or planning panels."

The bill goes to the very heart of what local government is supposed to do. To stand back and be Simon-pure and say, "It is not our job to make a bad bill better", is not good enough. What the Opposition is doing is conniving with the Government to make sure that the grounds are laid so that should the Opposition come to power it will be equally capable, able and willing to ride roughshod over any form of local democracy in this State.

#### **Amendment negatived.**

**Ms SYLVIA HALE** [9.16 p.m.], by leave: I move Greens amendments Nos 2, 3 and 4 in globo:

No. 2 Page 6, schedule 1 [15], proposed section 94EE. Insert after line 13:

- (1) The Minister, in consultation with key stakeholders and the public, is to prepare and make publicly available, a plan (an *infrastructure plan*) that sets out the infrastructure that is to be provided in relation to each special contributions area from contributions under this Subdivision. The infrastructure plan is to set out the nature and location of the infrastructure and is to include a timetable for its construction and a budget.

No. 3 Page 6, schedule 1 [15], proposed section 94EE, line 14. Insert "in accordance with the relevant infrastructure plan and" after "The Minister is,".

No. 4 Page 6, schedule 1 [15], proposed section 94EE (2). Insert after line 20:

- (a) the Minister is to consult with the Local Government and Shires Associations of New South Wales, and

Greens amendment No. 2 seeks to insert new section 94EE. As the bill stands, the Minister is able to determine the level and nature of development contributions. Greens amendment No. 3 seeks to incorporate in the Act a requirement that the Minister draw up an infrastructure plan. At the moment there is no constraint on how the Minister is to spend any of this money, there is no indication over what time frame he has to spend it, and there is no indication where he has to spend it or how he has to spend it. Indeed, it could be one gigantic grab for cash, which will not be used in accordance with the supposed objectives of the Act. As we see later in the bill, again there is no avenue open for any person to appeal to the court in respect of any determination the Minister might make with regard to special infrastructure contributions.

Greens amendment No. 4 says provides, in new section 94EE (2), that the Minister is to consult with the Local Government and Shires Associations of New South Wales, and that at least is some form of inclusion of the Local Government and Shires Associations in the process. It tries to inject into a bill that is inherently

flawed an accountability mechanism, requiring the Minister to explain clearly what amount of money is being gathered, how it is to be applied and over what time, and for a budget to be prepared. In this way, at least the general public—or those people who have contributed to the special infrastructure levies—may be aware of how their money is to be spent. As it is, the bill virtually gives open slather to the Minister to collect levies willy-nilly, as there is no requirement for him to spend the levies in the areas from which they are gathered.

This notion was first introduced with the Redfern-Waterloo Authority Act and the provision in relation to the Carlton United Brewery site in Chippendale that any section 94 funds that were gathered in relation to that site could be spent in the Redfern-Waterloo area, of which Chippendale does not form a part. The Minister developed this idea of robbing Peter to pay Paul in relation to Chippendale and Redfern-Waterloo and now proposes to extend that on a grander scale and rob anywhere across the State to fund infrastructure across the State wherever he deems necessary. It is extraordinary that in a Government that is supposedly responsible and accountable for its actions, particularly for monetary expenditure and financial outlay, a Minister should be given such extraordinary latitude to determine how funds will be raised and where they will be spent. I would have thought that for any self-respecting conservative the hackles would immediately rise at this prospect and that there would at least be an endeavour to call the Government in, to restrain it and to make it as accountable as humanly possible for the way in which significant sums of money are going to be raised and spent throughout the State. I commend Greens amendments Nos 2, 3 and 4 to the Committee.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.22 p.m.]: The Government does not support Greens amendments Nos 2, 3 and 4. In relation to amendments Nos 2 and 3, a Government amendment has been prepared which will give a similar effect. In relation to amendment No. 4, the Government amendment with regard to development contributions allows for appropriate options for consultation.

**The Hon. PATRICIA FORSYTHE** [9.23 p.m.]: The Opposition opposes the special infrastructure contributions as a matter of principle; therefore, we are not going to support the position taken by the Greens. I will have more to say about the Government's amendment shortly, particularly the view of the Housing Industry Association. When talking about the history of planning in New South Wales earlier tonight, one of my colleagues reminded me of the days of the Askin Government and what was termed the "betterment tax", which is exactly this levy by another name. It was to be a tax imposed on the development of land. As my colleague the Hon. Greg Pearce has reminded me, a classic area where this was relevant was in the original proposals for the development of the Somersby area. In fact, the consequence of placing this tax regime over the land is that nothing happened; people were not prepared to put their land up for development because before they were able to realise any sort of money on it, they were very conscious that they were going to have to pay a tax in whatever form.

If the Government sees this as a way of being able to get a contribution towards roads and schools, as they have identified, over and above what we normally see as a local component through section 94, then this is likely to have unintended consequences. The Opposition, being a responsible Opposition, would say that there is a role and a place for development in New South Wales. In the north-west and south-west regions of Sydney development is quite urgent because of the failure of this Government over a long period of time to release adequate lands through Landcom. We have to look at future development but the unintended consequence of this infrastructure development contribution may well be that people will hold onto their land when they might otherwise have been prepared to make it available for development.

I say that because we are a responsible Opposition. We believe in the responsible growth of Sydney. It is inevitable, given the population of Sydney, that it will not be all from infill, and in fact growth has to be into what would otherwise be greenfield sites. Far from achieving what the Government intends, this whole new infrastructure contribution may impede the very development that the Government wants to achieve. I suggest that members of the Government go back and review comments made by members of the Labor Party—particularly by people in some of the outer Sydney fringe areas—when tax was under discussion during the time of the Askin Government because I think they may well find that some of the issues that were raised then are as pertinent today.

The Opposition does not agree with the original principle in relation to this bill and we are not going to support the amendments. If we do not agree with the underlying principle why would we endorse something that seeks to amend it? We fundamentally oppose the initial proposal and we will not support the amendments.

**The Hon. Dr PETER WONG** [9.27 p.m.]: I support the Greens amendments. I question the Government's intentions and what it has in mind for section 94 and the infrastructure government contribution fund, as mentioned by the Hon. Patricia Forsythe. It was reported that the Government made a comment about \$700 million in trust funds under section 94 held by 152 local government councils. I want to know: does the Labor Government intend to use it for election purposes?

**Ms SYLVIA HALE** [9.27 p.m.]: The concern about the amending bill is right across-the-board, being initially from the Property Council, the Housing Institute of Australia, the Local Government and Shires Associations and various community groups. All have been dismayed. This morning I received an email from the Housing Industry Association expressing its concern about the bill and specifically about the special infrastructure contributions. It says:

HIA remains concerned about the proposed provisions relating to the expansion of special infrastructure contributions to cover a broad range of public infrastructure items across any part of the State. There is still nothing in the bill that guarantees that a lesser quantum of contributions will result or that once set, the rate of the levy will not increase over time, either separately or in conjunction with the local council section 94 levies.

The Housing Industry Association is concerned that the levies will go up. Councils are concerned that the levies will go down. There is every reason to believe that councils have more right to be concerned. I rang Ken Morrison of the Property Council of Australia and asked his view of the bill. He said, "We really support curbing local government's planning powers and the appointment of a planning panel or a planning administrator, but we have been given assurances that the department is already setting in place a review to reduce the levies that will have to be paid by developers." So, it is perfectly clear who has the ear of the Government. It is not local councils and the community; it is the Property Council of Australia.

This bill is the perfect mechanism for carrying out the wishes of the Property Council. We will inevitably see—and obviously the Property Council believe this to be the case—that the quantum of levies developers will end up paying will be significantly reduced and local councils will have to put their hands in their pockets to make up the difference because they will have fewer section 94 funds. That means that local residents will be denied amenities that should be provided by any properly functioning council. I urge honourable members to support Greens amendments Nos 2, 3 and 4 because they introduce some measure of transparency and accountability into the bill.

**Question—That the amendments be agreed to—put.**

**The Committee divided.**

**Ayes, 6**

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

**Noes, 24**

Ms Burnswoods	Mr Lynn	Ms Sharpe
Mr Catanzariti	Reverend Dr Moyes	Mr Tingle
Mr Clarke	Reverend Nile	Mr Tsang
Mr Donnelly	Mr Oldfield	Mr West
Mrs Forsythe	Ms Parker	
Miss Gardiner	Mrs Pavey	<i>Tellers,</i>
Mr Gay	Mr Pearce	Mr Colless
Ms Griffin	Ms Robertson	Mr Primrose
Mr Kelly	Mr Ryan	

**Question resolved in the negative.**

**Amendments negatived.**

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [9.39 p.m.], by leave: I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 1 [15], proposed section 94EE. Insert after line 36:

- (4) In determining the level and nature of development contributions to be imposed as conditions under this Subdivision for development within a particular special contributions area (other than a growth centre), the Minister is to do one or more of the following:
- (a) consult with owners of land in the special contributions area and other relevant stakeholders,
  - (b) publicly exhibit a proposal in relation to the level of development contributions and seek submissions within a reasonable time in relation to that proposal,
  - (c) establish a panel that, in the Minister's opinion, represents the interests of the various relevant stakeholders and consult with that panel.

No. 2 Page 8, schedule 1 [15], proposed section 94EG. Insert after line 2:

- (4) Before creating a special contributions area (other than a growth centre), the Minister is to consult with the peak industry organisations that the Minister considers to be relevant.

Amendment No. 1 inserts a requirement that the Minister, in determining the level and nature of special infrastructure contributions in an area other than a growth centre, will do one or more of the following: consult with the owners of the land in a special contributions area and other relevant stakeholders; publicly exhibit a proposal in relation to the level of development contributions and seek submissions within a reasonable time in relation to that proposal; and establish a panel that in the Minister's opinion represents the interests of the various relevant stakeholders and consult with that panel. This amendment will ensure accountability and transparency in the determination of special infrastructure contributions. It will enable a Minister to consider the views of relevant stakeholders in determining the level and nature of such contributions in areas other than growth centres.

This means that there will be a formal process for the Minister to consider stakeholders' views on the types of infrastructure required to support the development, the cost of that infrastructure and the level of State Government levies that can be accommodated by development in growth centres. Development corporations may choose to consult stakeholders when preparing recommendations for the Minister on the level and nature of special infrastructure contributions. For example, the Growth Centres Commission set up an advisory panel consisting of industry nominees and other stakeholder representatives to comment on the proposed levy and the use of levies in the north-west and south-west growth centres.

Amendment No. 2 inserts a requirement that the Minister, before creating a special contributions area other than in growth centres, is to consult with peak industry organisations that he considers relevant. This amendment will ensure that relevant stakeholders are consulted before a special contributions area is declared. This means that the views of the relevant stakeholders will be considered before a new area is opened up for the question of special infrastructure contributions. This amendment recognises that the declaration of a new special contributions area will impose new obligations on developers to contribute to such infrastructure required to support development in those areas. As such, developers and other affected stakeholders need to be consulted. At the same time the amendment retains the flexibility in the bill, that is, the bill will ensure that the Government identifies priority areas for provision of essential infrastructure. The Minister will be able to declare new special contributions areas to ensure that the Government can meet these infrastructure needs.

**The Hon. PATRICIA FORSYTHE** [9.42 p.m.]: Earlier in relation to the Greens amendment Ms Sylvia Hale quoted the views of the Housing Industry Association [HIA], which I think are also relevant to the Government's amendments. The Opposition has received the following advice:

The HIA does not believe that the possible benefits that arise from the proposed planning reforms aimed solely at poorly performing councils, outweigh the damage that the special contributions aspects of the bill would create for new home buyers in New South Wales ...

Despite the amendments to the bill that are now proposed, the level and nature of any special infrastructure levy will still largely be determined by the Planning Minister ...

HIA's members unanimously and wholeheartedly believe that the up-front funding of such infrastructure is grossly inequitable and will impact deleteriously on housing affordability in this State at a time when home owners can ill afford it.

The House well knows the views of the Opposition on housing affordability. In the last week the House sat, the Opposition moved to establish an inquiry into housing affordability because of the significant crisis in relation to that matter in this State but the motion was not supported. However the Government seeks to dress up the issue of the special contribution levy, the reality is, although in the first instance it is a tax on the landholder, those seeking to purchase houses in new development areas, such as in the south-west and north-west of Sydney, will bear the burden and pay the cost. Housing affordability is a significant issue. If one compares the cost of housing in New South Wales with other States and, particularly, Sydney with New York and London, Sydney is not placed favourably. Therefore, there are no grounds upon which the Opposition can support these amendments, notwithstanding the Government's best intentions to try to improve its flawed bill.

**Reverend the Hon. FRED NILE** [9.45 p.m.] by leave: I move Christian Democratic Party amendments Nos 1 to 7 in globo:

No. 1 Page 6, schedule 1 [15], proposed section 94EE. Insert after line 36:

- (4) The determination of the Minister:
  - (a) is to contain reasons for the level and nature of the development contributions, and
  - (b) is to be made publicly available by the Minister.

No. 2 Page 10, schedule 1 [19]. Insert after line 19:

**Review**

- (1) The Minister is to review Subdivision 4 of Division 6 of Part 4 of this Act to determine whether the policy objectives of that subdivision remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

No. 3 Page 11, schedule 2. Insert after line 32:

**[3] Section 117 (4A)**

Insert after section 117 (4):

- (4A) Before giving a direction under subsection (2) (c), the Minister is to consult with the Local Government and Shires Associations of New South Wales and any other industry organisation the Minister considers to be relevant, in relation to the information that the Minister is proposing to seek. This requirement is in addition to the requirement under subsection (4).

No. 4 Page 12, schedule 2 [3], proposed section 118. Insert after line 35:

- (4) A panel may not exercise the functions of a council for a continuous period of more than 5 years.
- (5) If a panel exercises the functions of a council for a continuous period of more than 2 years, the Minister is, as soon as practicable after 2 years after the date on which the panel was appointed, to conduct a review of the appointment and functions of the panel.
- (6) A review under subsection (5) is to be conducted by the Minister in consultation with the Minister for Local Government, the Local Government and Shires Associations of New South Wales and any other industry organisation that the Minister considers to be relevant.

No. 5 Page 13, schedule 2 [3], proposed section 118 (5), line 2. Omit "consult with". Insert instead "obtain the concurrence of".

No. 6 Page 13, schedule 2 [3], proposed section 118. Insert after line 2:

- (6) The Minister may appoint a planning administrator or a panel for a reason set out in subsection (1) (b) only if the Minister has, by order published in the Gazette, provided heads of consideration for the exercise of power under subsection (1) (b), and has taken those heads of consideration into account.

No. 7 Page 13, schedule 2 [3], proposed section 118. Insert after line 6:

- (7) The Minister must, as soon as reasonably practicable after appointing a planning administrator or a panel, make the reasons for that appointment publicly available.

As honourable members know, my votes and those of Reverend the Hon. Dr Gordon Moyes have been critical for the passage of this legislation. We have been under a great deal of pressure from many stakeholders concerned about the legislation. This puts a heavy responsibility on us to exercise our votes in a responsible way. The philosophy of the Christian Democratic Party, as I have stated on other occasions, is to endeavour to help the elected government, whether it is Labor or Coalition, to govern. Obviously if we think its policy is wrong, the Reverend the Hon. Dr Gordon Moyes and I will vote against it as we have done in relation to poker machines and other moral issues.

We seek to improve legislation through amendments after consultation with the Government. We have been able to obtain the co-operation of the Minister to move these amendments, which meet many concerns of the Local Government Association, the Shires Association of New South Wales, the Total Environment Centre and the Nature Conservation Council of New South Wales. We have taken on board their concerns and discussed them with the Minister for Planning, the Hon. Frank Sartor, to see what amendments can be moved to meet some of those concerns. I am pleased we have been able to negotiate a number of important amendments.

We try to ascertain the specific concerns of people who oppose legislation and refine their objections, as we have endeavoured to do in this case. For example, the Total Environment Centre, the Nature Conservation Council and local government bodies were concerned that under the current bill the Minister for Planning only had to consult with the Minister for Local Government before making decisions, but not obtain his concurrence. The Minister for Planning has agreed to accept our amendment so that he has to have the agreement of the Minister for Local Government. Some people were concerned that the legislation seems to give untrammelled powers to the Minister that he may abuse. Amendment No. 5 provides that the Minister will obtain the concurrence of the Minister for Local Government.

That is only one example of negotiating important amendments. All the organisations that lobbied us said there are no criteria on which the Minister could decide to appoint a planning administrator or a panel. We have endeavoured to deal with that issue in amendment No. 6, which provides that the Minister can exercise only those powers consistent with heads of consideration previously gazetted by the Minister. The heads of consideration—"criteria" is another word—will be gazetted and made available to all members of the Legislative Council. Obviously they could be disallowed if members feel they are still inadequate.

The Local Government Association of New South Wales and the Shires Association of New South Wales asked to have made explicit the criteria to be used by the Minister in determining whether a planning administrator or panel is to be appointed. There is concern about why the Minister would intervene, although the legislation clearly states why the Minister would take action and appoint a planning administration or a panel. Proposed section 118 states:

**118 Appointment of planning administrator or panel**

- (3) The Minister may appoint a planning administrator or a panel (or both) to exercise functions of a council if:
- (a) the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation, or
  - (b) the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect, or
  - (c) the council agreed to the appointment, or—

some councils have indicated their willingness to co-operate in this process—

- (d) a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under this Act.

So those conditions are provided as well. Also, the Minister will now be required to publish the reasons for such an intervention, which will bring some transparency to the legislation. When I was speaking to people about the bill it became clear that there has been some misinformation about it. That has caused unnecessary alarm—I would even say hysteria—in some sections. It has also caused paranoia, as the Hon. Dr Peter Wong demonstrated when he asked whether the Government would take the \$700 million held by all councils and use it for the Labor Party's election campaign. Legally, that cannot happen. That would be corruption and it would be dealt with by the ICAC.

That is the sort of misinformation that has been spread about the bill, which I believe has caused councils to be concerned unnecessarily. Also, I believe that is the reason we have received correspondence from almost all councils in New South Wales asking us to oppose the bill. A lot of that is based on misinformation. Indeed, I am not sure whether councils fully understand the legislation, as I have been trying to point out.

**The Hon. Patricia Forsythe:** I think they do.

**Reverend the Hon. FRED NILE:** I do not think they do, judging by some comments I have heard. Today I received a letter from the Minister in which he made commitments to the Christian Democratic Party. The letter states:

Dear Reverend Nile

In response to the matters that we discussed with regard to the Environmental Planning and Assessment Amendment Bill, please be advised that I accept your proposed amendments as follows:

1. Amend S118 (5) to provide for the "concurrence" of the Minister for Local Government, rather than "to consult with";
2. Amend S118 (1) to provide:
  - that subsection (b): "Must only be exercised consistent with heads of consideration previously gazetted by the Minister.
  - That, in respect of any intervention by the Minister to appoint an administrator, or a panel under S118 (1), the Minister must publish reasons for such an intervention;
3. That in respect of decisions to set "Special Infrastructure Contributions", the Minister must publish reasons for the level of contributions set.

To address the matter of local representation on Panels, you have my commitment that these Panels will comprise representatives from the local community.

Yours sincerely

Frank Sartor  
Minister for Planning ...

In discussions with me the Minister indicated that the local representatives could possibly include the local mayor, who would be the chairman of the panel. Obviously if there was a question about the mayor personally, he or she could not be appointed. But the Minister has given an undertaking about that approach. Although Opposition members are sitting on their hands in terms of this legislation, I believe we should allow the bill to proceed with these amendments. Amendment No. 2 is important as it provides for a review of the legislation. The amendment states:

Review

- (1) The Minister is to review Subdivision 4 of Division 6 of Part 4 of this Act to determine whether the policy objectives of that subdivision remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Crossbench members are always keen to include in legislation the requirement for a review and report to the Parliament, and the Minister has agreed to accept our amendment. Amendment No. 4 places some restraints on the operation of the panels. A panel may not exercise the functions of a council for a continuous period of more than five years; and if a panel exercises the functions of a council for a continuous period of more than two years the Minister is, as soon as practicable after two years after the date on which the panel was appointed, to conduct a review of the appointment and functions of the panel.

A review under subsection (5) is to be conducted by the Minister in consultation with the Minister for Local Government, the Local Government and Shires Associations of New South Wales and any other industry organisation that the Minister considers to be relevant. Some councils were concerned that the bill did not provide for consultation, and I believe that our amendment addresses that concern.

**Ms SYLVIA HALE** [9.58 p.m.], by leave: I move Greens amendments Nos 5 and 11 in globo:

No. 5 Page 6, schedule 1 [15], proposed section 94EE. Insert after line 36:

- (4) The Minister is to prepare reasons for any determination made under this section and is to make those reasons publicly available.

No. 11 Page 13, schedule 2 [3], proposed section 118. Insert after line 2:

- (6) The Minister may appoint a planning administrator or a panel for a reason set out in subsection (1) (a) or (b) only if:
- (a) the Minister does so in accordance with Guidelines, which are to be prepared by the Local Government Liaison Committee and adopted by resolution of that Committee, and
  - (b) the Minister provides the relevant council with reasons as to why the Minister is of the opinion that:
    - (i) the council has failed to comply with its obligations under the planning legislation, or
    - (ii) the council's performance in dealing with planning and development matters is unsatisfactory.
- (7) Sections 40 and 41 of the *Interpretation Act 1987* apply to the Guidelines referred to in subsection (6)
- (a) in the same way as those sections apply to statutory rules and, for the purposes of those sections, the Guidelines are taken to be made on the day that they are adopted by the Local Government Liaison Committee.

Greens amendment No. 5 requires the Minister, when determining any levies for special infrastructure contributions, to prepare reasons for any determination made under this section, and to make those reasons publicly available. I would think the purpose of the amendment is obvious. Some of the major shortcomings of the bill are lack of transparency, lack of accountability, and failure to require that the Minister justify or be held to account for his actions.

The amendment requires the Minister to give reasons for his decisions. That is hardly a radical proposition. It should be one of the most elementary requirements for any ministerial action. The amendment should appeal to all parties that will be affected by this legislation, whether they be developers or councils or residents. This is a legislative provision requiring the Minister to publicly account for his actions and to provide reasons.

Greens amendment No. 11 relates to the Minister's power to appoint a planning administrator or a planning panel. The amendment provides that the Minister may appoint such a panel as set out in subsection (1) (a) or (b) but only if the Minister does so in accordance with guidelines, which are to be prepared by the Local Government Liaison Committee and adopted by resolution of that committee; and if the Minister provides the relevant council with reasons as to why the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation, or the council's performance in dealing with planning and development matters is unsatisfactory. The amendment then goes on to provide:

Sections 40 and 41 of the *Interpretation Act 1987* apply to the Guidelines referred to in subsection (6)

- (a) in the same way as those sections apply to statutory rules and, for the purposes of those sections, the Guidelines are taken to be made on the day that they are adopted by the Local Government Liaison Committee.

The Environmental Planning and Assessment Act provides for a local government liaison committee. This committee has not yet come into being, but its membership is constituted of persons from the planning profession, the architectural profession, the industry as a whole, and local government. If the legislation already provides for such a committee, it seems to me that this is a perfect opportunity for the Act to take advantage of that provision and use the committee. In establishing those guidelines, once again we would be introducing into the Act an element of transparency that is otherwise absent from it.

One of the major concerns about the legislation is that the Minister will have the power to appoint a planning administrator and, under section 118 (1) (b), will have power to appoint a planning administrator if the Minister is of the opinion that the performance of the council is unsatisfactory, whether that be in regard to the way in which it has dealt with matters, the time it has taken, "or in any other respect". That latter phrase once again gives the Minister complete discretion in interpreting the activities of any council, and gives the Minister sole power to appoint a planning panel, and to do so for any reason.

Another reprehensible aspect of this legislation is that it does not impose on the Minister any requirement to justify whom he appoints to any planning panel, nor any requirement to disqualify anyone from

being on such a panel, even if they have a conflict of interest. The provision is totally open to subversion and corruption. At least a council is accountable every four years. That is, if the community is dissatisfied with the council's planning decisions, or is concerned that its decisions are made either too quickly or too slowly, it has the opportunity to replace its councillors. But, under this legislation as it stands, there is absolutely no limitation on the length of time during which a council may have its planning functions removed.

Country mayors constantly complain of how slow the Department of Planning is to approve, refuse or consider local environment plans or other proposals from councils. A constant source of complaint by local government is the inadequacy and tardiness and dilatoriness of the Department of Planning. One can understand why that is so, because the Department of Planning has been subject to three major upheavals. It was restructured and combined with Infrastructure and Natural Resources, and then it was restructured and returned to being a stand alone department—and in the process it lost many of its more skilled planners and personnel. We all know that throughout the State there is a severe lack of people with planning expertise. Because of the shortage of planners, many planning experts who live in a country area work for private industry, not for a council; and serving on a planning panel would almost inevitably result in a conflict of interest when it comes to determining development applications, especially in country areas.

I believe that the amendment moved by the Government is faulty. It provides, in relation to development contributions, that the Minister is to do one or more of three listed options. There is no requirement on the Minister to do any more than one of those—and one may merely be to consult with owners of the land in the special contributions area and other relevant stakeholders. All that that says is that the Minister may choose to consult. It does not even impose a requirement that the results of those consultations should be made publicly available. All the Minister has to do, perhaps, is pay lip service to consulting with the landowners.

The second option that the Minister might adopt, but is not required to adopt, is to publicly exhibit a proposal in relation to the level of development contributions and to seek submissions within a reasonable time. Anyone who is aware of the Government's record on seeking submissions knows that often it sets an absolutely minimal time for the making of such submissions. Again, the Government's amendment contains no requirement that those submissions be made publicly available. The Government may indeed publicly exhibit its proposal, but absolutely nothing in the Government's amendment or legislation requires the Minister to let the public know what submissions have been made or what is contained in them.

The third option is that the Minister establish a panel that, in the Minister's opinion, represents the interests of the various relevant stakeholders, and consult with that panel. Once again, it is totally up to the Minister's discretion as to who might be included on such a panel. I had that experience today in relation to the Enfield intermodal logistics terminal, which is creating great concern in the Strathfield and Enfield area. A resident complained about the panel the Minister has appointed to take public submissions and to assess them. According to the resident, one member of that panel has a direct conflict of interest in the matter. However, when the resident made the complaint, it was the Department of Planning—that is, the Minister—who determined that there was no conflict of interest. The people who appointed the panel are the people who hear any allegations of conflicts of interest. If that is the case in relation to the intermodal logistics terminal at Enfield, we can expect it to be the same in regard to any panel the Minister for Planning may constitute. This is token, lip service compliance with the concerns that have been raised across the board. Government amendment No. 2 states:

Before creating a special contributions area (other than a growth centre), the Minister is to consult with the peak industry organisations that the Minister considers to be relevant.

When you are talking about an industry organisation, you are obviously talking about the Housing Industry Association or the Property Council. However, in my view it is not usual for people to refer to local government as "a peak industry organisation". The proposal does not even include taking into consideration the views of the affected local government area. It just takes the property industry into consideration. The property industry is a massive contributor to the Government's funds. The Greens believe that the Government's amendments are sadly lacking.

I refer to the amendments moved by the Christian Democratic Party. Amendment No. 5 requires the Minister for Planning not merely to consult with the Minister for Local Government but to obtain the concurrence of the Minister for Local Government before appointing a planning panel or planning administrator. That is a complete copy of amendments that have been moved by the Greens. The Christian Democratic Party is trying to somehow, in a rather shame faced manner, say, "Well, it is an essentially abhorrent bill. We will try to tidy it up a little." However, they will not go far enough to meet the requirements of the Local Government and Shires Associations in this State.

**The CHAIR:** The Committee will vote seriatim on Greens amendments Nos 5 and 11.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [10.14 p.m.]: As has been indicated in the letter from the Minister for Planning, the Government supports the well-researched and defined amendments of Reverend the Hon. Fred Nile. As his amendment is similar to Greens amendment No. 5, but more defined and a better amendment, the Government will not accept Greens amendments Nos. 5 and 11.

**The Hon. PATRICIA FORSYTHE** [10.14 p.m.]: I will make one comment in relation to the letter from the Minister for Planning that Reverend the Hon. Fred Nile read. The letter perhaps gave him some assurances in relation to amendments that the Government is moving. I note that the letter began by stating that the Minister gave a guarantee that he would consult with local government. I place on record that one of the concerns of local government in relation to this bill is consultation. Consultation is not a matter of just picking up the telephone and telling local government that you are going to do something. Consultation is a genuine process by which the opinions of local government would be given due consideration.

That is not what the Minister has done, for example, in relation to this legislation. He claimed to have consulted originally. He did not; he merely told local government. When Reverend the Hon. Fred Nile quotes the Minister's letter and says that the Minister gives a guarantee to consult, that can mean anything—and when it comes from this Minister for Planning it means very little. I say to the members of the Christian Democratic Party that, notwithstanding their so-called letter from the Minister that is meant to give some justification to their position, Opposition members do not accept the position taken by the Minister for Planning. He is good on words, but it is action that counts. When it comes to action, he has treated local government shabbily in relation to this legislation. He is seeking to undermine the position of local councils in regard to planning in this State. We will not support that.

**The Hon. Dr PETER WONG** [10.16 p.m.]: I share the concern of Ms Sylvia Hale. I have read the Government's amendment. I do not see why the Government could not put in its first amendment:

- (a) consult with owners of land in the special contributions area and other relevant stakeholders,

and then (b) and (c), et cetera. With regard to Government amendment No. 2, I fail to see why the Minister for Planning cannot consult the relevant local council. I also share Ms Sylvia Hale's view about concern expressed in a letter from the Country Mayors Association of New South Wales in relation to this bill. The letter stated in part:

The views of the local communities need to be considered. The appearance of direct political intervention in the land development sector in regional areas needs to be reduced not added to.

Furthermore, as mentioned by Ms Sylvia Hale, on a practical level the Department of Planning does not currently have sufficient experienced qualified development assessment staff to meet its existing workload. Therefore, I do not know what the Government is talking about. I mention the \$700,000,000 to which Reverend the Hon. Fred Nile referred. I asked during the consultation with local government representatives: As the Government made allegations that local government may have \$700,000,000 in its trust fund, would the Government not consider using it for election purposes? The answer was, "Yes." Reverend the Hon. Fred Nile knew that that was the reply. Why did he not ask the question then?

**Reverend the Hon. Fred Nile:** I was quoting what you said here tonight.

**The Hon. Dr PETER WONG:** I know. Exactly right. That was the question I asked this morning. You were there.

**Reverend the Hon. Fred Nile:** But you said it here tonight.

**The Hon. Dr PETER WONG:** I said it tonight because I was asked that question, and I am sure you know.

**The CHAIR:** Order! Comments should be directed through the chair and not across the Chamber.

**The Hon. Dr PETER WONG:** We all know how politics works. We know how valuable \$700,000,000 can be at election time; it can buy a marginal seat. We know from today's debate on the M5 East

tunnel that three chimneys became one because of politics. I am sure that Reverend the Hon. Fred Nile is not that naïve or stupid.

**The Hon. PETER BREEN** [10.20 p.m.]: Today the crossbench had the benefit of a briefing from the Local Government Association, the Environmental Defender's Office and the Total Environment Centre, all of which expressed grave concerns about the impact of the Environmental Planning and Assessment Amendment Bill on local government. One paragraph of a letter that arrived today from the Local Government Association states:

In our view this legislation is a cross-roads in the relationship between local and State government and our communities. The onus is on us as community representatives to fight as hard as we can to promote and preserve transparency and accountability in decision making and planning. Failure to address the State Government's proposed legislation will be felt throughout the local communities of NSW.

I have not seen such a level of concern about legislation in all the time that I have been in this House. The Local Government Association, the Environmental Defender's Office and, in particular, Jeff Angel from the Total Environment Centre were absolutely livid by the reach of the legislation into the operations of local government in the planning process. The bill gives the Minister for Planning unprecedented powers to interfere in the planning process on the basis that he believes that council's treatment of a particular proposal is unsatisfactory. This unqualified power does not belong in the hands of one Minister. It undermines the reason for local government. Without their planning powers and their ability to determine what happens to section 94 contributions, local councils will become redundant to the Minister. There are in existence already in New South Wales various offices where representatives from the Minister are involved in the planning process. The appointment of panels will legitimise that process.

Before long we will find that the Minister constantly and persistently interferes with local government. If local councils do not co-operate and do what the Minister wants a panel will be appointed. This is the most undemocratic legislation dealing with the operations of the work of local government that I could imagine. I support Greens amendments Nos 5 and 11. We have had the benefit of advice from the Local Government Association and the Total Environment Centre about them. We were advised that we should support the amendments as a last resort if it appeared that the bill was going to be passed, and that certainly is what is happening. However, we now have to consider amendments from the Christian Democratic Party, on which we have not had the benefit of advice. My normal reaction would be: In the absence of advice, act on the last instruction, which was to oppose the bill. However, the difficulty for all crossbench members is that if the Greens amendments are defeated we are faced with a bill that we oppose totally, and that is an appalling injustice to local government that will create a whole regime of planning and treatment of section 94 contributions that is likely to create local government revolution.

How will the Minister deal with applications if all councils in New South Wales decide to let the Minister do it if he wants to be the planning determiner in these matters? If they were to say to applicants, developers, builders and people who want to build additions to their houses, "The Minister is now in control of planning. We will send the applications to him," there would be absolute chaos. If I were involved in local government and if I were opposed to the bill, as local government representatives appear to be, that would be the only reasonable course of action. However, we are still faced with the problem of how to vote on the amendments. Although I support Greens amendments Nos 5 and 11, they are replicated in amendments moved by the Christian Democratic Party.

**Mr Ian Cohen:** Word for word?

**The Hon. PETER BREEN:** They are not word for word in one case, but they are in the other case. Another amendment moved by the Christian Democratic Party relates to a review of the legislation and it is replicated in a Government amendment. It is difficult to know how to support the amendments. Although I support the Greens amendments, I am concerned that the Christian Democratic Party amendments have been approved by Frank Sartor. To my mind, that is a good reason not to support them.

**Mr IAN COHEN** [10.24 p.m.]: I am compelled to add only a few words and to make a few minor points because I appreciate the role taken by Ms Sylvia Hale, who has gone to a great deal of effort to follow through on the Environmental Planning and Assessment Amendment Bill as the Greens spokesperson on planning. When Frank Sartor goes out to local councils he does not consult, he insults. He insults my community and many other communities. The man is a megalomaniac. He does not know how to deal with people. He does not know the history of Labor. He does not know the party, the people or the pressures that are

involved at a council level dealing with the community. He has not had to do that because he has had the fiefdom of Sydney council for so many years where he had a bevy of experts and planners to do the work for him. He does not understand the pressures in dealing with community and council. I am afraid what we are seeing here, aided and abetted by the likes of Reverend the Hon. Fred Nile and Reverend the Hon. Dr Gordon Moyes, is an absolute abrogation of responsibility or any principle by many people in this Committee today. I do not accept the argument.

What is really happening is a toadying to the government of the day, which, in turn, is a toadying to the development industry. It is an appalling situation. Every so often when the Government introduces planning legislation it comes up. As the Hon. Peter Breen accurately said, the legislation guts the power of local government, another tier of government, in this State. Therefore, it is attacking the community. How can this be possible, particularly in an election year? More and more I am convinced that the Government does not need to worry about the sensitivities of the community and what people really feel, nor does it have to look in detail at the issues and the way things are done. The Government goes through the actions to facilitate the development industry, it gets a bag of money coming up to the election and then it is able to finance conning the public. We are seeing the degeneration of democracy, and the bill is very much part and parcel of that. After many years of not building a house on my property, which is in the coastal zone, I found out today that any size development I want to undertake will have to be sent off to Frank Sartor's department because local council will no longer be able to deal with it. I will throw in a little cheque to the New South Wales Labor Party with my development application!

**Reverend the Hon. FRED NILE** [10.29 p.m.]: I thank the Government for accepting the Christian Democratic Party amendments. Contrary to what the Hon. Peter Breen said, we would not have supported the Environmental Planning and Assessment Amendment Bill unless we had those amendments. He has it back to front. He said that he would not vote for the amendments because Mr Sartor supported them. However, he has to support them for us to support the bill. That is the whole principle. A previous speaker gave the impression that a lot of developers and real estate agents could be on the panel, but disclosure of pecuniary interest is covered clearly in the legislation. It is just as detailed for members of Parliament as it is for members of the panel. It was stated also that the Minister for Planning would do whatever he liked with all the developments. However, the bill says specifically that the panel is not subject to the control of the Minister in determining a development application. The Minister has no impact on the development application.

**The Hon. PETER BREEN** [10.29 p.m.]: Reverend the Hon. Fred Nile is underestimating the power of the Minister under this legislation. Christian Democratic Party amendment No. 3 states:

... the Minister is to consult with the Local Government and Shires Associations of New South Wales and any other industry organisation the Minister considers to be relevant ...

That is arbitrary power by the Minister. There is no other way to describe it. How such power is exercised will depend entirely on the goodwill of the Minister. If we have a Minister who believes in local government and supports the idea of community involvement in the planning process, which is what local government ensures, then we have no fears from the legislation or the amendments. If we have a Minister who becomes a demagogue and seeks complete power from Macquarie Street, then this bill and the amendments moved by Reverend the Hon. Fred Nile will undermine local government to the point that councils will be left to collect garbage and look after water and council rates. Beyond that, councils will not have any real input into local community. If there were to be a debate about the removal of various tiers of government, there would be a much stronger argument for removing the State government tier before the local government tier.

This bill is an appalling piece of legislation in terms of its impact on the Local Government Act, local government operations in New South Wales and the powers of the Minister. I simply say to Reverend the Hon. Fred Nile: if he thinks the Minister does not achieve the type of power that has been contemplated in the debate, he need only look at his own amendments to see that the power if used improperly is absolute.

**The Hon. PATRICIA FORSYTHE** [10.31 p.m.]: As to the comments made by Reverend the Hon. Fred Nile on the powers of the Minister, I draw the attention of the honourable member to the explanatory note in the bill. Having listened to Reverend the Hon. Fred Nile in this House over many years, I know he is not a gullible person and that he understands statements by Ministers and others. I am incredulous at his position on this matter. How and why are we going to get these so-called planning assessment panels? The explanatory note states:

The Division provides that if the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation or its performance in dealing with planning and development matters is unsatisfactory, if the council agrees or if a report by the Independent Commission Against Corruption recommends such an appointment, the Minister may appoint a planning administrator ...

The explanatory note states that the council's performance is based on the view of the Minister. I remind the honourable member that there is no definition of "unsatisfactory". It is a subjective view in the mind of the Minister. I will take it further and put it in the context of my local council, Ku-ring-gai Council, which is one of the local councils that has been mentioned in relation to this legislation. It is on the record that for the past few years the position of Ku-ring-gai Council on many issues of local development has been at odds with the view of the Minister for Planning. That is not to say the council's actions have been satisfactory or unsatisfactory. It has simply taken a different view about the community's requirements in local planning. The council has stood up to, first, the Carr Government and now the Iemma Government on a range of local planning issues, from density to regional shopping facilities. It has taken a fundamentally different view on a whole range of issues. One could say that the council was elected on such a platform. That is not to say its performance is satisfactory or unsatisfactory, but it is at odds with the view of the Minister for Planning. It is a classic example of a council that may lose planning powers and may see the appointment of a planning assessment panel.

Reverend the Hon. Fred Nile says that such appointments would only happen under certain circumstances and that the Minister would not take such action unless it was in the best interests of all parties. The history in my local area does not support that view. One could assume that within weeks of this legislation being gazetted Ku-ring-gai Council could see the appointment of a planning administrator or a planning assessment panel. Such action would be completely at odds with the local community and the local council which have tried to put forward an approach to planning in the area that reflects the views of the local community, as other councils have done in other parts of the State.

The council's plans may not be the general direction and may not be the view of the Department of Planning, the Minister for Planning or the Labor Government in this State. That is why we have a local democratic process and the election of councillors every four years. That is why we have a system of planning in New South Wales. The current legislation accords a role to local councils in making local plans and to the State through the Minister for Planning to administer the Environmental Planning and Assessment Act. That is as it should be. That is one of the clear reasons the Greiner Government was elected in 1988. If this bill is passed, as apparently it will be with the support of the Christian Democratic Party and others, then history will repeat itself. This will be one of the grounds upon which this Government will be thrown out of office.

**Ms SYLVIA HALE** [10.36 p.m.]: The Hon. Peter Breen said that so much is left to the discretion of the Minister and so much will depend on the nature of the Minister. For example, if the Minister is a megalomaniac, what impact will that have on planning in the State? Earlier I referred to the concerns of the Country Mayors Association about the Act and its request that the planning administrator or panel in some way be accountable and that the Minister does not have unfettered discretion to appoint whomever he wishes and to establish a panel without reference to any guidelines. The letter from the Country Mayors Association states:

The amended legislation allows the Minister to call in Development Applications on what appears to be an arbitrary basis. These applications are often very significant to local communities. Call-in guidelines and processes need to be clearly and objectively established. The views of the local communities need to be considered. The appearance of the direct political intervention in the land development sector in regional areas needs to be reduced not added to.

The letter refers to the practical implications of the Department of Planning calling in development applications. It states:

On a practical level, the Department of Planning does not currently have sufficient experienced, qualified development assessment staff to meet the workload. This has led to long assessment and processing times for regional applications. Inevitably local Councils complete a significant amount of the detailed local assessment with no assistance in cost recovery at all.

That is another feature of this bill. If the Minister imposes a planning panel or administrator, the local council, not the Minister or the department, will have to meet the costs. It is worth looking at the tendency of the Minister to concentrate power within himself. The Department of Planning web site has an archive of the number of matters that have been called in by the Minister for decision.

Between 2000 and 2004 there was in each year an average increase of 20 in the number of development proposals that were called in for decision by the Minister. But in the last year for which we have records, that is 2004-05, rather than that increase being on average 20, in fact the increase was 167. That means we are now up

to more than 200 applications being called in by the Minister in the last year and, as I mentioned before, what the country mayors are concerned about—this has happened in the context of the loss of expertise within the department—are inordinate delays. The whole justification for this legislation is supposed to be the tardiness of councils in processing applications. But time and time again we hear from councils comments about the inordinate time that the department takes to respond to councils in either refusing, approving or varying proposals from councils.

Indeed, as evidence from the director general of planning indicated during a committee hearing as recently as last week, the department can say, in terms of large developments, that it requires two years in which to process some development applications and finish the approvals process. The department has said it needs a minimum of two years, or possibly three, to get all the approvals done, yet this is the same department whose Minister consistently flails councils because they do not process applications within 40 days. Of course, if councils do not process applications within 40 days, the developer has the right to go to the Land and Environment Court. Whether a council wishes it or not, the council then becomes embroiled in very expensive legal proceedings, yet the council is flayed for running up additional costs in defending itself in the proceedings.

The entire planning scheme in New South Wales works against the provision of sufficient resources and finance to local government. This bill, as it currently stands, just tips the balance further against the community and against local government.

**The Hon. Dr PETER WONG** [10.42 p.m.]: Earlier the impression was given that the panel would be independent. That is not the case. Apart from what has been mentioned by the Hon. Patricia Forsythe, the Minister can appoint a panel if he has deemed the council is unsatisfactory because of the manner in which a council has dealt with matters, et cetera. Furthermore the bill specifically mentions that the panel will include three to five members appointed by the Minister. The Minister also appoints the chairman of the panel. Furthermore a panel, in the exercise of its function, is subject to the control and direction of the Minister.

**Reverend the Hon. Fred Nile:** Except for development applications.

**The Hon. Dr PETER WONG:** Yes. I was going to say that. That is a very grey provision and Reverend the Hon. Fred Nile knows that. Imagine a panel being given the power to determine all matters except for development applications.

**Reverend the Hon. Fred Nile:** That is the purpose of the amendment.

**The Hon. Dr PETER WONG:** The Minister is scared that he will be accused of corruption. I understand that. I am not making that accusation. However, if the Minister has 90 per cent control, that is almost as good as 100 per cent. In case people accuse me of paranoia, I quote from a letter I received from a council that relates specifically to this point:

Amendments to Planning Consent Powers

The Bill threatens to take away Council's planning functions in relation to the assessment and determination of DAs. In situations where the Minister deems a Council to be under performing in terms of time taken to reach critical decisions the Minister has the ability to appoint a planning administrator or a planning assessment panel to exercise Council's current planning functions ... The Bill provides no clarification in terms of how a Council's performance is measured nor does it require the Minister to consult with councils or provide reasons for his decision. The panel or administrator is also subject to the Ministers control and direction ...

That last point is what I mentioned earlier. The letter goes on to state:

The Bill then gives the Minister the power to remove a democratically elected Council as consent authority and hand these powers to an undemocratically selected panel or administrator. The costs furthermore of setting up the panel/administrator are expected to be met by Council and the Bill provides no indication in terms of what limitations may be placed on these costs forced on Council by the Ministers decision to appoint a panel/administrator.

**Reverend the Hon. FRED NILE** [10.45 p.m.]: I will clarify a point made by the Hon. Patricia Forsythe, who quoted section 118 and said I was unaware that the Minister only had to be of an opinion. The precise reason why I moved two amendments was to change that, so that, after the bill is passed it will no longer be just a matter of the Minister's opinion. Amendment No. 6 shows that some of the statements made by other honourable members, suggesting that tomorrow the Minister could act peremptorily, are false. He will not be able to because amendment No. 6 states:

- (6) The Minister may appoint a planning administrator or a panel for a reason set out in subsection (1) (b) only if the Minister has, by order published in the Gazette, provided heads of consideration for the exercise of power under subsection (1) (b), and has taken those heads of consideration into account.

There will be a buffer between the bare Minister's opinion and what ultimately happens, and the Minister will have to provide a regulation to that effect. Amendment No. 7 states:

- (7) The Minister must, as soon as reasonably practicable after appointing a planning administrator or a panel, make the reasons for that appointment publicly available.

The provisos have been added to the legislation. It is no longer simply the words "is of the opinion". The provision will be qualified by those two amendments.

**Government amendments Nos 1 and 2 agreed to.**

**Question—That Greens amendment No. 5 be agreed to—put.**

**The Committee divided.**

**Ayes, 6**

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

**Noes, 25**

Ms Burnswoods	Mr Hatzistergos	Mr Primrose
Mr Catanzariti	Mr Kelly	Ms Robertson
Mr Clarke	Mr Lynn	Mr Ryan
Ms Cusack	Reverend Dr Moyes	Ms Sharpe
Mr Donnelly	Reverend Nile	Mr Tsang
Mrs Forsythe	Mr Oldfield	
Miss Gardiner	Ms Parker	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Colless
Ms Griffin	Mr Pearce	Mr West

**Question resolved in the negative.**

**Greens Amendment No. 5 negatived.**

**Question—That Greens amendment No. 11 be agreed to—put.**

**The Committee divided.**

**Ayes, 6**

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

**Noes, 24**

Ms Burnswoods	Mr Hatzistergos	Mr Primrose
Mr Catanzariti	Mr Kelly	Ms Robertson
Mr Clarke	Mr Lynn	Ms Sharpe
Ms Cusack	Reverend Dr Moyes	Mr Tsang
Mr Donnelly	Reverend Nile	
Mrs Forsythe	Mr Oldfield	
Miss Gardiner	Ms Parker	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Colless
Ms Griffin	Mr Pearce	Mr West

**Question resolved in the negative.**

**Greens amendment No. 11 negatived.**

**Christian Democratic Party amendments Nos 1 to 7 agreed to.**

**Ms SYLVIA HALE** [11.01 p.m.], by leave: I move Greens amendments Nos 6 and 7 in globo:

No. 6 Page 6, schedule 1 [15], proposed section 94EE (4), lines 37 and 38. Omit all words on those lines.

No. 7 Page 7, schedule 1 [15], proposed section 94EF (6), lines 26-28. Omit all words on those lines.

Amendment No. 6 seeks to delete a clause that provides that a person cannot appeal to the court under this Act in respect of a determination of the Minister under this section. That refers to the levying of development contributions. Amendment No. 7 deals with section 94EF, which provides that a person cannot appeal to the court under this Act in respect of a direction of the Minister or a condition imposed by a consent authority or the Minister under this section. I find those two clauses utterly abhorrent because they remove the right of appeal. That is essentially undemocratic. Anyone, whether it is a resident, an incorporated body, a council or a developer, should have the right to appeal. These provisions destroy that right. I cannot understand how anyone who has any concern for the Westminster system and the division of powers could not possibly support a proposal that at least allows a person to appeal against a Minister's deviation from his powers and his failure to observe proper process. Deleting these two clauses will restore to the community the right to appeal against what is essentially the Minister's untrammelled discretion.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.03 p.m.]: The Government does not support these amendments. The certainty of infrastructure provision needs to be preserved.

**Amendments negatived.**

**Ms SYLVIA HALE** [11.04 p.m.]: I move Greens amendment No. 8:

No. 8 Page 9, schedule 1 [15]. Insert after line 17:

**94EN Audit of Fund by Auditor-General**

The Auditor-General is to audit the Fund, in the year it is established and in each year thereafter, as if:

- (a) the Fund had been prescribed under section 44 (1) (b) of the *Public Finance and Audit Act 1983*, and
- (b) the Minister had requested the Auditor-General to audit the Fund under section 45 of that Act.

This amendment relates to the establishment of a special contributions area infrastructure fund. This fund has been set up and into it will be paid the special contributions levies. The insertion of new section 94EN will require the fund to be audited by the Auditor-General. Again, if one is interested in accountability and transparency, to have the Auditor-General confirm that the funds have been spent in accordance with the Act is a minimal requirement. I would have thought that such a provision should apply in respect of almost any bill that concerns the collection or distribution of monies. It seems to me that the need for such a requirement is transparently obvious. We are talking here of significant amounts of money, millions of dollars, and at the very least it should be incumbent on members of this Chamber to satisfy themselves that those funds have been spent

in accordance with the law. The only way that that can be properly and adequately done is by requiring an audit of the funds by the Auditor-General.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.07 p.m.]: The Government does not support this amendment. We believe it is unnecessary.

**Amendment negatived.**

**Schedule 1 as amended agreed to.**

**Ms SYLVIA HALE** [11.08 p.m.]: I move Greens amendment No. 9:

No. 9 Page 11, schedule 2 [1], proposed section 74F, lines 5-24. Omit all words on those lines.

This amendment relates to the Minister's ability to direct councils with respect to development control plans. Under proposed section 74F the Minister may direct a council to make, amend or revoke a development control plan. The council is required to comply with that direction and if it fails to do so the Minister may again make, amend or revoke that plan. In fact the Minister would stand in place of the council. The Minister in making, amending or revoking a development control plan [DCP] is not subject to regulations. The essential difference is that again, as with proposed section 94 plans, when councils produce development control plans they do so after considerable consultation with the community. Any DCP is put out for public exhibition and it is subject to prolonged discussion and potential amendment within the council itself, in light of the submissions it has received.

As a result of the amendments made to the Environmental Planning and Assessment Act last year, the Minister has prescribed that there may be only one development control plan [DCP] relating to any particular site. One of the few virtues of the changes is that development control plans now have a power similar to that of local environment plans. In the past, because DCPs did not have the power of local environment plans, if there was an appeal to the Land and Environment Court the court was at liberty to ignore the DCP in a way that it could not ignore an LEP.

So, in some ways, as a result of the previous set of amendments to the Environmental Planning and Assessment Act, the authority of development control plans has been enhanced, and I believe that could well be a good thing. But when the Minister, without any reference to the community, without any requirement to give reasons, and without being accountable, can revoke a council's development control plan—say, with regard to heritage issues, site set backs, exposure to noise or privacy considerations—and can blithely either reject any of the provisions of such a DCP or amend the DCP to impose conditions that are absolutely abhorrent to a council and would certainly be abhorrent to residents, and do so without any requirement for any public consultation, the only requirement being that it be the Minister's opinion that a change should be made, I believe that is the ultimate expression of an authoritarian, centralist view of the functions of the Department of Planning. Greens amendment No. 9 would remove the Minister's power to direct councils with regard to development control plans entirely from the bill.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.13 p.m.]: The Government does not support Greens amendment No. 9. The original lines need to remain in the bill because the provision is necessary to co-ordinate State and local planning controls.

**The Hon. Dr PETER WONG** [11.13 p.m.], by leave: I move Unity amendments Nos 1 to 4 in globo:

No. 1 Page 11, schedule 2 [1], proposed section 74F (5), line 22. Omit "not".

No. 2 Page 11, schedule 2 [1], proposed section 74F (6), lines 23 and 24. Omit all words on those lines.

No. 3 Page 12, schedule 2 [3], proposed section 118 (1), line 20. Omit all words on that line.

No. 4 Page 12, schedule 2 [3], proposed section 118. Insert after line 27:

- (2) The Minister must not appoint a planning administrator or a panel (or both) to exercise functions of a council unless the council consents to the appointment.

Amendment No. 1 ensures that the Minister's planning decisions must be made in accordance with the regulations. The Minister therefore will not make a direction to a council that would otherwise be illegal for a council to fulfil, except with such ministerial direction. Amendment No. 2 ensures that only one development control plan made by the same relevant planning authority may apply in respect of the same land. Thus the Minister cannot cause two or more development control plans to exist on the one piece of land. Amendment No. 3, taken in globo with amendment No. 4, ensures that councils are fully in agreement with the Minister on the need for an administrator and/or a panel to take control. Amendment No. 4 ensures that the Minister can only operate under the bill with the agreement of the council affected.

**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.]: The Government does not support the amendments. In relation to amendment No. 1, the Minister needs the flexibility to intervene in a development control plan [DCP] quickly and efficiently in the case of inappropriate and contradictory policy provisions. In relation to amendment No. 2, such an amendment would have the unfortunate effect of necessitating amendments to other DCPs. It is not appropriate that other council DCPs should be affected as a result of intervention by the Minister. Amendments Nos 3 and 4 would remove the ability of a council to request the Minister to appoint a panel or an administrator. The amendments would also fail to allow the Minister to appoint in circumstances where, naturally, a council would be opposed to intervention, for example, in the case of an unacceptable performance, at the recommendation of the Independent Commission Against Corruption or due to corrupt conduct.

**Greens amendment No. 9 negatived.**

**Unity amendments Nos 1 to 4 negatived.**

**Ms SYLVIA HALE** [11.17 p.m.], by leave: I move Greens amendments Nos 12 and 13 in globo:

No. 12 Page 15, schedule 2 [3], proposed section 118AC, lines 1–11. Omit all words on those lines.

No. 13 Page 23, schedule 3 [5], proposed section 23. Insert after line 22:

- (3) The Minister is, within 21 days of receiving a statement of business intent, to make the statement publicly available.

Greens amendment No. 12 relates to the cost of a planning administrator or panel. The bill permits the Minister, for any reason he deems fit, to remove a council's planning powers and instead appoint a planning administrator or planning panel. One of the more invidious features of the bill is that the Minister may require a council to pick up the costs of that panel or administrator. As has been pointed out frequently by various councils, and as well as by the Local Government and Shires Association, the administrator or panel may refuse a development application or fail to consider it in the 40 days allowable, or may simply make a determination that is wrong in law.

That would then lead to appeals to the Land and Environment Court. The Government is always emphasising how expensive and time consuming such appeals are. Unfortunately, a council would be in the position of having to pay for those mistakes on the part of the administrator or panel. The amendment ensures that if the Government is determined to appoint an administrator or panel, the Government should bear the costs associated with that, rather than expect a council, through its funds, which may be already strapped, to bear such costs.

By removing these clauses from the bill the Greens amendment is merely trying to transfer the cost of that panel to where it belongs, that is, back to the Minister. Greens amendment No. 13 requires the Minister to make public any statement of business intent. The Greens welcome the requirement for development corporations to produce an annual statement of their business activities. As that is basic business practice it should be standard practice for any government department, and especially any corporatised entity.

The thrust of this amendment is to ensure that the statement is made public. Once again, this totally uncontentious amendment tries to inject into the bill a small element of transparency and accountability. There is nothing exceptional in that requirement; it merely requires the Minister to make public any statement of business intent. Of course, that allows public scrutiny and comment on the foolishness, wisdom or otherwise of the business intentions of development corporations.

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.20 p.m.]: The Government does not support these amendments. In relation to amendment No. 12, it would be inappropriate to defray the cost of a panel or an administrator. In relation to amendment No. 13, the statement of business intent would include commercially sensitive information considered inappropriate to publish.

**Reverend the Hon. FRED NILE** [11.21 p.m.]: The Christian Democratic Party raised this issue with the Minister and he pointed out that proposed section 118AC (2) states:

The Minister may do either or both of the following:

- (a) exempt a council from payment of all or part of the remuneration and costs and expenses of the planning administrator or panel,
- (b) resolve any dispute as to the amount of any such remuneration, costs or expenses.

I do not want to verbal the Minister but in a conversation he indicated that that might apply to smaller country councils and others that might not be able to pay those costs. That proposed section provides more flexibility than the approach adopted by the Greens. If it is automatic it is still within the discretion of the Minister.

**Ms SYLVIA HALE** [11.22 p.m.]: Reverend the Hon. Fred Nile failed to read what is in front of him. The bill clearly states:

The Minister may do either or both of the following ...

We again have this extraordinary accretion of power in the hands of the Minister. It is one thing to say that he, as a personal favour, might say to a small country council, "We will exempt you from having to pay this", but there is no requirement in the bill that he should do so. I refer next to this Government's treatment of councils and give as an example the amalgamation of country councils. Despite the strenuous opposition of country councils the Government rode roughshod over them and imposed amalgamations on them. In the past it has had no regard for small councils so, on the basis of its track record, why would we expect it to have any regard for them in the future?

**Amendments negatived.**

**Schedule 2 as amended agreed to.**

**Schedules 3 and 4 agreed to.**

**Title agreed to.**

**Bill reported from Committee with amendments and report adopted.**

### **Third Reading**

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.27 p.m.]: I move:

That this bill be now read a third time.

**The House divided.**

### **Ayes, 19**

Ms Burnswoods	Mr Kelly	Mr Roozendaal
Mr Catanzariti	Mr Macdonald	Ms Sharpe
Mr Costa	Reverend Dr Moyes	Mr Tsang
Mr Della Bosca	Reverend Nile	
Mr Donnelly	Mr Obeid	<i>Tellers,</i>
Ms Griffin	Mr Oldfield	Mr Primrose
Mr Hatzistergos	Ms Robertson	Mr West

**Noes, 18**

Mr Breen	Miss Gardiner	Mr Ryan
Dr Chesterfield-Evans	Mr Gay	Dr Wong
Mr Clarke	Mr Lynn	
Mr Cohen	Ms Parker	<i>Tellers,</i>
Ms Cusack	Mrs Pavey	Mr Colless
Mrs Forsythe	Mr Pearce	Ms Hale
Mr Gallacher	Ms Rhiannon	

**Pair**

Dr Burgmann

Mr Harwin

**Question resolved in the affirmative.****Motion agreed to.****Bill read a third time.****ADJOURNMENT**

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.32 p.m.]: I move:

That this House do now adjourn.

**DAVID KNIGHT BRIDGE OPENING**

**The Hon. CHRISTINE ROBERTSON** [11.32 p.m.]: In February I had the pleasure to represent the Government at the opening of a new bridge over the Castlereagh River at Deringulla. Deringulla is a small locality just to the south of Coonabarabran, and it lies on the road between Coonabarabran and Binnaway that goes on to Coolah. This road plays an important role as a freight transport route for the various agricultural enterprises that take place along it, including an abattoir, saleyards and grain silos. The narrow two-lane timber bridge over the Castlereagh River has been replaced with a modern, low-maintenance concrete structure. The new bridge is six spans wide, 71 metres long and can support B-double access, which is vital to local industry.

This project was undertaken in conjunction with the upgrading of Cookaburra Creek Bridge and McCallaugh's Creek Bridge on Main Road 129. The upgrade of the bridge also means that industries in the towns along the road's route, including Coonabarabran and Coolah, can be better serviced. The old Deringulla Bridge was built in 1937 and was not designed to carry heavy vehicles. Before the opening of the new bridge, heavy vehicles had to detour up to 82 kilometres to travel between these towns. Now travelling time will be drastically cut and access will be opened up for heavy vehicles to a whole new part of the State. Perhaps best of all, the improved access for trucks will help industry in the area grow, which in turn will create jobs. That relates especially to the local abattoir that was having major problems shifting its produce because the bridge could not carry B-double trucks and they had to make a major detour.

At the opening it was announced that this bridge would be named after local identity David Knight, who was tragically killed when his plane crashed last September whilst flying back from Murwillumbah with his wife. David Knight was described by the Mayor of Warrumbungle shire as a pillar of the local community, as he had founded the Deringulla abattoirs many years ago and had been a volunteer pilot for Angel Flight Australia, who volunteer their services to provide non-emergency flights for financially and medically needy people. Whilst his love of flying tragically claimed his life, it also allowed him to contribute in a major way to his local community for more than 50 years, as he ran his own business crop-dusting and running charter flights, besides his charitable work.

Naming the bridge after David Knight is certainly an appropriate honour for this fine local citizen. Several members of his family travelled to the bridge opening. However, perhaps the most pleasing aspect of the opening of the bridge was that all three tiers of government had worked together to build the bridge. The State Government had contributed \$600,000 to match the Federal Government's funding of this project, whilst the

Warrumbungle Shire Council also provided funding and carried out the construction works. The local Federal member, John Anderson, and I were able to jointly open this bridge.

This is yet another fine example of what can happen when the different tiers of government work together. Throughout New South Wales plenty of good infrastructure has been built because the different tiers of government have worked together to make things happen. That is a necessity because in many cases the resources needed to make things happen are only available when everyone pools their funds and works together in a spirit of co-operation to achieve things for their communities, regardless of their political colours. Unfortunately it does not happen nearly often enough.

For a start, there is the great GST rip-off by the Federal Government, which cannot be justified by anyone who is seriously interested in the welfare of New South Wales. This rip-off alone costs us \$3.5 billion a year in funding that could be spent on vital infrastructure. For all the great outcomes achieved when the Federal and State governments work together, far too often the current Federal Government has allocated money in a way that buys itself votes without providing any real benefit to New South Wales, and simultaneously forces the State Government to reallocate resources to ensure that vital services continue.

There are other tangible examples. In January 1996 the New South Wales Government entered into a 10-year agreement with the Federal Keating Government to jointly fund upgrades of the Pacific Highway. This co-operation has totally changed the drive from Sydney to the Queensland border. But there is still plenty of work to do. In an earlier debate in this Chamber I spoke of the need for the current Federal Government to come to the table with money to continue the upgrade, a call that was echoed by the Federal member for Page, Ian Causley. So far these calls have only been greeted with the occasional trickle of funding.

The New South Wales Labor Government is willing to put aside political differences to get things done, but unfortunately the Howard Government is just interested in playing politics. It was my great pleasure to open the David Knight Bridge, and I hope to see many further examples of the different tiers of government working together.

### **BYRON BAY GOVERNANCE**

**The Hon. CATHERINE CUSACK** [11.37 p.m.]: In recent weeks there has been major media coverage of a coronial inquiry into the death of 42-year-old Dianne Brimble on a P&O cruise. It is a shocking story that has touched the hearts of ordinary Australians. I recommend to the House a thoughtful and compassionate opinion piece written by Miranda Divine last week in which she commented:

Dianne Brimble's life can't be restored to her, but her dignity can ...

This tragic case raises yet again the important issue of drink spiking. In late December 2004 I attended the launch of an outstanding campaign in Manly called "Spiked Drinks: It's Beyond a Joke". Manly and my local area, particularly Byron Bay, have a great deal in common as iconic tourist destinations with large numbers of backpackers and international visitors. There is also a real drug problem. I wrote to the Green Mayor of Byron Shire Council, Jan Barham, to urge her to consider the Manly campaign, saying:

It was very impressive to see such an innovative campaign built with the cooperation of patrons, police, councils, the NSW Attorney General's Department and community groups dedicated to drug education.

I enclosed a copy of the materials and background notes for the project provided by the organisers. I wrote that letter in December 2004. I had no response until July 2005, when an acknowledgement letter arrived signed by a council officer. I have heard nothing further since. As shadow Minister for Women and as a North Coast member of the Legislative Council, I am concerned at the Greens' ambivalent attitude to drink spiking and drug abuse in their shire. I have received numerous complaints from local Liberals and others about the way in which the council fails on these issues, apparently because it is spending all its time harassing tourists and property owners, with disastrous results for the local economy.

I understand that over the past summer a 15 per cent downturn in business has been experienced in the Byron central business district, with a downturn of up to 60 per cent elsewhere. Anyone who understands business and employment—probably not the Greens—and who cares will realise that a 15 per cent downturn can be catastrophic. This has been caused by a dramatic fall in visitor numbers. A debate as to why this has occurred has begun, with the Greens blaming Rex Hunt, the Victorian actor and visitor, who made the outrageous claim that Byron was "more dangerous than Bali". But local businesses say that is not the full story

and that Mr Hunt received national airplay in part because of the anti-tourism campaign being run by the Byron Greens. The Greens Mayor, Jan Barham, denies this and has issued a challenge to produce a media report in which she is anti-tourism.

Where do I begin? Perhaps I should start with the disgraceful campaign to harass, demonise and encumber Gerry Harvey and his fabulous Byron at Byron resort. Mayor Barham was quoted as recently as 27 January this year in the *Australian Financial Review* as again attacking Mr Harvey, who is respected nationally as one of Australia's most ethical and community-minded businessmen. On 22 January last year the *Sydney Morning Herald* reported that the mayor had proposed a toll on tourists. Of course, that ridiculous idea should not be confused with suggestions by the Greens in 2004 that the council should be allowed to impose a bed tax.

On 3 September 2005 an article in the *Daily Telegraph* headed "Byron Bay draws \$1 million line in the sand" reported on the council's decision to limit the use of holiday rentals and crack down on those who breached the ban. Residents, including an 82-year-old grandmother, were slapped with notices for \$1 million fines, with a further \$110,000 for every day that the order was breached. A single mother with an 18-month-old child who also copped a notice said:

The fine is worth more than the House. I can't afford that.

A local real estate agent was quoted as saying:

Council is on a mission to close down holidays.

But perhaps the best example was when on 31 May 2005 the *Daily Telegraph* asked:

Has Byron got a sex predator or is it a plot to ... keep out tourists?

Much to the horror of the local business community, the Greens erected signs around Byron warning people about sexual predators, despite assurances from the police that the figures had not changed in the past 12 months. Inspector Owen was reported as saying, "The Mayor is anti-tourism." Given the council's total lack of response to a proposal for a meaningful campaign against drink spiking, I thought the move to install sex predator signage was pretty pathetic.

The Byron Greens have clearly sent out many strong anti-tourism messages in the national media. If the Greens were to attack drugs with the same fervour as they attack tourists and property owners, Byron would be crime free. Instead the Greens have policies called "natural retreat", which bans people who want to save their properties from falling into the ocean from taking measures against beach erosion. The latest fiasco is the new draft local environment plan. It was summed up by M. Jackson of Lismore, who wrote to the *Byron Shire News* saying:

The Mayor and her Green Machine have silently managed to damage the arteries that feed the town's heart and now it's time to go for the ticker.

On Friday the local Byron Liberals will host a function attended by a Federal Liberal member from Western Australia, Mr Wilson Tuckey, who is visiting the town to hear their concerns and those of other residents. I have no doubt that the locals will have plenty to say. Drink spiking will certainly be at the top of my list.

## LEGAL FEES INQUIRY

**The Hon. PETER BREEN** [11.42 p.m.]: Last week His Honour Justice Peter Young of the Supreme Court lamented the fact that legal counsel appearing in court cases are sometimes paid \$500 per hour "to repeat irrelevancies over and over again". The judge did not say so, but the reason for this appalling behaviour by some legal counsel can be attributed to one or more of three features of legal representation identified by law consumers: legal counsel are incompetent, they are overservicing their clients, or they are pleading every possible cause of action in order to satisfy the requirements of their professional indemnity insurers. Behaviour of this kind is not only offensive to the judiciary but particularly annoying to law consumers, since they are the ones footing the exorbitant legal bills.

More than three years ago Chief Justice James Spigelman identified the problem of lawyers charging by the hour instead of for items of work. Some commentators called it "the tyranny of the billable hour". In February 2003 Attorney General Bob Debus established an inquiry into lawyers' costs and time billing. A discussion paper published in November 2004 by the Legal Fees Review Panel said:

The culture of hourly billing and the increased pressure to obtain high profits have inevitably led to examples of unethical and illegal billing practices.

A report of the legal fees inquiry has been with the Attorney General for nearly three months, and law consumers eagerly await the Government's response to the inquiry. Meanwhile, the Law Society has already voiced its opposition to any changes to billing arrangements that impose further obligations on solicitors. If the Law Society had its way, solicitors would have few constraints on the way in which they account for their time and how they spend their clients' money.

Earlier this year I was approached by Edward and Norma Hall, a retired couple from the North Coast, when the Law Society refused to pay their claim on the Fidelity Fund for a sum of \$270,000 that was stolen by their solicitors, Lyon Jarrett and Associates of Thirroul. Mr and Mrs Hall married late in life and attended the office of Mr Neil Francis Lyon in 1999 to sign a cohabitation agreement. Mr Lyon introduced the Halls to Peter Martin Jarrett, whom Mr Lyon described as his partner. Lyon Jarrett and Associates then proceeded to handle three conveyancing matters and prepare new wills for Mr and Mrs Hall, who moved from the South Coast to the North Coast. It was in the course of these transactions that Lyon Jarrett and Associates stole the \$270,000 from Mr and Mrs Hall.

The facts of the case are simply disgraceful. Mr Jarrett stole the money and proceeded to purchase Mr Lyon's interest in the legal practice. The Law Society then moved on Mr Jarrett and removed his name from the roll of legal practitioners, leaving Mr Lyon in a position where, in his own words, he was able to buy the practice back for a pittance. Mr and Mrs Hall consulted a solicitor on the North Coast who knew nothing about claims on the Fidelity Fund but who proceeded to do a basketful of useless work at a grossly excessive hourly rate until he had run up a bill of nearly \$8,000. Due to the inadequacy of the claim on the Fidelity Fund, the Law Society had no hesitation in rejecting it. That raises a separate issue about the inherent conflict of interest the Law Society has as the administrator of the Fidelity Fund.

In any event, I was able to assist Mr and Mrs Hall with an appeal to the Supreme Court against the Law Society's decision to reject the claim on the Fidelity Fund. I have introduced the Halls to a solicitor who knows what he is doing and who is willing to act on a contingency fee basis. The new solicitor also contacted the police about the theft of the Halls' money. Mr and Mrs Hall are ordinary people who knew very little about the legal system. But they did know they had been robbed and they could not understand why the Law Society was so untroubled by their predicament. But, more than being untroubled, the Law Society failed in its statutory duty to administer the Fidelity Fund properly. If the Law Society were a truly responsible and independent custodian of the Fidelity Fund the first thing it would do when a solicitor steals a client's money is contact the police.

Whatever the recommendations of the report on the legal fees inquiry, I hope that one suggestion is an end to the tyranny of the billable hour for certain items of legal work. In complex matters legal fees ought to reflect the amount of work involved, and competent practitioners should not be precluded from charging a fee that recognises their experience and expertise. But a line needs to be drawn when the work is straightforward and the outcome entirely predictable. Contingency fees are appropriate in such cases—that is, no win, no fee—and this is one area where there is scope to replace the billable hour with an informed assessment of the likely fee component in a successful claim.

#### **RIVERINA-MURRAY REGION FURTHER EDUCATION OPPORTUNITIES**

**The Hon. TONY CATANZARITI** [11.47 p.m.]: Tonight I speak about developments taking place for people wishing to undertake further education in the Riverina-Murray region. We are fortunate to have two major educational institutions dedicated to providing the latest in training opportunities in the local area. Importantly, the education and training services that are provided not only give students the opportunity to study in a wide range of areas but also reflect the needs of employers throughout the region. Charles Sturt University and TAFE New South Wales Riverina Institute provide the Riverina-Murray region with educational opportunities once only afforded to our city cousins. The two are working with each other and local communities to ensure the educational needs of the region while constantly striving to improve upon the services that they offer.

The Riverina-Murray region is a diverse area covering approximately 125,000 square kilometres stretching from the Southern Alps to the South Australian border, with the Murray River forming the southern border. Honourable members may be aware that key employers within the Riverina-Murray region include primary industries and related businesses, tourism, education and service industries. Over the years the development of specialist training centres and the introduction of new courses aimed at meeting the needs of the local area have been a welcome addition. It often means that employers no longer have to send their staff to major regional or metropolitan centres or interstate just to update their skills. Most importantly, it allows children to stay in the area rather than having to pack up and move to the city to further their education.

Tonight I will focus on TAFE New South Wales Riverina Institute, which offers more than 550 courses each year, with enrolment rates of around 35,000 students. The Riverina Institute has campuses located throughout the region, including Albury, Coomealla, Cootamundra, Corowa, Deniliquin, Finley, Griffith, Lake Cargelligo, Leeton, Narrandera, Temora, Tumut, Wagga Wagga, West Wyalong and Young. In addition to those campuses, there are three centres of excellence. In Wagga Wagga there is the National Aerospace Training Centre located at the Royal Australian Air Force base and the Primary Industries Centre, and the National Environment Centre is located at Thurgoona near Albury.

Several campus expansions and facilities upgrades have been completed recently to the benefit of students at the Riverina Institute. These expansions and upgrades provide students with access to the latest industry resources and training, and assist in meeting the skills training needs of employers in the region. I have had the good fortune to be involved in a number of the official openings of refurbished buildings and new facilities. I am pleased to say that further capital works throughout the region are underway. In recent times I have represented the Minister for Education and Training at the opening of a multimillion-dollar upgrade at the Albury campus. One capital works program involved an investment of more than \$4.6 million in the Albury Technology Centre. The new centre provides top-class facilities for training in metal fabrication and welding, and the electrical trades. In addition, the fully State-funded refurbishment of the commercial kitchens and establishment of the training restaurant, the Rivers Restaurant, worth \$1.1 million, have been a great step forward for the historical Albury campus, which commenced trade training in 1899.

At the Griffith campus, the institute's fourth largest campus, I was pleased to be given the opportunity on behalf of the Minister to open the new hairdressing and beauty therapy building and refurbished teaching rooms. The hair and beauty industry is a rapidly expanding industry and the new training facilities were designed in consultation with key industry leaders, who said that they wanted people who have learned their skills in real-life situations. I was also fortunate enough to be treated to a much-needed manicure on opening day. I congratulate the students on their skills and professional attitudes, which will no doubt make them an asset to any employer. The Griffith campus is to undergo further expansion in the near future with the construction of nursing and child-care learning facilities that will be the most up to date in the State when completed. The project also includes additional parking for 20 cars, landscaping and the installation of rainwater tanks for reuse in irrigation of the grounds. Students at the Young campus will also benefit from an upgrade of its automotive and welding facilities. [*Time expired.*]

### PARRAMATTA BUS SERVICES

**The Hon. DAVID CLARKE** [11.52 p.m.]: The chronic problems facing Sydney's transport services continue to shape up as a major issue for next year's State election. Commuters on Sydney's trains, buses and ferries face an escalating series of disasters, including ferry breakdowns, late or cancelled train services, and a deteriorating government bus system, which does not go anywhere near to satisfactorily meeting commuter expectations. Nowhere is the issue of dysfunctional government transport services a more festering sore than in the Parramatta area. The people of Parramatta can be rightly proud of their city. It is a growing and vibrant community where initiatives of the local residents and the business sector have blended together for the common good. However, their fine endeavours are constantly hampered by a third-rate government transport system.

The latest fiasco arises out of the new, and much touted, Parramatta transport interchange bus service system pursuant to which a number of major bus stops have been removed from the heart of the central business district and consigned to its outer limits. Some bus services have been chopped around, with a further negative impact on the community. Commuters now find that where previously bus stops were easily accessible, they now have to walk an additional 400 metres, or more in some instances. Shoppers at heavily patronised Westfield Shopping Centre, who previously caught a bus directly outside the centre, are now required to walk some 300

metres to the new Parramatta transport interchange. These changes have been particularly hard on the elderly, the disabled and mothers with small children.

In addition, bus routes have been changed so as to remove bus services altogether from some areas previously serviced in the central business district. In some instances travel times have blown out quite noticeably. The fact that residents are growing increasingly angry has now become apparent to the Labor State member for Parramatta, Tanya Gadiel. What has been her reaction to this mounting anger? She issued a petition with a photograph of herself prominently displayed; that is what she has done. The petition, which is headed, "Bring our bus stops back", quotes her as saying "I've been listening to your concerns about recent changes to bus stop locations in Parramatta." It is about time too. The petition is directed to the Parramatta council traffic committee and states:

This petition of citizens of New South Wales draws to your attention that we the undersigned consider the changes made to bus stop locations in Parramatta an unjustifiable inconvenience to passengers. Buses bypass much of the CBD increasing travel time for those accessing shops, medical facilities and offices on the Church Street side of the CBD.

It is a good petition. It records some, at least, of the concerns of local residents. However, the only problem is that the petition should be directed to the State Labor Government because it is the culprit that has dictated and directed these disastrous changes in Parramatta. Contrary to what the petition states, the Government effectively decides where government bus stops are located, not the local council. That is where the real blame lies. The Minister for Transport has the whip hand here. We must ask: Why is Tanya Gadiel's petition not directed to him? The answer is, I would suggest, quite obvious.

But let us assume for a moment that the blame is not only with the Minister for Transport but also splashes up and over Parramatta council's traffic committee, to which the petition is directed. That committee is set up by and operates under a Labor-dominated council. The committee is chaired by none other than Tanya Gadiel's Australian Labor Party colleague Councillor Chris Worthington, who, I understand, works part-time for her. So whether the disastrous actions complained of in Tanya Gadiel's petition result from the actions of the council's traffic committee, to which the petition is directed, or the State Government, to which it really should be directed, the truth is both are Labor Party directed and dominated.

The Labor member for Parramatta should not need to take up a petition, although it certainly is a good public relations exercise for her. She should be able to go to her Labor Party colleagues on Parramatta council or in the State Government and get redress for the people of New South Wales through direct representation. Of course, this is if she had any influence in either, which, I suspect in all probability, she does not. In any event, the problem will be fixed. The people of Parramatta will get redress. Sensible bus stop arrangements and bus routes will be restored to the city of Parramatta. That redress will come when a Liberal-National Coalition comes to government in March next year.

### LIGHTNING RIDGE PUBLIC HOUSING

**Ms SYLVIA HALE** [11.57 p.m.]: I refer to an article that appeared in the *Ridge News*—the newspaper that serves the people of Lightning Ridge—on 16 March 2006. It is worth noting the situation of Lightning Ridge residents. Clearly, Sydney is not the only place with affordable housing problems—these problems are spreading beyond this expensive city to regions through New South Wales. I quote at length from the article, which was headed "We've been forgotten: housing promise broken":

It is now 10 years since the Minister for Housing promised that Lightning Ridge would receive public housing, and angry residents and community workers are demanding to know why it still has not happened.

Leading the push to bring affordable subsidised housing to the town is chairperson of Yawarra Meamei Women's Group, Joan Treweeke, who said it was long over due.

"There's just not enough housing in Lightning Ridge to cover needs", Mrs Treweeke said.

"Two-thirds of the population live on the opal fields, where conditions are far from good.

"There is no reticulated water, electricity or sewerage. Most other people in Australia can turn on a tap and flush a loo. They're pretty basic services everybody else takes for granted but the people in Lightning Ridge don't have access to. You have to supply these things yourself and if you're a single mother or you have a mental illness it's very difficult."

If public housing exists to provide assistance to the poor and disadvantaged there can be little doubt it is desperately needed in Lightning Ridge.

The town has been named in several different reports and studies as one of the most poverty-stricken towns in Australia.

A report by Tony Vinson placed Lightning Ridge among the six most disadvantaged postcodes in NSW, while a study by the University of Canberra stated that it has the highest rate of poverty in NSW. For seven out of ten people the main source of income is government welfare.

"These are disgusting statistics," Mrs Treweeke said.

"How is it possible that the most disadvantaged town in the State can be the one town that misses out on public housing? Walgett, Cobar, Bourke and Brewarrina all have public housing and they're smaller towns. Why are we the ones who have been forgotten?"

The demand for public housing is not a recent development.

The last major push was in 1995, when Ian Woodcock was the mayor, and for a brief moment it seemed he would achieve what nobody else had been able to.

"Whenever anybody had tried to get public housing here the Department of Housing said there was no demand for it because there was no list of applicants," Mr Woodcock said.

"I went to Sydney and met the Minister for Housing, which was then Craig Knowles. I explained there was a high demand and he was very sympathetic. He said if we had enough people interested in public housing he'd make sure a list of applicants was created."

A call went out in the town to see who needed public housing.

Two hundred and fifty application forms were collected and sent to the Department of Housing, but somewhere along the way they disappeared. A second group of forms were sent but these also failed to achieve any result.

"It was very frustrating," Mr Woodcock said. "I shook hands with the minister and he promised me he would do something to help us, but then nothing happened. To this day I don't think a list exists."

In fact, the absence of a list of applicants is the excuse still being used by the department for their lack of action.

In December last year the current minister, Cherie Burton, sent a letter to Member for Barwon Ian Slack-Smith in response to his questions about why there was no public housing in Lightning Ridge.

"I am advised that the Department of Housing does not have any public housing stock in Lightning Ridge due to insufficient demand. Additionally, there are no registered public housing applicants in Lightning Ridge," Ms Burton said.

Mr Slack-Smith has repeatedly invited Ms Burton to visit Lightning Ridge and witness the living conditions for herself, but he is yet to receive a response.

Ms Burton also failed to respond to repeated attempts by The Ridge News to schedule an interview.

Mrs Treweeke said the people of Lightning Ridge have been patient enough and it is time they started to see some action: "We've been through all the processes, we've written and given evidence but it's gotten us nowhere. Now we're going to give this issue a public hearing. We're going to make sure the public knows there are people in this town who want to improve their circumstances but they keep hitting a brick wall."

The Greens wait with interest to see the response of the Minister for Housing. It has been a record of complete indifference to the real needs of Lightning Ridge. Obviously for year upon year the needs of the residents of Lightning Ridge have been ignored.

**Motion agreed to.**

**The House adjourned at 12.02 a.m. Wednesday 29 March 2006 until 11.00 a.m. on the same day**

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