

# LEGISLATIVE COUNCIL

Tuesday 9 May 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.

## ADMINISTRATION OF THE GOVERNMENT

**The PRESIDENT:** I report the receipt of the following message from His Excellency the Hon. James Jacob Spigelman, Chief Justice of New South Wales, Lieutenant-Governor of the State of New South Wales:

J. J. SPIGELMAN  
Lieutenant-Governor

Office of the Governor  
Sydney 2000

The Honourable James Jacob Spigelman, Chief Justice of New South Wales, Lieutenant-Governor of the State of New South Wales, has the honour to inform the Legislative Council that, consequent on the Governor of New South Wales, Professor Marie Bashir, being absent from the State, he has this day assumed the administration of the Government of the State.

8 May 2006

## COMMISSIONS TO ADMINISTER THE PLEDGE OF LOYALTY

**The PRESIDENT:** I report the receipt of a commission authorising me as President of the Legislative Council to administer from time to time as occasion may require, to any member of the Legislative Council, the pledge of loyalty.

**The Clerk of the Parliaments** read the Commission.

**The PRESIDENT:** I report also the receipt of a commission authorising the Chairman of Committees, in my absence, to administer from time to time as occasion may require, to any member of the Legislative Council, the pledge of loyalty.

**The Clerk of the Parliaments** read the Commission.

## LEGISLATIVE COUNCIL VACANCY

### Election of Robert Leslie Brown

**The PRESIDENT:** At a joint sitting held on 3 May 2006 Robert Leslie Brown was elected to fill the vacancy in the Legislative Council caused by the resignation of the Hon. John Saxon Tingle.

## PLEDGE OF LOYALTY

**The Hon. Robert Leslie Brown** took and subscribed the pledge of loyalty and signed the roll.

## LEGISLATION REVIEW COMMITTEE

### Report

**The Hon. Penny Sharpe**, on behalf of the Chair, tabled a report entitled "Legislation Review Digest No. 6 of 2006", dated 9 May 2006, together with minute extracts for Digests Nos 4 and 5 of 2006.

**Report ordered to be printed.**

**TABLING OF PAPERS**

**The Hon. Ian Macdonald** tabled the following paper:

Youth Advisory Council Act 1989—Report of New South Wales Youth Advisory Council for 2005

**Ordered to be printed.**

**PETITIONS****Batemans and Port Stephens Marine Parks**

Petition opposing the creation of the Batemans and Port Stephens marine parks until the fishing industry and the community are adequately consulted, a socioeconomic study is undertaken, and real data on endangered species is made available, received from **the Hon. Robyn Parker**.

**Alcohol Sale Control**

Petition praying that alcoholic beverage sales be restricted to existing outlets, that opening hours be reduced, and that warning labels be placed on all alcoholic beverage containers, received from **Reverend the Hon. Fred Nile**.

**Snowy Hydro Limited Sale**

Petition calling for a plebiscite to be held at the same time as the State election in March 2007 to gauge public opinion on the sale of Snowy Hydro Limited, received from **Ms Sylvia Hale**.

**BUSINESS OF THE HOUSE****Postponement of Business**

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

**BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders**

**Ms LEE RHIANNON** [2.48 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 197 outside the Order of the Precedence, relating to a select committee on the New South Wales Crime Commission, be called on forthwith:

This motion is urgent as a review of the operations of the New South Wales Crime Commission are long overdue. This body was set up in 1985 and has been operating since 1986. Twenty years later surely it is time that the operations of the New South Wales Crime Commission were reviewed. This motion is urgent as it will enable this House to consider how to ensure the commission is accountable. Let us remember that if the New South Wales Crime Commission were set up today it would not be allowed to operate under the secrecy provisions that have prevailed for the past 20 years. This matter is urgent because we should have the opportunity to consider why the police, the Police Integrity Commission, the Independent Commission Against Corruption and the Ombudsman's Office all have clear accountability mechanisms but the New South Wales Crime Commission does not.

The current commissioner, Phil Bradley, was appointed to the New South Wales Crime Commission as a full-time member in 1989 and chairman of the commission in August 1993. Apart from a few months with the National Crime Authority, Mr Bradley has dominated the commission. Even though there is provision in the Act for one or more assistant commissioners, since 1997 that position has been rarely filled. The position of assistant commissioner was filled for only five months in 2002-03 and for the financial year 1997-98. Mr Bradley as the commissioner is answerable only to the Minister for Police.

This motion is a matter of urgency as this House deserves the opportunity—indeed, has the responsibility to create the opportunity—to bring the New South Wales Crime Commission up to twenty-first century standards of statutory authorities. This House has an urgent responsibility to consider how to ensure the New South Wales Crime Commission is obliged to engage in effective reporting to Parliament and in public review mechanisms.

This motion is urgent as the New South Wales Crime Commission, as part of Operation Mocha, in early 2005 permitted the sale of 7 kilograms of cocaine onto the streets of Sydney. The questionable tactics involved in this operation are highlighted by the fact that an alleged cocaine syndicate is now before the courts as a result of this operation and that the Federal Police pulled out of the operation when it found out the Crime Commission intended the cocaine would go through to the street. This motion is urgent as we need to consider why the New South Wales Crime Commission persisted with an operation that the Australian Federal Police said it fundamentally opposed and which senior and experienced detectives described as obscene.

The motion needs to be urgently debated as a senior New South Wales Crime Commission officer, Mark Standen, has told Central Local Court that the commission did some research on the health effects of cocaine before this operation went ahead and, on oath, he said there had been no deaths from cocaine. Considering the National Drug and Alcohol Research Centre figures for 2004 show 15 deaths in which cocaine was mentioned and five in which it was an underlying cause. This House needs to debate the motion—

**The Hon. Jan Burnswoods:** Point of order: Just because the honourable member keeps repeating "This matter is urgent" and then devotes the rest of the following paragraph to reeling off statistics and so on does not mean that she is debating why she is seeking urgency. In fact, she is debating the substantive motion. Madam President, I ask you to call her to order and direct her to stop using the phrase "This matter is urgent because" as if that enables her to defy the standing orders.

**Ms Lee Rhiannon:** To the point of order: I am clearly setting out the reasons that this motion is urgent. A number of serious matters add to the urgency for this matter to be dealt with today, and I am setting out that case.

**The PRESIDENT:** Order! I remind Ms Lee Rhiannon that at this stage she must confine her remarks to debating whether standing and sessional orders should be suspended to allow an item of business to be debated forthwith.

**Ms LEE RHIANNON:** This House has a responsibility to determine whether the New South Wales Crime Commission can guarantee that no-one died as a result of its operation, which put 6 kilograms of cocaine on the streets of Sydney.

**The Hon. Jan Burnswoods:** Point of order: Madam President, the honourable member is trifling with your ruling. She quite specifically started to use arguments that she would use if speaking to the motion, if she were successful in seeking urgency. The member has been here long enough to know what to do when moving a contingency motion to bring on a matter that she believes is urgent.

**The PRESIDENT:** Order! I remind all members that they must first debate whether standing and sessional orders should be suspended. They must not debate the substantive motion. The member's time for speaking has expired.

**The Hon. Dr Arthur Chesterfield-Evans:** Has the point of order been ruled upon?

**The PRESIDENT:** I have ruled on the point of order. If the honourable member wishes to speak to a point of order, he must stand in his place and seek the call.

**The Hon. MICHAEL COSTA** (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [2.52 p.m.]: The Government will oppose suspension on this matter. It is not an urgent issue. With regard to the allegations that have been made about the Crime Commission I can tell the House that during the time I was responsible for the Police portfolio the Crime Commission was an instrumental part of the law enforcement arsenal of this State. In fact, it was so highly regarded that even—

**Ms Lee Rhiannon:** Point of order: The Minister's remarks clearly have nothing to do with the issue of urgency. He is speaking in justification of the Crime Commission—demonstrating why he should support bringing on the debate.

**The PRESIDENT:** Order! The Minister will address his remarks to why the matter is not urgent.

**The Hon. MICHAEL COSTA:** I am addressing whether the matter is urgent, based on the fact that the member made a range of allegations to substantiate her argument that the matter is urgent. I am arguing that it is not urgent because the matters she has raised do not have credence and are without substance. The Crime Commission is well managed and is highly regarded by law enforcement agencies throughout the country. It works in partnership with other law enforcement agencies, particularly at the Federal level and internationally through the agencies of the Australian Federal Police, to do a tremendously important job: providing a framework to deal with crimes that impact on all Australians and, more broadly, to support global activity in law enforcement. The commission also provides support to our counter-terrorism operations. The member argued that the matter is urgent because of unsubstantiated allegations, about which neither she nor anyone else has been able to provide any evidence to indicate that such matters require investigation in the time frame suggested by her. The Government opposes suspension, and calls on the Parliament to reject what is clearly a political stunt to tarnish the reputation of a body that is highly regarded and provides an essential service to the people of New South Wales and this nation.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [2.56 p.m.]: The Opposition does not support the proposition that the matter must be debated at this stage. The substantive motion will have to wait its turn in the list of Private Members' Business—just as other business has to wait. As I have already indicated publicly, the Opposition does not believe that this form of motion should be debated as a matter of urgency. We would rather another form of oversight through the Parliament, to ensure a measure of transparency concerning the Crime Commission.

**Ms SYLVIA HALE** [2.57 p.m.]: This matter obviously is urgent. If the Crime Commission is acting inappropriately it is important that that be brought to the attention of the Parliament and debated immediately. The motion is urgent because members of Parliament should have the opportunity to consider whether the New South Wales Crime Commission method of paying witnesses is appropriate. Criminals turned informers have been allowed to keep their assets and have been paid for giving evidence. In one case the commission paid a convicted perjurer and self-confessed criminal, known as Mr X, about \$70,000 as well as his bills and rent. Surely this House should have the opportunity to urgently consider whether such action is justified and whether it amounts to buying of witnesses.

The motion is urgent as the New South Wales Crime Commission is under a cloud for abusing its power to seize assets suspected of being illegally acquired. This House clearly has a responsibility to urgently look into this aspect of the work of the commission. In one case a woman who had shoplifted clothing worth less than \$500 lost half her home and her car. I urge members to support this urgency motion as the New South Wales Crime Commission's use of listening devices needs urgent consideration. In fact, this issue puts the focus on the lack of accountability mechanisms for the commission. Members of the New South Wales police force are concerned about the New South Wales Crime Commission and their concerns should be dealt with urgently. Those concerns are set out in a letter dated 18 May 2004 from Strike Force Emblems to Peter Remfrey, Secretary of the New South Wales Police Association. Strike Force Emblems was formed to investigate a number of allegations involving listening device warrants.

The motion is urgent as members need to be able to consider the strike force's concerns that some commission officers may have broken the law but, because of the lack of co-operation from New South Wales Crime Commissioner, Phil Bradley, the matter could not be resolved. Surely the concerns of high-ranking New South Wales police who believe criminal offences have gone unpunished because the New South Wales Crime Commission is unaccountable must be considered urgently. In a letter dated 18 May Detective Inspector Mark Galletta wrote:

Due to New South Wales Crime Commission legislature restrictions on investigators were unable to interview any involved officers and/or witnesses.

Mr Galletta set out a number of recommendations under a section headed "Breakdown of Relations".

**The Hon. Jan Burnswoods:** Point of Order: My point of order is the same as the one I took earlier. The honourable member is not speaking to urgency, regardless of how often she repeats that word. I would think that reading out letters of itself proves the point. She is not speaking to the debate that standing orders be suspended to enable item 197 to be brought on; she is speaking to the substantive motion that would take place if urgency were granted.

**The PRESIDENT:** Order! I remind members that at this stage their remarks should relate only to whether the matter is urgent and should be debated today rather than on a future day.

**Ms SYLVIA HALE:** These matters are obviously urgent. If we believe that the Crime Commission is acting in an inappropriate way it is important that the House respond immediately and urgently to those allegations. Those allegations have come from major sections of the police force. The motion is urgent because the House has a responsibility to consider how the New South Wales Crime Commission meets its corporate objective number (4), which states that the commission will manage the organisation responsibly and equitably and use public resources for maximum public benefit.

**The Hon. Amanda Fazio:** Point of order: My point of order is the same as that taken by the Hon. Jan Burnswoods. The honourable member is debating the substantive motion and not arguing why the matter should be considered more urgent than the 200 other notices of motion on the notice paper. I ask you to call the honourable member to order. If she has no further contribution to make, she should sit down and not continue to repeat debating arguments and dropping in a gratuitous "This matter is urgent because".

**The PRESIDENT:** Order! Again I remind the member that she can only debate whether the matter is sufficiently urgent to have it brought on forthwith.

**Ms SYLVIA HALE:** The motion is urgent because the New South Wales Crime Commission needs to come under more scrutiny and needs to come under more scrutiny now.

**The Hon. Michael Costa:** Point of order: The honourable member has been given guidance by you on I think two occasions in relation to the need to argue the case for urgency. The merit of the case ought to be argued against other motions on the notice paper that have precedence over this matter. In fact, a number of those matters have been placed on the notice paper by the Greens. I assume the honourable member is arguing that this matter should have precedence over the Greens motion on asylum seekers, the Greens motion on the Snowy Hydro and the Greens motion on the cross-city tunnel. If that is what she is saying, and if she believes that this matter is more urgent than those matters, she ought to say so.

**The PRESIDENT:** Order! While that is an ingenious argument, it will not be the test that I apply. The member must confine her remarks to whether the matter is urgent.

**Ms SYLVIA HALE:** The matter is urgent because if members of the major parties in this House are sincerely committed to making our community safer, and not just beating the law and order drum at election time, they will recognise the urgency of this motion, which will put us on a path to developing accountability mechanisms for the New South Wales Crime Commission. The motion is indeed urgent.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.03 p.m.]:** Some serious allegations have been raised, and that makes this matter urgent. The statements by the Minister that the commission is a wonderful body that is well run and respected are simply unsubstantiated assertions about a totally nontransparent body that has been criticised by the police. The matter is important. The Leader of the Opposition has suggested it is a stunt. If it stays in its position on the notice paper, in the normal course of events it would be unlikely to come on for debate before the election. Therefore, it should be dealt with by way of urgency, because otherwise it will not be debated before the election. A higher standard of accountability is demanded now than when the Crime Commission was set up. The Crime Commission is the only body of its type that does not have parliamentary scrutiny, and it needs partly parliamentary scrutiny. If this matter remains in its place on the notice paper it will not come on for debate before the next election. It should be dealt with urgently.

**Reverend the Hon. FRED NILE [3.04 p.m.]:** The Christian Democratic Party supports the New South Wales Crime Commission. The only comment I would make is that I believe that what is occurring is an abuse of the intent of the standing orders of this House. The Greens know that the motion to suspend standing orders will be defeated, so it is engaging in a debate on the substantive matter, against the will of the House. It may be that we will have to amend our standing orders to prevent this abuse of the procedures of this House.

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

**The House divided.**

**Ayes, 4**

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

**Noes, 29**

Mr Breen	Mr Gallacher	Ms Parker
Mr Brown	Miss Gardiner	Mrs Pavey
Ms Burnswoods	Ms Griffin	Ms Robertson
Mr Catanzariti	Mr Kelly	Mr Ryan
Mr Clarke	Mr Lynn	Ms Sharpe
Mr Costa	Mr Macdonald	Mr West
Ms Cusack	Reverend Dr Moyes	Dr Wong
Mr Donnelly	Reverend Nile	<i>Tellers,</i>
Ms Fazio	Mr Obeid	Mr Harwin
Mrs Forsythe	Mr Oldfield	Mr Primrose

**Question resolved in the negative.**

**Motion negatived.**

# **THE HONOURABLE PETER BREEN AUSTRALIAN LABOR PARTY MEMBERSHIP**

## **Personal Explanation**

**The Hon. PETER BREEN**, by leave: I inform the House that I have joined the Australian Labor Party and I will serve the remainder of my term in this Parliament as a Government backbencher. I believe that the Australian Labor Party offers me a greater opportunity to promote my human rights agenda than as an Independent or as the sole representative of a minor party in this House. I am particularly concerned about the rights of workers under the Federal Government's WorkChoices legislation. I intend doing what I can in the Labor Party to expose the flaws of this legislation.

**The Hon. Don Harwin:** Point of order: A personal explanation is an opportunity for a member to correct the record about something that has been said. The Hon. Peter Breen is now straying well from the purpose of a personal explanation and is commenting on Federal legislation. I also note that he is speaking only by virtue of leave.

**The PRESIDENT:** Order! I remind the Hon. Peter Breen that leave for him to speak may be withdrawn at any time.

**The Hon. PETER BREEN:** Thank you, Madam President. A letter has been circulated among Government, Opposition and crossbench members that condemns my actions in joining the Labor Party. The letter is unsigned on the letterhead of a solicitor, John Marsden, and begins with the statement, "I have known Peter Breen since he was five years of age." This statement is demonstrably untrue. I reject any adverse imputation that honourable members may draw from the statement.

## **JURY AMENDMENT (VERDICTS) BILL**

### **Second Reading**

**The Hon. MICHAEL COSTA** (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [3.16 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

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

**Leave granted.**

I am pleased to introduce the *Jury Amendment (Verdicts) Bill 2006*.

As the Attorney General said in the other place last year, the question of whether the unanimity requirement in criminal trials should be preserved or amended has occupied the minds of the legal community and the general public for a long time.

It is a debate in which both sides have compelling and reasonable arguments, and between the two sides there are people who are legitimately undecided.

It is a difficult issue for many who have sought to comprehend its dimensions.

The requirement that an accused person can only be convicted if 12 of his or her peers are each satisfied beyond reasonable doubt of his or her guilt or innocence is a longstanding principle of the law.

Majority verdicts are not new. Indeed, they are common to many Australian States and have been for a considerable time. Only the Commonwealth, Queensland, Australian Capital Territory and New South Wales do not presently have them. Majority verdicts were first introduced in South Australia in 1927. They were introduced to Tasmania in 1936, Western Australia in 1960, the Northern Territory in 1963 and to Victoria in 1994. That is, four States and one Territory.

Majority verdicts were also introduced in England and Wales in 1967. The introduction of majority verdicts has divided members of the judiciary and legal profession. For example, although I note the current President of the Bar Association is fervently against majority verdicts, a previous incumbent did not hold these views. They are both decent, professional people.

The New South Wales Law Reform Commission Report 111 recommended the retention of the unanimity requirement. It nonetheless canvassed in some detail the persuasive arguments for and against the introduction of a majority verdicts system.

The Government has been mindful of the Commission's advice on this matter. Changing such a feature of our criminal justice system requires a high degree of thought and care.

The arguments presented in the report were evenly balanced, although the Law Reform Commission favoured retaining the status quo.

The Government's view is that the problems surrounding hung juries are present and can no longer be ignored.

A study conducted by the Bureau of Crime and Statistics and Research in 2002 suggested that the incidence of hung juries in NSW is double that in other jurisdictions.

The Government has now been persuaded, that provided it is clear that a unanimous verdict is unlikely to be forthcoming, a majority verdict may be returned if the jury have had a reasonable time to consider their verdict.

Majority verdicts are not automatic. Eight hours of court time must elapse before a majority verdict can be considered and then still a judge can advise the jury to further deliberate.

This is an improvement on the six hours proposed by the Member for Epping in the other place and those before him. The practical effect of having an eight hour threshold instead of six hours is that it means a jury will be compelled to deliberate for more than one court day before they or a judicial officer can entertain a majority verdict.

Until eight hours has elapsed, they must strive to reach a unanimous verdict.

The system of majority verdicts is supported by the Director of Public Prosecutions, Mr Nicholas Cowdery QC AM, the Senior Crown Prosecutor Mark Tedeschi QC, the Chief Judge of the District Court, Reg Blanch and a number of retired Supreme Court Justices.

I would be surprised indeed if anyone were to characterise these individuals' views as being the result of anything other than careful, reasoned thought.

There has been a tendency in the five or six months this debate has occurred—that is, since the Government announced its support for majority verdicts in November last year—for certain groups and individuals to assert that there is no credible basis for introducing majority verdicts.

Some say the innocent will be convicted; some say the guilty will go free—as though an eleven to one jury verdict to acquit will cause a guilty person to go free. I would have thought that if eleven out of twelve citizens are satisfied that an individual should be acquitted, then that is a sign of innocence, not guilt.

I do not think such statements are correct or help the debate.

The Government is of the view that majority verdicts negate the effect of the so-called "rogue juror" who may refuse to rationally engage in the jury deliberations. Judicial officers and those involved in the criminal law more generally will readily tell you of instances when a terribly long or complex trial hangs because one person is determined to be irrational.

One such story is from a prosecutor who told me of a juror who simply refused to convict because he believed that Police received a "bounty" for every successful conviction.

It is accepted by judges who sit in criminal trials that from time to time one juror may be responsible for the jury failing to agree in circumstances where, having regard to the evidence, conviction would have been appropriate.

Indeed, where information surfaces that a jury was deadlocked 11:1 and unable to reach a verdict because of the irrational views of one juror, or that juror's inability to scrutinise the evidence objectively, this can cause a high degree of distress for victims, their families, and other jurors who have sought to act in accordance with their oath and deliver a true verdict. Such revelations severely undermine public confidence in the jury system and criminal justice system as a whole.

One of the arguments against the introduction of majority verdicts is that they are contrary to the required standard of proof—that if a jury cannot come to a unanimous decision, reasonable doubt must be said to exist, and that majority verdicts therefore carry a greater risk of conviction of innocent people.

This argument is based on the premise that where a single juror's refusal to join the majority turns out to be correct, majority verdicts may lead to the conviction of an innocent person.

The Bill does not change the standard of proof. A jury must still be convinced—beyond a reasonable doubt—of the guilt of an alleged offender.

The underlying rationale of the Bill is that a jury should still endeavour to reach a unanimous verdict, however, if after a reasonable time has passed for deliberations, and the court finds it is unlikely that a unanimous verdict will be forthcoming, a jury may return a majority verdict.

Moreover, it cannot be said that miscarriages of justice have arisen in other jurisdictions which have had majority verdicts for many years.

The advice the Government has received strongly indicates that the systems in those other States operate fairly and are regarded as an unexceptional part of the legal system in those places.

The central aim of this Bill is to reduce the number of hung juries in order to give certainty and finality to criminal proceedings; it is not necessarily aimed at achieving a greater number of convictions by majority verdict. It is to ensure that jury deliberations are not thwarted by a single person who is unwilling to engage in a proper examination of the evidence.

The proposed majority verdict amendments will also apply to offences carrying life imprisonment, such as murder. This is not the same in other States of Australia. In Australia, only the Northern Territory has implemented majority verdicts for murder offences, however, this development is not without precedent.

In England majority verdicts of 10:2 are allowed for the offence of murder. More importantly, if majority verdicts are to be implemented in NSW, then clearly as a matter of principle and consistency they should apply to all offences. To exclude offences that carry life imprisonment from the scheme would create a tiered system of justice for NSW offences.

I turn now to the specifics of the Bill.

The Bill inserts section 55F into the *Jury Act 1977*, to provide that a majority verdict may be returned in a criminal trial for offences under NSW law if a unanimous verdict cannot be reached after the jurors have deliberated for a reasonable time, having regard to the nature and complexity of the case, being not less than 8 hours, and the court is satisfied, after examination on oath of one or more jurors, that it is unlikely the jury will reach a unanimous verdict. The Bill confers an entitlement on the jury to return a majority verdict provided the conditions set out in section 55F of the Bill are met.

A majority verdict means a verdict agreed to by 11 jurors where the jury consists of 12 people at the time the verdict is returned or a verdict agreed to by 10 jurors where the jury consists of 11 people at the time the verdict is returned. Majority verdicts will not be permitted where a jury consists of only 10 people.

Under the proposed legislation, the jury will be required to strive for a unanimous verdict for a reasonable time. This means that for this period the jury will be engaged in a process of reasoning, debate and deliberation based on reaching a unanimous verdict. They will be required to take into account the views of all jurors and listen to their arguments just as they do now. In this way, the introduction of majority verdicts will not have the effect that dissenters may be marginalised or ignored from the commencement of jury deliberations.

Judges' directions to juries will continue to tell the jury that they must reason towards a unanimous verdict. It is only after a reasonable time has passed and the court is satisfied that there is no likelihood that a unanimous verdict can be reached that a majority verdict may be returned.

And as I indicated earlier, the 8 hours is not an automatic trigger that immediately allows the jury to return a majority verdict. The Court must still be satisfied that the jury has had a reasonable time for deliberations depending on the nature and complexity of the case. This means that for long and complex trials, such as murder, or large drug matters, a court may give the jury three or four days to reach a unanimous verdict.

The Bill provides that the Court may satisfy itself that no such verdict will be forthcoming by asking one or more jurors on oath about the likelihood of reaching a unanimous verdict. It will therefore be clear to the court whether, if given further time, the jury may be able to reach a unanimous verdict or if this course is hopeless. It will eliminate the guesswork on behalf of judges, and they will have a clear basis on which to proceed to the next stage.

The Bill amends section 56 of the *Jury Act 1977*, to provide that a judge may not discharge a jury unless he or she is satisfied, after examination on oath of one or more jurors, that the jury is unlikely to reach either a unanimous or a majority verdict. This makes it clear that the judge must proceed along this line of inquiry. There is no discretion to discharge a jury of 11 or 12 people simply because they have not agreed on a unanimous verdict.

The Bill places an obligation on the trial judge to first inquire as to whether a unanimous verdict is possible. If it is not; then the trial judge should give directions to the jury about majority verdicts. It is only once it becomes clear that a majority verdict cannot be reached, that the jury can be discharged.

The Bill inserts Part 9 into Schedule 8 of the *Jury Act* to provide that the majority verdict amendments do not apply where a person has previously been put on trial before a jury for an offence arising out of the same allegations, and in the previous proceedings the jury were unable to agree on a verdict; there has been successful appeal against conviction from the previous proceedings and a retrial ordered; or the trial aborted before a verdict could be entered.

It would be unacceptable for an accused, who has previously been entitled to and has actually received a trial by jury for an offence where the verdict had to be unanimous, to find they are no longer afforded that entitlement.

The Bill inserts section 80 into the *Jury Act 1977* to provide for a statutory review of the amendments within 5 years of the commencement of the Bill.

In creating the Bill the Government has been able to learn from the experience of other jurisdictions that allow for majority verdicts.

There is a clear body of case law that has developed in other jurisdictions about acceptable directions to give to the jury about unanimous and majority verdicts. The directions set out what a judge should say to the jury from the outset about the possibility of majority verdicts.

The precise form of the direction and procedure to be adopted in NSW is a matter the Attorney General will refer to the Bench Book Committee, which is co-ordinated by the Judicial Commission. In order for the provisions of the Bill to be implemented consistently across the State, it is necessary that standard jury directions about majority verdicts be formulated prior to the commencement of the Bill and the Bill will therefore commence on a date to be proclaimed.

This Bill has been the subject of extensive consultation with the judiciary and legal practitioners.

Majority verdicts are not a panacea for all hung juries. However, they will reduce the instances in which juries cannot agree on an outcome, and of course, in consequence, they will reduce the level of anguish faced by some victims of serious crime and persons who fall one juror short of securing an acquittal. The system will fairly benefit victims and accused persons.

I commend the bill to the House.

**The Hon. DAVID CLARKE** [3.16 p.m.]: The Jury Amendment (Verdicts) Bill is not opposed by the Opposition: Indeed, the bill's proposals have been recommended by the Opposition for some time. During the 1999 elections the Opposition recommended majority verdicts in criminal matters. During the 2003 election the Opposition advocated such a proposal, and only recently the former shadow Attorney General, Andrew Tink, moved a private member's bill to this effect—the third occasion on which he has done so. What has been the attitude of the Government? It rejected the Opposition's proposal in 1999, again in 2003, and again only recently when it rejected Andrew Tink's bill—as it has on two previous occasions.

Why has the Government now introduced this bill, having rejected majority verdicts in the past? Why has there been this sudden turnaround? The truth is: Who would really know with this Government? This Government makes so many about-turns, zigzag changes, and reversals of policy, who would ever know? Hardly a week goes by without this Government reversing itself on policy issues; whether it is land tax, vendor tax on home sales, or desalination, the list is endless.

Why has the Government again reversed itself, this time in relation to majority verdicts, and accepted that the Opposition has been right on this issue all along? Maybe it is because the Government has finally woken up to the fact that unanimous jury verdicts continue to result in some extraordinary, bizarre and outrageous miscarriages of justice. Maybe it is the sight of clearly guilty offenders going free because of the obstinance of one juror in the face of overwhelming evidence that has finally jolted the Government into action. Maybe it is because the Government is finally responding to public anger and outrage at seeing clearly guilty offenders walking away free.

Or maybe it is because the Government has finally woken up to the fact that it is out of line with the majority of other jurisdictions on this issue—South Australia, Victoria, Western Australia, Tasmania and the Northern Territory permit majority verdicts in criminal cases. In South Australia majority verdicts have been in force since 1927. The Chief Judge of the District Court, the Director of Public Prosecutions and the Senior Crown Prosecutor favour majority verdicts. What has provoked the Government to act on this issue may never be known, but, be that as it may, whatever the reason, the Government has finally bowed to commonsense and to the needs of justice, and has introduced this bill—and about time too!

The stated purpose of the bill is to amend the *Jury Act 1977* to allow for majority verdicts in criminal proceedings. The bill allows the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a majority verdict if all the jurors are unable to agree on a verdict after deliberating for what the court considers a reasonable time having regard to the nature and complexity of the proceedings, but being not less than eight hours, and if the court is satisfied that after examination on oath of one or more of the jurors it is unlikely that the jurors will reach a unanimous verdict after further deliberation.

A jury of 11 or 12 persons may be discharged also if the court finds that the jurors are unlikely to agree on a unanimous or majority verdict. Provision is made to ensure that a verdict of guilty against an accused for an offence under Commonwealth law must be unanimous. That is to ensure compliance with the High Court's decision that majority verdicts in the case of Commonwealth offences are precluded by the Constitution of the Commonwealth. The proposals in the bill apply only if the jury is empanelled in relation to criminal proceedings after the commencement of the bill's amendments, except if a jury was empanelled in certain earlier related proceedings before the commencement of the amendments.

The bill provides for ministerial review of the operation of the proposed amendments to the Jury Act to be undertaken as soon as possible after five years from the commencement of the amendments, to determine whether the policy objectives of the amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives. The Jury Amendment (Verdicts) Bill is important and long overdue. It raises issues that have been the subject of debate and discussion for a considerable time, and the case for majority verdicts is a very strong one.

For too long the public has witnessed the destructive behaviour of rogue jurors who act in defiance of all other jurors and against the weight of the evidence, to act in effect as an obstruction to justice. The bill will have the effect of reducing costs and delays in the administration of justice. That has certainly proven to be the case in other Australian jurisdictions and in the United Kingdom, where majority verdicts apply in criminal matters. We need this bill to be passed. We need to re-establish the community's confidence in the jury system. That community confidence has been severely undermined in recent years when one juror has been allowed to thwart the decision of the remaining jurors and against the weight of the evidence. The bill does not undermine the jury system, it strengthens it, and it needs to be passed. It is long overdue.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.23 p.m.]: In November 2005 the New South Wales Law Reform Commission released a report which recommended that unanimous verdicts be retained in New South Wales for criminal trials. Section 80 of the Australian Constitution guarantees trial by jury. On numerous occasions the High Court has recognised the effect of a unanimous verdict in jury trials. In *Cheatle and Anor v R* (1993) 177 CLR 541, the High Court stated that a unanimous verdict:

... reflects a fundamental thesis of our criminal law, namely, that a person accused of a crime should be given the benefit of the doubt ... A verdict returned by a majority of the jurors, over the dissent of others, objectively suggests the existence of reasonable doubt and carries a greater risk of conviction of the innocent than does a unanimous verdict.

The Commonwealth retains unanimous verdicts for Commonwealth criminal offences. Queensland and the Australian Capital Territory also have unanimous verdicts. In 1927 South Australia was the first State to introduce majority verdicts; Tasmania did so in 1936, Western Australia in 1960, the Northern Territory in 1963 and Victoria in 1994. South Australia, Tasmania, Western Australia and the Northern Territory allow a majority verdict of 10:2; Victoria requires 11:1, as proposed in the bill. Murder and treason are excluded from majority verdicts in all jurisdictions except the Northern Territory. Minimum lengths of deliberation are provided: two hours in Tasmanian, three hours in Western Australia, four hours in South Australia, and six hours in the Northern Territory and Victoria. Majority verdicts were introduced in England and Wales in 1967.

The Jury Amendment (Verdicts) Bill is having a bit each way in to allow its proposed application of majority verdicts to New South Wales criminal offences. The proposal is to allow for 11:1 or 10:1 majority verdicts after an eight-hour deliberation. The length of time provided is more than in any other jurisdiction and the number required is more than in all States except Victoria, which is the same. The main difference with the New South Wales proposal is that none of the other jurisdictions except the Northern Territory that have majority verdicts allow them in murder or treason cases. Victoria adds "trafficking or cultivation of commercial quantities of drugs" to those offences.

The main argument for majority verdicts is that they will solve the problem of hung juries, as eluded to by the Hon. David Clarke. The Government's briefing note states that 8 per cent of New South Wales trials result in a hung jury, which is double that of other jurisdictions, which range from 3 per cent to 5 per cent. That would tend to suggest that an extra 4 per cent of cases would return a guilty verdict in New South Wales if majority verdicts were introduced. The figures quoted by the Government were from a 2002 Bureau of Crime Statistics and Research survey conducted over three years. It is dangerous to use such old statistics with regard to criminal matters. Quite often criminal trials involve a variety of charges that the accused may be found guilty of, and a number that the accused may be found not guilty of.

The 2002 study examined 182 trials that resulted in hung juries. Of the 182, 77 per cent involved hung juries on all charges and 23 per cent involved hung juries on only some charges. Of the 182, 82 per cent were

listed for retrial and 54 per cent proceeded to retrial. However, a more recent survey showed that the incidence of hung juries is much less than the Government's touted 8 per cent in the 2002 study. Figures from the Supreme Court show that in 2003, 112 trials were listed. The jury was discharged in eight of those trials, with at least three of them involving a hung jury; that is, less than 3 per cent. Figures from the District Court for 2003 show that 27 trials resulted in hung juries, representing 3.9 per cent of all cases that went to trial. Unfortunately for us, we cannot accurately predict how majority verdicts will affect those figures. Statistics for hung juries never indicate whether the jury was hung by one juror, two jurors or 11 jurors.

The argument for majority verdicts are that they reduce the number of hung juries, leading to savings of court time and expense for the Director of Public Prosecutions; they overcome the problem of one rogue juror derailing a trial; compromise verdicts are avoided; verdicts may be reached more quickly; and they are consistent with civil proceedings. I note that the Director of Public Prosecutions is in favour of majority verdicts.

The argument against majority verdicts are that the criminal standard is "beyond reasonable doubt" and majority verdicts reduce that to the civil standard of "on the balance of probabilities"; hung juries are relatively infrequent; unanimity is inconsistent with Commonwealth offences; and the Law Society and the New South Wales Bar Association prefer the retention of unanimous jury verdicts. The Bar Association kindly sent a copy of the movie *12 Angry Men* to honourable members, but I have not had time to watch it. The plot of the movie is that one juror was able to turn around the other 11 jurors to finally get the right decision. If majority verdicts had been available, it would have been a very short movie indeed.

A serious point I must make, particularly with juries in country towns, where a number of serious criminal matters are heard by the District Court, is that a jury would be picked from locals and if the accused were not a local the chance of an unfair conviction would rise dramatically if we had majority verdicts. I believe that the interests of justice would not be served by the introduction of majority verdicts. I am particularly concerned that the proposal will apply to all offences, including murder and treason, which puts New South Wales in the same basket as the wild-west attitude of the Northern Territory. I note for the benefit of members of The Nationals here that only one juror hung out in the trial of Joh Bjelke-Petersen.

**The Hon. Melinda Pavey:** Wouldn't that go against your own argument?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It would. I am putting that argument for members of The Nationals. The fundamental criminal standard of proof is undermined by this proposal. The best argument the Government can come up with, based on very rubbery figures, is that it will save time and money. I hope that members of this Chamber are more interested in the proper administration of justice, a fair trial and the principle of innocent until proven guilty, than saving a few dollars. The Australian Democrats oppose the bill.

**Ms LEE RHIANNON [3.30 p.m.]:** The Greens oppose the introduction of majority verdict trials in New South Wales. We believe the continuation of unanimous jury verdicts provides an application of the long-cherished principle of establishing guilt beyond reasonable doubt that does not warrant interference by this Government or the Opposition. The Greens believe that majority verdicts run counter to the principle of certainty in the criminal law and are therefore inherently unsafe and unnecessary. In making this change—it appears it will go through shortly, because again we see the Opposition and the Government working closely—we are overturning one of the fundamental tenets of our justice system, which has been handed down to us over the generations. This is a most serious proposal. The Greens are not alone in their opposition to majority verdicts. The High Court of Australia identified the risk in the 1993 case of *Cheatle and Anor v R*. In a rare unanimous decision in support of unanimous verdicts in Federal trials the court found:

... a verdict returned by a majority of the jurors, over the dissent of others, objectively suggests the existence of reasonable doubt and carries a greater risk of conviction of the innocent than does a unanimous verdict.

Members of this Parliament should tread very carefully when the High Court gives such a cautious response. In fact, I would urge supporters of this bill to reconsider their stance while the debate is going on. Others critics of majority verdicts are as numerous as they are knowledgeable. For instance, the New South Wales Bar Association also opposes majority verdicts. In its correspondence to me the association wrote:

The [majority verdicts] Bill does not describe any principled position. Its purpose is merely a pragmatic attempt to reduce the frequency of hung juries. This pragmatic solution is being sought at the cost of a greater risk of convicting the innocent.

The New South Wales Law Reform Commission has twice been asked to report on the merits of majority verdicts and twice has rejected them. According to the Law Reform Commission's most recent report on majority verdicts, published in November last year, the commission found:

The strength of the jury is based on the coming together of 12 individuals, each with his or her own beliefs, values and experience, to judge the guilt or innocence of one or more of their peers. Where each of those 12 individuals reaches a conclusion based on a genuine assessment of the evidence, each one of those 12 views needs to be respected. Where one or two of those views can be ignored because they differ from the rest, then the true significance of the jury as an instrument of peer judgment is lost.

Consequently, the Commission does not consider that the case for introducing majority verdicts has been sufficiently made out...

The Greens agree with the findings of the High Court of Australia, with the Bar Association and with the New South Wales Law Reform Commission, and in doing so oppose majority verdicts. The Greens believe that a hung jury should not be seen as a failure of the criminal justice system; in fact, hung juries should be seen as an expression of it. As such, hung juries have a legitimate role to play in the criminal justice system that can protect the innocent from incarceration, and both individuals and society from the tragedy of miscarriages of justice. As I said, the Greens believe majority verdicts are unnecessary. The Bureau of Crime Statistics and Research has found that hung juries are extremely rare. Significantly, that is because jury trials themselves are extremely rare. As the New South Wales Law Reform Commission argued in its 2005 report:

In reality, very few criminal charges are prosecuted before a jury. According to the most recent Australian Bureau of Statistics figures, 97% of all criminal cases in Australia in 2003-2004 were prosecuted in the magistrates' courts, where defendants are tried summarily without a jury. Of the remaining cases adjudicated in the higher courts, more than 80% of defendants pleaded guilty, thus removing the need for a trial by jury. This means that in 2003-2004, as few as 0.4% of all criminal cases were determined by jury trial.

Of those 0.4 per cent of jury trials, the New South Wales Bureau of Crime Statistics and Research argues:

...the introduction of a majority decision based on 11:1 or 10:2 would affect the outcome of less than half of the 8% of trials with hung juries in NSW. When this is taken into account with the fact that not all matters proceed to retrial, and that some cases with hung juries also involve Commonwealth offences which require a unanimous verdict, BOCSAR estimates that the introduction of majority verdicts would result in a potential net saving in criminal court time of only 1.7% for 10:2 verdicts, and 1.1% for 11:1 verdicts.

The saving to the court system is a whopping 1.1 per cent of 0.4 per cent of court time. That is hardly a figure that demonstrates a compelling need for this legislation, at the expense of increasing the risk of convicting the innocent. The Government and the Opposition need to be reminded that after a hung verdict is reached it is open to the prosecution to try again, by retrial, with the first trial often giving a solid indication of the strengths and weaknesses of the Crown and defence cases. I said the Government and Opposition need to be reminded of this fact, but they know it and they are willing to forgo it for political reasons. Sacrificing justice for quick political advantage is absolutely tragic.

It is a mischievous argument to suggest that majority verdicts are necessary to fix the unreasonable blockages of the criminal justice system. Indeed, some of those blockages, in which lone jurors hold out against the majority, are in practice nothing short of appropriate. It is in fact justice. This legislation will do nothing to solve the more substantial and pressing problems facing the courts and gaols in this State. This bill is another smokescreen for dealing with the key issues that could make our justice system fairer.

The New South Wales justice system is underfunded, unfair and under-resourced. The Government should act to remedy this, but it seems the Government wants to argue that the most critical issue it needs to address is majority verdicts, not the problems confronting us in our gaols or the gross unfairness that confronts so many people when they deal with the justice system. If the Government were serious about reducing the incidence of hung juries in New South Wales, it would apply the advice of its own experts. In 2002, the Bureau of Crime Statistics and Research argued that:

It is possible that improvements in the instructions to jurors or changes in the way the jury spokesperson is selected would be just as effective, if not more effective, than the introduction of majority verdicts in reducing the incidence of hung juries.

Sadly this advice has been ignored. Had it been acted on, it would have allowed us to maintain a very important part of our justice system and we would not have to waste our time with this legislation. This legislation has more to do with the next election than with delivering a fairer justice system. Even more disturbing is the fact that this bill amounts to nothing more than the Government's theft of the Coalition's law and order policies in the lead-up to the coming election. This bill is unnecessary and dangerous; it is another plank in the Government's law and order election campaign and the Greens reject it in its entirety.

**The Hon. MELINDA PAVEY** [3.38 p.m.]: As this was originally an Opposition bill, I join with the leader for the Opposition in this debate, David Clarke, in supporting it. In doing so I acknowledge the work over many years of Andrew Tink, who first proposed 11:1 majority verdicts in a private member's bill that he introduced in the other place on 19 September 1996. He has not let this issue go and this bill is testament to his ability and tenacity. All those who have worked with Andrew Tink know that he is a man of great tenacity.

This bill is a win for the victims of crime. It is good news that, some 10 years after the Opposition proposed the introduction of majority verdicts, this legislation will be passed. I note reports in the *Sydney Morning Herald* that the bill caused much consternation in the Left faction of the Labor Party caucus. That journal of record reported that many left-wing members of Parliament spoke out against the bill, including the Hon. Jan Burnswoods, Paul Pearce, Linda Burney and Paul Lynch. Other than Mr Debus, John Mills was the only member of the Left to voice support for the bill. According to the *Sydney Morning Herald*, some members of the Left sought to water down the bill by excluding murder trials. Mr Debus outlined his support for the bill to caucus and later received the backing of the Premier, Morris Iemma. One Left member of Parliament said that the intervention of Mr Iemma in the caucus debate was a tactical victory.

It is interesting to note that only one year before the next State election the Left of the Labor Party saw commonsense and folded on this issue. They supported their Premier, who realised that this was a great Opposition initiative and came on board. I note from the speeches in the Chamber this afternoon that the Greens and the Australian Democrats—parties that I think most people would agree are on the left of the political spectrum—will not support the bill. I raise this issue because I think it is quite valid and most important to point out that the so-called "unaligned" Independents were the only members in the other place who voted against the Jury Amendment (Verdicts) Bill.

**Ms Sylvia Hale:** The only principled people in the place.

**The Hon. MELINDA PAVEY:** If Ms Sylvia Hale is going to talk about principles she should ask the people of Dubbo, Tamworth, Port Macquarie and Northern Tablelands what they think of the bill. The people on the ground wanted it to be supported. I acknowledge that the honourable member for Port Macquarie, Robert Oakeshott, has, with the indulgence of his electors, been able to complete a university degree in law. During his time as a member of Parliament he has had the opportunity and the privilege to leave his workplace and to be absent from Parliament on occasion to complete his degree. I would suggest that Robert Oakeshott organised, deftly and cleverly, for his Independent colleagues in the other place to support him in opposing the bill.

**Ms Sylvia Hale:** A law degree broadens your mind and makes you aware of the issues involved rather than taking a black-and-white approach to everything.

**The Hon. MELINDA PAVEY:** I acknowledge the interjection by Ms Sylvia Hale and I thank the Greens for putting on record their support for Robert Oakeshott and his wonderful open mind. The honourable member for Port Macquarie defied most of the Australian legal community in opposing the introduction of majority verdicts in New South Wales. It is very important that the electors of Dubbo, Tamworth, Pittwater and Northern Tablelands appreciate that their State parliamentary representatives are wolves in sheep's clothing: they say one thing in their electorates and do something quite different in Parliament. It is also worth reminding those electors that those same members will do a deal with the Premier on Thursday.

**Ms SYLVIA HALE** [3.43 p.m.]: It gives me great pleasure to join my colleague Ms Lee Rhiannon in voicing the Greens' opposition to the Jury Amendment (Verdicts) Bill. It is appropriate that I follow the Hon. Melinda Pavey in speaking to the bill. Fifteen years ago I had the opportunity to serve on two juries. I found my experience so fascinating that I went on to complete a law degree, studying part time, and served on a legal aid review committee panel. I believe all that experience is germane to this debate. I will explain why. The first jury of which I was a member was unanimous in its decision to find the defendant not guilty. The case involved drugs and the jury believed the defendant had been set up. The evidence against him simply did not stand up and it did not take us very long to dismiss the Crown's case.

The jury in the other case found the defendant guilty. The case involved several young men from Dulwich Hill—I remember it well because I lived in the area—who were charged with, among other things, stealing a number of car radios and attempting to sell them. The jury in that case was divided on the question as to which charge the men should be found guilty of. One juror said they should not be charged with theft because there was no evidence that anyone saw them steal the radios. The only evidence came from police who had subsequently found the radios in the possession of the young men as they were trying to sell them. Therefore,

that one juror maintained that the defendants should be found guilty not of theft but of receiving stolen goods. The remaining jurors were absolutely indignant about that because they believed the defendants would receive a far lighter sentence for receiving stolen goods than for theft. The ensuing debate revolved around that question.

Eventually, because one juror held out on the question of the charge, the jury decided unanimously to find the men guilty of receiving stolen goods. Having reached a verdict, the jury returned to the body of the court, where they were extraordinarily surprised to learn that receiving stolen goods carries a far heavier penalty than theft—because receiving stolen goods encourages theft. That is an example of a jury reaching a verdict as a result of a misconception or misunderstanding of the law. Therefore I think it is possible for the majority view to not necessarily be the correct view. The majority view in the case I described was that theft would carry a heavier sentence than receiving stolen goods, and the jury reached a verdict on that basis. I am not arguing the pros and cons of the decision in that case. However, I think it is important for juries to reach a unanimous decision because they can get it wrong. The fact that one person objects strongly to the majority view indicates to me that there is reasonable doubt—which lies at the heart of our criminal justice system.

**The Hon. John Hatzistergos:** Why didn't you help them out? You had a law degree.

**Ms SYLVIA HALE:** The Minister for Health asks why I did not help out my fellow jurors. I did not have a law degree at that stage. I did my degree after my jury service because I found that whole process fascinating. After I completed my degree I became a member of a legal aid review committee for four or five years. If anything opened my eyes, it was that experience. That committee dealt with people whose applications for legal aid had been refused. Legal aid applicants had to fill out forms, lay bare their entire financial situation, give details of their personal lives and explain why they needed legal aid. During my time as a committee member it became progressively difficult for people to access legal aid. People were ruled out on all sorts of procedural grounds. They were ruled out because the legal aid budget did not extend far enough. It was an absolutely shocking experience.

If we believe our legal system must allow people to be represented adequately and fairly, we must ensure that legal aid is made available to them so that they have assistance from qualified professionals in working their way through the system. But that is what we do not have and that is what is fundamentally wrong. Even if you were to accept that majority verdicts might be acceptable in some circumstances, the absence of adequate legal aid and the way in which it is being scaled back again and again shows that it is wrong, reprehensible and misguided to consider majority verdicts under the current conditions.

The bill is not only unnecessary but also dangerous because it panders to the lowest common denominator in the Government's campaign to outbid the Opposition on law and order credentials in the lead-up to the forthcoming State election. But the Greens are not the only ones who oppose this legislation. I understand that even the Left faction of the Australian Labor Party opposes it, not that such a principled view will stop it voting for the bill today. Just imagine what the Government would be like if the Australian Labor Party Left actually stood up for its principles in so many matters that come before us—New South Wales might then be regarded as the principled State, not simply as the Premier State.

While the Left faction of the Australian Labor Party has gone to water on this issue, the rollcall of opponents of the bill reads like an A-list of the State's legal institutions. The New South Wales Law Reform Commission has argued against it on the grounds that very few criminal charges are prosecuted before a jury. In 2003 and 2004, 97 per cent of all criminal cases in Australia were prosecuted in the magistrates' courts where defendants are tried summarily without a jury.

The Law Society of New South Wales stated that it is "completely opposed to majority verdicts in criminal trials and supports the retention of unanimous jury verdicts". It noted that "only the Northern Territory permits majority verdicts in all criminal trials including murder". The Bar Association of New South Wales argued that "The principle that jurors' decisions in criminal trials should be unanimous is at the heart of the administration of criminal justice" because "the jury is representative of the community at large". Likewise, the Criminal Defence Lawyers Association of New South Wales opposes the legislation. As its spokesperson, Winston Terracini, pointed out, not even those States that allow majority verdicts accept them in murder trials. He said:

... it is a whittling down of all citizens' rights to permit a person charged with murder to have it said that he is guilty ... beyond reasonable doubt when one person doesn't think so.

The Council of Civil Liberties has argued:

... the issue at stake here is a fundamental one that implicates the rights of a citizen to a fair trial and, within that context, the rule of law which is the linchpin of the justice system. Such rights are to be found deeply embedded within our common law tradition and citizens expect them to be upheld as a matter of trust, and that our political representatives will not betray that trust.

The New South Wales Bureau of Crime Statistics and Research argues that it is not necessary, since "the introduction of a majority decision based on 11:1 or 10:2, [of jurors] would affect the outcome of less than half of the 8 per cent of trials with hung juries in New South Wales". But probably the best argument for unanimous verdicts is that it is the principle underlying the belief that it upholds the requirement of proof beyond reasonable doubt. It is equally telling that the right to trial by jury was included in our founding Constitution. Constitutionally enshrined rights are rare, yet our forefathers and mothers felt compelled to include this one. Thus I draw the attention of the House to a decision of the High Court of Australia in 1993. In a unanimous decision in *Cheatle and Anor v R*, the court found that:

... a verdict returned by a majority of the jurors, over the dissent of others, objectively suggests the existence of reasonable doubt, and carries a greater risk of conviction of the innocent than does a unanimous verdict.

When we have to choose whom to trust between the Government of Morris Iemma and the High Court of Australia, I—like most Australians—would prefer in this instance to choose the High Court. This bill is unnecessary and dangerous, and the Greens reject it in its entirety. I genuinely urge honourable members to reconsider their stance.

**Reverend the Hon. Dr GORDON MOYES** [3.54 p.m.]: On behalf of the Christian Democratic Party I speak to the Jury Amendment (Verdicts) Bill. The object of this bill is to amend the Jury Act 1977 to allow for majority jury verdicts in criminal proceedings. Majority verdicts in criminal trials have reared their head on a number of occasions in the past decade in New South Wales. Honourable members would be aware, as was mentioned by members of the Opposition when speaking to the bill, that on several occasions the honourable member for Epping, Andrew Tink, has introduced a bill for majority jury verdicts in criminal proceedings in the lower House. There are some differences between the instant bill and the legislation introduced by the honourable member for Epping, but the substance of both is similar.

I draw honourable members' attention to parliamentary debates in 1977 when the now Premier of New South Wales, Morris Iemma, spoke about majority verdicts. His comments were made during the time that a study of the New South Wales Bureau of Crime Statistics and Research was being undertaken, and the results of this empirical study had not been finalised. Mr Iemma said:

It could hardly be said that there is a pressing need [in introducing such a bill for majority verdicts] bearing in mind that unanimous verdicts have been regarded as an essential feature of jury trials in New South Wales for many decades. Majority verdicts should not be introduced—

this is the current Premier speaking in 1997—

unless and until the Bureau of Crime Statistics and Research study provides firm empirical evidence of need and utility. Any legislation before such time is manifestly premature. In introducing the bill, the honourable member for Eastwood is serving only political ends ..."

Curiously, the study that the then honourable member for Hurstville, Morris Iemma, the current Premier, was referring to found that:

... while the introduction of majority verdicts would probably produce some administrative benefits, in general they are only modest.

As reported in the New South Wales Parliamentary Library Research Service briefing paper by Ms Talina Drabsch entitled "Majority Verdicts in Criminal Trials", the study found, amongst other things, that approximately 19 per cent of jury trials that go to verdict end with a hung jury, and are about one-third longer than trials that do not hang. The study also found that if majority verdicts were introduced, allowing up to two jurors to disagree with the majority, the amount of court time saved would be 1.7 per cent, reduced to 1.1 per cent if limited to the dissent of one juror. Clearly, the firm empirical evidence of need and utility for which the then honourable member for Hurstville was searching did not clearly emerge.

In light of Premier Iemma's comments in 1997, it is of importance to note that the bill we are debating flies in the face of recommendations made by the New South Wales Law Reform Commission. Last year the New South Wales Law Reform Commission was asked to inquire into such things as the incidence of hung juries in New South Wales and the possible effect of majority verdicts on hung juries. The Commission concluded that the case for the introduction of majority verdicts was not sufficiently made out. Consequently,

the commission's first recommendation was to retain the status quo—the system of unanimity in jury verdicts. This bill defies that recommendation. The commission also suggested that empirical studies be conducted into "the adequacy, and possible involvement, of strategies designed to assist the process of jury comprehension and deliberation". This suggestion was made in light of the following understanding:

"We simply do not know enough about how actual juries really deliberate and why they reach the decisions they do. While studies have shown when juries are likely to hang, they have revealed only limited insight into why some juries remained deadlocked. Until more information is uncovered as to the problems that need to be addressed, the introduction of majority verdicts would be of limited value.

I ask myself why the Government is introducing this bill so hastily, given that unanimous verdicts have been regarded as an essential feature of jury trials in New South Wales for many decades. Majority verdicts should not be introduced unless and until the suggestion put forward by the New South Wales Law Reform Commission for further empirical studies is followed through. It may be of interest for honourable members to know that in the days leading up to the introduction of this bill in the lower House, the Government had actually proclaimed this bill as one of its victories, without the bill having been passed by either House of the Parliament. The radio announcement declared that the introduction of majority verdicts was one of the highlights of Mr Iemma's first eight months in office. The sheer arrogance of counting the introduction of majority verdicts as an election victory, without having consulted the representatives of the people, is dumbfounding. The advertisement declaring the introduction of majority verdicts a victory is false and a grave misrepresentation.

It is true that majority verdicts are not new. As suggested by the second reading speech given by the Attorney General in the other place, majority verdicts are common to many Australian States. Victoria, Tasmania, South Australia, Western Australia and the Northern Territory permit majority verdicts. Only the Commonwealth, Queensland, the Australian Capital Territory and New South Wales do not at present have them. However, there is a clear and blatant distinction between this bill and the legislation in all other Australian States—not including the Northern Territory. That distinction is that in those States majority verdicts are not permitted for murder trials. The proposal in this bill is to allow majority verdicts in all criminal proceedings, including murder trials. This distinction is a dangerous one. If this bill is passed, New South Wales will join the Northern Territory as the only jurisdiction that allows majority verdicts in all criminal proceedings, including those that deal with murder.

**Pursuant to sessional orders business interrupted.**

## QUESTIONS WITHOUT NOTICE

### JOHN HUNTER HOSPITAL NEXUS UNIT

**The Hon. MICHAEL GALLACHER:** My question without notice is directed to the Minister for Health. What action is the Minister taking to ensure that the Nexus unit at John Hunter Hospital, the only psychiatric unit catering for young people in the Hunter and northern New South Wales, does not close or scale back services following the resignation of three child and adolescent psychiatrists? In light of the significant demand for the services of this specialist unit, will the Government consider providing incentives to attract qualified specialists from outside the Hunter if this is required? Given that the pressing demands on the specialists is one of the factors that led to those three resignations, will the Minister commit to ensuring that additional specialists' services are secured for the Nexus unit?

**The Hon. JOHN HATZISTERGOS:** I thank the Leader of the Opposition for this important question. I am advised that the area health service is taking action to ensure there is no gap in service provision. I am further advised that the area health service will be using visiting medical officers until vacant positions are filled. I am advised also that action is being taken immediately to recruit people to vacant positions.

### MINE SAFETY

**The Hon. PETER PRIMROSE:** My question is addressed to the Minister for Mineral Resources. Given the Beaconsfield mine accident in Tasmania, can the Minister tell the House what steps New South Wales is taking to help protect the wellbeing of miners in this State?

**The Hon. IAN MACDONALD:** The entire nation continues to celebrate the successful rescue of Todd Russell and Brant Webb from Tasmania's Beaconsfield mine—an event that, at the same time, is tinged with

sadness with the death of Larry Knight. The 14-day ordeal has captured the resilience, mateship and that never-give-up spirit that defines Australia. Todd and Brant's long-awaited rescue is making international headlines, and I congratulate everyone involved in the successful operation. Images of those two men walking away from the mine have brought cheers the world over.

The ordeal also highlights the importance of having the best safety standards and practices possible. New South Wales has one of the most enviable mine safety records in the world. The number of deaths in the New South Wales mining industry has dropped from 11 in 1999-2000 to just 1 death in 2004-05. The number of serious injuries has also dropped. I should note that the unfortunate fatality in June 2005 did not occur inside a mine. It involved a truck driver at a quarry in the Hunter Valley who lost control of the vehicle, which rolled down an embankment. But, no matter what the circumstances, we believe every accident is avoidable. The New South Wales Government is committed to working with the mining industry to bring about a safer work environment. That is why we carried out the Mine Safety Review, headed by former Premier Neville Wran. As honourable members would be aware, the Government has already begun implementing the recommendations of that review, and today I can update the House on another milestone.

One of the review's key recommendations was that the Government strengthen the Mine Safety Advisory Council. That council provides government with advice on ways to further enhance the safety of the men and women who work in and around the State's mine sites. Today I can inform the House that we have revamped the membership of the council to include senior officials from some of the most respected bodies in the mining industry, including: Ian Murray, of the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union; Wayne McAndrew, from the same body; Mathew Wilmore, of the Australian Workers Union; Mick Buffier, of the New South Wales Minerals Council; Tim Lehany, of the New South Wales Minerals Council; and Susan Fields from Cement, Concrete and Aggregates Australia.

Mr Norman Jennings will serve as the council's independent chair. Mr Jennings is a chartered engineer, a fellow with the Australian Institute of Energy, and a member of the Institute of Gas Engineers and Managers. He had recently returned from Geneva, where he served as Acting Director in the International Labour Office. During his time there he was directly responsible for the office's activities in mining and metal production. He has also authored major reports and papers on coal and non-coal mining, small-scale mining and the iron and steel industry. No doubt Mr Jennings will provide vital knowledge and leadership.

I can also inform the House that the State Government will give the Mine Safety Advisory Council enhanced scope, which was another recommendation of the Wran review. The council will now have the ability to conduct and commission research, commission expert consultants, and explore a range of issues that affect safety of our mineworkers. One of the first tasks of the revitalised council is to commission an expert to examine working hours and fatigue in the mining industry. The strengthened Mine Safety Advisory Council will meet for the first time this Thursday, in Sydney. I look forward to meeting the new members and discussing the important role they will play into the future.

This is just the latest in a series of initiatives designed to help us achieve zero fatalities and serious injuries in the New South Wales mining industry. Since 1998 the New South Wales Labor Government has invested nearly \$25 million to improve mine safety. In June last year it also opened a new Mine Safety Technology Centre, where experts use state-of-the-art technology to test equipment. And the Government has introduced the mine safety levy to help ensure resources are available to meet the costs of mine safety regulation needs in the future.

### **PORT STEPHENS GREAT LAKES MARINE PARK**

**The Hon. DUNCAN GAY:** My question without notice is directed to the Minister for Primary Industries. Will the Minister acknowledge that the socioeconomic study on the impact of the Port Stephens Great Lakes Marine Park on its local communities says that "any effects of the marine Park and its zoning on recreational fishing is difficult to quantitatively estimate because sanctuary zone locations have not been finalised and any displacement of recreational fishing is unknown"? Does this not mean that the socioeconomic study is flawed? Or does it simply mean that the Minister has already worked out where the sanctuary zones are going to be and that his limited community consultation was a farce? Will the Minister halt any further progress on creating the Port Stephens Great Lakes Marine Park until a proper socioeconomic study can be undertaken?

**The Hon. IAN MACDONALD:** In answer to the last part of the question: No, I will not be halting the process. The submission period for public consultation on the draft boundaries opened yesterday and will

continue to 21 August 2006. Yes, I am aware that there are a number of statements, similar to the one that the honourable member has made, about the socioeconomic study. And, yes, there are difficulties when—

**The Hon. Duncan Gay:** That was not my statement. That is their statement.

**The Hon. IAN MACDONALD:** That is what I am saying: there are similar statements to the one made by the Deputy Leader of the Opposition about what is in the document. That is the very nature of it because at the time of the commissioning of the socioeconomic study they did not know the location and boundaries of sanctuary zones. But they had some idea of the amount of money.

**The Hon. Duncan Gay:** Well, how did they do a proper study? That is the point.

**The Hon. IAN MACDONALD:** They have done a very good job in going through all of the potential outcomes and all the potential variations in it.

**The Hon. Duncan Gay:** Or have you told them what your final boundaries will be? You've told them, haven't you?

**The Hon. IAN MACDONALD:** It is very clear that they have done a good job in providing the baseline information that people can take into account when they are considering submissions that they might want to make.

**The Hon. Duncan Gay:** You have told them what the boundaries will be. You know, don't you? You've made up your mind already.

**The Hon. IAN MACDONALD:** I have not told anyone about what sorts of general boundaries should be in the park. That is up to the advisory council, which has done a brilliant job. An article in the *Daily Telegraph* today relating to the park made it clear that anglers have got a fair deal. There is enough information within that large socioeconomic study to enable any person wishing to make a submission on the draft boundaries in this period to make a very substantial and very accurate submission to the process. I believe the work of the advisory committee has been absolutely excellent. I believe John Clark, one of the most well known recreational fishers in New South Wales, summed it up—

**The Hon. Duncan Gay:** Who?

**The Hon. IAN MACDONALD:** John Clark runs the 2SM radio program between 6.00 a.m. and 7.00 a.m. on Sunday morning. I hope honourable members will listen in next week—

**The Hon. Tony Kelly:** It is a bit early for the Nats.

**The Hon. IAN MACDONALD:** It is very early for these Nats. There is enough information and John Clark made it clear that it is a pretty fair go. He said there are plenty of spots for fishers to go and throw in a line, as opposed to the exaggerated situation that the Deputy Leader of the Opposition is trying to whip up around the place. I have met with recreational fishers on many occasions in relation to this. Even the fishing party I met with yesterday have some concerns and they should put those concerns in the form of a submission, which will be considered in due course. Let us be very clear about this. There is a majority in this Chamber in favour of these marine parks and I can tell honourable members there will be a majority of members in this Chamber after the next election that supports these marine parks.

#### **BRIGALOW BELT SOUTH BIOREGION WOOD PRODUCTION EXTRACTION OPERATIONS**

**The Hon. PETER BREEN:** My question without notice is addressed to the Minister for Primary Industries. Will the Minister please update the House on developments with local timber mills in the Brigalow region?

**The Hon. IAN MACDONALD:** I thank the honourable member for his first question, and I am very honoured to answer it, particularly as it deals with the timber industry and the workforce in that industry. I know that the honourable member understands clearly the importance of the Federal Government's WorkChoices legislation and he is here to make a difference in relation to that iniquitous legislation. Honourable members will be aware that not long ago I met with the Paul family from Gunnedah Timbers and Baradine Sawmilling, and

subsequently signed a historic 20-year wood supply agreement with them. This delivered a level of security never before seen in the Brigalow timber industry. It also gave the Paul family the confidence they need to invest in their future and provided security for the estimated 50 workers employed at the family's two mills. I can now inform honourable members of additional important developments in this area.

Last week I met with Ross and Tim Lacey from Gulargambone Cypress, and with Richard and Matthew Grant from Grants Holdings in Narrandera and Condobolin. Mr Russ Ainley from the New South Wales Forest Products Association also participated in those meetings. Following detailed negotiations, Grants Holdings has now signed a 20-year supply agreement for 14,390 cubic metres of timber per annum. This agreement will deliver a royalty value to Forests New South Wales of \$13 million over the next two decades and has a sawn value of up to \$75 million for the company. Gulargambone Sawmilling also signed an agreement for 11,800 cubic metres per annum over the next two decades. This agreement has a sawn value of up to \$61 million over 20 years and will deliver royalties of up to \$10 million dollars to Forests New South Wales. Both agreements mark important and exciting developments for the industry and the individual mills.

For instance, the Grant family has been milling at Narrandera since the 1960s under a sawmill licence that dates back to 1918. The Grants also have a mill at Condobolin, which it purchased in the 1980s. Mr Richard Grant has been an active member of the Forest Products Association for many years and has been a significant participant in the development and implementation of the Cypress Industry Strategic Plan. The Grants sawmills are accredited under the Cypress Industry Quality Assurance program. This well-known milling family is an innovator in the industry and has a track record as an early adopter of new technology. The company employs 33 workers at Narrandera and seven at Condobolin. I understand from the Grant family that the workers at these mills are delighted with the new supply agreements, which provide unprecedented security.

Tom Lacey established Gulargambone Cypress in 1946. Gulargambone produces a wide range of sawn and value-added wood products with strong emphasis on flooring items, and 10 per cent of its sawn output is exported. Its principal domestic markets include capital cities and regional New South Wales and Victoria. Gulargambone is the largest private employer in the Coonamble Shire. The 30 workers employed at the mill now have a more certain future as a result of this important agreement, something that is lacking under the Federal Government's WorkChoices legislation. I thank the staff at Forests New South Wales for their diligent work on finalising these supply agreements. I also thank the management and staff of the affected mills for their ongoing co-operation and input in finalising these wood supply agreements.

Finally, I must acknowledge Mr Russ Ainley, Executive Chairman of the New South Wales Forest Products Association, who has played a key role in the negotiations. Mr Ainley has worked hard for his membership, and these new agreements are a positive reflection of that. They are good news for industry, good news for the Brigalow area, and good news for regional New South Wales. With the new wood supply contracts in place, we have now begun discussions on proposed upgrades and value-adding projects at both mills. Part of the State Government's \$80 million Brigalow package includes up to \$15 million for an industry development fund. The Iemma Labor Government will provide up to \$2 for every \$1 invested by industry to help upgrade mill equipment, processing techniques, and business and market development activities. Both Grants and Gulargambone Sawmilling have submitted applications to the Forest Industry Structural Adjustment Unit for a range of potential upgrade assistance.

## URANIUM EXPLORATION

**Ms LEE RHIANNON:** I direct my question to the Minister for Mineral Resources. Is the Minister aware that the company Champion Resources Limited has issued a prospectus dated November 2005 that lists the region Nangerybone, between Condobolin and Cobar, as a region where the company has applied to explore for uranium? Will the Minister rule out allowing uranium exploration in New South Wales?

**The Hon. IAN MACDONALD:** My understanding is that we do have a piece of legislation in New South Wales that prohibits uranium mining. It is called the Uranium Mining and Nuclear Facilities Prohibitions Act 1986. It is New South Wales legislation and is administered by the New South Wales Minister for Mineral Resources. As Minister for Mineral Resources I would not take any steps that run counter to the law of this State. I will give the honourable member all the assurances she would like.

**Ms Lee Rhiannon:** What do you do about exploration?

**The Hon. IAN MACDONALD:** As far as I know, I have not granted an exploration licence for something that is prohibited in New South Wales.

### SCHOOL ZONE FLASHING LIGHTS TRIAL

**The Hon. JOHN RYAN:** My question is directed to the Minister for Roads. Do other Australian States have flashing lights installed at school zones? Have flashing light trials been undertaken in New South Wales since February 2003? What more does the Government need to know before introducing this road safety measure? Will the Minister release statistical information gathered to date as part of the flashing light trial being conducted outside Middle Harbour Public School zone in McPherson Street, Cremorne, to enable the public to judge whether or not the flashing lights have had an impact on motorists' behaviour? What is the explanation for a Roads and Traffic Authority [RTA] vehicle, registration number RTA260 to be illegally parked until 2:30 p.m. today on the footpath in the school zone outside Seaforth Primary School, in the same area where young Sophie Delezio was injured?

**The Hon. ERIC ROOZENDAAL:** That long question contained a number of assertions. In relation to what a vehicle was doing on the footpath, I suspect it is a little outside my knowledge to know what every single vehicle in the Roads and Traffic Authority fleet is doing. I will certainly look into that matter and follow it up. Clearly, we need to be setting the appropriate example and if the information is correct we will deal with it appropriately. On the issue of flashing lights, it is important to appreciate that it is a very complicated area and we want to make sure that we get it right.

Nothing is more important than the safety of our children. I am advised that the Roads and Traffic Authority engaged an independent researcher to conduct an evaluation of flashing lights operating at a 40 kilometre an hour school zone. Forty-three school zone sites were selected to trial flashing lights. I am further advised that a report on the evaluation of this trial is being finalised. It is essential to assess things such as the reliability of the technology of flashing lights and their effectiveness in improving safety.

A number of issues in relation to school zones and flashing lights need to be reviewed. First, we need to ensure that the technology is the most modern technology possible and gives the highest visibility possible and is effective in communicating with drivers in a school zone. Second, we need to consider reliability. Nothing would be worse than to have a system in place that is unreliable or inaccurate.

**The Hon. Catherine Cusack:** You had a pilot for three years.

**The Hon. ERIC ROOZENDAAL:** That is exactly why we conducted a pilot, and we are now assessing the research. It is important that we do not mix up the issues of school zones and flashing lights. The report has been compiled because the Government is working on an appropriate policy response, an appropriate safety response and a school children's safety package, which will take up a number of initiatives. I will have more to say about that in the near future.

### CHILDHOOD FOOD ALLERGIES

**The Hon. CHRISTINE ROBERTSON:** My question without notice is addressed to the Minister for Health. What is the New South Wales Government doing to educate the community about how to deal with the rising incidence of severe food allergies in school children?

**The Hon. JOHN HATZISTERGOS:** I thank the Hon. Christine Robertson for this very important question, which is very timely as this week is Food Allergy Awareness Week, and especially important in the light of the increasing prevalence of food allergy and anaphylaxis in childhood.

**The Hon. Duncan Gay:** You put out a press release on Sunday and did media on Sunday.

**The Hon. JOHN HATZISTERGOS:** It goes for a whole week. As honourable members may know, anaphylaxis is the most severe form of allergic reaction and is potentially fatal. Food allergy is the most common cause of anaphylaxis in preschool age children although insect stings as well as foods also trigger reactions in school children. In teenagers and young adults, peanuts and other nut allergies are the biggest risk factor for life-threatening and fatal food anaphylaxis, particularly for those with a history of asthma.

The cause of allergy and anaphylaxis and its increase in incidence are not known. There are a number of theories and worldwide research is being undertaken. In a school of 500 children it is expected that two to five children would be affected. Anecdotally I am informed also that a decade ago an allergy clinic would see no more than 10 or so patients with peanut allergies in a year, but now there are many more than that in just one week. With more awareness of anaphylaxis and the appropriate emergency response, we may be able to prevent tragic and unnecessary deaths from occurring.

During Food Allergy Week, schools are including information about food allergies in their newsletters to parents. One device that even a lay person can use is an EpiPen, which is an auto-injector device to deliver adrenaline. Individual children are prescribed this life-saving device, which anyone is capable of using. New South Wales has led the nation in educating the community about anaphylaxis. We have developed comprehensive anaphylaxis management guidelines for schools, and training for childcare services and teachers in managing anaphylaxis. Our nurse educators have already visited approximately 600 schools in New South Wales to educate teachers and other staff on how to treat children who are at risk of anaphylaxis. Plans are underway to expand the anaphylaxis training program to more schools across New South Wales in response to the increased number of children with severe food allergies.

The expansion will involve training other health workers such as asthma educators and community paediatric workers who already educate our school communities. Further, NSW Health has put together a panel of experts known as the anaphylaxis working group to deal with the challenges that anaphylaxis presents in our community. This group has developed a document to assist schools, the anaphylaxis guidelines for schools, which was developed by the anaphylaxis working party and was jointly supported by the Catholic Education Commission, the Association of Independent Schools and the Department of Education and Training. The second edition of the guidelines is to be released this year.

Anaphylaxis is not an issue just for New South Wales. All States and Territories are affected by its increasing prevalence. We have a responsibility to ensure the safety of children in our care. It is therefore critical that the Australian Government takes up anaphylaxis as a national public health issue. Just as we have seen the benefits of a national approach to asthma, so too we are capable of seeing a nationally consistent campaign, nationally consistent materials and raised public awareness of anaphylaxis. New South Wales has taken the national lead on anaphylaxis. It is my intention to progress this even further at the next meeting of the Australian Health Ministers Conference.

#### **SYDNEY HARBOUR COMMERCIAL FISHING INDUSTRY COMPENSATION**

**The Hon. Dr PETER WONG:** My question without notice is directed to the Minister for Primary Industries. Will he explain why he did not set up a panel to review his offer, as required under the Fisheries Management Act 1994, to buy out the businesses of Sydney Harbour fishermen when he was requested by a large number of fishermen? Why has he instead decided to unilaterally cancel licences and entitlements held by the fishermen, despite their clear indication of continuing negotiations with his department?

**The Hon. IAN MACDONALD:** I thank the Hon. Dr Peter Wong for his question. It is very interesting that in relation to Sydney Harbour an expert panel has recommended closure of the harbour to commercial fishing. What would be the best course of action for the fishers who have been affected by that decision? I would have thought that the best course of action would be to obtain substantial payouts in a buyout program to ensure that in the future they have financial backing and are in a financially strong position to go forward and undertake fishing in other areas, if they so desire, or adopt a new career. The fishers have not opposed my taking the step of the buyout process. They have debated whether it should involve more money, and some of the people to whom the Hon. Dr Peter Wong has spoken have made that clear to me in meetings. We have a buyout program that has been conducted in other areas of the State for a long time.

**The Hon. Eddie Obeid:** It is recognised internationally.

**The Hon. IAN MACDONALD:** It is recognised internationally, whatever that means, and it has been put forward. Some of the fishers have received up to \$340,000 and some will receive more when the generous depreciation allowance, which was increased from \$10,000 to \$20,000, is taken into account as well as the training that has to be taken into account, which is worth approximately \$10,000.

**The Hon. Duncan Gay:** Very mean.

**The Hon. IAN MACDONALD:** For an industry that our records suggest has a catch history of approximately \$250,000, I cannot see how a \$5 million payout to those fishers is a mean program. It is not mean at all. It adequately reflects the circumstances. I think we have to take this course because I cannot see any prospect of the industry being open within a few years until the remediation program has had some impact and we can reconsider it. The honourable member is concerned about docks that will have to close to the fisheries. The fishery has closed.

The Government has offered what I regard as a generous package to fishers as a buyout, and the vast majority of fishers have taken it. My last reading of it showed that 32 of the fishers have accepted the offer. Some of them are taking up fishing in other areas using their endorsements to enable them to fish in the whole of the region. I think that we acted expeditiously to address the issues of the fishers once we realised that the harbour would be closed for a considerable period. One day in the future—and I hope it will come—it may be that we will revert to having part of the harbour being a working harbour, but for the time being it is closed. The Government has adopted a package that I think is generous.

**The Hon. Dr PETER WONG:** I ask a supplementary question. Will the Minister inform the House of the sections of the Act he has relied upon to cancel the entitlements and licences of the fishermen?

**The Hon. IAN MACDONALD:** I will take that question on notice. As I understand it, there is provision in the Act for licences eventually to be cancelled. I do not know what the honourable member is trying to say. If the fishermen keep the licences, we cannot do a buyout. So, some of the fishers have more than \$300,000 and would not be able to avail themselves of that sum. I think the vast majority of fishers have voted with their feet and accepted the buyout offers. The Hon. Dr Peter Wong is running a peripheral agenda and I cannot see that it serves any useful purpose whatsoever.

### YASMAR JUVENILE JUSTICE CENTRE SITE USE

**The Hon. CATHERINE CUSACK:** My question is directed to the Minister for Juvenile Justice. Did the Minister meet with Ashfield Municipal Council last week, as promised, to resolve the future of the Yasmar estate at Haberfield? Further to my question asked last week, is the Minister now able to advise the House of the costs of securing Yasmar as a result of decommissioning it as a detention centre?

**The Hon. TONY KELLY:** Last week I met with representatives of Ashfield council and with local member Angela D'Amore. They told me what they thought the future of the Yasmar premises should be. I advised them, as I advise the House, that currently the Department of Juvenile Justice and the Department of Corrective Services will use parts of that centre as a training facility and that I would certainly look at any necessary urgent repairs to the building as a result of damage caused by white ants or roof leakage. The security of the site has been an ongoing priority. To that end the detention facility in the nearby historically significant Yasmar House and gardens has been secured. I am a little confused about the measurement referred to I have read the comments in *Hansard* by the Hon. Catherine Cusack in an adjournment speech a few weeks ago.

**The Hon. Catherine Cusack:** I have corrected that.

**The Hon. TONY KELLY:** So, it is not a 25-foot fence?

**The Hon. Catherine Cusack:** No, it is the figure you gave in the House.

**The Hon. TONY KELLY:** I understand it is a 3.6 metre high perimeter fence. Security guards continue to conduct random security checks by day and night, and there is a back-to-base alarm system. On Friday 5 May the principal heritage architect of the Department of Commerce inspected the property and reported that the works already undertaken since January 2004 were consistent with the conservation policies and the conservation management plan, and with the priorities of good conservation practice, while maintaining the integrity and significance of Yasmar House. As I said, I met recently with representatives of Ashfield and the honourable member for Drummoyne to discuss the site and its future.

### SEAFORTH PEDESTRIAN CROSSING SAFETY

**The Hon. PENNY SHARPE:** My question is addressed to the Minister for Roads. Will the Minister provide the House with the latest information concerning Frenchs Forest Road, Seaforth, and related matters?

**The Hon. ERIC ROOZENDAAL:** I am sure all honourable members of this House are united in their concern over the tragic incident involving little Sophie Delezio on Frenchs Forest Road, Seaforth, last Friday. As the driver involved has been charged with dangerous driving occasioning grievous bodily harm, negligent driving causing grievous bodily harm, and failing to give way at a pedestrian crossing, I will not comment further on the particulars of the charges. I am advised in relation to Frenchs Forest Road that in July last year the local council wrote to the Roads and Traffic Authority [RTA] suggesting that zigzag line markings be placed on the road to improve driver awareness of the pedestrian crossing. The RTA installed zigzag line markings and four high visibility pedestrian crossing signs.

In January of this year the RTA raised the installation of traffic signals at the site with representatives of Manly Council and local police. I am advised that in January of this year the RTA agreed that the zebra crossing should be replaced with traffic lights including signalised pedestrian crossings at all three legs of the Frenchs Forest Road and Baringa Avenue intersection. Installation of the traffic signals is in the design phase. Last weekend I directed the RTA to accelerate those plans as well as the immediate installation of other interim measures. I am advised the following steps have been taken since the incident: the school zone around Seaforth Public School was extended by 200 metres so it now includes the pedestrian crossing and the nearby intersection of Frenchs Forest Road and Baringa Avenue; 40-kilometres per hour school zone signs are now in place to the west of the Baringa Avenue intersection, where that school zone starts; additional reminder 40-kilometre per hour school zone signs have been installed within the school zone; larger signs indicating pedestrians ahead have been installed on the approach to the pedestrian crossing; portable variable message signs reading "Pedestrian Crossing Ahead" are in place temporarily; and a new patch, which is a 40-kilometre per hour marking, has been installed on the road surface.

The current approach speed on Frenchs Forest Road is 60 kilometres per hour. The RTA is reviewing that speed limit also. The RTA advised me that traffic signals will be installed by October at the latest, and sooner if there are no technical difficulties such as the relocation of utilities. I have directed the RTA to fully audit the safety of pedestrian crossings over four-lane roads in busy areas. I reiterate the Premier's comments in the other place praising the efforts of the health and rescue workers who cared for Sophie and her family and continue to do so.

### LANE COVE TUNNEL

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is directed to the Minister for Roads. Is the Minister aware that residents affected by the Lane Cove tunnel collapse have been hugely inconvenienced by having to move to lesser accommodation for a long period? Is the Minister aware that some residents have sold their homes as they are fearful to remain in them? Is the Minister aware that John Holland Construction has offered some residents \$650,000, when some comparable three-bedroom units in Lane Cove are worth between \$850,000 and \$900,000? Is the Minister aware that residents have been unable to get a reasonable market price for their houses, particularly at this bad time to sell, and that only John Holland Construction has offered to purchase their homes? What has the Minister or the Roads and Traffic Authority done to help people who, through no fault of their own, have been massively inconvenienced and traumatised by the incompetent construction methods of the tunnel contractors? Will the Minister step in and ensure that the right thing is done by those people in terms of stress management and by the contractor? If not, why not?

**The Hon. ERIC ROOZENDAAL:** The contractor has a clear responsibility to look after residents and a responsibility to ensure that no resident is worse off as a result of the subsidence. I am advised that the contractor, Thiess John Holland, has completed, or reached agreement on, the purchase of 18 units. I understand that the contractor is in discussion with, or waiting on responses from, owners of another 12 units and that agreement is near on three of those units. I am advised that the contractor has been unable to contact one owner. I am advised further that a number of tenants have returned to their apartments and that the company has agreed to pay stamp duty costs on the purchase of a replacement property, legal fees and the cost of independent valuations. I will read closely the other questions asked by the honourable member. I am happy to take up any remaining issues with the contractor if there are outstanding issues for those affected by the subsidence. The contractor has a clear responsibility to do the right thing by the people in the block of units that was affected by the tunnel collapse. I am happy to work towards resolving any issues in this regard.

### QUEEN VICTORIA MEMORIAL HOSPITAL, WOLLONDILLY, SITE USE

**The Hon. CHARLIE LYNN:** My question is directed to the Minister for Health. Is the Minister aware that his Parliamentary Secretary wrote to the Wollondilly Queen Victoria Support Committee, which has been campaigning to save the site for aged residential care for more than 10 years, stating, "Other development opportunities may exist and should not be precluded" for the site? Will the Minister explain to the House what is meant by "other development opportunities" and will he rule out general residential development?

**The Hon. JOHN HATZISTERGOS:** That is a matter for the local council, as I understand it. The council determines the appropriate planning for the site. In 2003 the Government sought tenders and agreed on the preferred proponent's tender in July 2005, following a prolonged process which resulted in two investigations that addressed issues about the tender by the Queen Victoria Memorial Hospital Support Committee. Following the issue concerning the original tender a consultant was engaged to review the 14 State

nursing homes. Future plans for that nursing home will take that finding into account. Of course, any decision in relation to what occurs on that site ultimately requires the approval of the Wollondilly Shire Council and the Department of Planning.

### **SOUTH COAST HARBOUR AND MARINA FACILITIES**

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Lands. Will the Minister advise the House on plans to expand and improve harbour and marina facilities on the South Coast?

**The Hon. TONY KELLY:** Population growth has increased the demands on existing marine facilities on the South Coast. Much of the land around the ports is Crown land, managed by the Department of Lands. The Iemma Government is working closely with councils, business and the broader community on development strategies for these ports and marinas. Last month I had the pleasure of visiting Batemans Bay and announcing immediate funding worth \$680,000 for both the Batemans Bay Marina and Ulladulla Harbour, as well as plans to redevelop these important regional ports to cater for the economic, social and recreational needs of the communities they serve. The upgrade planned for Batemans Bay Marina will provide over 260 moorings—I understand there are now about 130 moorings, so this will double the number of moorings at the marina—and a prime site for marine businesses, shops and recreation. Community consultation has worked up an option that reclaims land at the western end, where the marina is, for marine and related commercial opportunities, tourist facilities and recreational space.

The Department of Lands has been working closely with the Department of Planning, which has designated the marina upgrade a major project. I have instructed the department to fast-track this exciting development, and work is under way on an environmental impact statement and the issuing of an expression of interest for interested parties to redevelop the marina. Marina users and the community will be consulted as plans for the marina redevelopment are finalised later in the year. This is good news for Batemans Bay, and the redevelopment will generate jobs and economic growth for the entire South Coast.

As a first step, three projects worth \$150,000 are already under way. They include a hydrographic survey of the lower Clyde Estuary, including the marina and part of Corrigan's Beach, to assist in detailed planning of the marina site; a geotechnical investigation of the existing undeveloped eastern area as part of the environmental assessment; and a vessel sewage pump-out facility designed by a local consultant and built on the existing marina wharf, which is due for completion by the end of June. While inspecting the facilities at Batemans Bay I also announced \$500,000 worth of upgrades to Ulladulla Harbour, which will be completed by late July. The funding will go towards the replacement and upgrading of the fendering on Tuna Wharf, allowing for larger fishing vessels and cruising super yachts; repairs to the seawall opposite the heritage-listed sandstone jetty; and an ocean monitoring program to better understand wave and current conditions entering the harbour.

The Lands Department has consulted the Ulladulla Fishing Co-op, other Ulladulla Harbour users, the Department of Planning, Premier's Department and Shoalhaven City Council to understand community needs for the harbour. Besides the funding, work is almost finished on a design concept for future redevelopment of the harbour that will look at the longer-term future of this important harbour. The Government has backed this with a \$30,000 grant to Shoalhaven City Council for an urban planning study that will consider growth over the next 20 years and will be integrated with the Ulladulla Harbour redevelopment to create a master plan for the town. The future of these South Coast ports is bright indeed and the Iemma Government is committed to working with communities to deliver key infrastructure projects for the region. Unlike the Coalition, which will slash jobs and close important government projects such as the Department of Lands' Minor Port Program, the Iemma Government is getting on with the job of rebuilding coastal and country New South Wales.

### **RAINFOREST PROTECTION**

**Mr IAN COHEN:** My question is directed to the Minister for Primary Industries. Yesterday former Premier Neville Wran, in launching a book about his decade as Premier, listed environmental protection, and in particular the protection of rainforests, as one of his key achievements. Given that the Iemma Government is allowing the logging of rainforest on private land, is Neville Wran's statement just spin or has the Iemma Government betrayed the Wran-Carr legacy of rainforest protection? Why is the Minister allowing rainforest logging to continue in New South Wales?

**The Hon. IAN MACDONALD:** Again, this is a typical statement by the Greens on this issue. I guess it fits with the member's view of the private native forestry code, which is written under the Native Vegetation

Act 2003. The Government acknowledges the importance of forestry on private lands as a major resource for the native hardwood timber industry and an important source of farm income. The industry is estimated to contribute over \$95 million per annum to the New South Wales economy. The Native Vegetation Act 2003 provided for forestry activities on private land while ensuring appropriate safeguards were put in place in respect of the environment. In the majority of cases, private native forestry activities will be provided for and regulated through the preparation of a property vegetation plan [PVP] under a private native forestry code of practice. A draft code of practice for private native forestry is being prepared and will be adopted under a regulation for the Native Vegetation Act 2003. The code sets out silvicultural requirements to ensure sustainable production from healthy forests in the long term. This will be a significant step forward for the private native forestry industry and the community. It will provide industry planning and investment certainty through 15-year consents, with important safeguards for the environment.

Once a PVP has been agreed no new threatened species listing or new local environmental plan can change the terms of the agreement for up to 15 years. The code will cut red tape for industry and involve a straightforward assessment process. As long as the operation meets the code's standard and the landholder registers the operation through a PVP they can start operating straight away. The Department of Natural Resources will carry out a risk-based auditing and compliance program to ensure that the landholder is meeting the code's standards. The department will also develop educational and support materials to help private forest growers understand new arrangements such as silvicultural guidelines.

The current exemption under the Native Vegetation Conservation Act 1997 will continue on all private land, except State protected land, as a transitional arrangement until the code of practice system is in place. This will help to minimise disruption to landholders and industry. The Government is committed to developing these arrangements in consultation with farmers, landholders, the timber industry and environmental organisations. We have sought stakeholder input in preparing the code and will consult further with the community before the code takes effect. This is expected to happen in September this year. I am carefully considering the issue of private native forestry to help secure a sustainable private forest timber industry while protecting the environment.

**Mr IAN COHEN:** I have a supplementary question. Will the Minister confirm or deny that under his ministership he is allowing the logging of rainforests in New South Wales?

**The Hon. IAN MACDONALD:** Again, that is a most exaggerated question. I ask him, you know—

**The Hon. Patricia Forsythe:** Not "you know"; yes or no.

**The Hon. IAN MACDONALD:** Is the Hon. Patricia Forsythe supporting this question? Is the Liberal Party supporting this proposal? We not only have the Green Nationals—

*[Interruption]*

I am not going to answer that question precisely at this point because Mr Cohen calls just about everything in this State rainforest. You could have one tree anywhere and he would regard it as a rainforest. I would like to know what examples he has before I answer a silly question like that. It is typical exaggeration.

#### **QUEANBEYAN DISTRICT HOSPITAL UPGRADE**

**The Hon. MELINDA PAVEY:** My question is directed to the Minister for Health. Given that it is nearly four years since the Government announced funding for the redevelopment of Queanbeyan hospital and that the local member gave a commitment that construction would start last year, when will work begin on the redevelopment of Queanbeyan Hospital—physical construction—and when will it conclude? How many staff from the Greater Western Area Health Service will be located in the redeveloped hospital?

**The Hon. JOHN HATZISTERGOS:** Announcements about all those matters will be made in the very near future. I do not intend to give the Hon. Melinda Pavey any information in advance of my announcement to the community at large—particularly since she resides in Coffs Harbour. As a matter of interest, this will be a terrific development for the people of that region. Of course, it would have been better if the National Party had not sold the land around Queanbeyan hospital when it was in government, which restricted the capacity of the redevelopment. Do not ask me silly questions like that again!

### CAMDEN AND CAMPBELLTOWN HEALTH SERVICES

**The Hon. KAYEE GRIFFIN:** My question is addressed to the Minister for Health. What is the latest information on health services in the Campbelltown and Camden areas?

**The Hon. JOHN HATZISTERGOS:** I am pleased to update the House on the \$133.7 million upgrade of community and hospital services in the Campbelltown and Camden areas under the Macarthur strategy. Last Sunday I attended the opening of the Macarthur Fun Fest, an annual community fundraising event, and was pleased to announce the completion of the \$133.7 million development. The Macarthur community is growing at a significant rate. That is why the New South Wales Government commenced in June 1999 the Macarthur strategy for the redevelopment of Camden and Campbelltown hospitals with the aim of ensuring a high quality of health care for the people of Macarthur now and into the future.

In bed numbers alone, the two hospitals have increased in size by more than 25 per cent since 2002. The number of non-casual staff has increased from 1,797 in 2001 to 2,260 in 2005, which is an increase of more than 25 per cent. In the three years to June 2005 the number of full-time equivalent nurses at Camden and Campbelltown hospitals increased by 32 per cent, from 415 to 546. From 2003 to 2005 the number of visiting medical officers increased by 25 per cent, from 45 to 59, and the number of permanent doctors at all levels increased by 23 per cent, from 74 to 94.

The Macarthur strategy focused on upgrading facilities and services at Campbelltown to make it a major metropolitan hospital. It also implemented changes at Camden hospital so that it will maintain a complementary role with Campbelltown. The strategy also focused on upgrading services, equipment and staffing—improvements that will have a long-term impact on local health care, making it faster and more sophisticated and reducing the need for transfers. The final stages of the Macarthur strategy at Campbelltown include a comprehensive new \$3.26 million women's and babies centre, with refurbished and relocated maternity services; a new coronary care unit, with seven additional coronary care beds and seven newly appointed specialists; a new 30-bed medical ward; and a new stroke unit.

I can also inform honourable members that Campbelltown will receive a sophisticated new \$1.29 million computerised tomography [CT] scanner. The 64-slice CT scanner boasts some of the most advanced technology available. It allows more patients to be diagnosed and tested by enabling physicians at Campbelltown to conduct faster and more accurate imaging on site. The 64-slice technology provides greater comfort for patients by conducting a whole body scan in 20 seconds—which is especially important for trauma patients when every second counts. The CT is a method of medical imaging that generates three-dimensional pictures of internal features of the human body, such as blood vessels. This is amongst the best CT scanners anywhere in Australia and it reduces the need to transfer patients for diagnosis. All these improvements translate to better local health care services in Campbelltown and Camden, which will be much appreciated by both staff and patients.

### GRAYTHWAITE ESTATE, NORTH SYDNEY

**Ms SYLVIA HALE:** My question is directed to the Minister for Health. Did the Department of Health or any of its agencies or representatives notify either Shore school or North Sydney Council that it was taking the matter of the Graythwaite trust to the Supreme Court last month? If the department or one of its agents or representatives notified Shore school but not North Sydney Council, why was Shore school given such preferential treatment?

**The Hon. JOHN HATZISTERGOS:** That question is prefaced on a number of hypotheticals. I gave a comprehensive answer regarding this matter in response to a question asked of me last week by the Hon. Don Harwin. I refer Ms Sylvia Hale to that answer.

### PORT STEPHENS GREAT LAKES MARINE PARK

**The Hon. ROBYN PARKER:** My question is directed to the Minister for Primary Industries. Is it true that draft sanctuary zones covering 20 per cent of the Port Stephens Great Lakes Marine Park actually constitute 80 per cent of the good recreational fishing areas? Is that why the Minister announced the boundaries at a private function, with only invited guests present? Is the Minister afraid to meet recreational fishers publicly to explain his marine park boundaries?

**The Hon. IAN MACDONALD:** The Hon. Robyn Parker seems suddenly interested in recreational fishing. I think she might have been prompted to ask this question by the Deputy Leader of the Opposition. Let me make it very clear: there is some disputation about sanctuary zones. Marine parks, by their very nature, give rise to disputation about what is in and what is out and what is good and what is not in terms of recreational and commercial fishing. The figures cited by the Hon. Robyn Parker are nowhere near reality. It is interesting to note that when I made announcements about Byron Bay Marine Park in the previous week Ken Thurlow—an active recreational fisher who is pretty antagonistic towards marine parks—said that that marine park had subsumed nearly all local recreational fishing spots. That is clearly nonsense.

As to the Port Stephens Great Lakes Marine Park, I can only go on the statements made by a leading recreational fisher who served on the consultative committee. Honourable members do not have to believe me: if they look at today's edition of the *Daily Telegraph* they will see him quoted as saying that fishers have got a pretty good deal out of this. In fact, the article's headline states that anglers have got a fair deal—and they have. I know that members of The Nationals and the Liberal Party will try to whip up dissent about every marine park issue, but the evidence about the marine park and the Solitary Islands is clear-cut. Reports released recently reveal that the marine park has caused no economic loss—in fact, there is considerable interest in marine parks. There is also evidence that the marine park is helping to build up fish stocks and increase fish size. There is a lot of evidence in support of marine parks and their value to the economy and the environment. I will listen to what various fishers have to say in the submissions that they put forward.

**The Hon. Robyn Parker:** But you won't meet them at a public meeting, will you?

**The Hon. IAN MACDONALD:** I have been meeting heaps of them. I have met many recreational fishers.

**The Hon. Duncan Gay:** Where were you last night?

**The Hon. IAN MACDONALD:** I have many engagements, and I had one last night. I made it clear the previous week at the Byron Bay Marine Park event, when I received the invitation, that I would not be able to attend the meeting on Monday night because I had a prior engagement.

**The Hon. Robyn Parker:** Because you are afraid to meet them.

**The Hon. IAN MACDONALD:** I am not afraid to go to a public meeting. I have never been afraid to attend a public meeting and I have never been afraid to get into a slanging match with the likes of the Deputy Leader of the Opposition. I made it clear to those fishers that I will listen to their case. If they have a good case, it will be taken into account. That is the fair way to proceed. Although our proposal for a marine park at Port Stephens is balanced, it could be amended. We will consider such matters during the submission period.

#### WINDSOR FLOOD EVACUATION ROUTE

**The Hon. IAN WEST:** My question is addressed to the Minister for Roads. Will the Minister provide the House with the latest information on the Windsor flood evacuation route?

**The Hon. ERIC ROOZENDAAL:** Last month I went to the Windsor flood evacuation route with the honourable member for Riverstone, the Hon. John Aquilina, and the honourable member for Londonderry, Allan Shearhan, to announce the commencement of work for the final link in the evacuation route for more than 40,000 Windsor residents during major floods. The Windsor flood evacuation route over South Creek is managed as an independent project and is fully funded by the State Government as part of both the Government's \$420 million upgrade of Windsor Road and the Hawkesbury Nepean Flood Plain Management Strategy.

As well as providing residents with additional time to evacuate during major floods, the flood evacuation route is designed to improve traffic flow and alleviate peak hour congestion in nearby McGraths Hill and Windsor town centre. I am advised that journey times between Windsor and Parramatta are expected to be quicker as a result of the construction of two extra traffic lanes between Windsor and Mulgrave. The project involves building a 2.6 kilometre road between Day Street at Windsor and Railway Road South at Mulgrave, including a 1.5 kilometre bridge across the South Creek flood plain. I am advised that a comprehensive strategy for the flood plain management of the Hawkesbury-Nepean Valley was developed in 1997 by a work group comprising representatives from local councils and State Government agencies. The strategy included improved

evacuation routes, better flood forecasting and warning systems, faster recovery for affected communities, improved understanding of flood hazards and the development of best practice land development guidelines.

The contract to build the evacuation route was awarded to Abigroup Ltd in October 2005, and I was pleased to meet some of the dedicated Roads and Traffic Authority staff who work on the project, including Geoff Fogarty, Kevin Hays, Bruce Taggart and Max Anandappa. Substantial progress has been made in delivering the entire \$420 million Windsor Road upgrade program, with \$151 million allocated in the 2005-06 budget for its continuation. The upgrade is approximately 28 kilometres in length, and I am advised that it is the largest urban arterial road program undertaken by any State Government. The upgrade will provide bus priority measures at all signalised intersections along Old Windsor and Windsor roads. The upgrade will also allow priority for the \$524 million Blacktown to Parklea and Parramatta to Rouse Hill bus-only T-ways.

In recent times widening works have been opened to provide four lanes of traffic on Old Windsor Road between Seven Hills and Kellyville and on Windsor Road from Norwest Boulevard to Showground Road, from Kellyville to Mile End Road and from Level Crossing Road to Henry Road. As well, works are currently under way on Windsor Road from Roxborough Park Road to Norwest Boulevard, Acres Road to Old Windsor Road, Mile End Road to Boundary Road and Boundary Road to Level Crossing Road. As I said, this is the largest urban arterial road program undertaken by any State Government.

The Windsor Road corridor is one of the oldest in Australia and is an important part of Sydney's road network, connecting Sydney's north-west to the Blue Mountains via Bells Line of Road and the Hunter Valley via Putty Road. It also connects to Sydney's orbital motorway network. Thanks to the Iemma Government it will provide significant benefit for motorists and their families for generations to come.

**The Hon. MICHAEL COSTA:** If honourable members have further questions, I suggest they put them on notice.

#### URANIUM EXPLORATION

**The Hon. IAN MACDONALD:** Earlier today Ms Lee Rhiannon asked me about uranium. I am advised that Champion Resources has not applied for a title to explore uranium in New South Wales. I stated the name of the Act that prohibits mining of uranium, under which there is a significant penalty for anyone caught illegally prospecting for uranium in New South Wales.

#### SYDNEY HARBOUR COMMERCIAL FISHING INDUSTRY COMPENSATION

**The Hon. IAN MACDONALD:** Earlier today the Hon. Dr Peter Wong asked what gives me the authority to cancel fishing entitlements in Port Jackson. Section 42 (2) of the Fisheries Management Act 1994 gives the Minister for Primary Industries the authority to cancel those entitlements.

#### QUEANBEYAN DISTRICT HOSPITAL UPGRADE

**The Hon. JOHN HATZISTERGOS:** Earlier today the Hon. Melinda Pavey asked me about the Queanbeyan District Hospital upgrade. I inform the House that enabling works have already commenced for Queanbeyan hospital. It is something that one misses when one follows these things from the North Coast.

#### DEFERRED ANSWERS

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

#### M5 EAST TUNNEL AIR POLLUTION

On 30 March 2006 Ms Lee Rhiannon asked the Minister for Roads a question without notice regarding M5 East tunnel air pollution. The Minister for Roads provided the following response:

I am advised:

The Roads and Traffic Authority's (RTA) Motorways Directorate was not established until 2004. The RTA's Director, Motorways Mr Les Wielinga does not have a record of having sent an email on 25 April 2002 in relation to the M5 East tunnel.

At that time, concerns had been raised by Emergency Services personnel who attended the first multi-vehicle accident in the Cook's River tunnel on 19 February 2002. As a result of those concerns and subsequent

interagency discussions, NSW Health undertook its "M5 East Tunnels Air Quality Monitoring Project", July 2003 that concluded:

We have demonstrated that for a range of transits with the cabin open or closed during peak hour through the M5 East tunnels, motorists are unlikely to encounter air pollution that would lead to acute health impacts.

The Conditions of Approval require the World Health Organisation (WHO) 15-minute carbon monoxide (CO) goal of 87 ppm.

I am further advised the M5 East tunnel meets the air quality goals set by the Conditions of Approval.

#### **LONG BAY CORRECTIONAL CENTRE PRISON OFFICERS INDUSTRIAL DISPUTE**

On 4 April 2006 the Hon. Dr Arthur Chesterfield-Evans asked the Minister for Health a question without notice regarding the Long Bay Correctional Centre prison officers strike. The Minister for Health provided the following response:

I am advised that although the patients were locked in their cells, the routine management of forensic patients (administration of medications, etc) was unaffected by this industrial action.

I am also advised that a sitting of the Mental Health Review Tribunal scheduled for Tuesday 4 April 2006 did not convene owing to the industrial action. The seven (7) forensic patients scheduled for hearings on that day have been rescheduled.

#### **LONG BAY CORRECTIONAL CENTRE PRISON OFFICERS INDUSTRIAL DISPUTE**

On 4 April 2006 the Hon. Dr Arthur Chesterfield-Evans asked the Minister for Health a question without notice regarding the Long Bay Correctional Centre prison officers industrial dispute. The Minister for Justice provided the following response:

The strike by correctional officers on 4 April 2006 resulted in Long Bay Hospital being staffed by a minimum number of personnel until correctional officers returned to work at 8.30am on 5 April.

Inmates at Long Bay Hospital were subject to a lockdown on 4 April; however all inmates received medication and meals and had access to medical staff as required but could not make phone calls or receive visits on that day.

Medical appointments for 4 April were rescheduled by Justice Health.

#### **ROYAL EASTER SHOW PRODUCE**

On 5 April 2006 Mr Ian Cohen asked the Minister for Primary Industries a question without notice regarding Royal Easter Show produce. The Minister for Primary Industries provided the following response:

The Sydney Basin is indeed the largest producer of horticultural products in the State and I am pleased to inform Honourable Members that produce from the Basin is regularly exhibited at the Royal Easter Show. Prize winning fruit and vegetables appear in the District Exhibits display and competition, and this has been part of the Show's tradition since 1900.

The NSW Department of Primary Industries has been for many years the premier sponsor of the District exhibits, and I am proud of this longstanding association with the Royal Agricultural Society of NSW.

The five District Exhibits, Western, Southern, Central, Northern and SE Queensland, encompass all regions of NSW. These regions are supported by many local show societies, who help in co-ordinating and collecting the range of produce required for the different judging categories.

The District Exhibits showcase a wide and diverse range of agricultural produce. In order to compete and display such a broad range of produce categories, the districts are large and cover a range of production and climatic regions.

The Sydney Basin provides the best of its horticultural produce to both the Western and Southern district displays, as the border between these two districts cuts diagonally through the Sydney region. Thus, produce from the Sydney Basin is actually showcased in two exhibits. High-quality leafy vegetables, Asian vegetables, salad vegetables, herbs, strawberries, citrus, stone and pome fruits are all selected for the displays.

Whilst there is a 16km circle radiating from the GPO which excludes any produce grown in that area, that boundary ceased to represent a significant production area many years ago.

**Questions without notice concluded.**

### **JURY AMENDMENT (VERDICTS) BILL**

#### **Second Reading**

**Debate resumed from an earlier hour.**

**Reverend the Hon. Dr GORDON MOYES** [5.04 p.m.]: Before question time I said that majority verdicts in jury trials are not a new issue. As suggested in the second reading speech of the Attorney General in the other place, majority verdicts are common to many Australian States; for example, Victoria, Tasmania,

South Australia, Western Australia and the Northern Territory permit majority verdicts. Only the Commonwealth, Queensland, the Australian Capital Territory and New South Wales do not presently have them. However, there is a clear and blatant distinction between this bill and the legislation in all other Australian States, not including the Northern Territory: in those States, majority verdicts are not permitted for murder trials.

The proposal in this bill is to allow majority verdicts in all criminal proceedings, including murder trials. This distinction is dangerous. If the bill passes, New South Wales will join the Northern Territory as the only jurisdiction that allows majority verdicts in all criminal proceedings, including murder. Noticeably then, there is general unease about this position in other Australian States. The reasons why this situation is worrying is that the consequences of being found guilty of a murder charge are heavy. The prospect of life imprisonment is a daunting one. Honourable members would be aware that currently within the criminal justice system the prosecution must convince the jury that a person is guilty of such a crime in such a way that the jury is 100 per cent convinced of that person's guilt; that is, the test is "beyond all reasonable doubt" rather than "on the balance of probabilities", as within the civil system.

The proposal to allow majority verdicts goes head to head with this test—a test that is at the very heart of the criminal justice system. Unanimous verdicts are a reflection of a basic non-negotiable tenet of the criminal justice system. The High Court in *Cheatle v The Queen*, in 1993 volume 177 of Commonwealth Law Reports at page 560, held that "to abrogate the requirement of unanimity involves an abandonment of an essential feature of the institution of trial by jury". Further, the court was not convinced that considerations of convenience favoured the abolition of unanimity.

The Government refers to a study conducted by the Bureau of Crime Statistics and Research in 2002 that suggested that the incidence of hung juries in New South Wales is double that in other jurisdictions. That statistic may lead one to believe that the incidence of hung juries is a real problem on an absolute level. However, it is important to highlight that this figure should be viewed in relative terms within the entire criminal justice system. Report 111 by the New South Wales Law Reform Commission indicates that 0.4 per cent of all criminal cases in Australia in 2003-04 were determined by a jury trial. Hung juries result in only a small number of jury trials, and therefore represent only a minor proportion of all criminal cases. Further, it has been suggested that the incidence of hung juries in criminal trials will not be eliminated altogether should New South Wales proceed with the current proposal to introduce majority verdicts. Juries with a minority of more than one will continue to be hung.

The Government also indicates that the system of majority verdicts is supported by the Director of Public Prosecutions, Mr Nicholas Cowdery, QC; the Senior Crown Prosecutor, Mark Tedeschi, QC; the Chief Judge of the District Court, Reg Blanch; and a number of retired judges. This position is to be expected. But the Law Society and the Bar Association do not agree with this view. For instance, the President of the New South Wales Bar Association, Michael Slattery, QC, contacted the Leader of the Christian Democratic Party, Reverend the Hon. Fred Nile, and me and said:

The State Government, contrary to the advice of its own Law Reform Commission, is taking away a centuries-old civil right in exchange for uncertain benefits.

The Bar Association has proposed three sensible amendments to the bill which would insert some basic protections for the people of New South Wales. The first is a sunset clause of five years, allowing concerted observation of any purported benefits of the bill. The second is to exclude murder cases and offences carrying a penalty of life imprisonment. As confirmed by the association, no State of Australia permits majority verdicts in murder cases. Only the Northern Territory permits majority verdicts for murder. A number of States do not allow majority verdicts for offences that carry a life sentence.

The third amendment modifies the period of time available for a majority verdict. Under the present bill an 11:1 verdict may be taken after eight hours. As was rightly pointed out by the association, this is far too short a period, given that this legislation purports to refer to serious crimes. The association's amendment allows for at least two days of deliberation before an 11:1 result can be taken. In my firm opinion, these three amendments ought to be closely considered and accepted by the Government. The Legislation Review Committee has expressed concern with the bill. For example, the committee notes that:

... trial by jury is a central feature of the Australian criminal justice system, which helps to protect the rights of accused persons. The Committee further notes that the High Court has consistently maintained that unanimity is an essential feature of the right to trial by jury for criminal offences under the Commonwealth Constitution.

The Committee also notes that the right to be presumed innocent until proven guilty beyond reasonable doubt is a fundamental personal right. The Committee further notes that a dissenting juror objectively suggests the existence of reasonable doubt regarding a person's guilt and allowing a conviction in such circumstances increases the risk of convicting the innocent ...

The Committee brings to Parliament's attention the opinion of the High Court which stated, inter alia, that "a verdict returned by a majority of jurors, over the dissent of others, objectively suggests the existence of a reasonable doubt and carries a greater risk of conviction of the innocent than does a unanimous verdict".

In the analysis of the proposed legislation, the committee referred to Parliament the question of whether majority verdicts unduly trespass on the right to be presumed innocent until proved guilty beyond reasonable doubt. I appreciate that we are discussing that issue right now, and I would ask the Government to seriously consider those issues. May I say that the mechanisms of the bill are straightforward. The bill inserts new section 55F to allow the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a majority verdict if all the jurors are unable to agree on a verdict after deliberating for a reasonable time—being not less than eight hours. The court also has to be satisfied that it is unlikely that all of the jurors will reach a unanimous verdict after further deliberation. The bill also makes provision for the discharge of an 11-person or 12-person jury by the court if the court finds that the jurors are unlikely to agree on a unanimous or majority verdict.

Finally, it is worth mentioning that an excellent report on this issue has been put together by Ms Talina Drabsch of the New South Wales Parliamentary Library Research Service. I urge honourable members to familiarise themselves with it. In brief, the Christian Democratic Party does not think the thrust of the bill is better than the current practice of unanimous verdicts, but we do recognise that as both the Government and the Opposition will vote for majority verdicts, our stance will make little difference. We believe that the Government of the day has a right to make such changes even if our advice is rejected. But we urge the Government not to get into a situation of trying to have tougher legislation than the Opposition just prior to an election. What the Premier said in 1997 was right, and we urge him not to persist with his current views. We strongly recommend that the Government seriously consider what we have had to say about the implications of the bill.

**The Hon. PETER BREEN** [5.13 p.m.]: The Jury Amendment (Verdicts) Bill raises the issue of majority verdicts for criminal proceedings and will change the law that is in place at present, which provides for unanimous jury verdicts in criminal proceedings. Majority verdicts are not a new issue, as the Legislation Review Committee has pointed out. The Commonwealth, Queensland, the Australian Capital Territory and New South Wales at present do not have majority jury verdicts, but the other States and the Northern Territory do.

The main object of the bill is to reduce the number of hung juries in order to give certainty and finality to criminal proceedings. There is some doubt in my mind about whether that central and primary objective of the bill is correct. I am not certain, from my experience of the criminal justice system, that majority jury verdicts will create certainty or finality in relation to criminal proceedings. In my experience, the unanimous jury verdict requirement means that all jurors must address the question of the innocence or guilt of the accused. They cannot afford not to be involved in debate about the issue, and they cannot afford to be seen as one out; they have to be convinced by the other jurors, or indeed the opposite, as in the case of the film *Twelve Angry Men*, where one juror—the odd person out—was able to convince the other 11 that they in fact were wrong and he was right. This majority jury verdicts legislation will change a considerable body of law that has been in place since the legal system and jury verdicts came into effect.

The Law Society wrote to me on 19 April stating that it did not support certain aspects of the bill, particularly the requirement of a majority verdict for offences carrying life imprisonment. The Law Society said there should be unanimous verdicts for all offences carrying sentences of life imprisonment. I agree with that idea in principle. Indeed, in a previous life in this place I put forward an amendment that Reverend the Hon. Fred Nile has indicated to me is still on the notice paper. However, that amendment is in the same terms as a Greens amendment, so nothing turns on it. But the principle is an important one and ought to be stated, with the benefit of some information that I have been able to obtain from the Parliamentary Library.

One of the issues that arise in any discussion about jury verdicts is what the statistics really are in relation to jury verdicts, how many jury cases achieve majority decisions, and what are the results of those decisions when the accused go for retrial. I asked the Parliamentary Library Research Service to make inquiries, and it advised that the Judicial Commission does not hold statistics in relation to the outcome of retrials. However the Deputy Solicitor for Public Prosecutions was able to provide some figures. It is very interesting to note exactly what those figures are.

In 2005 there were 45 hung juries in the District Court of New South Wales and in the Supreme Court of New South Wales. The outcomes of all those 45 hung juries are not available at this stage—obviously because the events are so recent. However, 12 of those 45 matters have been resolved. The library informed me that 6 of those 12—50 per cent—resulted in decisions favouring the accused. In two cases the accused were found innocent on retrial, and in the other cases they were not billed or the charges were vacated. That means that 50 per cent of hung juries, on the results of the figures available for 2005, resulted in the accused going free. Under this new legislation, those people would be imprisoned, some of them for the terms of their natural lives.

It was interesting to talk to Tim Anderson about this. Tim Anderson and two others were wrongly convicted in 1979 of offences relating to the Hilton Hotel bombing. Honourable members may or may not recall that at the time an outspoken juror hung out against the other 11 jurors. That juror's name is Ross Clark. He was actually the foreman of the jury. Mr Clark telephoned me recently and told me some of the things that happened on that jury. He was elected foreman of the jury and he alone decided that the accused were innocent of the conspiracy charges.

Honourable members may recall that Tim Anderson and other members of the Ananda Marga sect were the subject of charges relating to an alleged criminal conspiracy and to other charges that related to an alleged attempt to blow up three policemen. Mr Clark informed me that he formed a view early in the proceedings because most of the evidence had been provided by police and there were only one or two other witnesses. The jury deliberated on the charges of attempting to blow up the three policemen and decided 9 to 3 that Anderson and the others were guilty. In the course of the deliberations the other jurors informed Mr Clark they would do a deal on the blowing up charges and vote that the accused were innocent if Mr Clark agreed to abandon his sole opposition to a finding of guilty on the criminal conspiracy charges. So juries do deals with each other; jurors sit around the jury room and do deals—"We will go easy on this offence if you will agree with us on that offence." That is the kind of dealing and bargaining that goes on.

As foreman of the jury in the Tim Anderson trial, it fell to Mr Clark to inform the judge that no decision could be reached. He knew he would not change his mind on the innocence of the accused, and on that basis the jury was discharged. The accused, Tim Anderson and his alleged co-offenders, were later convicted unanimously on a new trial. That is one example of the difference between a unanimous jury verdict and a majority jury verdict and the outcome resulting in innocent people being convicted. Another example I would like to give the House is that of the Phung Ngo trial. Honourable members may recall that Phung Ngo, Quang Dao and David Dinh went to trial three times for the murder of the former member for Cabramatta, John Newman. The first trial was aborted when the prosecutor, Mark Tedeschi, informed the jurors that someone who was giving evidence by video link was actually in the same building. The judge took the view that that was detrimental to the accused, aborted the trial, and discharged the jury.

At the second trial Phung Ngo and Quang Dao were accused of the murder of John Newman and the jury decided 11 votes to 1 that they were guilty. Because of the requirement for a unanimous jury verdict, the judge asked the foreman of the jury whether or not he thought there would be an outcome and if it would be an outcome that was likely to happen quickly. The foreman of the jury, who was the one hanging out and saying they were innocent, said, "Your honour, no matter how long it takes, these other 11 jurors will not convince me in a month of Sundays that these people, Quang Dao and Phung Ngo, are guilty of the murder of John Newman." That jury was also discharged and the trial abandoned, as had happened with the Tim Anderson jury. The third trial of the three offenders, Phung Ngo, Quang Dao and David Dinh, resulted in a split decision. Phung Ngo was convicted and Quang Dao and David Dinh were acquitted.

Quang Dao and David Dinh live in the community. They are both honourable people. In the case of Quang Dao he had no previous connection with the criminal justice system. Those people are living in the community and are free. Under the bill before the House, Quang Dao and David Dinh would be in gaol for the term of their natural lives, together with Phung Ngo. Phung Ngo has appealed to the Court of Criminal Appeal and to the High Court and is still in gaol. Presumably, Quang Dao and David Dinh would have been in the same boat. They are examples of majority jury verdicts that resulted in people who would otherwise have gone to gaol for the term of the natural lives now walking free.

On the statistics I quoted, of the 45 cases involving hung juries in New South Wales last year, 50 per cent of the accused would be free under unanimous jury verdicts but will now be in gaol, some for the remainder of their natural lives, under majority jury verdicts. The fundamental injustice that has been referred to by other speakers in the debate, and by the Law Society and the Bar Association, is such a serious infringement and is such a radical and drastic change from the system that is already in place that one has to question the moral basis of the legislation. The Legislation Review Committee said:

The Committee notes that trial by jury is a central feature of the Australian criminal justice system, which helps to protect the rights of accused persons. The Committee further notes that the High Court has consistently maintained that unanimity is an essential feature of the right to trial by jury for criminal offences under the Commonwealth Constitution.

The committee also pointed out that the fundamental principle at stake here and the one the committee was most concerned about is the right to be presumed innocent until proved guilty beyond reasonable doubt. That is a fundamental, personal right that the bill will overturn. The Hon. Neville Wran spoke very eloquently, as usual, yesterday at the launch of a book titled *The Wran Era*, edited by Troy Bramston. The Hon. Neville Wran said that the principle of the presumption of innocence that has always been treasured in Australian society was "being steadily pushed to one side and being substituted by the presumption of guilt."

That is what is happening in the criminal justice system. There is a very subtle shift from the presumption of innocence to the presumption of guilt. The bill is one more example of that very subtle shift in the way we as a community are thinking about justice. We are so concerned about safety, security, terrorism and all the rest of it that we are prepared to undermine these basic and fundamental principles in our legal system, particularly in relation to the presumption of innocence. That aspect of the bill is one to which I wanted to draw attention, particularly in the context of the little information that we have about juries. We know something about the juries in the Tim Anderson trial because the sole dissenting juror went public. We know something about the jury system in the Phung Ngo trials because a sole dissenting juror went public, but there must be many other cases where we do not hear from jurors.

I note that it is now an offence in New South Wales to approach a juror about the result of a trial. The secrecy that operates in the jury system can be used in a way to undermine the system. We ought to know what is happening and I do not believe enough research has been conducted into what happens in the jury room. The advice of the Law Society and the Bar Association is being ignored and it is important advice because they are the people who are at the coalface. They know what happens in the courts and in the jury room, and Parliament ought to heed their advice. I am disappointed that the legislation does not protect us in the case of an offence against the law of New South Wales that carries a penalty of life imprisonment. It is a serious change to a provision and will result in innocent people going to gaol for the rest of their lives. In those circumstances I suggest to the Government that some consideration ought to be given to the implications of this bill and I hope that this is not the end of the debate. Otherwise, I commend the bill.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.27 p.m.], in reply: I thank honourable members for their contributions to the debate on the Jury Amendment (Verdicts) Bill 2006. Clearly there is a great divergence of opinion on the introduction of majority verdicts in criminal trials in New South Wales. This reflects the division of opinion within the legal profession generally. It is therefore important to acknowledge the concerns of the Law Society and the Bar Association about the introduction of majority verdicts and the manner in which they have informed this debate. The primary concern raised by the Bar Association and the Law Society is that majority verdicts undermine the concept of reasonable doubt and burden of proof. The Law Society and the Bar Association argue that if a jury cannot come to a unanimous decision, reasonable doubt must be said to exist, and that the criminal onus of proof has not properly been established or is somehow undermined.

A number of proposals to improve the bill have been put forward by the Bar Association. One of these proposals was the introduction of a sunset clause, which is a highly unusual feature of a bill. However, the point of review that is raised is an important one. Consequently the bill introduces section 80 into the Jury Act 1977 to provide for a statutory review of the operation of the legislation within five years of its commencement. A report will then be tabled to Parliament within 12 months of that period.

There is no need to include a specific statutory power in the bill to allow for the collection of data and research on juries, as this is already covered. Section 68A (3) of the Jury Act 1977 provides that it is not an offence to solicit information from a juror or former juror in accordance with an authority granted by the Attorney General for the conduct of a research project into matters relating to juries or jury service. I am advised that the Attorney General's office has had discussions with the New South Wales Law Reform Commission regarding a review of the bill after five years and that the Law Reform Commission is prepared to be involved. Although the terms of reference of such a review are yet to be finalised, the Government considers that the conduct of the section 80 statutory review by the New South Wales Law Reform Commission will satisfy the issues raised by the Bar Association.

The Bar Association and others also have raised concerns that majority verdicts will apply in cases of murder. The underlying rationale of the bill is that the amendments should apply equally to all New South

Wales offences. There are a number of New South Wales offences where a maximum period of life imprisonment may be imposed—for example, murder, aggravated sexual assault in company and supplying a large commercial quantity of a prohibited drug. As a principle of consistency and fairness, the majority verdict amendments should apply to all offences. If not, a tiered system of justice would be created for New South Wales offences, which would be most undesirable.

The Bar Association further suggests that it would be preferable if the jury had to wait for two days before it could return a majority verdict. With all due respect, this proposal does not appear to appreciate the different nature and complexity of jury trials conducted in this State. Some trials revolve around a single issue and can be conducted in a few days. It would be extremely difficult if the jury had to wait for days and days before they were entitled to return a majority verdict in a relatively short and simple case. It must be remembered that the minimum period of eight hours set out in the bill is not an automatic trigger. Rather, it is a matter for the trial judge to determine whether a reasonable time has passed, based on the nature and complexity of the case.

Under the legislation, a majority verdict can be returned only after it is clear that there is no likelihood that a unanimous verdict can be reached. In complex and difficult cases, such as murder, a judge may very well give the jury a number of days to reach a unanimous verdict before asking whether they can reach a majority verdict. The Government is of the view that this bill presents a balanced and sound approach to the introduction of majority verdicts in this State. It contains a number of safeguards to ensure that majority verdicts are not simply delivered at whim. The bill is clear that a unanimous verdict should be delivered where possible.

The eight-hour minimum requirement ensures that jury deliberations will not be hasty, and that when a majority verdict is returned, jurors will have had to think about their verdict for more than one day. However, there will be cases when it is clear that the jury is unable to agree on a unanimous verdict, even with further time, and a majority verdict of 11:1 or 10:1 may be returned. In these cases, a majority verdict may be returned provided all the requirements of the bill have been met. Turning to the other points raised in the course of the debate, the Hon. David Clarke and the Hon. Melinda Pavey trotted out the same tired old Opposition line that the Government's bill mirrors previous Opposition proposals. That is not the case.

The Government's bill differs from the Opposition's proposals in a number of important respects. Firstly, under the Government's bill the jury must have considered their verdict for a reasonable time, given the nature and complexity of the case being not less than eight hours, before a majority verdict can be returned. The minimum time period in the Opposition's bill was only six hours. This is an important difference. The minimum eight-hour requirement means that juries will generally have to deliberate for more than one day before a majority verdict can be returned. This will mean that the jury will suspend their deliberations overnight and come back the next morning to continue.

The task of the jury is not easy, and reasonable minds may differ. However, experience has shown that although jurors may become frustrated and angry, if given an opportunity to calm down and return to deliberate with a fresh mind a jury may well be able to reach a unanimous verdict. The eight-hour requirement reflects the underlying rationale of the bill that a unanimous verdict is to be preferred where possible. Secondly, the bill provides that a majority verdict may be returned by a majority of 11:1 or 10:1. In contrast, the Opposition bill provided only for a majority verdict of 11:1. The Government's bill reflects a more realistic understanding of the problems of retaining all 12 jurors in lengthy criminal proceedings. These days it is not uncommon for a juror to be discharged well into the proceedings because that juror is no longer able to serve, and the jury will continue with only 11 jurors.

Thirdly, the Government's bill expressly provides that the majority verdict amendments will not apply to retrials where a person previously had a right to trial by unanimous jury in the original trial for the same offence. Other honourable members referred to statistics to argue that jury trials are comparatively rare. This matter was dealt with in such detail by the Attorney in the other place that I will not waste the time of honourable members by repeating his arguments here. I commend the bill to the House.

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

**The House divided.**

**Ayes, 26**

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

**Noes, 5**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 to 4 agreed to.**

**Ms LEE RHIANNON** [5.47 p.m.]: I move:

Page 3, schedule 1, line 26. Insert ", or an offence against a law of New South Wales for which a penalty of life imprisonment may be imposed," after "Commonwealth".

The amendment excludes the use of majority verdicts in circumstances when a person accused of breaking New South Wales law faces a term of life imprisonment. Originally proposed by the new Australian Labor party member of the Legislative Council, Peter Breen, the amendment should be supported as it ameliorates the harshest and most dangerous aspects of the bill. I note that the Hon. Peter Breen missed voting on the second reading of the bill.

**The Hon. John Ryan:** Give him another chance.

**Ms LEE RHIANNON:** I note the interjection and agree with it. The Hon. Peter Breen now has a chance to support the amendment, something he identified as important. Earlier, in giving a personal explanation, he said that he was joining the Australian Labor Party because he saw that as the best way to advance human rights. He spoke of his commitment to a fairer justice system. I very much hope he will support the Greens in this matter. In effect the amendment is an application of the principle that the larger the punishment, the more certain our justice system should be that it is convicting the right person.

Since majority verdicts by definition are a reduction in the certainty of the justice system, it is appropriate that they do not apply when a person faces a life sentence. In the jurisdictions that allow majority verdicts—Victoria, Tasmania, South Australia, Western Australia and the Northern Territory—only the Northern Territory allows majority verdicts for all offences, while the other States prohibit majority verdicts for the offences of murder and treason. Victoria does not allow majority verdicts for serious drug offences. On that basis, if the amendment is not agreed to and the bill becomes law, the New South Wales approach will be tougher and more reckless than that of the other States and much more reckless than that of our closest comparable counterpart, Victoria.

We are facing an extraordinary situation. If the amendment is not agreed to New South Wales will move closer to the judicial system that applies in the Northern Territory, a place that is infamous for its wrongful conviction of Lindy Chamberlain and for mandatory sentencing laws that sentenced a 21-year-old to

12 months gaol for stealing a packet of biscuits. New South Wales should not go backwards, we should not end up like the Northern Territory. We should work with the Northern Territory to help it improve its justice system, not run down our system. The Greens believe the criminal justice system needs to be particularly sure that verdicts for which a life sentence can be ordered are as safe and as certain as possible. For these reasons I urge honourable members to support this amendment, to better manage the risks of miscarriage of justice when life sentences are being contemplated.

I remind the Chamber that the amendment before us is word for word the same as the one that had been moved by the Hon. Peter Breen on behalf of Reform the Legal System. When I heard that he had joined the Labor Party I guessed that he would not move this amendment. The Greens thought it was very important that the Chamber had the opportunity to improve this bill. We are obviously still concerned about the bill overall, but there is a clear possibility here of at least bringing us slightly into line with some other States and not throwing all the important justice principles out the window.

**Ms SYLVIA HALE** [5.50 p.m.]: I support my colleague Ms Lee Rhiannon. Much of the legislation that goes through this Chamber can obviously affect some people's lives, but a lot of it is machinery legislation or of relatively little immediate personal effect. However, this is not an ordinary bill and the amendment moved by Ms Lee Rhiannon is not an ordinary amendment because we are facing the enactment of a bill that could result in a person spending life in prison if one member of the jury has a genuine reasonable doubt about that person's guilt. It is okay to say there is always the appeals system, but it is also true of our system of justice that unless there has been a complete misdirection of the jury or unless relevant new evidence is unearthed, an appeals court will not entertain a rehearing of the issues. Any error that has been perpetrated, any misunderstanding, or any juror's doubt, will go unrectified. I find the draconian nature of this proposed law most offensive.

People elected to this Chamber are supposed to adhere to a set of principles. If you are elected on a platform of reforming the legal system, presumably aimed at making the system fairer and more equitable and just, it seems to me that when your principles really are put to the test and you are called upon to vote in accordance with those principles, it is the epitome of moral cowardice to abstain from that vote or say, "Well, I said what the case should be but I'm not going to follow that up with appropriate actions." It is extraordinary that in one day we have had a motion concerning the Crime Commission and this amendment to remove majority verdicts in the case of very serious crimes—and so early in the piece, within a day or so of the Hon. Peter Breen transferring his allegiance—in relation to which his principles have been found to be so hollow.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.54 p.m.]: The Government opposes the amendment. The majority verdicts provision should apply to murder cases and to other offences carrying a maximum penalty of life imprisonment. The Government firmly believes that it would be inappropriate to distinguish cases simply because of the available maximum penalty for the offence being tried. If a majority verdict is available for armed robbery, sexual assault without consent and the ongoing supply of drugs, it should also be available for murder, aggravated sexual assault in company and other offences that carry life imprisonment. This is the approach taken not only in the Northern Territory, but also in England and Wales. If majority verdicts are to be implemented in New South Wales, as a matter of principle and consistency they should and must apply to all offences.

**The Hon. DAVID CLARKE** [5.56 p.m.]: The Coalition does not support this amendment moved by the Greens. We want majority verdicts in all criminal proceedings and that includes criminal offences where life imprisonment may be imposed.

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

**The Committee divided.**

**Ayes, 4**

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

**Noes, 22**

Mr Brown  
Mr Clarke  
Mr Costa  
Ms Cusack  
Mr Donnelly  
Mrs Forsythe  
Mr Gallacher  
Miss Gardiner

Mr Gay  
Ms Griffin  
Mr Lynn  
Reverend Dr Moyes  
Reverend Nile  
Mr Obeid  
Mr Oldfield  
Ms Parker

Mrs Pavey  
Ms Robertson  
Mr Ryan  
Mr Tsang

*Tellers,*  
Mr Harwin  
Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**Schedule agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment and report adopted.**

**Ms LEE RHIANNON** [6.03 p.m.]: I move:

That the third reading of the bill be adjourned to a later hour of the sitting.

**Division called for.**

**The DEPUTY-PRESIDENT (The Hon. Kayee Griffin):** Order! I have received advice from the Clerks that the motion is out of order. Accordingly, a division is not required.

**Third Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [6.07 p.m.]: I move:

That this bill be now read a third time.

**The Hon. JOHN RYAN** [6.08 p.m.]: I move:

That the question be amended by omitting all words after "That" and inserting instead the words "the third reading stand as an order of the day for a later hour of the sitting."

I have moved this motion to ensure that every member, including and particularly the Hon. Peter Breen, has an opportunity to come to the Chamber to express a point of view on the Jury Amendment (Verdicts) Bill.

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

**Division called for.**

**Call for division, by leave, withdrawn.**

**Amendment agreed to.**

**Motion as amended agreed to.**

**Third reading ordered to stand as an order of the day.**

**BUSINESS OF THE HOUSE****Postponement of Business**

**Government Business Order of the Day No. 3 postponed on motion by the Hon. Henry Tsang.**

## PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (WASTE REDUCTION) BILL

### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [6.10 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

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

### Leave granted.

The New South Wales City and Country Environment Restoration Program was announced by the Premier in November 2005. In line with that announcement, this bill will enable regulations to be made to assist local councils to deliver good environmental management outcomes and high quality waste services in New South Wales. The City and Country Environment Restoration Program is a \$439 million investment by the New South Wales Government to fix the environmental legacies of the past. It builds on this Government's many outstanding environmental achievements. The Program will also help New South Wales achieve the targets in the New South Wales Waste Strategy, and deliver a healthier environment and more sustainable New South Wales. The bill has two main elements. First, it sends a strong economic signal to encourage waste avoidance, and resource recovery, reuse and recycling. Second, it provides a major funding boost to environment restoration over the next five years to tackle our most significant environmental challenges.

An economic signal for waste avoidance the New South Wales Waste Strategy was launched in 2003. At the time it was a first in Australia. It provides tough but achievable targets for what we can achieve and action plans for how to get there. The strategy relies strongly on partnerships with industry, with local councils, and with those who champion the environment. But, we are still facing considerable challenges. Despite a growing understanding about the impacts our lifestyle has on the environment, there is still an unfortunate trend towards increased consumption of disposable goods—that is, products that are meant to be used only once. This is not just an Australian problem. It is one faced by all advanced economies. Around the globe, the rate at which we are consuming and degrading environmental resources is unsustainable. A major component of the City and Country Environment Restoration Program is the strengthening of the waste levy—an economic instrument that has existed since the 1970s and is designed to encourage reuse and recycling.

Put simply, it provides a strong incentive to manage waste in a more environmentally sustainable manner and to look for alternatives to landfill. The new Waste and Environment Levy will be collected by local councils and industry. It will create even stronger incentives to develop new sustainable waste technologies. The program includes increases in the Waste and Environment Levy of \$6 annually plus CPI, to apply in the five year period from 1 July 2006. It is important to note that the impact on households of this increase will be modest. For instance, in the first year, the average household will pay only an extra four cents a week, rising to less than 20 cents a week by the year 2011. And every cent of this will be spent on programs to better protect our environment. This modest increase in the levy will allow us to plough an extra \$439 million directly into effective conservation and other environmental programs, including the Environmental Trust. It represents the single largest funding boost for the environment in the State's history.

The economic message sent by the new Waste and Environment Levy will be supplemented by a strong regulatory effort to ensure that good operators in the waste industry will not be undercut by illegal operators. The program therefore includes an \$18 million commitment over 5 years for a waste compliance and enforcement program by the Department of Environment and Conservation. A number of incentive programs have also been developed as an integral part of new environmental funding commitments. New funding commitments over the next five years mean this program will: help restore and protect our natural heritage through: \$105 million investment in the New South Wales RiverBank—a program to buy environmental water restore our stressed inland rivers and wetlands, \$30 million to establish new marine parks and buy back fishing licences on the Manning Shelf and Bateman Shelf, and \$13 million to establish a High Conservation Value Area Fund to purchase Crown leases in areas of high conservation value.

Help create a sustainable future for country New South Wales through: a \$37 million Native Vegetation Assistance Package to provide grants for sustainable farming, farmer exit assistance and to the creation of native vegetation 'offset pools'. Help revitalise our urban environments through: \$80 million for urban sustainability programs, including stormwater harvesting for recycling, waste reduction and increased recycling, and \$76 million for Environmental Trust Grants including support for local government waste reduction initiatives, plus payments to local councils for achieving waste reduction goals. The bill now before the House will amend the Protection of the Environment Operations Act 1997. It will enable the establishment of a local council waste reduction scheme for recycling, resource recovery and other reduction of waste, including payments to local councils for achieving waste reduction goals set by the Department of Environment and Conservation (DEC).

The bill provides a simple mechanism to enable regulations to be made that will deliver: a scheme for recycling, resource recovery and other reduction of waste by local councils payments to local councils that meet the standards of the scheme DEC is working closely with the Local Government and Shires Associations to develop a Memorandum of Understanding that will underpin the standards for the new scheme and deliver equitable payment arrangements for those Councils, in the levy paying area, that meet the standards. I commend the bill to the House.

**The Hon. DON HARWIN** [6.11 p.m.]: My colleague the Hon. Rick Colless was due to lead for the Opposition in this debate but for personal reasons he is unable to do so. He has asked me to take up the cudgels

for him and has provided me with some notes that will be the basis of much of what I will say in this debate. I indicate at the outset that the Opposition will not oppose the Protection of the Environment Operations Amendment (Waste Reduction) Bill, which is the only piece of legislation so far brought forward as a result of the Premier's City and Country Environment Restoration Program announced last November, to be paid for by a \$30 per tonne increase in the levy—\$6 a year over five years—on waste going to landfill in the Sydney area and also in a number of local government areas surrounding the Sydney basin that anomalously, in my view, are included, such as the City of Shoalhaven.

The package—discussed both in the overview of the bill and the second reading speech—includes an Inland Rivers and Wetlands Restoration Program; two new marine parks, Manning Shelf and Batemans Shelf; stormwater harvesting; and the recycling incentive scheme. The Government intends providing \$80 million worth of rebates over five years to councils that meet preset recycling targets. As the shadow Minister in his contribution to the second reading speech said:

... the content of this bill embodies Coalition policy as announced in July last year at the Waste Management Association of Australia Annual Conference at Darling Harbour.

Of course we will see the Iemma Labor Government adopt many Coalition policies leading up to next March because it is tired and bereft of new ideas. The Government's attempt at policy on waste management was to spend \$102 million of taxpayers' money on setting up regional waste boards. However, that was disbanded. In a speech to the Waste Management Association of Australia conference last year, the shadow Minister, the honourable member for The Hills, emphasised that the key plank of Coalition policy would be to work with councils to reduce waste going to landfill.

Local councils have a crucial role to play in reducing the amount of waste going to landfill. They organise the collection service, determine what and how much of the materials collected should be recycled, and in many cases operate the landfill. They also decide whether to stage clean-up days for items too bulky to fit in the wheelie bins that are given to residents, to participate in chemical drum collection programs and to organise e-waste collection schemes. Councils are constantly having demands placed on them by this Government, without any financial support to assist them to meet objectives. Local councils should have clear objectives set for kerbside recycling, green waste recovery, residual waste management, public place/event recycling, household clean-ups and litter.

The Iemma Government's failure in this regard is a major weakness in its strategy, and has resulted in the Minister for the Environment, Bob Debus, sending out a letter last year to councils exhorting them to recycle more and not to sign up for long-term landfill contracts. The Coalition believes a system of objectives, backed up by financial incentives, would be much more effective. Councils that meet their objectives would be rewarded, as would their ratepayers. Councils that did not meet their objectives would have an incentive to do better the following year. Interestingly, following the detail of speech of the shadow Minister, Mr Richardson, to the Waste Management conference was incorporated in the Premiers' environment package released last November. Now the Government has introduced this bill into the Parliament to give effect to it. The only provision in the bill reads:

*Schedule 2 Regulation-making powers*

Insert after clause 5:

*5A Local council waste reduction scheme*

- (1) The establishment and administration of a scheme for recycling, resource recovery and other reduction of waste by local councils.
- (2) The making of payment to local councils in accordance with the scheme from money appropriated by Parliament for that purpose.
- (3) Requirements that must be met by local councils to be eligible to receive payment under the scheme.

The package depends on money coming from an increase in the waste levy of \$30 a tonne phased in over five years. The waste levy in Sydney at the moment is \$22.70 a tonne. How much will it be in five years? The Parliamentary Secretary claimed in the second reading speech that the increase in the waste levy of \$30 a tonne would mean an increase of only 20¢ a week or \$10 a year in the average garbage bill. In his contribution to the second reading debate in the other House the shadow Minister claimed that households will end up paying about \$31 a year extra in an attempt to make the Premier look green. That is because at the moment the average

household disposes of about 750 kilograms of garbage to landfill each year. The Government claims that there will not be an increase of that magnitude because there will be less waste going to landfill. That is not borne out by the figures.

In his second reading speech the Parliamentary Secretary talked about the \$10-a-year increase and said that we would need a 75 per cent reduction in the amount of waste going to landfill from the average household. I do not see that happening, nor does the shadow Minister. In the absence of markets for recycled products, a significant amount of waste will still end up in landfill. Regardless of whether it has been processed beforehand, it will still end up in landfill because there is no market for the by-products. Some communities are extremely annoyed that they are paying a great deal more for their garbage collection and that the money they are paying is not going back into resource recovery as the Government promised would be the case in 2000. It promised to hypothecate 55 per cent of the revenue raised through the waste levy to resource recovery. Three years ago it simply stopped paying any money into the waste fund and put it all into Consolidated Revenue. Since then it has been simply a tax on wheelie bins.

A bill that was introduced in May last year as part of the Brigalow and Nandewar Community Conservation Area legislation package abolished the waste fund and all the money was paid into the Environmental Trust Fund. I spoke at some length about my concerns on that occasion. That legislation and this bill have been designed effectively to create a slush fund for the Government. As far back as 1995, the then Labor Minister for the Environment promised to reduce waste going to landfill by 60 per cent by 2000. In fact, the Government has increased the amount of waste going to landfill by about 1 million tonnes a year over the past couple of years. We know that is a fact because of the amount of money that is being raised via the levy, which has become an important revenue stream for the Government. The Government is offering to pay \$16 million a year to councils as an incentive to improve recycling rates. However, that is still much less than the amount mentioned in the promise made six years ago to hypothecate 55 per cent of the waste levy, which was then about \$40 million annually, for resource recovery.

The windfall that that tax on wheelie bins will generate will be extraordinary even if the amount going to landfill is reduced to four million tonnes a year, rather than five million tonnes a year. That simply removes the one million tonnes a year extra that the Government has added to waste going to landfill in the Sydney metropolitan area over the past couple of years. It will still be raking off some \$240 million a year by 2011. That is more than the Government will collect through the bushfire levy, the health insurance levy or the racing industry. The \$16 million it is planning to return to councils out of that \$240 million is a pittance.

The Government has committed to the following waste reduction targets by 2014: 66 per cent for diversion of municipal waste, 63 per cent for commercial and industrial waste and 76 per cent for construction and demolition waste. The Minister claims that the current figures are: for municipal waste, 39 per cent; for commercial and industrial waste, 33 per cent; and for construction and demolition waste, 75 per cent. Some progress is being made with municipal waste and construction and demolition waste because the industry controls that area. However, commercial and industrial waste has reached half the stated target and no plans have been developed to reach it. What is in this package to achieve that? What card does the Minister have up his sleeve to do that?

The expanded waste tax will also support the creation of two marine parks: the Manning Shelf Marine Park, based on Port Stephens, and the Batemans Shelf Marine Park, off the South Coast. That decision is controversial in the affected communities. We hear about that in the House almost every day we sit, with petitions being presented in the Chamber by my colleague and friend the Hon. Robyn Parker expressing outrage about that issue. The Government is renowned for making decisions, particularly environmental decisions, and consulting the community after it has done so. This is what it has done with the creation of these two marine parks. The Government has no idea how to consult with the community. In conclusion, I reiterate that the Opposition supports the bill, but some questions still remain unanswered. In what areas will targets be set? Will they be set to deal with kerbside recycling, green waste recovery, residual waste management, public place event recycling, or household clean-ups? What will happen to councils that underperform? Will they be penalised? The Government has not spelt that out. With those few remarks, I commend the bill to the House.

**Mr IAN COHEN** [6.22 p.m.]: I speak on behalf of the Greens on the Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006. While the Greens welcome the bill, I take on board some criticisms expressed by members of the Opposition about the allocation of funding and the appropriateness of the Government's setting up of schemes at significant cost—for example, to address inland water, which I will come to in a moment, and returning flows to the environment. The Greens have issues with both allocation of

funds to protect the environment and the misuse of those funds. However, we believe that the bill is a step forward. We can only hope that the positive impacts of these measures will be ongoing, and that community education, with support from local councils—one aim of the bill is to establish a local council waste reduction scheme—will enhance public awareness of waste material going to landfill and achieve greater levels of recycling.

The bill seeks to establish a local council waste reduction scheme, including the payment of rebates to local council that are designed to achieve waste reduction goals set by the Department of Environment and Conservation. It is pleasing that the New South Wales Government is taking some positive action on waste reduction. Australia produces more than 3.3 million tonnes of packaging a year. Recovery of post-consumer packing for recycling from kerbside collection is only about 20 per cent. Kerbside recycling places a heavy cost burden on councils and ratepayers—almost \$300 million a year. It is therefore appropriate that councils should receive rebates for the good work that they do to reduce waste. A large proportion of resources collected through kerbside collection is lost due to contamination. Encouraging councils to set up schemes that reduce contamination and increase the capacity to reduce waste effectively is important.

The money from the levy will be used to fund the City and Country Environment Restoration Program. This will include funding for the New South Wales Riverbank Program to buy back water licences from over-allocated river systems and restore inland river and wetland health. This step is to be commended. It is, at very least, a move in the right direction, although much more will need to be done to redress the over-allocation of water to irrigators. The \$105 million Riverbank Fund has been created to purchase water for significant wetlands in inland New South Wales. This water—and this is rather absurd from a conservation point of view, but it is nevertheless the state of play in society at the present time—was once freely available to these unique areas of diverse wildlife and plant communities. Now, the Government is compelled to buy back that water. This is certainly a case of "We told you so." However, we were ignored at the time. In this circumstance, the Government gives with one hand and takes with the other. Nevertheless, the most important thing at this point is the recovery of significant wetland areas of inland New South Wales.

Now that the water in our rivers has been privatised, we are in the sad position of needing to direct public money towards keeping those wetlands alive. The water sharing plans, gazetted in 2003, certainly have not achieved the outcome of providing long-term security to the environment. The Riverbank Fund is a starting point in the buyback of water for the future environmental health of our inland river systems. A much larger amount of money will be needed to prevent significant inland wetlands from disappearing. The Macquarie Marshes is a case in point. The Macquarie River system is over-allocated by nearly 100 per cent. This means that there is only a 50 per cent reliability of the marshes receiving the environmental water allocation. An investment of \$280 million is needed to purchase enough water to prevent this internationally significant waterbird sanctuary from dying. The Riverbank Fund will provide an initial \$6 million. However, there is no guarantee that the environmental flow water will actually reach the marshes. The amount of illegal flood plain harvesting in the Macquarie Valley has not been identified or dealt with.

A flood plain management plan is being developed with no transparent community consultation and no input from ecologists. This plan will legitimise the unauthorised levee banks that siphon flood plain water into on-farm water storages. The harvesting of flood plain water has not been accounted for under the cap, and that has had a significant impact on the connectivity between watercourses, billabongs and wetland areas. Flood plain harvesting needs to be dealt with thoroughly, and soon. There must be confidence that environmental flow waters allocated to the Macquarie Marshes and the other inland wetlands gets to them. The public investment in more water for significant inland wetlands is the only way forward under the national water initiative. The New South Wales Government must guarantee that this water gets to the wetlands and not into on-farm storage.

The levy will also support the establishment of new marine parks—another move welcomed by the Greens, and one which I will elaborate on later. Thirteen million dollars is to be dedicated to buying high-conservation Crown land. This pales to insignificance compared with the valuable asset that the Government is disposing of in its Crown land sell-off. Urban environments will benefit through sustainability programs and new Environmental Trust grants. Thirty seven million dollars will be provided for a native vegetation assistance package to offer grants for sustainable farming.

The City and Country Environment Restoration Program announced by the Premier in November last year is a step in the right direction. It marked the reopening of a dialogue between the New South Wales Government and the environment movement. I hope the Government follows through with its promises and that intelligent and forward-looking environmental programs are adopted. The levy will send a strong economic

signal to change ways of thinking about waste disposal. It is only appropriate that pricing structures should be such that recycling and waste avoidance are cheaper than adding to landfill.

The cost to ratepayers will be minimal and should have little impact in return for the positive benefits to the environment. I understand that the average household will pay an additional 4¢ a week, rising to 20¢ a week in 2011. This is a small price to pay for the constructive environmental programs and waste reduction that the increase will fund. Rebates to local councils worth \$80 million over five years will reward those councils that reach waste avoidance and resource recovery targets, and improve waste collection and recycling schemes for their constituents. I applaud this support for councils and I hope it leads to innovative and successful programs to reduce waste going to overstretched landfill.

The schemes for waste reduction, recycling and resource recovery are to be established collaboratively with the department and councils, with goals set by the department. The delivery of these schemes will be set down in regulations. As they are not yet available I cannot comment on them, but I hope they are strong and deliver the outcomes that are envisaged. I am told that the department is working with the Local Government and Shires Associations to ensure fair arrangements between the Government and councils. This is as it should be and is a pleasant change from the recent contemptuous treatment of councils by the Government, particularly by the Minister for Planning. While the bill is positive, the Government must do more and take decisive action to drastically reduce the growing waste problem in New South Wales.

In particular I urge the Government to implement a container deposit scheme. Bob Carr was an ongoing obstacle to such a program, despite the mountain of evidence that this was the way forward to reduce waste. Now that Mr Carr is long gone, Premier Iemma has the opportunity to stamp his authority and direction. He should ditch this Government's ongoing objection to container deposit legislation [CDL]. I have given notice of a private member's bill that would put a 10¢ refund on all beverage containers. It would force the beverage packaging industry to get serious about recycling while no doubt also being a neat way for some children to earn a bit of pocket money. Up to 50 per cent of major food items are now consumed away from home and therefore away from recycling facilities.

The introduction of a container deposit scheme would go some way towards dealing with this problem. The National Packaging Covenant has so far not produced any significant results in reducing waste. A container deposit scheme is already working in South Australia and in many places around the world, and it would work well here. An independent review by the Institute of Sustainable Futures at the University of Technology Sydney found that container deposit legislation in New South Wales could have a net economic benefit of \$70 million to \$100 million per year. This valuation did not include the value of improved visual amenity from litter reduction. The review also estimated that there would be a net employment increase of between 1,000 and 1,500 jobs if CDL were implemented.

**Debate adjourned on motion by Mr Ian Cohen.**

*[The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.34 p.m. The House resumed at 8.15 p.m.]*

#### **JURY AMENDMENT (VERDICTS) BILL**

**Bill read a third time.**

#### **PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (WASTE REDUCTION) BILL**

#### **Second Reading**

**Debate resumed from an earlier hour.**

**Mr IAN COHEN** [8.17 p.m.]: I suggest to the Government that if it wants to do something positive, popular and environmentally creative in the lead-up to the New South Wales 2007 election, it should grab my bill and run with it. In March the Government released its extended Producer Responsibility Priority Statement. This is a move in the right direction, but there are only so many times the Government can threaten to regulate if industry does not act on its own. I strongly urge the Government to proceed with regulating on this important issue.

Planned obsolescence, whereby companies design products that will fail quickly, thus generating more sales and boosting profits, is a huge environmental problem. It is responsible for the depletion of resources and

the escalation of waste as these products end up in landfill. The computer industry has been particularly culpable in this respect, leaving a toxic legacy for future generations. Industry should be responsible for taking back products and recycling them. Perhaps then there would be less incentive for them to continue the practice of planned obsolescence. On that point, I commend Planet Ark on its campaign. Today I received in my office, and I am sure other honourable members did also, a black ruler made entirely from recycled toner cartridges. That shows how much can be done with recycling. It is an opportunity and it can work. This is the type of environmental measure that we would like to see the Government focus on. Container deposit legislation would be a significant step in that direction.

Much has been made in the other place about funding from this levy being applied to fund marine parks, so I will dwell briefly on this issue to address some of the points raised. The Opposition has been scaremongering about the supposed loss of jobs and the decimation of the fishing industry as a result of marine parks, but nothing could be further from the truth. Marine sanctuaries have an important role in preserving the health and biodiversity of our oceans. Some 80 per cent of marine species in New South Wales are endemic; they are not found anywhere else in the world. By providing safe breeding grounds for marine life, sanctuaries replenish fish stocks both within and outside their boundaries. This has a positive benefit for the fishing industry, creating economic benefits for coastal communities.

A scientific study conducted on the Bouddi National Park marine sanctuary found that fish species richness was 63 per cent greater and total fish density was 70 per cent greater than in normative populations of fish. Fewer than 3 per cent of New South Wales waters are currently protected as sanctuaries. This is out of step with the percentage of New South Wales land that is under protection. Our oceans are already suffering a visible decline due to past mismanagement and overfishing. Climate change will increasingly add to the human impact on our marine environment. In view of the current and future threat to our oceans' ecosystems, we need to act now to ensure that New South Wales marine habitats are appropriately protected.

The provisions for non-extractive use of marine sanctuaries, such as recreation, tourism, education and research, create additional economic and social benefits for the people of New South Wales. Jervis Bay Marine Park offers an example of how tourism and recreational fishing improve around marine parks. The Shoalhaven City Council has reported that the park has built a positive image of the area as clean and green and has improved the experience of recreational fishers. The Coffs Harbour City Council has reported significant benefits to the tourism industry flowing from the Solitary Islands Marine Park, as well as increased fish stocks and benefit to the community through improved recreational marine pursuits.

The reports from Shoalhaven and Coffs Harbour city councils show that fully protected sanctuaries give the best outcomes for the community. Unfortunately, a lack of awareness and understanding of the need of marine sanctuaries often fuels antagonism in the local community toward the establishment of sufficient full-protection zones. For this reason, it is important that the zoning plan for the newly established Bateman's Bay Marine Park is based on solid scientific research to guarantee the best outcome in terms of marine environment protection and the community's enjoyment and benefit. The drafting of zoning boundaries for the Bateman's Bay Marine Park should be established by independent science following current recommendations for efficient habitat protection. The International Union for the Conservation of Nature [IUCN] recognises that a minimum of 20 per cent to 30 per cent of each habitat should be strictly protected to maintain and increase marine biodiversity.

The Pew Institute for Ocean Management recognised that as much as 50 per cent of each ecosystem should be placed in marine sanctuaries. Furthermore, the integrity of the marine sanctuary must be protected by the provision of sufficient buffer zones, or habitat protection zones, where commercial fishing is prohibited. That is something the Government has failed to do in protecting the grey nurse shark. The Government can do a lot more with waste avoidance and recovery, such as introduce a container deposit scheme and a strong extended producer responsibility scheme. Nevertheless, the bill is a step in the right direction and the funds that consequently will be directed into environmental projects are welcomed by the Greens. I support the bill.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [8.23 p.m.]: The Australian Democrats support the Protection of the Environment Operations Amendment (Waste Reduction) Bill, but with considerable misgivings. The bill is good in some aspects, but the Government's history with the use of levies is suspect. It has frozen council rates at the consumer price index and has squeezed councils very hard while imposing more tasks on them. The bill imposes a levy on council rates that will be used by the State Government—effectively a tax collected by councils to go to the Government. Some of that money will be spent by councils, but a lot of it will not be.

The bill imposes a new waste and environmental levy that is to be collected by councils and the industry. The initial levy is to be \$6 per household adjusted to the CPI annually over the next five years, raising an estimated \$439 million. Money raised from the levy will be used to finance a variety of projects itemised in the second reading speech delivered in the other place. The projects include \$18 million for waste compliance and enforcement programs; \$105 million for the New South Wales Riverbank Program to buy environmental water, \$30 million for new marine parks and buying back fishing licences on the Manning Shelf and the Bateman Shelf, a \$13-million fund to purchase perpetual Crown leases of land with a high conservation value, \$37 million for a native vegetation assistance package to provide grants for sustainable farming and farm-exit assistance, \$80 million for urban sustainability programs—that is, stormwater harvesting for recycling and waste reduction—and \$76 million for Environmental Trust grants to local government and council waste reduction initiatives.

I will comment on each of those items. I suspect that the allocation for waste compliance and enforcement programs will pay for inspectors who, presumably, should have been there anyway. The buyback of environmental water effectively means that the Government has overallocated water licences and now has to buy them back because it has privatised too many. The buyback of new marine parks is supported by the Democrats because it will result in a considerable increase in fishing stock. The purchase of Crown leases of high conservation value is certainly an environmental levy, but hardly waste. The Native Vegetation Assistance Package is a good initiative, but I cannot help remembering how slow the Government was to stop the destruction of native vegetation in the first place. I wonder if we are now spending a lot of money to repair what should have been repaired much earlier if the Government had acted more quickly in the past.

The financing of stormwater harvesting programs is interesting. Sydney Water has not maintained its pipes adequately. It now has to go to a lot of trouble to harness stormwater because a lot of that water runs out of its pipes and is wasted. The Government is taking large amounts of water rates as a dividend from Sydney Water—which in any other language would amount to a tax. The Democrats support the waste and environment levy because the Government has cunningly listed all these worthy causes and made the levy dependent on them, as opposed to the levy going into consolidated revenue. Effectively, if this bill were rejected, all the good projects would be lost. That is how the Government has packaged the levy; it is politically cunning. The Democrats will agree to the bill, but the Government should not think it is fooling us; we know what it is doing.

Only the urban sustainability programs and the Environmental Trust are pertinent to waste reduction and they are getting only a fraction of the total money, \$156 million of the \$439 million, or one third. The New South Wales Local Government and Shires Associations said in its budget submission for 2006-07:

Currently, a levy of \$22.70 per tonne of waste disposed applies in the Sydney metropolitan area and a levy of \$15 a tonne applies in the Hunter, Illawarra and Central Coast regions.

The Protection of the Environment Operations (Waste) Regulation enshrines increases in the levy that will see it increased by \$1 indexed for CPI per year until it reaches \$25 indexed for CPI.

This means that the NSW Government raises approximately \$107m a year, 60% from the private waste industry and 40% from local councils.

Despite assurances by the State Government in 2000 that 55% of the levy would be returned for waste minimization initiatives, the amount hypothecated between 2000-03 averaged only 30% and hypothecation was suspended entirely in 2003-04 and 2004-05 (no money was returned to the waste fund).

Hence we look askance at the Government, which, of course, will tie all good projects to this fund. However, it does not spend money on what it says it would spend it on. The association's submission continued:

Recent legislative amendments (the Brigalow and Nandewar Conservation Areas Act) have abolished the Waste Fund and transferred these funds to the NSW Environmental Trust—

In fact, the trust bought conservation areas for forests. The submission continued:

The Trust scope has been broadened to enable it to allocate funds for waste projects, but only \$10 million of the \$100 million raised via the waste levy was provided to the Trust in 2005-06, and this was used for existing programs, only some of which assist Local Government—

which, of course, collects the levy—

The remaining \$90 million will be spent on general government expenditure, including Departmental funds (mainly Department of Environment and Conservation sustainability division) and on Forestry restructure.

That is the opinion of the Local Government and Shires Associations. The New South Wales Government justifies the waste levy as a tool to reduce waste. It is not applied to materials that are recycled or treated through an alternative waste technology. The Local Government and Shires Associations consider the levy to be very effective in the construction and demolition waste sector. However, in the domestic waste stream, dramatic increases in the levy over the last 10 years have not led to any significant reduction in domestic waste tonnages.

In the Sydney metropolitan area total waste is around seven million tonnes a year, with only 35 per cent recycled. Australians are second only to the United States when it comes to household waste, producing around 690 kilograms of domestic waste each year. The levy is, of course, an environmental tax on householders and one that will increase steeply over the next five years. What happens after that is anybody's guess. There is no sunset clause for the levy in this legislation. The Government has to stop slugging the people of New South Wales and deliver some of its election promises.

If we want to get to the base of waste production, the main thing to do is not produce things that we do not need or to produce them in a different way. The packaging industry uses huge amounts of energy and produces huge amounts of waste. Many things could be packaged in re-usable bottles. Container deposit legislation has been working for many years in South Australia, but the reason this Government will not adopt it is that it simply does not want to take on the packaging industry and the big users of packaging. Their objective has been to transfer the responsibility for the waste from them as producers, and from their retailers, to the consumers. There is a huge campaign for consumers to sort out their waste and for the Government and councils to collect that waste and take it somewhere.

Many items do not need packaging and could be sold in other forms. We could all take bottles to the supermarket and have hygienic dispensers put material in those bottles, which would require much less packaging. The ideal way to deal with this problem is to use market forces so that the person who retails packaging has to take it back again. Woolworths and other retailers, who have immense market power—about 85 per cent of the grocery market—would then very speedily find ways of demanding much less packaging. That would have spin-off benefits for the environment, the level of waste and indeed for the overproduction of goods.

The marketing of things such as bottled water results in huge amounts of material being carried around the place while pipes that could carry the water are not doing so. It is almost absurd. I was at Mangrove Mountain recently where Amatil had bought a farm that was producing primary products—I think it was eggs from battery hens, but I may be wrong. Amatil bought the farm for the water licence, got an increase in the licence, strangely enough, and is putting the water in a bottle and bringing it to Sydney. There is lots of water in Sydney. I gather Amatil was buying water at agricultural prices rather than at town prices, which was saving the company a fraction, but the cost of the water in each bottle is a tiny fraction of 1 per cent of the actual cost of the water. To save a tiny amount Amatil was taking water from the farm and bringing it all the way down here, which involves a great deal of energy and costs to transport it. Some rather insane practices are occurring as we generate waste by packaging and transporting things we do not need to package and transport. If we are serious about strategies for lessening our dependence on oil and reducing packaging waste, we will have to do better than this Government is doing.

It is poor policy to transfer responsibility to the consumer and then levy the consumer to get rid of the waste that is generated, but it is this Government's policy. In a sense I support this levy, but I am continually disappointed that this Government does not look seriously at the problem of waste. It keeps on producing more of it and then getting money to subsidise the consumers to clean it up.

**Reverend the Hon. Dr GORDON MOYES** [8.34 p.m.]: On behalf of the Christian Democratic Party I speak to the Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006. The main object of this bill is to establish a local council waste reduction scheme, which will include payments in the form of rebates to local councils that achieve waste reduction goals set by the Department of Environment and Conservation.

The genesis of this bill lies in catering for reforms that were announced last year by Premier Iemma, known as the City and Country Environment Restoration Program. As the title of this program aptly suggests, the wide-ranging initiatives in this program cover measures aimed at both urban and rural areas: provision is made for waste reduction schemes by local government in urban areas, through to protection of natural heritage areas in country regions. The bill will insert a new regulation-making power into the Protection of the Environment Operations Act 1997, establishing a platform for the implementation of this program. The

Government has dedicated a total of \$439 million under this program. Approximately \$148 million will be committed to the restoration and protection of natural heritage; that is, to the restoration of inland rivers and wetlands and the establishment of new marine parks, and for the purchase of high conservation value Crown land. A total of \$80 million will be earmarked for urban sustainability programs and another \$76 million will be earmarked for new Environmental Trust grants.

Projects within the urban realm will support stormwater harvesting and its reuse, waste recycling and avoidance, and campaigns to prevent litter and illegal dumping, as well as initiatives to restore local waterways and urban bushland. As I said, it is a large grab bag of ideas with which all members of this House would agree. In this age it is trite to state that one of the most beneficial legacies that may be left for future generations is a healthy and sustainable environment. Recurrent and effective investment in our natural environment is mandatory if we have in mind not only the health and wellbeing of the immediate generation but also of generations to come. We must be good and faithful stewards of the natural environment. All Christians must be committed to this kind of program.

However, this revelation did not exist in the collective consciousness of decision makers half a century ago and we may now, to some degree, congratulate ourselves on embracing this enlightened perspective on the environment. Together we are making inroads into reversing the damage to the environment that has ensued in the past. I perceive that the reforms catered for in this bill will contribute to making some positive inroads, even though they may be limited and not cover all the areas in which we believe there must be more environmental sensitivity.

One of the pillars of the program is the establishment of guidelines for recycling, resource recovery and other reductions of waste by local councils. The State of the Environment Report 2003 found that there have been significant improvements in waste recycling. For example, environment protection authority domestic kerbside recycling data for the Sydney metropolitan area shows that in 1991 only 8 per cent of the waste generated was recycled—about 30 kilograms of waste per person per year. By 2001, the per capita kerbside recycling figure for this area had risen to 85 kilograms per person per year. Interestingly, paper accounts for just under two-thirds of kerbside recycling, glass around 27 per cent, plastic 5 per cent, steel 3 per cent and aluminium cans less than 1 per cent. This equated to each person in 2001 recycling approximately 54 kilograms of paper, 23 kilograms of glass containers, five kilograms of plastic containers, two kilograms of steel cans and about one kilogram of aluminium cans each year. According to Clean Up Australia's Rubbish Report, plastic film bags persist everywhere and can last from 20 to 1,000 years, aluminium cans can last 80 to 100 years, glass bottles one million years and plastic bottles indefinitely.

One small step towards mitigating the level of litter in New South Wales is to introduce a refundable deposit on all beverage containers sold in the State, similar to the excellent program that has been run in South Australia since 1978, where a 5¢ deposit is required on all beverage containers. Community participation in, and ownership of, the environmental problems caused by such litter would be increased. Although I understand that an inquiry has been undertaken into container deposit legislation, no moves have been made by the State Government to introduce such legislation due to State-Federal arrangements on this issue. Some merit exists in pursuing this avenue.

Empowering communities to take responsibility and prompting concern through minimal economic incentives may build the momentum for a veritable snowballing of community concern about the environment. In the context of waste disposal it is worth drawing attention to the findings of the State of the Environment 2003 report, which indicated that New South Wales has significantly improved its waste management and resource recovery practices over the past 10 years and that the amount of waste disposed of in all waste streams has slowed.

That being said, waste disposal rates in Australia are among the highest in the OECD. Based simply on the population density of New South Wales compared with other Australian States, any reduction is commendable but relative in nature. Australia's per capita waste disposal rate is estimated to be 1.1 tonnes per year—the second highest among OECD countries. We are surpassed only by the United States of America in the amount of rubbish that we generate every year. We still have a long way to go to make our waste disposal levels more acceptable. The State of the Environment report commented:

... the difficulty of reducing the waste generated and managing solid waste are most evident in the Sydney Metropolitan Area ...

Honourable members will realise that the Sydney metropolitan area covers all metropolitan areas in New South Wales except Hawkesbury, Gosford, Wyong, Wollongong and the Blue Mountains. Unfortunately, waste data that allows us to monitor the extent of waste disposal and recycling within different regions is available only for the metropolitan area. However, the report notes:

... industry generates 68% of the waste disposed of in NSW, while the remainder ... is generated domestically or in public places and typically managed by local government.

Given the vast proportion of waste generated and disposed of by industry, it is clear that advocating and assuming corporate social responsibility should weigh heavily on all decision-making entities involved in this process. For the past 10 years or more I have served on the board of the Prime Minister's Community Business Partnership. Most major companies in Australia take very seriously the idea of being good corporate citizens. Corporate responsibility in the area of waste disposal is high on the agenda of the Prime Minister's Community Business Partnership. As indicated by the "State of the Environment" report:

... industries need also to seek opportunities to incorporate other municipal and commercial wastes within high volume materials, such as building materials, to minimise resource use and waste disposal.

The report identifies four wastes of concern for which we do not currently have a good post-consumer management scheme. They are: used tyres—which I understand can remain in the environment for 10,000 years if buried and longer if burnt—computers, televisions and nickel cadmium batteries. Some battery recycling programs are already in existence.

In 1997 I established at Wesley Mission a computer recycling program. The idea was to recycle computers from large businesses and train unemployed people—who would study for certificates in computer technology—to work on them. Over time, several thousand people graduated as computer technologists. The program has upgraded thousands of computers and sent them by the container load to countries such as India, several countries in Africa, East Timor, West Papua, Ecuador, Sri Lanka and other underdeveloped countries where they are needed by charitable and not-for-profit organisations. The beauty of the program is that it disposes of our unwanted computers by upgrading and selling them to non-government organisations overseas that could never afford them otherwise, thus ensuring their use in the future. All the work is done by unemployed people who earn various certificates in information technology.

The Government has established a number of measures—both legislative and policy based—to deal with waste. I will not examine all the various Acts, such as the Waste Avoidance and Resource Recovery Act 2001, the New South Wales waste avoidance and resource recovery strategy, and the Extended Producer Responsibility Priority Statement. However, one very important initiative introduced in the Sydney metropolitan area and in certain other regional areas is the waste and environment levy, which is imposed on waste facilities for the waste that is deposited in their landfills. The purpose of this levy is to provide a financial disincentive for waste disposal, and to support waste avoidance and recycling. The summary of the City and Country Environment Restoration Program released by the Department of the Environment states:

... [the] current Waste Levy has been moderately successful in achieving greater recycling in the construction and demolition sector. However, it has not been high enough to encourage recycling in the commercial and industrial sector, which has lower waste disposal costs than other sectors.

I am ashamed to say that, when people have the option of depositing a trailer load of rubbish in a landfill and paying a levy for the privilege, they often dump the rubbish in some quiet corner along a rarely used road. The program will include increases to the waste and environment levy of \$6 annually plus the consumer price index. It will apply for five years from 1 July 2006. The Government has indicated that the impact on waste costs for households will be modest. In the first year the average household will pay only an extra 4¢ a week, rising to no more than 20¢ a week by the year 2011. It is said that most of this levy is committed to the Waste Fund. But, as previous speakers have mentioned, this is hard to track. The State of the Environment 2003 report indicates the intention of this fund:

... [is to] support the operation and waste reduction programs of Resource NSW; litter reduction and environmental education campaigns, such as Our Environment—It's a Living Thing; implementation of the Government's Waste Reduction and Purchasing Policy; the education program on illegal dumping; and the Government's obligations under the National Packaging Covenant.

It is of the utmost importance that the moneys raised under this levy are attributed directly to waste avoidance and management strategies in the areas in which they are levied. It is commonsense and makes economic and social sense to do so, given that significant improvements still can be made in reducing and managing current waste disposal levels. As the State of the Environment 2003 report indicated:

NSW people have demonstrated a substantial commitment to waste recovery and recycling but the small decrease in overall waste generation levels suggests that further efforts are needed.

A positive development in this program is that up to \$80 million of the funds levied through the waste and environment levy will be earmarked for a waste rebate scheme. The rebate scheme involves making payments to local councils that meet the standards outlined in the waste guidelines. These payments will be made to local councils over five years and seek to reward achievements and support councils that improve waste collection and recycling by their ratepayers. Such rebates will be made available only to councils in the greater metropolitan region, where the levy is payable, and will apply only to municipal waste. The rebate will be set at 50 per cent of the total additional levy revenue raised each year. It will be \$3 per tonne in 2006-07, increasing to \$15 per tonne in 2011.

It is envisaged that the Department of Environment and Conservation will work closely with the Local Government and Shires Associations to develop a memorandum of understanding that will contain standards for the waste management scheme. Negotiations will ensue to deliver equitable payment arrangements for eligible councils in the levy-paying area that meet the standards. Finally, I note that the Legislation Review Committee examined the bill under the Legislation Review Act 1987 and did not identify any problems with it. The Christian Democratic Party is pleased to support this new Government initiative.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [8.49 p.m.], in reply: I thank honourable members for their contributions to the debate. I will briefly address some of the main points that have been raised in the debate. The Opposition has questioned the Government's record on reducing waste. Let me restate the facts. The Government is committed to a 66 per cent reduction in municipal waste by 2014, and it is already well on the way to achieving that target. In 1994, the last year of the Coalition Government, every Sydney resident generated 430 kilograms of waste—but only 60 kilograms was being recycled. After this Government's successful waste reforms, waste has fallen by 28 per cent to 310 kilograms per person and recycling has increased by 65 per cent to 102 kilograms per person. The Government is certainly fulfilling its commitment to waste minimisation and recycling.

The Opposition has referred to the impact of the proposed waste and environment levy on households. Again, I will restate the facts. The levy will increase by \$6 annually, plus consumer price index increases, over a five-year period beginning July 1 2006. The impact on households will be modest. In the first year, the average household will pay only an extra 4¢ a week. This will rise to less than 20¢ a week by 2011. Every cent of the levy increase paid by householders will be returned to environment programs under the New South Wales City and Country Environment Restoration Program. This includes a rebate for councils that meet waste collection and resource recovery standards. Councils will receive up to \$15 per tonne for household waste—half the increase paid by householders—which will help to minimise the impacts on the average family.

I turn briefly to marine parks because I know this matter already has been debated at length in this place. New South Wales is the only State with an Opposition that enjoys predicting economic disaster for coastal communities whenever a marine park is declared. Rather than predict economic disaster, the Coalition should talk up the benefits of marine parks. When the Government expanded a pre-existing marine reserve to increase the Solitary Islands Marine Park in 1998, a number of predictions were overstated. Many claimed that hundreds of jobs would be lost in Coffs Harbour and the price of fish would skyrocket. All those predictions were wrong. We know this because an independent study commissioned by the Marine Parks Authority to investigate the economic contribution of the Solitary Islands Marine Park to the regional economy indicated that the park contributes approximately \$6 million every year to the regional economy.

**The Hon. Melinda Pavey:** Who did the study?

**The Hon. HENRY TSANG:** The independent authority. The Government is confident that these economic benefits will also be seen in the State's other marine parks.

[*Interruption*]

The Macquarie Marshes and the New South Wales Riverbank Fund will benefit. In addition to his comments in support of the bill, Mr Ian Cohen suggested that he would welcome more funds to buy water in the Macquarie Marshes. The Government is committed to protecting these important wetlands from further decline. That is why it committed \$13.4 million to the New South Wales Wetland Recovery Plan last year. That is why it announced the \$105 million Riverbank Fund. In both cases, submissions have been prepared for matching funds from the Commonwealth under the Australian Government Water Fund. However, New South Wales has not yet received a cent from the Federal Government for any of its wetland protection initiatives. Our iconic wetlands are everyone's responsibility. New South Wales would certainly welcome the Commonwealth making a contribution to our existing initiatives.

At its heart this bill is a simple mechanism to amend the Act to enable regulations to be made to deliver a scheme for recycling, resource recovery and the reduction of waste by local councils, and payment to local councils that meets the standard of the scheme. In conclusion, let me state that the bill has two main elements. First, it sends a strong economic signal to encourage waste avoidance, and resource recovery, reuse and recycling. Second, it provides a major funding boost to environment restoration over the next five years to tackle our most significant environmental challenges. I commend the bill to the House.

**Motion agreed to.**

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

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Orders of the Day Nos 5 and 6 postponed on motion by the Hon. Henry Tsang.**

## **FISHERIES MANAGEMENT AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 6 April 2006.**

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.57 p.m.]: I move:

That this bill be now read a second time.

This bill makes a number of minor changes to the Fisheries Management Act 1994. Its primary focus is on improving the administration of fisheries management, particularly in the areas of licensing, the issue of endorsements, levying of annual charges and contributions and the reporting of fishing activity. The amendments build on those made in 2004 and represent subtle adjustments where these are necessary, rather than broad-scale changes. A key theme of the bill is ensuring consistency in administrative arrangements across the share management, restricted fishery and charter boat fishery frameworks. Before I proceed to detail with its key aspects, I emphasise that the bill contains a range of enabling or discretionary, rather than directive, provisions. It largely qualifies or extends existing regulation-making powers, and ensures consistency with provisions already enacted.

Where new regulations, including share management plans and supporting plans, are required to give effect to the provisions of this bill there will be statutory consultation, which I anticipate will occur in coming months. The majority of provisions relating to share management, restricted fisheries and the recreational charter boat fishery will not be commenced until the regulations to which they refer have been drafted, consulted on, and revised, where necessary. A number of management advisory committees and advisory councils established under the Fisheries Management Act represent commercial and recreational fishing, conservation and Aboriginal interests in our commercial fisheries and the charter fishing boat fishery. The relevant management advisory committees were consulted on aspects of the bill and any issues raised have been carefully considered during drafting.

The Seafood Industry Advisory Council was also consulted on the amendments in this bill—members were given a briefing and update at their meeting in September last year. The chairperson and deputy chairperson of the advisory council were also given an opportunity to review the detail of the bill. While there has been consultation on the bill, more significant consultation will follow as we work through the details of the regulations. Before I turn to the specific amendments contained in the bill I stress that this bill is a small part of the broader suite of management arrangements that are being undertaken by this Government to assist commercial fishers. As honourable members know, the Government has closed Sydney Harbour indefinitely to all commercial fishing to protect public health. An expert panel, made up of Government and independent experts, was convened in mid-December 2005 to provide recommendations on the results of the dioxin testing.

The expert panel advised that seafood caught in Port Jackson posed a potential public health risk and should not be consumed on a regular long-term basis. The Government has implemented a \$5.8 million response

package, comprising a \$5 million buyout of commercial fishing entitlements, a \$250,000 public education program to inform recreational fishers about the dietary limits, and further sampling of other fish species. Sixty-nine permanent warning signs, translated into eleven languages, have been erected around the harbour. Advisory letters with the dietary advice have been sent to all one and three year licence holders in the Sydney region and are being sent to such fishers elsewhere, and brochures have been sent to bait and tackle shops, NSW Fisheries offices, charter boat operators and others. A multilingual brochure has also been developed to warn recreational fishers of the dangers of consuming fish, prawns and crustacean, molluscs taken from Port Jackson.

The buyout package is based on the Marine Parks and Recreational Fishing Haven buyout model whereby a fair offer is made on fishing businesses based on catch history. I advised the Seafood Industry Advisory Council at its meeting on 17 March 2006 that the New South Wales Government has no intention to change the overall formula used for marine park buyouts. I have maintained this position throughout this Port Jackson buyout process and it is disappointing that the Opposition, including the member for Wakehurst in the other place, is so intent on trying to undermine this process. The minimum offer for a fishing business is \$20,000 and the maximum is \$350,000. Fishers also were offered up to \$10,000 for training and relocation and up to \$20,000 for accelerated depreciation of their fishing equipment. Plus they received an up front payment of \$10,000 once they agreed to a buyout. Fishers are free to sell their boats and other fishing equipment if they wish.

The 2005-06 fisheries management invoice charges, commercial fishing licence, boat licence, fish receiver and New South Wales Food Authority seafood licence fees are also being waived for the relevant Port Jackson fishers. In recognising the hardships currently being faced by fishers affected by the closure in Port Jackson—which, I might add, is no fault of their own—the buyout was made a priority. A second round of buyout offers were made, and those closed on 5 May. Of the 44 offers that were made, 32 fishing business owners had accepted the offer as at 5 May. Arrangements will also be put in place to give those fishers who accept the offer the first option to re-enter the fishery if it is reopened in the future. Any such arrangements would be based on a scientific and economic assessment to determine the number of operators and the fishing methods.

Another issue that I would like to mention in the context of discussing this bill in detail relates to the abalone commercial fishing industry. The Government has introduced a number of measures to assist this industry through some difficult times. Honourable members may be aware that I established an independent task force to review the industry after receiving advice that the resource is under increasing pressure. The task force chairperson, Dr John Keniry, has completed his report, which makes recommendations on future directions for the fishery. I will be advising the House on the Government's response to this report in due course.

But, this is not the only measure the Government is taking to assist the abalone industry. Other measures include increased fines for illegal fishing; increased training for law enforcement officers in criminal investigations; the purchase of a new patrol boat to target illegal fishing on the South Coast; continuing research into Perkinsus to try to arrest the devastating impact it is having on the industry, which will assist future management of abalone populations; basing the community contribution on the quantity of catch rather than on the quota allocated to shareholders and allowing payment to be subject to price thresholds and changes in the total allowable catch—members should note that no community contribution is payable by shareholders in 2005-06; passing on savings from operational efficiencies resulting from the establishment of the Department of Primary Industries to abalone shareholders with respect to their management charge, wherein overheads have been cut from 61 per cent to 48 per cent; and, increasing the contribution paid by the Government in 2005-06 with respect to the benefits that flow from the management of the fishery to recreational fishers.

The last point I would like to make is that I was disgusted to see the member for Bega, Andrew Constance, again abuse his privilege and name a public servant in Parliament last week. This public servant, Dianna Watkins, continues to do an excellent job under sometimes difficult conditions and she continues to have my full support. If the Opposition really wanted to help industry, it would cease its petty sniping and underhand political tactics, which only serve to highlight its complete lack of understanding of the real issues involved in fisheries management. It should also call on its Federal counterpart to ease fuel prices. This would be a huge benefit to industry.

I now turn to the specific amendments—firstly to those relating to the commercial fisheries management framework. Commercial fishing in New South Wales is now, in the main, managed under category 1 share management. Share management provides industry with ongoing security of access, encourages greater stewardship of the resource and enables more effective management. Under share management, fishing business

owners are issued with tradable shares and operate within the requirements of statutory fishery management plans. Fishing business owners play a major role in ensuring the future of their industry, and are integral in developing the fishery management plans.

Many of the amendments to the Fisheries Management Act facilitate the final stage of share management for our major commercial fisheries, that is, the implementation of share management plans and issue of final shares in 2006. A commercial fishing licence authorises a person to take fish for sale in New South Wales. However, in restricted fisheries and share management fisheries, fishing activity can only occur in accordance with an endorsement. An endorsement is a form of statutory authorisation that allows a fisher to participate in a specific fishery, to use a certain type of fishing gear, harvest a particular species or fish in a specific region.

Several provisions in the bill relate to the issue and holding of endorsements, the ability to revoke, vary or add conditions attached to an endorsement and the recording of particulars of endorsements in the share register. Clauses 9 and 13 relate to the holding of endorsements by shareholders or their nominated commercial fisher. Endorsements are currently listed on each individual's commercial fishing licence, and the historic system for changing endorsements between the shareholder and their nominees is bureaucratic and cumbersome. It requires a licence to be returned to the department, amended and reissued.

The share management plan regulations currently under development will provide a more flexible system for changing endorsement holders. Endorsements will be removed from individual fishing licences and placed on a card. Subject to any requirements in the fishery management plan, a licensed commercial fisher in possession of the card would be taken to hold the endorsement and be able to take fish for sale in accordance with the relevant legislation. The management plans will positively specify the circumstances in which shareholders can hold endorsements or nominate others within and across fisheries. The purpose is to ensure there can be no dispute as to which fishing business a commercial fisher is operating on behalf of at any point in time. This is significant in terms of ensuring compliance with fishery rules, and particularly so where serious breaches and subsequent convictions could result in loss of access to the fishery.

Clauses 11, 14 and 21 relate to conditions on endorsements in share management and restricted fisheries. Endorsements are already subject to conditions, as listed on each commercial fishing licence. These conditions reflect subtle management differences between endorsements authorising different activities, such as the use of nets or traps or the taking of certain fish species generally to reflect local conditions. A similar cumbersome process applies to changing conditions, as applies to changing endorsement holders. For this reason, where they are required, endorsement conditions will be prescribed in share management plans. However, in limited circumstances an endorsement condition may need to be implemented immediately by notice in writing, pending the necessary regulatory change. The new provisions in relation to endorsement conditions mirror those that already apply to conditions on commercial fishing licences under section 104 of the Act and on charter boat fishing licences under section 127C. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

**The Hon. Duncan Gay:** Only if it is the same as the speech delivered in the other place.

**The Hon. IAN MACDONALD:** I think it virtually is. The earlier part was on the arrangements. The rest of it is the same, yes. The only reason I read the first part of the speech was that it dealt with the officers and some of the claims that had been made. The rest follows and outlines each and every point of the bill. I seek leave to incorporate the remainder of my speech in *Hansard*.

### **Leave granted.**

Accordingly, an equivalent 100 penalty units apply to a contravention on an endorsement condition.

I now turn to the provisions relating to management charges and annual contributions.

I must stress that this bill does not increase revenue collected via charges and contributions from those already subject to them, nor does it set the amount of any future charges or introduce new charges over and above those already in place.

The Government is aware that the commercial fishing industry is under financial pressure as a result of the drought, rising fuel costs, fluctuating market prices as well as longstanding structural problems.

It is further acknowledged that some businesses are finding it difficult to pay the annual charges which help support the sustainable management of their industry.

In the past 12 months the Government has assisted in relieving financial pressure on industry in a number of ways.

In 2004-05 the fishery monitoring charge, a contribution to a monitoring program required by the environmental approvals issued under New South Wales and Commonwealth laws was waived, saving industry around \$400,000.

As I mentioned earlier, a new method for calculating the abalone community contribution, previously set at 6 per cent of the gross value of the fishery, has been introduced, passing a considerable saving to industry.

The community contribution for the lobster fishery has been set at \$112 per shareholder until 2008 instead of being calculated based on 6 per cent of gross value of the fishery. The annual lobster management charge has also been reduced.

Nevertheless, in a commercial environment, it is only fair that all business owners pay their share of management costs.

The department has given industry members additional time to pay their 2005-06 charges without any penalties and those operators with legitimate financial difficulties will be treated fairly in line with Government financial policies.

The Government will continue to work with industry on a fair pricing and charging regime.

In the meantime, this bill makes sensible, practical and important changes to progress the shift from charging commercial fishing licence holders to charging fishing business owners, as the owners of those statutory rights.

Firstly, the bill ensures management charges and annual contributions are to be paid by the fishing business owners, the owners of shares and restricted fishery endorsements rather than the licensed commercial fishers who fish under them and who in some cases are only employees.

Secondly, the bill, through clause 17, requires payment of the management charge and annual contributions irrespective of whether the fishing business owner chooses to actively fish, or hold their endorsements in abeyance.

Regardless of whether a fishing business or its endorsements are active, the owner holds saleable property rights and receives a benefit from activities such as management, research and compliance, which are funded by the charges and contributions.

The existing provisions are inequitable because the full time operators subsidise those who choose not to activate their business but could do so at any time subsequently benefiting from any new management initiatives.

This form of free-riding encourages latent effort, which is acknowledged as a major problem in the industry.

Clause 18 provides flexibility in the way the management charges are structured. It enables a single management charge to be payable for more than one share management fishery, and for a single management charge to apply to a single fishing business, subject to the management plan adopting such provisions.

This approach is consistent with the Government's position as indicated during the second reading speech relating to the 2004 Fisheries Management Act amendments, that is, the charging system should not penalise fishers for being diversified and, in fact, it should be capable of being structured so as to foster diversification.

Clause 20 repeals the existing provisions requiring the payment of an annual contribution by commercial fishing licence holders—as opposed to business owners—under section 106.

Commercial fishing licence holders will continue to pay licence fees, however the costs of management, research and compliance will increasingly shift to owners of the property rights in the future.

Clause 22 introduces an annual contribution payable in restricted fisheries, while clause 26 introduces an equivalent annual contribution payable by the holders of charter boat fishing licences.

Let me be clear that the annual contributions for restricted fisheries and the charter boat fishery will replace existing endorsement and activity based charges—they will not be additional charges.

Members will note that the bill reinforces that annual contributions are payable towards specific industry costs consistent with existing statutory provisions governing expenditure from the Commercial Fishing Trust Fund and Charter Fishing Trust Fund.

Put simply, the bill makes it clear that revenue can only be collected for the purpose for which it can be lawfully spent.

A further amendment via clause 16 of the bill corrects a drafting oversight related to the Commercial Fishing Trust Fund.

Mandatory share forfeiture for non-payment of charges is a last resort, and applies once all the normal debt recovery procedures have been exhausted.

The sale of shares by public tender to recover outstanding charges has had limited application to date, but is a necessary instrument to safeguard revenue for effective management of our commercial fisheries.

With the exception of the community contribution, all of the charges levied on shareholders are payable directly to the Commercial Fishing Trust Fund, as required under section 236 of the Act.

Erroneously, the original legislation overlooks this fact by requiring all revenue from the sale of forfeited shares to be paid only to the Consolidated Fund, even where shares have been forfeited to recover an outstanding amount that, had it been paid in the normal course, would have been paid into the Commercial Fishing Trust Fund and used for management purposes.

As is appropriate, the amendments enable the Commercial Fishing Trust Fund to be credited following the sale of shares to recover outstanding amounts, excluding the community contribution.

I now turn to the amendments regarding the making, keeping and submission of fishing activity records.

Commercial fishers and charter boat operators are already obliged to submit records on the quantity and species of fish harvested, the fishing methods and boats used. This generally occurs on a monthly basis, with some commercial catch data spanning over 50 years.

The records provide a vital data source, which along with other independent information, assist in the monitoring of our fish stocks and assist decision-making.

Fishing business and charter fishing boat owners therefore have an interest in providing accurate and timely records to the Department.

Clauses 23, 24, 25, and 27 amend provisions relating to the making, keeping and submission of fishing activity records in the commercial and charter boat fisheries.

Records confirming nil fishing activity, or fishing activity that did not result in any catch are equally important as records of catch and are now specifically provided for in the legislation. These records can provide important information on stock availability.

As with the other substantive provisions of this bill, the detail will be contained in the regulations. I can confirm that the regulations will not require submission of records by both commercial fishers or masters and fishing businesses—this would be unnecessary duplication.

Rather, the principle is that the fishing business owners or charter fishing licence holder owners would be normally required to submit records to the director-general in respect of their business. There may be some exceptions, for example in quota managed fisheries where this would be impractical.

Importantly, a commercial fisher or charter fishing master who fails to provide relevant information to their fishing employer will be committing an offence, as will the employer if they fail to make and submit a record of fishing activity. The penalties have not changed.

The bill also adopts consistent provisions with respect to the making, keeping and submitting of fish receiver records.

Due to privacy legislation, catch records prepared by a nominated fisher or employed charter boat master cannot currently be released to the fishing business owner without their permission.

While the future reporting requirements as just outlined will address this issue, further amendments are necessary to deal with access to historic information.

Fishing business owners have a legitimate interest in knowing how much catch their business has generated, especially if they are considering selling or refinancing.

Clause 29 of the bill allows fishing business and charter fishing boat owners access to records prepared in relation to their business.

I will now deal with the balance of the provisions in the bill.

A Share Appeal Panel has been established to hear appeals relating to the provisional issue of shares in the new category 1 fisheries.

Clause 35 of the bill introduces important amendments to the savings provisions relating to the Share Appeal Panel.

These amendments are necessary to remove ambiguity as to the matters the panel is to hear, to safeguard the intent of the original savings provisions, and to ensure the appeals are efficiently and fairly dealt with.

When the Fisheries Management Act was passed in 1994 it was intended that each fishery would move directly from open access arrangements to a share management framework.

Appropriately, the original share appeal provisions of the Act envisaged appeals to the Share Appeal Panel relating to catch history, a key component of the proposed share allocation criteria.

During its first term, this Government on the advice of industry implemented a restricted fishery framework, which relied largely on catch history to allocate endorsements.

A comprehensive and independent review process followed the issue of restricted fishery endorsements in 1997. It involved assessment of over 800 appeals by an independent panel established under the regulations between 1997 and 2000.

Where appellants were not satisfied with the outcome of their restricted fisheries review they were able to appeal the decision to the Administrative Decisions Tribunal as was their right under section 126 of the Fisheries Management Act.

When the category 2 share management framework was incorporated into the Act in 2000 the significance of the comprehensive restricted fishery review process was not overlooked.

Savings provisions were inserted into the Act to specifically exclude appeals to the Share Appeal Panel relating to the eligibility for restricted fishery endorsements and validated catch history where these could have been subject to a review request through that process.

It was clear that restricted fishery matters were not intended to be reopened via the share appeal process and accordingly the existing savings provisions direct the panel to refuse to hear any such matter.

However, the conversion from category 2 to category 1 fisheries in March 2004 has led to some ambiguity as to the application of the savings provisions as originally intended.

While the amendments may appear to be a significant redraft they do not go beyond what was originally intended.

They clarify the matters for which there is no appeal. They ensure the panel is not required to revisit matters that have already been exhaustively examined.

This includes matters dealt with by earlier internal reviews and review panels over the past 10 years and which could have been the subject of appeals to the Administrative Decisions Tribunal.

As to current appeals that have been lodged with the Share Appeal Panel, of 1,257 fishing businesses, only 88 share appeal applications were received with respect to the allocation of provisional shares.

This figure signals that the vast majority of applicants felt their shares had been correctly allocated and that catch history had indeed been already finalised.

Importantly, these amendments will be commenced shortly after assent so that the Share Appeal Panel can proceed with the appeal hearings and complete the process without further delay or undue expense.

The independent Total Allowable Catch Setting and Review Committee makes determinations on harvest levels for specified species by commercial fishers currently abalone and rock lobster.

At the moment, the committee is required to call for public submissions before it makes or reviews a determination.

Even if the review itself takes place soon after the original determination, a second call for submissions is required.

The determinations usually relate to a one-year period, and the existing requirement for a second round of submissions can result in undue delays and uncertainty as to the total allowable catch.

The bill gives the committee some discretion as to whether a second round of public submissions is necessary but nevertheless ensures that the committee is to have regard to earlier submissions.

Clause 33 of the bill makes a small change to the description of the ocean trawl fishery to provide for the use of a Danish seine trawl net.

This legitimate fishing gear is used by a small number of commercial fishers and its use has been considered in the environmental impact statement and draft fishery management strategy for the ocean trawl fishery.

The final amendment concerns the issue of permits for fish auctions for charitable purposes. Honourable members may be aware of the revenue these fish auctions provide to assist charities.

The amendment simply removes any ambiguities that permits may be issued for fish auctions.

The issue of specific permits for this purpose is provided by clause 5 of the bill. Implementation of these provisions will be subject to any advice arising from the recent bag and size limits review paper, and from the New South Wales Food Authority. It is already a specific permit condition that the permit holder must notify the Food Authority and the local Fisheries office before undertaking a fish auction.

Other permit conditions include that any fish caught must be kept on ice; that the fish are suitable for human consumption; and that appropriate records are kept of all fish sold at the auction.

The bill currently before the House covers some ground. The changes are not being made just for the sake of themselves but to provide a fairer, more consistent and efficient approach to the regulation of fishing activities.

Overall, the aim of this bill is to make the Fisheries Management Act more efficient from an administrative and operational point of view, a move that I'm sure all members would see as the sensible way to go.

The Iemma Government is committed to ensuring that there is a sustainable, viable commercial fishing industry in New South Wales.

I commend the bill to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [9.08 p.m.]: The Opposition was happy to grant leave to the Minister to incorporate the remainder of his speech. It was a merciful release. It is interesting that the Minister was speaking in this House to an audience of ten or a dozen people tonight—about eight more than he normally speaks to. He has taken to restricting the size of crowds that he speaks to since his

unfortunate experience with the general public at Byron Bay. He found that the general public were revolting. They did not like him any more and even some of his old Labor mates had a go at him. He now restricts his meetings to a small number of people and avoids any place where he might come in for criticism. I suspect that will limit him from the greater part of this State in the future, given the level of unpopularity that he lives with right across the State of New South Wales, from the coast to the mountains and the Western Division.

The Opposition does not oppose the bill. We were told by the Minister that it builds on the Fisheries Management Amendment Bill 2004, and makes a number of important and administrative changes to the Fisheries Management Act 1994, facilitating the final stage of share management, with which we also agree. It also intends to provide greater consistency and efficiency in administrative arrangements across the share management, restrictive fisheries and charter fisheries framework—all laudable initiatives. Most importantly, we were advised the fishing industry supports the bill. That is what we were told. However, in reality the fishing industry, like the Opposition, has some reservations. Firstly, we are being asked to support a framework, with the detail to come later in the form of regulations. But like everything with this Government, the devil is in the detail. Until we see those regulations, how can we be sure of what the Government has in mind?

The fishing industry is nervous on precisely this point, and understandably so. The Labor Party has a track record of letting them down time and again. The inaction of the Government over the high level of dioxins in Homebush Bay has led to the closure of Sydney Harbour to commercial fishing. While closing Sydney Harbour was a public health decision, the Government has ignored the needs of commercial and recreational fishers, not to mention charter boat operators and fishing and tackle shops. Day after day information is exposed that this Government has tried to keep from the general public and from the people who were paying money to the Government for a licence to operate in those fisheries.

Commercial fishers licensed to fish in Sydney Harbour have lost their livelihoods, yet the Government made those fishers wait nearly three months before an emergency package was made available to them. And was that package made available with no strings attached? No! The emergency package that would allow those fishers to feed their families and carry on at a time when they had no income was held like a gun to their heads. If they accepted the package, they had to agree to leave the industry. The Labor Party boasts of its track record helping families and workers, yet it had no compassion for workers in this industry, small business people who put their families on the line. As I said earlier, the fishers could take advantage of the emergency package only if they sign up for the compulsory buyout, forcing them out of an industry that some had worked in for many years.

The fishers were also initially heartlessly denied blood testing for dioxin until media, crossbench, Opposition and community pressure forced the Government to relent. The Government was dragged to the line to finally pay for the blood tests administered to fishers. Recreational fishers have largely been kept in the dark over the dioxin problem in Sydney Harbour. It took four months before they were notified in writing about the potential dangers of eating catches from the harbour, and another month went by before signs were erected around Sydney Harbour indicating maximum consumption levels of seafood caught in the harbour. During all that time the Government covered up information it had on file that small amounts of seafood could have been harmful to people's health. Interestingly, throughout all this charter boat operators seem to have been forgotten by the Government. They are losing business but the Government has done nothing for them except provide brochures for operators to hand out to their reduced numbers of passengers, and a sign to display on their boats with advice about the safe level of seafood consumption.

Charter boat operators have brochures advising them that seafood is not safe and they have signs warning them about seafood consumption, and, as honourable members would appreciate, their businesses are failing. And what has the Government done about it? It has done absolutely nothing. Day after day in this Chamber we ask the Minister what he is going to do about this situation. He can spend \$40,000 on his office, but he cannot spend \$4 to help Sydney charter boat operators and their staff. They want and need support during these difficult times. Others feeling the effects of all this are the owners of fish and tackle shops around the harbour, who are largely dependent on Sydney Harbour fishers. Obviously, because of reported dioxin levels in fish, fewer people are fishing in the harbour and fish and tackle shops are faced with reduced sales because of a decreasing customer base.

Not one member of the Government has said, "No, that is not right. That is not true. These guys are doing well." Obviously no-one can say that. Given that we have not heard a rebuttal of situation—and there could not be a rebuttal—once again I ask the question: What is the Government doing for charter boat operators and for bait and tackle shop owners around Sydney Harbour? I wish this were the only issue, but it is not. This Labor Government has failed the New South Wales fishing industry in other ways. The New South Wales abalone fishery has, frankly, been mismanaged so badly by the Government that one of the principal banks in New South Wales, Elders Rural Bank, has refused to finance an abalone fisher. The bank wrote in a letter to the abalone fisher that it was refusing finance because of the mismanagement of the abalone fishery in New South Wales.

**The Hon. Ian Macdonald:** I am glad you have raised this.

**The Hon. DUNCAN GAY:** The Minister indicates that he is glad that I raised this matter. I asked the Minister a question about this matter sometime ago. I also issued a press release and showed a copy of the letter to the Minister at that time. The letter from Elders Rural Bank states explicitly that finance was refused because of the Government's mismanagement. The letter referred to other matters relating to the Government, but reference was made to the Government's mismanagement of the New South Wales fishery.

**Reverend the Hon. Dr Gordon Moyes:** It was shown on current affairs television.

**The Hon. DUNCAN GAY:** I did not propose to mention this but I am sure many members of this House saw the recent *Stateline* current affairs program on television. The Minister had a pretty tough week that week.

**The Hon. Jennifer Gardiner:** It was a special edition.

**The Hon. DUNCAN GAY:** It was a special edition; it was the "Macca" edition. That was the week when he paid for New South Wales police to go with his officers to harass a 70-year old widow in the Western Division of New South Wales. The Minister might well smile about it, but I can assure him that there is not a lot of smiling going on in the Western Division about his actions on that occasion. Many people are pretty upset. The Minister has a heavy hand. He might say he is not responsible, but he is the Minister and the buck stops with him.

**The Hon. Ian Macdonald:** And I will not be interfering in operational matters, you can rest assured of that.

**The Hon. DUNCAN GAY:** The Minister will encourage this type of action to happen in the future. He paid for the operation involving good police officers who would have been better placed in their communities looking after law and order than harassing a lady on her own with her grandchildren.

**The Hon. Ian Macdonald:** She was not on her own. She was with her sons.

**The Hon. DUNCAN GAY:** The Minister placed police in that position when they did not need to be there. The lady has sons, but they were not on a farm with her that day. The Minister is responsible for that action and he has to wear it. In respect of the abalone industry, instead of trying to help the fishers, the New South Wales Government has been meeting with Aoetera, which is a New Zealand company interested in owning a significant portion of the New South Wales abalone fishery—and in increasing fees. The company's interest is developing, despite allowable catch levels decreasing over time. The promise that excessive, overdue fees were to be put on hold has been forgotten.

Oyster farmers play an important role in water quality because they perform a number of tests, the results of which are utilised by many government departments. The Government will not pay its share of the cost of this program and has not indicated if any financial assistance for the 2006-07 financial year will be forthcoming. Tilligerry Creek oyster growers have had their livelihoods ruined after the waterway was closed to oyster farming almost a year ago because of contamination from water run-off from nearby septic tanks. Growers there have been forced to bear the entire financial burden through no fault of their own. The Labor Government not only has refused to assist Tilligerry Creek oyster growers in the clean-up of the polluted leases, but also has charged the growers for the clean-up.

The closure of the Bellinger River near Bellingen has been forced and there has been no oyster growing there for some time. There does not seem to be a day that goes by without problems such as QX in the Hawkesbury or other places in the oyster industry. The Minister responsible for fisheries has failed the New South Wales people in yet another area: marine parks. While the commercial fishing industry has been struggling to remain economically viable since the 1990s, a reduction in available fishing grounds, which has forced larger numbers of fishers into smaller areas of fishing grounds and placed pressure on the environmental sustainability and economic viability of the fishing industry, does not make any sense at all.

The fishing industry and local communities in marine parks have been let down enormously. The Government does not want to listen to what the community wants. Consultation so far has largely involved a survey being sent out at Christmas time to be returned by the end of January. Some meetings have been held to

help determine where the boundaries might go, but frankly it has all been a farce. The Government indicated that it would look after local fishers, yet as recently as yesterday, 20 per cent marked as the sanctuary zone in the Port Stephens Marine Park takes up close to 80 per cent of the viable and popular fishing stocks. It is no wonder the industry and local people feel that they have not had their say.

Communities who have been affected by the marine parks want to know what will happen to their livelihoods if recreational fishers stop coming to their towns because their favourite spot is no longer accessible or is in a no-fishing-allowed sanctuary zone. The Government's answer is that socioeconomic studies were done before the zones had been determined—in other words, they are hardly accurate. How can a socioeconomic study be done on a zone when we do not know the boundaries of the zone? Even the people conducting the studies have acknowledged the fallacy of such a proposition. These communities have simply been let down.

Communities have been meeting all along the New South Wales coastline. They have been meeting not just in their 10s, 20s, 50s or 60s but in their hundreds; the attendances at the meetings usually number in the 500s and 600s. There have been many meetings in places such as Bateman's Bay, Narooma, Port Stephens and the Tweed. Last night a meeting was held at Tumby Umbi. At each of the meetings approximately 500 people have attended. At each meeting a chair was left unoccupied so that the Minister could come and put his case, but at not one of the meetings did the Minister turn up.

Yesterday the Minister was not far away from Tumby Umbi. He was at Port Stephens, where he met with limited numbers of people. He was letting groups of twos and threes in the door so that he did not have to face a public meeting at which he might get ambushed and people would have their say. The Minister declined to attend the meeting last night because he was driving back from another meeting. The fact is that he would have driven past the meeting he was invited to.

**Reverend the Hon. Dr Gordon Moyes:** It is on the way.

**The Hon. DUNCAN GAY:** He could have driven there and attended the meeting, but that is not the Minister's style. His style is to be out of touch with the people. The Government must ensure that the industry has its say and is properly consulted. Because of these issues, the Opposition reserves the right to consider each regulation on its own merits. We want to ensure that the fishing industry remains viable. If this legislation can help to do that, the Opposition will be strong supporters of it. But if it becomes yet another example of the fishing industry being let down by this Minister, the Opposition simply will not support it.

**Reverend the Hon. Dr GORDON MOYES** [9.26 p.m.]: I speak on behalf of the Christian Democratic Party on the Fisheries Management Amendment Bill, the object of which is to amend the Fisheries Management Act 1994 to make further provision with respect to the management of fishery resources. The bill makes a gamut of minor changes to the Fisheries Management Act ranging from provisions dealing with endorsements on local fishing licences to other provisions relating to the levying of management charges and contributions. The rationale of the bill is to ensure consistency in administrative arrangements across share management, restricted fisheries and the charter boat fisheries frameworks whenever possible.

Most if not all the provisions of this bill deal with a range of discretionary rather than directive provisions or prescriptions rather than descriptive provisions. This means that provisions in the bill will be used to either extend or limit the scope of current regulation-making powers under the Fisheries Management Act 1994. Most importantly, the majority of the provisions relating to share management, restricted fisheries and recreational charter boat fisheries will not commence until the regulations to which they refer have been drafted, consulted upon and revised wherever necessary. There must be full transparency and consultation on such issues. This consultation is likely to proceed in the next couple of months.

Unfortunately the stage already has been reached at which many people within the industry have come to their own conclusions and are very aggressive in their attitudes towards the Government and the department. The fishers in the abalone industry are extremely angry and the fishers whom I met from Sydney Harbour likewise are angry. Some have been able to obtain compensation, but others cannot shift to fishing grounds outside Sydney Heads. The department does not seem to recognise the difference between fishing inside the harbour and fishing outside the harbour. As a result the support for those who now have to fish outside the harbour is quite inadequate. They require different boats and different gear. Some of them have hundreds and thousands of dollars worth of unusable nets in their backyards because they cannot use outside the heads.

The Parliamentary Secretary's speech in the other place indicated that the relevant management advisory committees were consulted on aspects of the deal and on any issues that had to be carefully considered

during drafting of the legislation. I trust that those consultations were conducted in all the areas that directly impinge upon the work of the communities. The compulsory buyout of Sydney Harbour fishers has been good for some of the older men to whom I spoke. They indicated they wanted to retire from the business anyway. In a sense, they received a golden handshake. But those who are not at the point of retirement have found that their businesses have been undervalued and they have little scope for the future. I recognise that the Government has faced a great deal of difficulty in the whole aquaculture area: oyster pollution, dioxin in Homebush Bay and Sydney Harbour, and rogues who have pirated abalone. Those issues require really good management, fairly aggressive inspection, and the upholding of the law. Additionally the Chairperson and Deputy Chairperson of the Seafood Industry Advisory Council were afforded an opportunity to review the contents of the bill.

The notion of share management fisheries was introduced with the Fisheries Management Act 1994. Under that type of management arrangement, fishing business owners are allocated a ride in the fishery by way of shares. As with any shares, they are tradable. For access to a community resource shareholders must pay a levy that is credited directly to consolidated revenue and is known as a community contribution. That levy is in addition to any management charges that are imposed on the fishery. As fishers own an asset by way of a share they are encouraged to be effective stewards of the resource they have bought into. As the Parliamentary Secretary said in the second reading debate:

Fishing business owners have a major role in ensuring the future of their industry and are integral in developing the fishery management plans.

Under the Fisheries Management Act of 1994, commercial fishing is generally managed under arrangements known as category 1 share management. The bill introduces a number of amendments that facilitate the final stage of share management for key commercial fisheries, being the implementation of share management plans and the issue of final shares in 2006-07. In share management fisheries, fishing activity can take place only in accordance with an endorsement, being the type of statutory authorisation that allows a fisher to participate in a specific fishery. That authorisation may prescribe a number of conditions to be adhered to when fishing in such an area.

The bill amends endorsement arrangements. In particular it provides for things such as the issue and holding of endorsements, the ability to revoke, vary or add conditions attached to an endorsement, and the recording of particulars of endorsement in a share register. One seemingly minor but important amendment to be made by share management plan regulations currently being negotiated relate to the way an endorsement is modified. Currently, any change in an endorsement requires a licence to be updated because the endorsement is actually recorded on the licence. However, modification of an endorsement entails sending the licence to the department for amendment and reissue. As was pointed out in the second reading speech, this is "bureaucratic and cumbersome". The proposed regulations envisage a more flexible system for changing endorsements. Endorsements will be removed from individual fishing licences and placed on a separate card.

Several amendments relate to conditions of endorsement in share management and restricted fisheries. Endorsements are subject to conditions, as listed on each commercial fishing licence. A similar process exists in changing endorsement conditions as applies to changing endorsement holders. But, endorsement conditions will be reflected in share management plans. Where a change in an endorsement condition is made it will be implemented immediately by notice in writing, pending the necessary regulatory change. A penalty of 100 penalty units, currently equivalent to \$11,000, will apply to a contravention of an endorsement condition. The bill makes some changes to the way that management charges and annual contributions are levied. The Parliamentary Secretary said in the second reading speech in the Legislative Assembly that there is to be no increase in revenue from those charges. He said:

The commercial fishing industry, like other primary industries, is under considerable financial pressure as a result of the drought, rising fuel costs—

which is a major issue facing fishers—

and fluctuating market prices as well as longstanding structural problems.

I add that rogue abalone divers are wrecking the abalone fishers who pay their licences but are not protected by aggressive and ever-present inspectors. Nevertheless, because of the commercial nature of the environment, the Government has said, "It is only fair that all business owners pay their share of management costs." Time has been given to business owners to pay their current dues without penalty. A number of working groups have been formed by the Seafood Industry Advisory Council to help the council focus on key issues faced by the industry, including groups to look at pricing and industry charges for a range of government services.

A couple of salient changes to the regime are that the bill requires that those costs be paid by the fishing business owners, the owners of shares and restricted fisheries endorsements, rather than the licensed commercial fishers, who fish under the endorsement and who, in some cases, are merely employees. A payment of management charges and annual contributions will apply irrespective of whether the fishing business owner actively chooses to fish or to hold their endorsement in abeyance. That is a commonsense change. Builders are required to pay for their licences irrespective of whether there is a slump in the housing market. It seems logical that fishing business owners should be placed in a similar situation. The Parliamentary Secretary said:

... the existing provisions are inequitable because the full-time operators subsidise those who choose not to activate the business but could do so at any time, subsequently benefiting from any new management initiatives.

Further, management charges will be structured in such a way to encourage diversification. Single management charges will be payable for more than one share management fishery and for a single management charge to apply to a single fishing business, subject to the management plan adopting such provisions. An annual contribution will be payable on restricted fisheries. Annual contributions for restricted fisheries and charter boat fisheries will replace existing endorsements and activity-based charges. Accordingly, new contributions payable will replace current contributions; they will not be additional charges. Further, the bill will allocate those annual contributions for the purpose for which they are collected.

Currently commercial fishers and charter boat operators are obliged to submit records on such matters as the quantity and species of fish caught, fishing methods, and whether they are employed in harvesting fish. Records are required to be provided on a monthly basis. Obviously such information is vital in assessing the level of fish stocks and providing data for decision making. The bill provides for amendments relating to the making, keeping and submission of fishing activity records in the commercial and charter boat fisheries. It will be an offence for a commercial fisher or charter fishing master to fail to make and submit a record of his fishing activity to his employer. It is clear that fishing business owners have a legitimate interest in knowing how much catch the business has generated, particularly if they are considering selling their business or refinancing their business.

The bill makes miscellaneous amendments, which I will not go through exhaustively. Item [35] of schedule 1 to the bill amends the savings provisions relating to the Share Appeal Panel. The purpose of that amendment is to ensure, among other things, that appeals are efficiently and fairly dealt with. The bill makes a small change in the description of the ocean trawl fishery, to provide for the use of a Danish seine trawl net. An important amendment relates to the issue of permits for fish auctions for charitable purposes, being any benevolent, philanthropic or patriotic purpose. Advice received indicates that an amendment of the section of the Act dealing with the issue of permits is required to allow for those types of auctions. The issue of specific permits for charitable purposes is provided by item [5].

I take this opportunity to pay tribute to the New South Wales Fish Marketing Authority. Honourable members may not know what happens to fish seized by inspectors from fishers who have poached them, or kept undersized catch, or who have been involved in illegal catches such as abalone. In 1993 I built four larger freezers at the Wesley Mission in Pitt Street, Sydney. The Fish Marketing Authority phones the mission and arranges to deliver tonnes of fresh fish to the mission which, in turn, contacts the major charities in Sydney. As a result the homeless and the hungry eat well. I acknowledge and thank the Fish Marketing Authority for the way it has served the hungry and homeless of Sydney so well for so many years.

In the context of fish auctions, amendments were made in relation to the way fish are kept and how fish must be suitable for human consumption. The Christian Democratic Party commends the bill to the House.

**Mr IAN COHEN** [9.40 p.m.]: The Greens support the general thrust of the Fisheries Management Amendment Bill, which continues changes in fisheries management that began in 1995. It aims to facilitate the final change of shared management in the commercial fishing industry and to provide greater efficiency and consistency in the administrative arrangements across the shared management, restricted fishery, and charter boat fishery frameworks. These changes build on those that were made in 2004. At that time the Greens supported those amendments, and I am happy to support these.

I think I may have said during the debate in 2004 that much of the direction that this legislation is taking, and which I have come to support, came about through investigation of sustainable fisheries by the Standing Committee on State Development, of which I was a member. The current Minister, Ian Macdonald was also a member of that committee. We all acknowledged that there was a great deal of support from the commercial fishing industry for the move to shared management rather than restricted fisheries or other ways of

managing fisheries. It gave individual professional fishers and their companies and families some certainty and a degree of ownership of the fisheries.

It also allowed for consideration of sustainable management rather than other forms of management that tend to lead to an extraction mentality rather than a guardianship mentality. That has been reflected in many areas. Of course there will always be people in an industry who abuse a resource, as there are in any walk of life, whether it be professional fishers or recreational anglers. There is plenty of opportunity for someone to complain about lack of responsibility and inappropriate extraction, to the point where the resource is diminished and lost to everyone. There are many examples of that around the world.

Mention has been made in this debate of hardship caused to various elements of the fishing industry. Oyster growers have had a difficult time. I have had an opportunity to speak with a number of growers and I have good relationships with them. The Tilligery Creek growers who have addressed crossbench members recently are taking their responsibilities as environmental managers very seriously. But they are being unfairly impacted upon, often by poor land management upstream or by septic tank runoff and drainage running into waterways. This has had a massive impact on a very sensitive industry. It relies on pristine waterways, whether it is the Bellingen River, Tilligery Creek or Lake Wallace.

Successful industries have operated in the past up and down our coastline, but one after another they have been forced to close through no fault of those commercial fishers. Other elements in the community have had an impact, such as private landowners, lack of consideration or investigation by councils, septic runoff, and inappropriate urban development. The creeks have not been able to cope and the oyster growers have suffered. They have happily paid for testing programs, but in some cases that has been denied to them because the Government has not contributed to those programs. The oyster industry has suffered significantly as a result.

Similarly, those in the abalone industry who have paid their registration and done the right thing are suffering greatly from the impact of the black market. Abalone areas have been closed and the stocks are growing, but it is disturbing that the Minister has undertaken to have discussions with New Zealand companies. The resource is recovering as a result of the restrictions imposed on it, which have meant hardship for individual businesses. These restrictions show there is a way through this problematic development of the industry. Now a New Zealand company is looking at making use of the resource. One has to ask why the local abalone fishers are not being given a fair crack at a share of the resource. An international company will potentially come in and harvest this product in our coastal waters at a far greater and possibly unsustainable rate.

I have some sympathies for the Government's task in dealing with marine parks. In some instances I find that nobody is getting what they want, so I wonder whether the Government is not doing something right. Certainly there has been a lot of opposition to marine parks from recreational fishers up and down the coast. Having been involved in the Cape Byron Marine Park discussions in my area, I believe it had too few sanctuary zones, as I said earlier. Sanctuary zones are important for the maintenance, replenishment and sustainability of fish stocks. Fishers around the sanctuary zones, whether commercial or recreational, are able to harvest far greater quantities when the zones are put in place. I have said that a number of times in this House.

A number of people have been actively engaged in moving around the State stirring up hysteria and real fear in the fishing communities for political purposes. One person from Byron Bay, Ken Thurwell, campaigned hard against the Cape Byron Marine Park and then travelled to the South Coast spreading the same sort of fear among recreational anglers: that they will lose so much. Marine areas need to be allowed to regenerate so they can be harvested sustainably. It is also vital that the various types of ecosystems are maintained. In this respect the Government has done a reasonable job, despite all the stirring-up of fishers' fears. In my experience, the commercial fishing industry, particularly in the Byron area, recognises it has had an opportunity through buyouts. The industry understands the situation and recognises that change must happen. We cannot go on fishing areas or they will eventually be fished out and the ecosystem we are all relying on for sustainable professional and recreational activities will be destroyed.

I support the Government's moves on marine parks. It is moving towards sustainability of fisheries and the Government is to be commended for that. Having said that, I still see areas that can, but should not, be fished. I can point out areas the Government has not protected that I would have liked to see protected. Limiting accessibility means that fisheries can be sustained, which is the most important factor in the long run. Marine parks take a significant step in that direction.

I agree with a previous speaker, the Hon. Duncan Gay, that fishers in Sydney Harbour are getting a pretty rough deal. It is incumbent on the Government to do justice to them by way of proper compensation and

opportunities for health testing of their families. That testing should extend also to recreational fishers, who have used the harbour for many years trusting governments of both political persuasions to ensure their catch was clean and could be consumed safely. Unfortunately that was not the case. This is not a recent problem—although it was ignored for some time; it was caused by industries that produced Agent Orange for use during the Vietnam War. So the dioxins have been in that ecosystem for a long time.

We are now aware of the true situation. A few days ago I attempted to query the Government about this issue but was howled down because I directed my question to the wrong Minister. It is obvious that questions about fisheries and the environmental impact of dioxins in Homebush Bay extend across the portfolios of Health, Primary Industries, Fisheries and the Environment. I make it clear to the Government that I will not let go of this issue.

I understand that the company undertaking the clean-up has discovered that it cannot use cofferdams because the sediment is buried too deep in the bay and it cannot maintain stability. It is absolutely vital that we adequately investigate how to clean up the dioxins in the bay. I thank the Hon. Robert Brown from the Shooters Party, who attended a crossbench briefing on the bill, for explaining the impact of the different clean-up methods and how the process would be best managed. He has a degree of practical experience in this area for which I am certainly appreciative.

I ask the Minister for Primary Industries and the Ministers who are associated with the clean-up in some way—including the Minister for the Environment through the Environment Protection Authority—to consider this issue. Thiess, the company responsible for the clean-up of Homebush Bay, cannot use cofferdams and so cannot pump out the bay and remediate it properly. I have heard that it has therefore opted to use silt curtains without removing the water. This process will involve digging up the sediment with some sort of dredge and bucket, which will cause a great deal of turbulence—one can only imagine the amount of sediment that every bucket will stir up. The disturbed sediment will be rich, for want of a better word, with dioxins that have been sitting on the bottom of the bay for many years. We could well have another disaster on our hands.

I was glad to hear the Minister concede that the ban on fishing in Sydney Harbour will be maintained for the foreseeable future. If the foreshadowed removal method is used, the clean-up could be incomplete. That would be a major problem. I ask that other methods be assessed properly. If cofferdams do not work perhaps caissons could be pile driven into the seabed—I have seen this done—to allow proper drainage. The Minister might tell me whether I am on the wrong track. If caissons are driven into the bed of the bay and fabridam-type material is used as lining, sections of the bay can be drained and remediated properly.

Other removal methods could cause massive amounts of dioxin-laden sediment to spill into other parts of the Sydney Harbour ecosystem. I do not accept that Thiess will be able to clean up the area adequately simply by dredging the waters of the bay using silt curtains in the hope they will hold back the dioxins. I ask the Minister to examine the matter carefully as I will remain watchful and will certainly continue to pursue it.

Homebush Bay is a major fish nursery. It has mangroves and it is a regeneration area. I understand that hot spots in the bay have not yet been assessed properly. The remediation of only the most contaminated areas near the shore ignores the fact that significantly contaminated areas further out in the bay also require attention. The situation must be assessed properly and remediation must occur to assist many areas further downstream in Sydney Harbour. The silence on this issue has been deafening. Since the first round of remediation, health organisations around the world have lowered the safety threshold for dioxins. Those remediation practices may have been appropriate under the old regime but they are not appropriate now.

It is incumbent on the Minister and the Government to ensure that the dioxin contamination is assessed properly. That is an issue of the utmost importance socially and environmentally as well as to recreational and commercial fishers. The area is also the subject of international migratory bird agreements. I have heard of predatory birds suffering as a result of eating contaminated fish from the bay. The problem extends throughout the food chain. It is a pernicious bio-cumulative problem that requires a robust and aggressive remedy. Unfortunately the solution suggested, as I understand it, is fraught with difficulties.

Returning to the thrust of the Fisheries Management Amendment Bill, which the Greens support, commercial fishing in New South Wales is managed mostly under category 1 share management, which encourages a greater sense of ownership and more long-sighted resource management. Under this model, tradeable shares are issued to fishing business owners and fishers operate within the requirements of statutory fishery management plans they help to develop. This is the most effective way for responsible fishers to manage

a precious resource. I had the opportunity to consider a number of issues regarding the fishing industry when I was part of an inquiry into fisheries management and resource allocation undertaken by the Standing Committee on State Development in 1997. The inquiry found that this model of shared management was the best way to achieve sustainability in the fishing industry while protecting biodiversity.

The bill introduces some changes to the management charges and annual contributions collected from the industry. I understand there is no net increase in the revenue from these charges. The bill shifts the cost of management charges and contributions from licensed commercial fishers to fishing business owners, which is a more appropriate arrangement. The bill also makes these charges payable whether a fishing business is active or in abeyance, in recognition of the continued benefits accrued irrespective of whether the business is operational. This is a fair amendment that recognises the importance of research and compliance to the fishing industry both at present and in the future.

We also commend the flexibility the bill provides regarding the structure of charges to encourage diversification. I realise the Government has assisted some in the industry who have been finding it difficult to pay these charges in the face of drought and rising fuel costs. This is to be commended also. However, it would be good to see the Government extend its generosity to assisting those involved in the oyster industry by reinstating funding for the shellfish program. Those producers have also been affected by drought and fuel prices. In addition, they have had to meet the water quality monitoring costs the Government used to share. This monitoring has an important public benefit in respect of the health of our rivers and estuaries.

The bill amends provisions dealing with the making, keeping and submitting of fishing activity records. They are very important for the monitoring of fish stocks and are therefore crucial for both the industry and conservation efforts. The tightening of record-keeping provisions is a positive measure in the bill. The bill makes a number of other amendments, none of them controversial, which are aimed at improving the management and efficiency of the fishing industry, and the Greens support them.

It is pleasing to know that where new regulations are required to give effect to the provisions of the bill there will be statutory consultation. Consultation with stakeholders should be a given in the drafting of legislation, but, sadly, it is something we see less and less of with this Government. However, in this case I understand that management advisory committees, representing commercial and recreational fishing, as well as conservation and indigenous interests, and the Seafood Industry Advisory Council, were consulted and their interests carefully considered. This is as it should be.

Marine species in New South Wales have a high level of species richness not found elsewhere. This endemic biodiversity is our marine heritage and must be protected. I believe that organising the fishing industry in a system of shared management will go some way to achieving this. However, there are further ways that biodiversity should be protected. Establishing a framework for ecosystem management incorporating sustainable fishery assessment and management plans for recreational and commercial fishing is a further step that should be taken, as well as the implementation of by-catch avoidance techniques of fishing. The Government must also take responsibility for protecting endangered marine species.

The Government has tried to bypass the environmental assessment of the impact of ocean trap and line fishery on the grey nurse shark. I call on the Government to withdraw the request for approval of this fishery without requiring specific investigation into its impact on the grey nurse shark. I talk about that species in many debates. I was interested to find out that abalone divers are successfully using electronic shark repellent devices.

**The Hon. Duncan Gay:** You should be able to get it for the House.

**Mr IAN COHEN:** Perhaps if we flood the place, but I think we are lacking the water. I acknowledge the interjection of the honourable member: many a shark far more dangerous than the grey nurse circles in this House. There are significant advances in electronic shark repellent devices. One such device is attached to the leg rope that surfers use. I am tempted to try it out. I ask the Minister to seriously consider cordoning off sections of the beach—people feeling safe bathing between the flags—so that the devastating impact of shark nets and shark bait drums on many protected marine species does not continue. Whales migrating along our coastline, turtles and harmless sharks have been part of the by-catch.

I know the Minister has a strong predisposition to defend what I regard as an old-style protection that is relatively half-baked. I ask him to consider what is now technologically available so that the by-catch is non-existent. Given those various points peripheral to the main thrust of this debate, I believe the Fisheries Management Amendment Bill is a positive one, and I commend it to the House.

**Reverend the Hon. FRED NILE** [10.03 p.m.]: I support the Fisheries Management Amendment Bill. Reverend the Hon. Dr Gordon Moyes has spoken to the bill in great detail, but I want to add my comments about Homebush Bay. Commercial fishermen who have been stopped from fishing in Sydney Harbour are deeply concerned about the spread of dioxin. They believe that urgent measures must be taken to prevent dioxin moving from Homebush Bay into Parramatta River and progressively into Sydney Harbour. I am not a commercial fisherman, but from studying the diagram of Homebush Bay I believe it would be simple to put a cofferdam across the narrow opening at the mouth of Homebush Bay while other remedial work is being carried out. Fishermen are certain that watercraft on Homebush Bay are sucking out the dioxin from Homebush Bay into the main stream.

**The Hon. Ian Macdonald:** That's not right.

**Reverend the Hon. FRED NILE:** That is what they believe and I put some faith in their concerns because they live in that environment. The remedial proposal is a step in the right direction, but it is too slow and not sufficient to meet the serious situation we are now facing with the dioxin threatening the lives of the fishermen, their families and the general population. Fishermen also believe that the dioxin will move into the harbour and the ocean as a result of small fish being eaten by larger fish. There is also the serious impact of dioxin on an unborn child if a pregnant woman eats fish contaminated with dioxin. I urge the Minister to give this major tragedy that faces the city of Sydney his close attention.

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.06 p.m.], in reply: I thank honourable members for their contributions to this debate. I say to Reverend the Hon. Fred Nile that the one thing that has got my attention in recent months is dioxin: it seems to be a never-ending issue. Part of the problem has been created by recommendations of the World Health Organization and the European Union. In the 1990s when a lot of the original testing was done in Homebush Bay the levels found were generally permissible according to most standards around the world. But there is no real clarity. For instance, the United States of America has no maximum allowable rating. Very few countries around the world have defined limits of the maximum allowable dioxin.

**Reverend the Hon. Fred Nile:** There can be a maximum allowable dioxin, but they could eat a lot of fish.

**The Hon. IAN MACDONALD:** Yes. I am making the point that part of the problem during the past few years has been the moving of goalposts in public health considerations. A few years back, if my memory serves me correctly, the best way to treat the issue was to leave it, not disturb it and let the accumulation occur over a period of time where sediment would build up over the top of the deposit.

**Reverend the Hon. Dr Gordon Moyes:** The River Cats don't seem to help, though.

**The Hon. IAN MACDONALD:** From my information the River Cats do not go within 400 or 500 metres of the point. In fact, the point comes around at an angle that would make it very difficult for them to impact on the areas where there are significant deposits of dioxin. I have looked at that issue.

*[Interruption]*

Yes, I have no doubt the fishermen will raise some of these issues, but during the past few months I have checked some of them. It is important that we remediate the site. I listened with interest to Mr Ian Cohen. Yes, there is a great debate about technologies and how not to exacerbate a problem that is not simple. It is not often done. That is why it has taken a considerable amount of time for people to work out how to remediate a harbour with sediment on the floor of that harbour. It is not often done. But I return to the levels of dioxins.

**Reverend the Hon. Fred Nile:** It went from ICI to Union Carbide.

**The Hon. IAN MACDONALD:** Union Carbide no longer exists. They used the American way of getting out of these sorts of problems: when they realised that people everywhere round the world were going to sue them for their activities, they entered into an arrangement under bankruptcy laws to avoid responsibility. We have a problem with what they did in Homebush Bay, but the people of Bhopal, India, have a far worse problem; they did not get a cent, if my memory serves me correctly. On dioxins, there has been a great amount of change. Every issue has been quite difficult to resolve. First of all, it was impossible to offer buyouts to fishers when another batch of fish had to be tested to get an idea whether the problem went beyond prawns and

so forth. Every step has been difficult, because in a buyout one is effectively closing the fishery down. You cannot just rush in and do that. Every step in this measure has been pretty well thought out. Of course, there are a lot of steps that will have to be taken to complete the buyout; it is not technically easy.

I will deal now with a few other points. There were close negotiations on the bill with the fisheries industry. As I mentioned before, the Seafood Industry Advisory Council was consulted heavily in relation to it. I attended a meeting, if I recall correctly, at Parliament House with the commercial fishing industry to discuss these very matters. We had very long, more or less workshop meetings to thrash them out. The amendments underpin what we are attempting to move towards, that is, a full share managed fishery in New South Wales. As Mr Ian Cohen said, this gives ownership, and therefore stewardship, to the fishers themselves in moving forward in this industry.

The Deputy Leader of the Opposition raised a number of points. One of the major Sydney Harbour charter boat operators met with Department of Primary Industries staff last week and indicated that the dioxin issue had not affected his business at all. If the Deputy Leader of the Opposition knows of people in the charter boat industry operating on Sydney Harbour who believe they are affected, I would like to hear from them. The honourable member made a number of other outrageous comments.

**Reverend the Hon. Fred Nile:** Then why did he come to see you?

**The Hon. IAN MACDONALD:** I have not had charter boat operators knocking at my door to see me about this issue at all. The major, very successful operator on Sydney Harbour indicated to the department that the dioxin issue has not affected his business. You have to remember that in recreational fishing these days, catch-and-release is a major form of fishing, and whether fish have dioxins in them or not would be irrelevant to operators using that technique. In relation to Tilligerry Creek, we have helped the growers. Three of them have been offered to relocate further down that part of the creek so that they can continue to operate, and they have operated. One, or perhaps two, have made it clear right from the beginning that they were thinking of legal action. Once they started talking legal action, our position was: Well, if that is what you want to do, you pursue that. We believe the State Government is not responsible for sewerage operations anywhere in the State; that that is a matter clearly within the powers of the local authority.

**The Hon. Duncan Gay:** You blame the councils, the councils blame you, and the fishermen miss out.

**The Hon. IAN MACDONALD:** That is certainly not true. The legal advice we have on this issue is clear cut. In relation to abalone, the Deputy Leader of the Opposition said that this is clearly a local government issue.

**The Hon. Duncan Gay:** The fishermen say that local government says it is a State Government matter, and State Government says it is a local government matter, and the fishermen miss out.

**The Hon. IAN MACDONALD:** In fact, local government has realised it has a responsibility, because it has been talking to maybe 400 or 500 households around Anna Bay and the headwaters of Tilligerry Creek, which have large septic tank based sewerage systems. Local government officers are inspecting and checking in an effort to reduce the burden. In relation to the abalone issue, the Deputy Leader of the Opposition referred to Elders. I refer to a letter from the Chief Executive Officer of Elders, Mr R. G. Jones, written to me a couple of weeks back:

Dear Minister

I am writing to you regarding the article which appeared in the Daily Telegraph of Monday April 10, under the heading "There's just one catch: industry looks fishy".

I felt it was necessary to point out that the comments attributed to Elders Rural Bank are definitely not the official view of the Bank.

Reverend the Hon. Dr Gordon Moyes indicated support for the Deputy Leader of the Opposition on this point. Mr Jones continued:

While the comments were contained in a letter sent to an unsuccessful applicant for a loan, they were made by an officer acting on behalf of the Bank, but without authority or basis.

**The Hon. Duncan Gay:** But they were made.

**The Hon. IAN MACDONALD:** The letter continues:

Elders Rural Bank unequivocally withdraws the comment and I would like to apologise on behalf of the Bank for any embarrassment or stress caused by the comments and their resultant publication in the Telegraph.

So that is absolutely clear cut.

**The Hon. Duncan Gay:** No, it's not.

**The Hon. IAN MACDONALD:** The Chief Executive Officer of Elders Rural Bank makes it clear that that is not the policy of the bank.

**The Hon. Duncan Gay:** It means that you made some threatening phone calls. That's all it means.

**The Hon. IAN MACDONALD:** You are one of the most offensive people I have ever come across in this Parliament. I made no phone calls to Elders Rural Bank's Chief Executive Officer or anyone else in Elders Rural Bank in relation to this matter. I would not do that. But this letter has come to me, and it quite clearly sets the record straight.

**The Hon. Duncan Gay:** What is the date of it?

**The Hon. IAN MACDONALD:** I do not have the date of it.

**Reverend the Hon. Fred Nile:** Table the letter.

**The Hon. IAN MACDONALD:** I am quite happy to table the letter. In fact, the letter has a fax imprint at the top which is not clear but appears to read "Elders Rural Bank 12/04/2006". I think that is the date—two days after the article was published. To make it clear, I will read it again:

Elders Rural Bank unequivocally withdraws the comment and I would like to apologise on behalf of the Bank ...

**The Hon. Duncan Gay:** But the comment was made by one of the bank's people. You cannot get away from that.

**The Hon. IAN MACDONALD:** They had no authority. In relation to New South Wales fisheries, let us be very clear. A number of years back a large number of licences were issued across the State. In 1984 some 3,259 licences were issued, reducing by 1994-95 to 2,100. We have around 1,300 now. It is the key issue that faces the fishery. In fact the Seafood Industry Advisory Committee—the leaders in the industry—believes that we should reduce the numbers from 1,300 to 700. That is what they are talking about. The Commonwealth recognises this with a \$150 million package to reduce the number of Commonwealth licence holders. Everyone realises we have too much pressure on the fisheries. That is the major problem facing this State. I point out that the Government is spending, roughly this year and round this year, \$27 million on industry adjustment. Prior to that, an additional \$20 million was spent on buying out 251 licences. These are complex issues. I was going to deal with some more of them in a little more detail, but I will let that go until another occasion. I commend the bill to the House.

**Motion agreed to.**

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

#### ADJOURNMENT

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [10.19 p.m.]: I move:

That this House do now adjourn.

#### STATE EMERGENCY SERVICE VOLUNTEERS

**The Hon. TONY CATANZARITI** [10.19 p.m.]: Close to a fortnight ago I toured the Lachlan, Murrumbidgee, Wagga Wagga and Albury electorates, making a couple of announcements along the way. In

West Wyalong I announced, on behalf of the Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs, that the Department of Lands would reserve a parcel of Crown land for Emergency Services use. While there I also made the announcement that the West Wyalong Motor Registry will remain as is. This follows consultation between the Mayor of Bland Shire Council, David Bolte, the General Manager, Frank Zaknich and the Minister for Roads, and I am happy to say that everyone is pleased with the result. Reservation of the land as a Crown Reserve for community purposes for use by local Emergency Services, including the State Emergency Service, is expected by mid year. Bland Shire Council will be appointed as trust manager.

This will be a great asset to the Emergency Services as the site is centrally located in the town and fronts on to the Newell Highway, making it easily accessible to all the agencies. The adjoining crown land is already reserved to provide other government services such as the Soil Conservation Service, Roads and Traffic Authority and New South Wales Forests. This announcement comes on top of the opening of two joint Rural Fire Service-State Emergency Service [RFS-SES] facilities in Narrandera and Griffith about a month and a half ago, about which I have spoken previously. I also paid tribute to our Rural Fire Service volunteers and tonight I would like to highlight the invaluable service carried out by the State Emergency Service volunteers. They, too, are true heroes. The SES is made up of approximately 10,000 volunteers, including reserves, and 109 members of staff.

Every council area in New South Wales has an SES presence, and services to the communities of the State are provided from 231 local units staffed by volunteers ranging in age from 16 to 80. The State Emergency Service celebrated its fiftieth anniversary last year. It was following the disastrous floods of 1955, which resulted in the loss of 22 lives and major property damage in many parts of the State, that the then New South Wales Labor Government set up the SES, recognising the need for a body of trained volunteers who possessed good local knowledge and who would be available at short notice to assist the community in such disasters. Prior to that, water brigades were established along the Hawkesbury River from the 1870's, increasing to around 20 brigades by 1906. They covered an area from the Tweed to the Hawkesbury, providing invaluable assistance during times of flood.

These community-based groups were well supported by local councils and the Government. However, from around 1920 until the end of World War II, the water brigades declined in number due to a long period of few floods, made worse by the human toll of the war. Following the war, 10 years of increased flooding saw the brigades struggle to respond and, as I have mentioned, it was the terrible floods of 1955 that led to the establishment of the State Emergency Service. During the height of the Cold War, the SES also had the task of the management of civilian protection in the event of war. However, as the threat of the Cold War subsided, the civil defence role of the organisation disappeared and today the SES plays a vital role in the event of emergency: it is now the most widely utilised rescue and public safety organisation in New South Wales. The main roles of the SES are to assist in times of flood—for example, warning, evacuating, rescuing and providing essential supplies to those isolated by floodwater; and storm—including securing and covering damaged roofs, removing fallen trees and branches from property and rescuing trapped people.

In addition, the SES rescues people from vehicle accidents, cliffs, ravines and other situations, although these activities are almost exclusively carried out in rural areas of New South Wales. It provides assistance to other agencies in the management of disasters such as bushfires, earthquakes, landslides and technological disasters, and assists police with searches for lost people or evidence. It is important to recognise the invaluable job that these men and women do in protecting our families in dangerous situations. We are fortunate to have such dedicated people in New South Wales. I am sure honourable members of this House will join with me in giving thanks to each and every SES volunteer who strives to assist us in our time of need. [*Time expired.*]

#### INDEPENDENT MEMBERS OF PARLIAMENT PARLIAMENTARY STRATEGY

**The Hon. MELINDA PAVEY** [10.24 p.m.]: This week in this building a very important meeting will take place, a meeting that highlights the desperateness of this Government to stay in power at any price, a meeting that shows the duplicity, moral bankruptcy and desperation of a group of people to defy the will of their electorates and to do a deal with an incompetent, lazy Government that by the standards of any unbiased assessment has miserably failed the people of New South Wales. Time is up for this Government: the people of New South Wales and in particular regional New South Wales know this Government's time is up. The people of New South Wales cannot afford 16 years of hard Labor and the constituents of Port Macquarie, Dubbo, Tamworth, Northern Tablelands and Pittwater cannot reward their unaligned members who, by their own admission, are contemplating keeping the very same Government in office.

The people of Port Macquarie know that Robert Oakeshott was taken for a ride by the previous Roads Minister, Carl Scully, who promised construction would start on the Oxley Highway and who announced a program to replace timber bridges—both commitments broken after the election. Labor has continued to dodge the redevelopment of the Parkes Hospital in the Dubbo electorate and it has failed to support construction of a new road over the Blue Mountains to help local businesses. The people of Tamworth, Gunnedah and the Northern Tablelands are aware of the damage to the region by the draconian changes to the management of the Brigalow belt to keep the voracious Greens happy in Labor's pursuit of Greens preferences. The people of the region also know that keeping Labor in office will mean local businesses facing stiff competition from their Queensland neighbours who operate under a far more business friendly administration.

An *Australian Financial Review* editorial highlighted the fact that New South Wales has long since ceased to be the "powerhouse" State. We have been treated to the unedifying spectacle of the spoils of government being divided up by power mongers with nothing but self interest in mind, something we in this Chamber see every day. An *Australian Financial Review* editorial stated:

The Right—fanning out from ALP headquarters in Sydney's Sussex Street—has dominated Labor politics since the mid-1980s. And in NSW they've called the shots for the past decade. Labelling this a boys' club is generous. To most people it's a mafia: appointing cabinet members, selecting leaders and giving jobs to their own—of which the Olympics was the most sickening example.

All the king making and the metaphorical knee-capping has been done with a smile and a "What, me?" look of innocence, of which Graham Richardson [the current Premier's former boss] was the master.

The Right might think it's innocent, but ultimately the public destroys tyrants. Unless Labor focuses on the economic and infrastructure shortcomings that afflict the beleaguered residents of NSW, it'll be devastated at the next election, and wither like its federal counterpart.

In addition to the *Australian Financial Review* editorial there was a comment by Mark Bethwaite from Australian Business Limited pointing out that to the north, Queensland is enjoying the benefits of a resources boom. In the last year it has created more than 80,000 full-time jobs with employment growth of 6 per cent. Each week 700 New South Wales residents pack up their belongings and move across the border. It is little wonder that New South Wales employment growth now lags behind every State but Tasmania. I raise these issues because I believe the people of this State, particularly regional New South Wales, have had enough.

Earlier today I referred to majority verdicts in my contribution to the debate on the Jury Amendment (Verdicts) Bill. I said that to see the Independents hunting as a pack but calling themselves Independents would be humorous if not so serious. Following the Pittwater by-election they confirmed that they hold a weekly meeting to caucus and discuss their parliamentary strategy, evidenced by their decision to vote as one in opposing the majority verdict legislation first proposed by the Opposition to bring back some justice to the New South Wales justice system. Last Wednesday in the Legislative Assembly on one side of the Chamber were The Nationals, the Liberals and the Labor Party—despite some disquiet within the left-wing ranks of the ALP in regard to this policy about-face by Premier Iemma—and, on the other, Oakeshott, Draper, Fardell, Torbay, Barr McTaggart and Moore voting as a party to block the legislation.

I have checked the policy web site of the member for Port Macquarie and, interestingly, there is no mention on that web site of Mr Oakeshott's policy decision on this matter. There is some general motherhood, fluffy stuff that everyone would agree with, but no explanation as to how he came to reach his decision on majority verdicts and why he coalesced his Independent colleagues to vote in the same way. As the Hon. Peter Breen pointed out in his defection to the Labor Party, one can only do so much as an individual. When you are on your own it is hard to promote major changes in Parliament. The Hon. Peter Breen's comments highlight the fact that Independents are not part of a team and are therefore unable to exert any real influence on the political process. In other words, they have no clout and are ineffectual. As a result, they are relegated to the role of political commentators who merely watch the issues being debated from the sidelines.

The reality is that The Nationals and the Liberals will win the next State election. We will win the seats to govern in our own right because the people of New South Wales have had enough and know that we cannot afford 16 years of hard Labor. They also see through the attempts of the Independents to do sleazy deals with the Labor Party and punish those who attempt to undermine the future of New South Wales for the sake of their own cheap political careers.

## BIOFUELS

**Mr IAN COHEN** [10.29 p.m.]: In November last year I made a speech on peak oil. I wish to return to this issue. Honourable members should be well aware of the concept. Peak oil refers to the point at which 50 per cent of any given oil reserve has been depleted. It can refer to a single oil well or the entire planet's oil supply,

but this 50 per cent figure is significant because as the amount of oil decreases, so does the rate at which the oil can be extracted. Essentially it is like scooping water out of a bucket—easier to do when it is two-thirds full than when it is one-third full. Essentially once peak oil occurs, our rate of supply gets slower. The obvious economic result is that a dwindling supply will result in significantly increased prices unless accompanied by a parallel reduction in demand. If demand increases or continues as is, the average family will soon be unable to afford to run their car on petrol, especially as increasing fuel costs will lead to price rises in other areas as well.

Oil supply is out of our control: demand is not. This requires our most urgent attention. There is conjecture as to exactly when the world's oil supply will have reached the peak oil point, but most analysts predict that it will be in the next five to 10 years, if it has not happened already. It is not a point at which a great announcement will be made, or trumpets will sound. Its effects will slowly and increasingly take hold. By the time they become dire, it will be too late to do anything about it. We should realistically have been looking at alternative sources of transport and energy at least a decade or so ago. Some areas of government have made small attempts to address this issue, but what we have done so far amounts to little more than rearranging the proverbial deckchairs on the *Titanic*. We have had plenty of warning and failure to act would be reprehensible.

Obviously, transport is responsible for much of society's oil consumption, but oil is far more pervasive than that. It is used in many manufacturing processes and as a raw material in many items, including pesticides and herbicides. All families will suffer financial hardship, but farming families will suffer more than most. I would especially encourage members representing rural electorates to carefully consider their response to this issue. To that end, it is crucial that the solutions we come up with are effective and long term. We must reject fossil fuels outright. We must also reject stopgap options such as ethanol. We must be wary of ethanol as a fuel in its own right. It is less energy efficient than petroleum. Also, crops that are grown to produce it could otherwise produce food.

By being primarily useful only as an additive, ethanol effectively exacerbates the problem by prolonging our dependence on oil. In addition, ethanol also has a number of negative environmental impacts in its own right. Research by Tad Patzek of the University of California clearly shows that the fossil fuel input to ethanol exceeds by a wide margin its energy content. It is false to call ethanol a renewable fuel. The crops from which it is derived are energy intensive and erode soil much faster than they can rejuvenate it. The same research shows that even inefficient solar cells produce more than 100 times the electricity produced by ethanol. We need to look at renewable sources of energy.

I therefore call on the Government to do as much as possible to encourage the use of solar power and other forms of renewable energy. If we need to use fossil fuels in the interim, we should encourage the use of compressed natural gas rather than oil or ethanol. We must implement efficient and energy friendly modes of public transport, and make them affordable. This requires a moratorium on new major road infrastructure. The Government must be especially wary of long-term commitments with private companies that involve financial responsibility for new roadways in future decades. The way things are going nobody will use them. In some cases we are not using them now. There must be a massive reassessment of transport funding in favour of public transport, especially rail options. Tax concessions and other financial incentives must be offered to individuals and corporations that attempt to wean themselves off oil. Most importantly, we must explain to the public what we are doing and why. We should make the best option, that being renewable energy, the cheapest and easiest option for people to use.

As I stated in my previous speech on this issue, we must cut down on "food miles". To that end we should promote, and encourage local councils to promote the notion of consumers purchasing goods produced in their local area. This will reduce the number of trucks on our roads, it will reduce pollution, it will reduce wear and tear on our roads and make them safer. It cuts transportation costs and it helps to build community. Where this is not possible, rail should be used to transport as much freight as possible, and the Government should be making this an easy and cheap option for companies.

Politicians around the world love to emphasise their belief in family values. This is one issue in relation to which they can show that their words are more than empty rhetoric. Act now and save our families from falling into the trap of ever-escalating oil prices, which affects not only the cost of fuel they put in their cars but also the cost of most items they purchase. Act now and help create a world with efficient and environmentally friendly transport. All parents want a decent future for their children. The world that children grow up in will be shaped by the decisions we make now. I ask the New South Wales ALP to listen to the words of the current leader of their Federal parliamentary party, who stated last October:

As Australians queue for petrol at around \$4.00, \$5.00 potentially up to \$10.00 a litre even further down the track, the questions will be:... how had our Governments not seen the writing on the wall?... didn't our leaders foresee the soaring demand?... didn't our leaders do their sums and realise demand would outstrip supply?... couldn't they foresee the threats to supply?... and why was Australia so unprepared?

Kim Beazley has recognized the problem. However, he is in opposition, and I suspect he may be there for some time. [*Time expired.*]

### DEATH OF MR GRANT McLENNAN

**The Hon. AMANDA FAZIO** [10.34 p.m.]: During this year's Sydney Festival I had the privilege of seeing *Danger in the Past: the Story of The Go-Betweens* at the Sydney Theatre at Walsh Bay. It was a great concert, sold out of course and enthusiastically and warmly received by the audience. I have been a fan of The Go-Betweens since I first heard their single *Lee Remick* played on the radio in 1978. Like all their fans, I was very saddened to hear that Grant McLennan, one of the group's founders, had passed away in his sleep at his home in Brisbane on Saturday 6 May 2006. He will be deeply missed by all who knew him, whether personally or through his music.

Many people may not have heard of Grant McLennan or The Go-Betweens, which is a great pity. They are so highly regarded internationally that obituaries have appeared in the *Independent*, the *Times*, on the BBC, the *NME* and *Billboard* as well as in all major Australian newspapers. As well, a book was written on the band in 1997—*The Go-Betweens* by David Nichols. Grant McLennan was one of Australia's greatest songwriters who created an outstanding musical legacy as a founding member of The Go-Betweens and as a solo artist. He was enjoying enormous acclaim for the band's most recent album, *Oceans Apart*, which has received five-star reviews around the world and won a prestigious ARIA award. In 1999, Australia had lost the greatly talented David McComb of The Triffids, who will be remembered for his song *Wide Open Road*.

Grant McLennan was born in Rockhampton, Queensland, on 12 February 1958 and grew up in rural Queensland, where an early interest in poetry, music and cinema marked him out from his peers. He first met kindred spirit Robert Forster while the two were at university in Brisbane during the mid-1970s, and by late 1977 they had begun to realise their mutual dream of forming a band together. Robert was already writing songs. Grant had wanted to become a film critic. The first time Grant saw Robert on stage was with two friends at a talent show. Everybody else was doing cover versions. Robert was singing original songs about Brisbane and movie stars. He was realising his friends were not on the same wavelength, and all he wanted was someone he could consider a friend and teach him to play bass—anyone could play the drums. Grant was prepared to become that bass-playing friend.

As well as the fact that Grant sang about Brisbane, he was fascinated by Robert's courage playing good songs so badly. He wanted to do it too. They thought they would release two or three singles and then go and do other things with their lives. As The Go-Betweens they recorded two of Robert's songs for the first single, an unashamedly poppy ode to actress Lee Remick, and *Karen*. They pressed 500 copies and distributed it themselves. Like The Saints before them, the greatest interest came from London. In November 1979 they finally departed for England, where they recorded a third single *I Need Two Heads* for an independent label in Glasgow—the legendary Postcard records. They were mixing with and playing to people who had heard of Velvet Underground and Jonathan Richman, But, after a year, out of money and needing a new drummer, they returned to Australia.

After releasing a string of singles, the band recorded their debut album, *Send Me A Lullaby*, in 1981. The Go-Betweens recorded a series of exceptional albums that achieved widespread critical acclaim and were fundamental in bringing Australian music to a global audience. Their song *Streets of our Town* is used as the theme for Prime Television. Grant McLennan was an unparalleled lyricist and a prolific and meticulous composer. His autobiographical masterpiece, *Cattle and Cane*, was recently voted by the Australian Performing Rights Association as one of the 10 greatest Australian songs of all time. In 1989 The Go-Betweens took a 10-year sabbatical and Grant recorded four powerful solo albums including the vivacious debut *Watershed* and the epic *Horsebreaker Star*, as well as forming satellite groups like Jack Frost with Steve Kilbey of The Church and The Far Out Corporation with Ian Haug of Powderfinger.

When Robert Forster and Grant McLennan reformed The Go-Betweens in 2000, the band was greeted with adulation by a new generation of musicians for whom their songs had been an inspirational teenage soundtrack. The three albums that the band subsequently released were universally acknowledged as containing some of Grant McLennan's greatest compositions. His song-writing partner, Robert Forster, has stated:

Grant had been really well, in the past six months he was as happy and as well as I've ever seen him. And he was in Brisbane which is where he wanted to be.

He was in his prime and cracking songs were pouring out of him. I think it was the best set of tunes he'd ever had and I told him so. I'm very glad that I did now.

His greatness was in his lyrics and in his melodies, too. He really was a master melody writer, and he was searching for that magic combination, the magic pop song.

Grant McLennan was a passionate supporter of the arts, extremely well read, and he maintained a keen interest in all contemporary music, cinema and visual art. He was an exceptionally charming and polite man who endeared himself to everyone who met him and was one of the rare individuals worthy of the epithet "larger than life". His singular contribution to music and his commitment to his craft simply cannot be overstated. He will be deeply missed by all who knew him.

Grant is survived by his mother, his sister, his brother, his son, his girlfriend, Emma, his band mates, Adele Pickvance and Glenn Thompson, and lifetime musical colleague and friend, Robert Forster. Every time I drove through the cane-growing areas near Woodburn when the cane was being burnt I would think of his lyrics:

*I recall a schoolboy coming home  
Through fields of cane  
To a house of tin and timber  
And in the sky a rain of falling cinders.*

Vale Grant McLennan.

#### UNLICENSED BOARDING HOUSES

**The Hon. JOHN RYAN** [10.39 p.m.]: I wish to report to the House a number of concerns I have about the regulation of unlicensed boarding houses. Today I received answers from the Minister for Disability Services to questions I placed on notice about 10 unlicensed boarding houses. Those answers confirm everything I have been concerned about. It is an offence under the Youth and Community Services Act 1973 for a person to operate a boarding house accommodating more than two people with disabilities without a licence. The New South Wales Ombudsman regards that Act as outmoded and unenforceable. I am concerned that the Act is barely enforced at all. The Minister admitted that in five years the department has conducted a mere 18 investigations into unlicensed premises. The department's investigation of the 10 premises that I referred to it will amount to 50 per cent of its effort in five years. Departmental officers can enter a suspected unlicensed boarding house only if they have a warrant from a magistrate.

The Minister has informed the House that prior to 1998 the department had obtained two warrants and none since. Boarding houses are expected to comply with fire standards set out in the Building Code of Australia. While the assessment of these matters is complex, in simple terms we should expect to see certain essential fire safety provisions in a boarding house. They include items such as a back-to-base fire alarm system, smoke detectors, portable fire extinguishers, illuminated exit signs, solid core doors to each room, and an adequate means of exit from the building including soundly built stairs. I complained about a boarding house in Crystal Street, Marrickville, which clearly does not comply with those minimum standards. It has a narrow and rickety set of stairs leading to a number of upper levels in the house.

The doors to the rooms are obviously not the appropriate solid core doors. I did not see one portable fire extinguisher, or evidence of illuminated exit signs. The passageways leading to both the front and rear exits were cluttered with junk including abandoned shopping trolleys and the remains of discarded white goods. An answer I received from the Minister for Disability Services stated that a departmental officer:

...inspected premises at 117-119 Crystal Street, Petersham, on 2 March 2006, as a result of its concerns regarding fire safety issues and poor health standards at the premises. On 21 April 2006, the Council advised the region that the fire safety at these premises now complies with the requirements of the Building Code of Australia.

I visited that boarding house to be photographed for an article published in the Glebe newspaper on 27 April 2006 in the same week that Marrickville council provided that advice. While I am no expert in the finer points of fire safety assessment, it was clear to me that the boarding house did not comply with essential fire safety or health standards. I notice that the Minister made no reference to the department's concerns about health standards. In regard to another seven unlicensed boarding houses I referred to the department for attention, the Minister's answer confirms my concerns about both fire safety and health issues. He said:

... referrals have been made to the local council where issues have been identified that relate to the Building Code of Australia.

In regard to another boarding house that I was concerned about at 300 Palmer Street, Darlinghurst, where a more detailed inspection took place on 20 April, the Minister reported:

The co-owner agreed to a process where providing the residents gave consent, regional staff would undertake an assessment to determine if any of the residents met the criteria for a "handicapped person", and he reported that of those residents who consented to this assessment, none met the criteria under the Act.

Unfortunately, the investigation could take place only with consent. We have absolutely no idea how many of the 25 residents reported in the media to be living there were assessed. I was informed that during the investigation a person tried to inform the inspectors that action had been taken by the owners to prevent some of the residents from answering questions by telling them to not open their doors. Additionally he wanted to report that a pet cat had been transferred to a local laundromat to prevent the inspectors becoming aware that the cat shared a room with one of the residents under the filthiest of conditions. Apparently the investigation was also disrupted by a fire alarm going off, caused by a room being fumigated for cockroaches.

Unfortunately the departmental officer refused to act on that useful information; and probably could not, under the law. I can only imagine that that boarding house barely passed the appropriate public health requirements. The boarding house is one that has been publicly identified as being owned and operated by the member for Pittwater. The Youth and Community Services Act needs to be reviewed and reformed because its provisions are outmoded, its standards are inadequate, and enforcement of them is a demonstrable joke.

#### UNITED STATES OF AMERICA AMBASSADOR TO AUSTRALIA

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [10.44 p.m.]: Mr Tom Schieffer was the United States of America [USA] ambassador to Australia from July 2001 until February 2005. Since that time there has been no USA ambassador to Australia and the mission has been run by the current deputy chief of mission, Mr Bill Stanton. Recently it was announced that he will be replaced in July this year by Ms Carol Rodley, who is the head of the USA State Department's Bureau of Intelligence and Research. That department is the spy agency for America's diplomats. She has access to America's most tightly guarded secrets about Al Qaeda and the global war on terror. Ms Rodley's job will involve liaising with Australian intelligence and law enforcement officers on terrorist threats in Asia and to Australia. She is part of the inner circle of Washington's top spies, which includes the Director of National Intelligence, John Negroponte. But ABC online states:

Ms Rodley may find herself acting as the ambassador, as the nomination of Robert McCallum as the new US ambassador to Australia was put on hold in the face of opposition from within the US Senate last week. McCallum was the man nominated by President Bush for the position. Mr McCallum currently serves as Associate Attorney General at the Department of Justice.

Deputy Democrat leader in the US Senate, Dick Durbin, Senator for Illinois, has objected to the nomination. Senator Durbin remains concerned about Mr McCallum's activities in the US Justice Department. Senator Durbin wrote to President Bush to express his concern about sending Mr McCallum to Australia while he is the subject of an ethics investigation by the Justice Department. The inquiry is examining whether Mr McCallum improperly influenced a US Government law-suit against big tobacco manufacturers when he was associate attorney-general. While he was Acting US Deputy Attorney General in July 2005, McCallum decided that the Government would "reduce the amount of damages it was claiming in a landmark anti-racketeering case against cigarette companies from \$A180 billion to \$A13 billion".

Mr McCallum was a former tobacco industry lawyer, who worked for Alston and Bird on behalf of R. J. Reynolds. He has denied exerting any improper influence on the case. It is interesting to note that both McCallum and President Bush were members of the infamous Skull and Bones Fraternity at Yale University, the graduating members of which are given a sizeable cash bonus to help them get started in life. Older graduate members, the so-called Patriarchs, give special backing in business, politics, espionage and legal careers to graduate Bonesmen who exhibit talent or usefulness. An article by Michael Gawenda in the *Age*, dated 16 March 2006, stated:

Mr McCallum grew up in Tennessee and has remained close to his Southern roots despite working in Washington for more than five years.... The White House will say only of Mr McCallum's friendship with President Bush that they were in the same year at Yale, and both were members of Yale's secretive and exclusive Skull and Bones society.

It is not surprising that the White House is reticent about the relationship between President Bush and Mr McCallum, given the view that cronyism is widespread in the Bush Administration.

A White House official confirmed that Mr Bush had been involved in choosing Mr Schieffer's replacement and that he had approached three other close associates about the job.

The tobacco industry donated \$2.7 million to the Republicans in 2004 and \$938,000 to the Democrats, but Justice Department officials insisted that the decision [to lower the amount of money asked from the tobacco industry] was made on legal grounds.

Justice Gladys Kessler is yet to hand down a decision in the case. The Justice Department's Office of Professional Responsibility is considering whether the decision to reduce the claim was due to political interference or involved ethical and conflict-of-interest issues.

So, there has been no USA ambassador for Australia for the past 15 months. On 22 April, 2006, on ABC's *Lateline*, the former USA Deputy Secretary of State in the first Bush administration, Richard Armitage, said that the length of time it has taken the United States Government to appoint a new ambassador to Australia is "unconscionable and unfortunate". Is that indicative of the level of regard the Bush administration has for Australia? Is that how John Howard's new best friend treats him? What high regard has the current USA regime for its ally in the so-called "Global War on Terror"! Worse than that is the choice of a candidate for the job—an apologist for the tobacco industry who is under investigation by the USA Justice Department. Australia deserves better than a crony of big tobacco, with the alternative a spy. Thanks to our major parties, big tobacco has just got out of giving any evidence to the New South Wales Government's tobacco use committee, and does not need any more evil influence coming from the USA. Our civil liberties are being progressively trashed as our own spy agencies go into overdrive to keep us safe with our belligerent USA-driven foreign policy. It is frankly disappointing who are on offer as ambassadors, but the relationship between John Howard and George Bush is so close and so subservient that perhaps Americans think we are happy with it. Let them note: some of us are not!

### CHILEAN POLITICAL PRISONERS

**Ms SYLVIA HALE** [10.48 p.m.]: Yesterday it was my pleasure to attend a delegation of trade unionists, human rights and anti-war campaigners who met with the Consul General of Chile, Mr Eduardo Ruiz, to demand immediate negotiations with Mapuche Indian hunger strikers now on their fifty-seventh day without food. Since Monday 13 March 2006 four Mapuche political prisoners have been on a hunger strike in the Chilean prison of Angol. The hunger strike has been undertaken in order to compel the Chilean Government and the international community to review the judgment that has seen them unfairly sentenced to 10 years and one day of imprisonment, and to pay \$US791,000 in compensation to Mininco, a multinational forestry and logging company. The delegation handed to the Consul General a letter addressed to Chile's President, Michelle Bachelet, and demanded immediate action on the prisoners' demands and an end to the Anti-Terrorism Law No. 18,314 of 1984.

*[Time for debate expired.]*

**Motion agreed to.**

**The House adjourned at 10.49 p.m. until Wednesday 10 May 2006 at 11.00 a.m.**

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